YUBA-SUTTER TRANSIT AUTHORITY

REQUEST FOR PROPOSALS (RFP) #07-26 FOR DESIGN AND CONSTRUCTION OF THE NEXT GENERATION TRANSIT FACILITY

November 16, 2026

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This project is funded, in whole or in part, by the Federal Transit Administration (FTA)

SEALED PROPOSALS ARE DUE BEFORE 3:00 PM on January 18, 2027

NOTE: Updates, changes, or addenda to the RFP are posted at:
https://www.yubasuttertransit.com/current-requests-for-proposals

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DIVISION 1 – NOTICE REQUESTING PROPOSALS TO PREQUALIFIED DESIGN-BUILD TEAMS

This Request for Proposals ("RFP") is issued by Yuba-Sutter Transit Authority ("Authority") to solicit Proposals for a California-licensed Contractor to lead a team of qualified and licensed Design Consultants and Subcontractors to design and construct the Next Generation Transit Facility Project as described in the RFP Documents. A Design-Build entity is a single organization, firm, joint venture, or consortium that contracts with the Authority to provide both design and construction services under one unified contract (DB Entity).

The Authority intends to adhere to the following solicitation schedule, but it is subject to change at the Authority's discretion:

Schedule of Events	Date	Time
RFP Issue Date	**November 16, 2026**	Not Applicable
Pre-Proposal Conference (Optional)*	**December 3, 2026**	11:00 am (PST)
Written Questions for Clarification Due	**December 11, 2026**	3:00 pm (PST)
Written Responses from the Authority Provided	**December 18, 2026**	5:00 pm (PST)
Proposal Due Date	**January 18, 2027**	3:00 pm (PST)
Anticipated Contract Execution	**April 2027**	Not Applicable

**A pre-proposal conference to clarify any contractual or technical questions for this RFP will be held via Zoom. Proposers attending the Zoom meeting must email Matt Mauk at matt@yubasuttertransit.com to obtain conference call-in information. Attendance is highly recommended but not required to submit a Proposal.*

QUESTIONS WILL ONLY BE ACCEPTED IF EMAILED TO MATT MAUK AT MATT@YUBASUTTERTRANSIT.COM.

Responses to questions and addendums will be posted at
https://www.yubasuttertransit.com/current-requests-for-proposals

PROPOSALS NOT RECEIVED BY THE PROPOSAL DUE DATE AND TIME SPECIFIED ABOVE WILL BE REJECTED. IT IS THE SOLE RESPONSIBILITY OF THE PROPOSER TO ENSURE THAT THEIR PROPOSAL IS RECEIVED BY THE AUTHORITY NO LATER THAN THE STATED DUE DATE AND TIME.

1.0 PROCUREMENT METHOD

This procurement is structured to comply with California Public Contract Code §22160 et seq. requirements, which govern the Design-Build process for Local Agencies such as the Yuba-Sutter Transit Authority. The California Public Contract Code requires the Authority to prepare and issue a request for qualifications to prequalify or short-list the Design-Build entities whose proposals shall be evaluated for final selection. Only shortlisted Proposers may submit a proposal for the Next Generation Transit Facility as the Design-Build entity. The selected proposer must comply with all applicable California and Federal Transit Administration laws and regulations.

The Authority will use a competitive sealed Proposal process to determine the responsive and responsible Proposer submitting the best value as determined in accordance with Paragraph 2.24 of the Instructions to Proposers. The California-licensed Contractor shall have overall management responsibility for the Project, shall be considered the Proposer, and shall sign the Proposal Letter.

1.1 OBTAINING RFP DOCUMENTS AND ADDENDA

Proposers must secure RFP Documents ONLY from the Authority. The RFP Documents, including Preliminary Design Documents, shall be on file in the office of Yuba Sutter Transit Authority, 2100 B Street, Marysville, CA 95901; the RFP Documents may be examined, and copies obtained. The RFP Documents will be provided to Proposers electronically. Proposers are responsible for providing any copies of the Proposal documents to their subcontractors. Material suppliers, subcontractors, and other sub-proposers may not obtain documents through the above process, and they will not be sent Addenda. Proposers are responsible for making sure they have obtained all Addenda pertaining to this RFP.

1.2 DBE PARTICIPATION

This Agreement is subject to 49 C.F.R. Part 26. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Proposer shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Proposer to carry out these requirements is a material breach of this Agreement, which may result in termination or such other remedy as the Authority deems appropriate. Each subcontract must include this assurance. The Authority does not have a DBE goal for this Agreement. The Proposer shall pay subcontractors for satisfactory performance no later than ten (10) days after receiving payment from the Authority and shall return retainage within thirty (30) days after the subcontractor's work is satisfactorily completed. The Proposer shall not terminate a DBE subcontractor without the Authority's prior written consent.

1.3 PROPOSAL FORMS

Each Proposal shall be submitted using the Authority's forms as provided in Division 3. If any Proposer makes any alteration, strike-through, or deviation in any of the printed matter of the Proposal or makes any qualifications of the Proposal Forms in separate documents submitted with the Proposal, the Proposal may be considered non-responsive.

1.4 LICENSES

At the time of the Proposal Due Date and at all times during performance of the work, including full completion of all corrective work during the Correction Period, the Proposer must possess a California Contractor license or licenses, current and active, of the classification required for the Work, in accordance with the provisions of Chapter 9, Division 3, Section 7000 et seq. of the Business and Professions Code, except as otherwise provided in California Business and Professions Code Section 7028.15. The Authority has determined that the Proposer must possess the following license(s): "Class A or Class B". The successful Proposer will not receive a Contract award if the successful Proposer is unlicensed, does not have all of the required licenses, or one or more of the licenses are not current and active. If the Authority discovers after the Contract's award that the Design-Builder is unlicensed, does not have all the required licenses, or one or more of the licenses are not current and active, the Authority may cancel the award, and exercise any one or more of the remedies in the Contract Documents.

Each listed Subcontractor (Form H: List of Design Consultants and Subcontractors) must possess a current and active California Contractor's license appropriate for the portion of the Work listed for such Subcontractor (Class A, B, or C) and shall hold all specialty certifications required for such Work at the time of the Proposal Due Date and at all times during performance of the Work.

Failure of a single-entity Proposer to possess the required license on the Proposal Due Date shall render the Proposal non-responsive. Failure of a joint venture Proposer to be properly licensed by the date of Contract award may result in loss of the Contract.

1.5 PERMITS, INSPECTIONS, PLAN CHECKS, GOVERNMENTAL APPROVALS, UTILITY COSTS, AND SIMILAR AUTHORIZATIONS

All necessary permits, inspections, plan checks, Government Approvals, and Utility Costs shall be obtained, paid for, and issued in the name of the Design-Builder. The Proposal Price/Contract Sum shall exclude the cost of all Permits and shall include the cost of administration and coordination for all city-issued Permits, Government Approvals, and Utility Costs.

1.6 INSURANCE

The Design-Builder, Design Consultants, and Subcontractors must provide the insurance described in the Exhibits of Division 4 in this document.

1.7 PERFORMANCE BOND AND PAYMENT BOND

The selected Proposer will be required to furnish to the Authority (1) a Faithful Performance Bond and (2) a Payment Bond on forms furnished by the Authority (see Division 4, Exhibit 2 - Project Forms) or approved by the Authority Attorney. The penal amount of the Payment Bond shall remain equal to one hundred percent (100%) of the Contract Sum. The penal amount of the Performance Bond shall remain equal to one

hundred percent (100%) of the Contract Sum. Said bonds must be satisfactory to the Authority and must be executed by a California-admitted surety insurer.

1.8 SUBSTITUTION OF SECURITIES

Pursuant to Public Contract Code §22300, the substitution of securities for withheld funds is permitted in accordance therewith.

1.9 ACCEPTANCE AND REJECTION OF PROPOSALS

Authority reserves the right to reject any or all Proposals; waive any informalities, irregularities or technical defects in any Proposals or in the RFP process; judge the Proposer's representations in submittals and results of reference checks, and any post-Proposal investigation to determine whether Proposer is qualified to perform the work and determine the Best Value Proposer, whichever may be in the best interests of the Authority.

1.10 PREVAILING WAGES

This Project is subject to the provisions of Labor Code §1720, et seq., and regulations set forth in Title 8 §16000 et seq. of the California Code of Regulations, which govern the payment of prevailing wages on public works projects. Design-Builder awarded the Contract, Design Consultants, as applicable, and all Subcontractors of any tier shall pay not less than the minimum prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Work. The Director of the Department of Industrial Relations, State of California pursuant to the California Labor Code, has determined the general prevailing rates of wages in the locality in which the Work is to be performed. The rates determined by the California Director of Industrial Relations are available online at https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html

The Davis-Bacon Act (40 USC 276a to 276a-7), as supplemented in the Department of Labor regulations (29 CFR Part 5), applies to this Contract. The Federal minimum wage rates/Davis-Bacon wage rates are available online at https://sam.gov/wage-determinations. To the extent that there are any differences in the Federal and State prevailing wage rates for similar classifications of labor, Design-Builder and its Subcontractors shall pay the highest wage rate.

1.11 CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS – PUBLIC WORKS CONTRACTOR REGISTRATION

This is a public works Project. The successful awardee shall be responsible for paying prevailing wage rates, training apprentices, and complying with other related requirements. Beginning July 1, 2014, under the Public Works Contractor Registration Law (California Senate Bill No. 854 – See Labor Code Section 1725.5), Contractors must register and meet requirements using the online application https://www.dir.ca.gov/public-works/contractor-registration.html before bidding on public works contracts in California. The application also provides agencies that administer public works programs with a searchable database of qualified Contractors. Application and renewal are completed online with a non-refundable fee. More information is

available at the following link:

http://dir.ca.gov/Public-Works/PublicWorks.html

The Authority shall award public works projects only to Contractors and Subcontractors who comply with the Public Works Contractor Registration Law.

Notice to Proposers and Subcontractors:

a. No Contractor or Subcontractor may be listed on a Proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for Proposal purposes only under Labor Code section 1771.1 (a)].

b. No Contractor or Subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

c. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

d. The Design-Builder must post job site notices prescribed by regulation. (See 8 California Code Reg. Section 16451(d).

e. The Design-Builder must furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement).

1.12 PROPOSAL IRREVOCABILITY

Proposals shall remain open and valid for one hundred twenty (120) days after the Proposal Due Date.

1.13 TIME FOR COMPLETION

The Project must be commercially operational by June 30, 2029.

-END OF NOTICE REQUESTING PROPOSALS-

DIVISION 2 – RFP INSTRUCTIONS AND REQUIREMENTS TO PROPOSERS

The following instructions and conditions apply when responding to this RFP:

2.0 GENERAL

All capitalized terms not defined herein are defined in the General Conditions (See Attachment B - General Conditions of Exhibit 1 in Division 4), as modified by the Special and Supplementary Conditions, if any.

2.1 QUESTIONS REGARDING RFP AND POINT OF CONTACT

Any questions, interpretations, or clarifications, either administrative or technical, about this RFP must be requested in writing no later than the date indicated in Division 1, Schedule of Events. All written questions will be answered in writing and conveyed to all Proposers. Oral statements concerning the meaning or intent of the contents of this RFP by any person are not considered binding. The point of contact for this RFP shall be:

Matthew Mauk
Executive Director
(530) 634-6880
matt@yubasuttertransit.com
https://www.yubasuttertransit.com/current-requests-for-proposals

The Authority does not encourage negotiation of the Standard Contract Terms & Conditions. Certain provisions are required by law, while others reflect longstanding Authority policy and practice. Proposers should carefully review the Standard Contract Terms & Conditions and identify any requested exceptions or modifications on Form R – Exceptions and Deviations.

All communications regarding this solicitation shall be made directly with the designated point of contact. Any verbal or written communications between any potential or actual Proposer, or its representatives, and any Authority Board Member, staff member, committee member, or consultant regarding this procurement are strictly prohibited from the date of the RFP advertisement through the date of execution of the Agreement. The only exception is communications at a publicly-noticed meeting of the Authority's Board of Directors.

Any violation of the requirements outlined in this section shall constitute grounds for immediate and permanent disqualification of the Proposer from participation in this procurement.

2.2 INVESTIGATION AND EXAMINATION OF SITE CONDITIONS AND CONTRACT DOCUMENTS

Proposers are responsible for reviewing the RFP Documents and Contract Documents, carefully examining the Project site prior to the Proposal Due Date and utilizing such other

means as they may choose to determine actual conditions of the work and accuracy of the information contained in the RFP Documents. The submission of a Proposal will be conclusive evidence that:

1. The Proposer has read and understands the RFP Documents.
2. The Proposal is made in compliance with the RFP Documents and is based upon the materials, equipment, and systems required by the RFP Documents.
3. The Proposer has visited and investigated the Project Site and familiarized itself with the local conditions under which the Work is to be performed.
4. The Proposer is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of Work to be performed and materials to be furnished, the difficulties to be encountered, and as to the requirements of the Drawings, Specifications, and other Contract Documents.
5. The Proposer is fully experienced, qualified, and competent to perform the Work set forth in the RFP Documents.
6. The Proposer shall not damage or endanger and shall preserve and protect adjacent properties.
7. The Proposer is properly equipped, organized, and financed to perform the Work.
8. The Proposer is properly permitted and licensed by the California Contractors State License Board to perform the Work set forth.
9. The Proposer has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials.
10. The Proposer has familiarized itself with the availability of labor, water, electric power, and roads.
11. The Proposer has familiarized itself with uncertainties of weather or similar physical conditions at the Project Site.
12. The Proposer has familiarized itself with the character of equipment and facilities needed, preliminary to and during the performance of the Work.
13. The Proposer has familiarized itself with the staging and material storage constraints of the Project Site and surrounding structures and will confine its staging and storage operations to approved areas; and
14. The Proposer will coordinate its construction activities with the Authority's Project Manager and the other Contractors performing work on the Project Site, including, but not limited to, any Separate Contractor retained by the Authority or its Project Manager.

2.3 EXISTING INFORMATION

The Authority has made available to Proposers information in its possession as to site and local conditions in the vicinity of the Work or other information that might assist Proposers in properly evaluating the amount and character of the Work required.

Proposers may rely upon the technical data contained in such documents, but not non-technical data, interpretations, opinions, or provisional statements contained therein. Authority does not warrant the completeness or accuracy of the data so provided, and Authority assumes no liability for such data. Any additional testing, investigation, or subsurface exploration shall be done at the Proposer's expense and shall be coordinated with the Authority's Project Manager. The Proposer shall ascertain the locations of the existing utility services and other underground facilities and provide for carrying out his/her operations so as to cause the minimum possible inconvenience to the occupants of the property along any streets affected. All Work and costs involved in the safeguarding of the property of others shall be at the expense of the Proposer to whom the Contract may be awarded.

The Proposer hereby certifies that it has examined the local conditions, has read each and every clause of the Contract Documents, and that it has included all costs necessary to complete the specified Work in the Proposal prices, and the Proposer agrees that if awarded the Contract it will make no claim against the Authority based upon ignorance of local conditions or misunderstanding of any of the provisions of the Contract. Should the conditions turn out otherwise than anticipated, the Proposer agrees to assume all risks incident thereto.

2.4 OR EQUAL SUBSTITUTIONS

No requests for substitution of any material, device, product, equipment, fixture, form, or type of construction shall be considered by the Authority prior to the award of the Contract. The successful Proposer shall submit all requests for substitution and substantiating data on the Authority's Form 5 or Equal Substitution (See Division 4) so as not to delay completion and the orderly progress of the Project. Refer to the appropriate provisions of the General Conditions for additional information regarding substitutions. Authorization of a substitution is solely within the discretion of the Authority. Proposal prices should not be based on any anticipated post-award approval of a substitution or value engineering Proposals.

2.5 RFP FORMS

Responsive proposals must include all forms provided and requested by the Authority. Proposal submissions not incorporating all forms may be considered non-responsive and rejected.

2.6 CONFIDENTIALITY

All information submitted to the Authority under this RFP process becomes the exclusive property of the Authority, but if not otherwise a public record under the California Government Code §7920.000 et seq., shall not be open to public inspection. All submissions and other correspondence will be subject to the following requirements:

A. Under Public Contract Code Section 20101(a), it is the Authority's position that all Proposers Qualifications and related information submitted in response to this RFP "shall not be public records and shall not be open to public inspection." Barring a court

order to the contrary, the Authority will treat all Proposer's Qualifications and related documents as confidential and will not disclose them.

B. California also recognizes an exception to the disclosure of records that contain confidential trade secrets. The Authority cannot determine what information in a submission, if any, may be subject to one of these exceptions. Accordingly, if a DB Entity believes that any specific portion of its submission is exempt from disclosure, the DB Entity must mark the part of the submission as such and state the specific provision that provides the exemption and the factual basis for claiming the exemption. For example, suppose a DB Entity believes a submission contains trade secret information. In that case, the DB Entity must mark the information as “Trade Secret” and refer to the appropriate section of the California law, which provides the exemption for such information and the factual basis for claiming the exemption.

2.7 RESERVATION OF RIGHTS OF THE AUTHORITY

The Authority may investigate the qualifications of any Proposer, Design Consultant, Design Subconsultant, or Subcontractor, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP. Any verbal modifications of the conditions or specifications documented herein shall be considered void and ineffective for Proposal preparation and evaluation purposes. Only changes issued as written Addendums from the Authority to this RFP shall be deemed valid and binding. In connection with this procurement, the Authority reserves to itself all rights (which rights shall be exercisable by the Authority in its sole discretion) to:

a. Reject any or all of the Proposals, or any item of the Proposal, without further obligation or reimbursement to the Proposers.

b. Modify this RFP.

c. Cancel or withdraw this RFP.

d. Issue a new Request for Proposals.

e. Suspend or abandon the Project.

f. Appoint evaluation committees to review Proposals and seek the assistance of outside technical experts in Proposal evaluation.

g. Adjust, increase, or decrease a Proposer’s qualification determination based on subsequently learned information.

h. Approve or disapprove the use of Subcontractors or Design Consultants.

i. Negotiate lower pricing with the Proposer recommended for award at any time after receipt of the Proposals.

j. Waive immaterial deficiencies, informalities, and minor irregularities in Proposals.

k. Require a Proposer to provide a guarantee (or guarantees) of the Contract

by a third party.

l. Terminate any negotiations if the Authority determines termination is in its best interests.

m. Not issue a notice to proceed after execution of the Contract.

In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these Authority-held rights.

This RFP does not commit the Authority to enter into a contract, including if the Authority elects to reject, in its sole discretion, all of the Proposals. The Authority is not liable for any costs incurred by a Proposer in preparation and submission of a Proposal or in anticipation of award of a contract. By submitting a Proposal, the Proposer disclaims any right to be paid for such costs.

The Authority reserves the right to reject any and all Proposals or any item or items of the Proposals and to waive any informalities or technical defects as the Authority's interests may require.

2.8 LATE PROPOSALS

Proposals not received by the Proposal Due Date and time will not be considered. Oral, telegraphic, facsimile, or electronically transmitted Proposals shall not be considered unless the RFP expressly permits such means of transmittal.

2.9 WITHDRAWAL OF PROPOSALS

Any Proposer may withdraw its Proposal either personally or by written request any time prior to the scheduled Proposal Due Date by notice to the party receiving Proposals at the place designated for receipt of Proposals. Such notice shall be in writing, signed by the Proposer, and shall be received, date-stamped, and time-stamped by the receiving party on or before the Proposal Due Date. Withdrawn Proposals may be resubmitted on or before the Proposal Due Date provided that they are then fully in conformance with these Instructions to Proposers. Once submitted, all Proposals are irrevocable, except as otherwise provided by law. Request for withdrawal of Proposals after the Proposal Due Date shall be made only in accordance with Public Contract Code §5100, *et seq.* Each Proposer agrees by submitting a Proposal that its Proposal shall remain open, is irrevocable, and may not be modified, withdrawn or cancelled for a period of one hundred twenty (120) calendar days after the Proposal Due Date.

2.10 EQUAL OPPORTUNITY

The Authority hereby notifies potential Proposers that all pre-qualified firms will be afforded equal opportunity to submit Proposals in response to this request and will not be discriminated against based on race, religion, color, sex, creed, marital status, ancestry, physical or mental disability, medical condition, sexual orientation, national origin, age, or any other consideration made unlawful by federal, state or local laws. It is the policy of the Authority that in connection with all Services and Work performed under contracts, there

shall be no discrimination against any prospective or active employee engaged in the Services or Work.

The Design-Builder shall comply with all applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act (California Government Code Section 12900, et seq.), California Labor Code Section 1735, and The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The Design-Builder shall require like compliance by all Design Consultants and Subcontractors employed on the Work by such Design-Builder.

While this Project does not currently have a specific Disadvantaged Business Enterprise (DBE) goal, DBE participation is strongly encouraged.

2.11 PRE-CONTRACTUAL EXPENSES

The Authority will be under no obligation to pay pre-contractual expenses. No stipend will be paid to Proposers for any costs associated with preparing and submitting Proposals in response to this RFP. Pre-contractual expenses are defined as expenses incurred by the Proposer for the following:

A. Preparing the Proposal in response to this solicitation;
B. Submitting the Proposal to the Authority;
C. Other expenses incurred by the Proposer before the date of award.

2.12 RFP PROTEST PROCEDURES

A protest is a Proposer's remedy for correcting a perceived procurement mistake. There are three basic types of demonstrations, based on the time in the procurement cycle when they occur:

1. A pre-bid or solicitation phase protest is received before the Proposal's due date.
2. A pre-award protest is a protest against making an award and is received after the receipt of Proposals but before the award of a contract.
3. A post-award protest is a protest received after the award of a contract.

All protests must be submitted in writing via mail or e-mail addressed to the Executive Director at the following:

Yuba-Sutter Transit Authority
ATTN: Executive Director
2100 B Street
Marysville, California 95901
Email Address: matt@yubasuttertransit.com

Required Contents—To be deemed substantive, a written protest must include, at minimum, the name of the protester; the applicable solicitation title, number, or description; a statement of grounds for the protest; adequate contact information; and a preferred delivery method for the response/determination.

The Yuba-Sutter Transit Board of Directors is responsible for awards to a vendor or contractor financed with Federal assistance or otherwise subject to Federal and State Third Party Contract provisions.

Request for Reconsideration—Yuba-Sutter Transit will allow a request for reconsideration if data that was not previously known becomes available or if there has been an error of law or regulation. Requests for reconsideration should be submitted in writing within five (5) working days of the date the protester learned or should have learned of an error or other basis of appeal.

Pre-Bid Protests - Unless otherwise explicitly stated in the public solicitation document, the deadline for the submission of a pre-bid protest shall be the close of regular business hours, no later than ten (10) working days after the publication/release date of the respective solicitation document(s). When a solicitation document expresses a specific date and deadline for submission of pre-bid protest, the published deadline shall take precedence over the ten (10) working day policy.

Responses - The Executive Director shall respond to each substantive issue raised in the protest in detail. Written responses/determinations will be mailed or emailed (according to the protestor's preference) during regular business hours, no later than five (5) working days after receiving the pre-bid protest or before the published qualification due date, whichever is first. Responding to any substantive questions received by Yuba-Sutter Transit may be sent to all interested parties or published as an addendum to the original solicitation.

Pre-Award Protests—To be considered, a pre-award protest must be received within 15 calendar days after the staff recommendation for award has been made available to the public.

Responses - The Executive Director shall respond prior to final award.

Post-Award Protests—To be considered, a post-award protest must be received before the close of business and within five (5) working days of the date the protester learned or should have learned of an adverse decision or other basis of appeal.

Responses - The Executive Director shall respond, in detail, to each substantive issue raised in the protest. Written responses/determinations will be mailed or emailed (according to the protestor's preference) before the close of regular business hours, within three (3) working days of receipt of the protest.

1. Notice of Intent to Award is issued for the award of a contract if the contract is awarded by the Yuba-Sutter Transit Board per staff recommendation or

2. Notice of Intent to Award is issued if the Yuba-Sutter Transit Board has delegated award authority to the Purchasing Agent or does not award the contract according to the Notice of Intent to Award.

Protests shall be in writing and addressed to the Executive Director.

The protest shall identify the protestor, contain a statement officially declaring a protest and describing the reasons for the protest, and provide any supporting documentation. Additional materials in support of the initial protest will only be considered if filed within the time limit specified above. The protest shall indicate the ruling or relief desired from Yuba-Sutter Transit.

Requirements for the Protester
The protester must:

A. Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third-party contract.

   1. Subcontractors. A subcontractor does not qualify as an "interested party" because it has no direct economic interest in the procurement results.

   2. Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder and is acting in its entirety would qualify as an "interested party" because it has a direct economic interest in the procurement results. An individual member of a consortium, joint venture, partnership, or team acting solely in its capacity does not qualify as an "interested party" because it does not have a direct economic interest in the procurement results.

   3. Associations or Organizations. An association or organization that does not perform contracts does not qualify as an "interested party" because it has no direct economic interest in the procurement results.

B. Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by completing the recipient's protest procedures.

2.13 ADDENDA AND INTERPRETATIONS

A. Authority reserves the right to revise the RFP Documents prior to the Proposal Due Date. Any such revisions shall be described in an Addendum issued by the Authority ("Addendum" or "Addenda"). If an Addendum requires significant changes to the Work, the Authority in its sole discretion may postpone the Proposal Due Date. In any event, the Proposal Due Date shall occur at least seventy-two (72) hours after Authority's issuance of the last Addendum.

B. No interpretation of the meaning of any plans, specifications, or other pre-qualification documents will be made to any Proposer orally. Every request for such interpretations shall be in writing and addressed to the attention of the Authority listed above. Such requests must be received before the date fixed for "Written Questions Due" in Division 1 listed above. Any such interpretations and supplemental instructions will be in the form of written Addenda to the specifications

and, if issued, will be posted on https://www.yubasuttertransit.com/current-requests-for-proposals. Should a Proposer find any irregularities, discrepancies, errors, or omissions in the RFP Documents, or find variances in any of the RFP Documents with Applicable Law, or should there be doubt as to the intended meaning of any RFP Document, the Proposer must submit to the Authority Contact a written request for clarification, interpretation, or correction. It is the Proposer's responsibility to ensure all requests are received and answered by the Authority promptly.

C. Failure of any Proposer to receive any such Addendum or interpretation shall not relieve such Proposer from any obligation. All Addenda so issued shall become part of the Contract Documents. Proposer shall assume full responsibility for making itself completely aware of all Addenda's existence and contents. Each Proposer will be presumed to have inspected any relevant site and to have read and be thoroughly familiar with any associated or referenced plans, specifications, or other documentation (including all Addenda) and referenced legal provisions. The failure or omission of any Proposer to examine any form, instrument, document, or referenced applicable legal requirements shall in no way relieve any Proposer from any obligation with respect to the Proposal submitted. If Authority determines, in its sole discretion, that an interpretation or clarification requires a change in the RFP Documents, the Authority will issue an Addendum. Receipt of any such Addenda by the Proposer must be acknowledged on Form A – Proposal Cover Page. Failure to acknowledge receipt of all Addenda may cause the Proposal to be rejected as non-responsive.

2.14 RFP RESPONSIVENESS

Proposers shall respond to this RFP with respect to all sections, terms, conditions, requirements, specifications, and the like. Failure to submit a complete response will likely result in rejection.

By submitting a submittal package, a Proposer represents that:

- The RFP is sufficient in scope and detail to indicate and convey a reasonable understanding of all requirements, terms, and conditions for the performance of the services required in this Project;
- The Proposer has exercised all necessary due diligence in making investigations and inquiries and examining documents for this Project;
- The Proposer is thoroughly familiar with— and has fully considered— all facts, conditions, circumstances, and matters that may affect, in any way, the Proposer's services or costs;
- The Proposer is and will comply with the RFP's requirements, terms, and conditions; and
- All personnel designated to work on this Project will possess valid licensing throughout the Project.

2.15 OBLIGATION TO KEEP THE PROJECT TEAM INTACT

Proposers are advised that all firms and Key Personnel identified in the Proposers Qualifications shall remain on the Project Team for the duration of the procurement process and execution of the Project. If extraordinary circumstances require a change, it must be

submitted in writing to the Authority Contact. At its sole discretion, the Authority will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur beyond the Design-Builder's control. Unauthorized modifications to the Project Team at any time during the procurement process may result in the elimination of the Proposer from further consideration.

2.16 INSURANCE REQUIREMENTS

A. The Design-Builder, at the Design-Builder's sole cost and expense and for the entire term of the Design-Build Contract or any extension thereof, will be required to obtain and maintain, at a minimum, all of the insurance requirements outlined in *Attachment A Insurance Requirements*.

B. Certain insurance certifications are required as part of this RFP process, as provided in Division 3, Form E—Insurance Requirements Affidavit.

2.17 BONDS

A. The Design-Builder will be required to deliver to the Authority performance and payment bonds in forms acceptable to the Authority in the full amount of the estimated construction costs to guarantee faithful performance and payments. To provide performance and payment bonds, the estimated construction cost for this Project is 100% of the Project Value indicated in Division 5, Project Manual.

B. Certain bond certifications are required as described in Division 3, Form E—Insurance Requirements Affidavit.

C. The Authority reserves the right to negotiate the bonding level requirements. However, the Authority will not allow other guarantees (such as bank letters of credit, etc.) instead of or in combination with the performance bond requirements.

2.18 CONFLICT OF INTEREST

Each DB Entity submitting a Proposal is responsible for determining whether or not its participation or the participation of other DB Team members in the proposed Design-Build Contract constitutes a conflict of interest or a potential conflict of interest under California Government Code Sections 1090, 87100 et seq., and other applicable law. Each DB Entity must investigate and manage any possible conflict of interest as part of considering whether to submit a Proposal and when assembling its project team.

The existence of such a conflict of interest is a basis for the Authority to disqualify a DB Entity's participation in this RFP process. Suppose the Authority determines that a DB Entity is disqualified because of such a conflict of interest. In that case, it will provide the DB Entity with a written statement of the facts leading to that conclusion.

2.19 INELIGIBLE PARTIES

The following individuals and firms (including parent or subsidiary organizations) serve in an advisory capacity to the Authority for this Project. They are, therefore, prohibited from participating in any capacity as a member of the Design-Build team:

- AECOM
- WSP

The Authority may issue an addendum to add or remove additional persons or firms from the list during any stage of the competitive selection process.

2.20 SUBMISSION OF PROPOSALS

Proposals must include all Authority forms contained herein with all blank spaces properly filled in. All forms required to be submitted with the Proposal are listed in Division 3, Proposal Forms and Submittals for Proposal. The phraseology on the forms shall not be changed. Unauthorized conditions, exemptions, limitations, or provisions attached to a Proposal may cause its rejection. All forms requiring specific information shall be completed with all applicable information for a Proposal to be considered responsive.

Include all Proposal Forms, properly executed and intact on the forms provided. Enclose the Proposal Forms in a sealed packet/envelope plainly marked “Proposal Documents for Next Generation Transit Facility” and the Proposer’s name and address. The envelope may be mailed, hand-delivered, or delivered by courier or package delivery service.

Proposals hand-delivered, delivered by courier, or package delivery service shall be presented to:

Yuba-Sutter Transit Authority
Next Generation Transit Facility DB Proposal
Attn: Executive Director
2100 B Street
Marysville, CA 95901

Proposals must be received by the Executive Director before the Proposal Due Date. Proposals received after the Proposal Due Date or at any place other than the Yuba-Sutter Transit Authority, to the attention of the Executive Director, will not be considered.

Failure to use sealed envelopes or properly identify the Proposal may result in an inadvertent opening before the time and place for the opening of Proposals and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, resulting from any inadvertent opening of unsealed or improperly identified envelopes. The Authority shall have no obligation to compensate any unsuccessful Proposer for its efforts in preparing a Proposal.

2.21 PROPOSAL IRREGULARITIES AND ALTERATIONS

A Proposal may be considered irregular and may be rejected for any of the following reasons:

a. If the forms furnished in the RFP Documents are not used or are altered.

b. If there are unauthorized additions, qualifications, conditions, or irregularities of any kind which may make the Proposal incomplete, indefinite, or ambiguous as to its meaning.

c. If the Proposer adds any provisions reserving its rights to accept or reject any award of Contract.

d. If prices provided by Proposer are obviously unbalanced or excessive or may materially affect the final cost of the work.

e. If the Proposer fails to complete in any manner the RFP Documents where information is requested so that the Proposal may not be properly evaluated.

f. If Proposer has been delinquent or unfaithful in the performance of any former contract with Authority.

g. If the Proposal is received after the designated deadline.

h. If the Proposal is oral (except to the extent provided herein), telephoned, e-mailed, or faxed, such Proposals are invalid and will not be considered.

i. If alterations by erasure, interlineation, or striking out text are not initialed by the signatory to the Proposal on the page on which each such alteration occurs.

j. If a Proposer or any Mandatory Design Consultant or Mandatory Subcontractor fails to meet any minimum experience requirements for specialty items of Work, as further described in the RFP Documents.

2.22 PROPOSER REPRESENTATIONS AND ACCEPTANCE OF CONDITIONS

In submitting its Proposal, the Proposer acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including, but not limited to, those conditions bearing on transportation; waste handling and disposal; handling and storage of materials; availability of labor, water, electric power, and roads; uncertainties of weather, river states, tides or similar physical conditions at the Site; the conformation and conditions of the ground; and the character of the equipment and facilities needed during prosecution of the Work.

The Proposer further acknowledges that it has satisfied itself with the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered at the Site insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory Work done, as well as from information presented in conjunction with the RFP Documents.

The Proposer further acknowledges that it has acquainted itself with the character and extent of the Authority's and other Contractor's operations in the area of the Work, as well as the Work.

Any failure by the Proposer to acquaint itself with the available information shall not relieve it from responsibility for properly estimating the difficulty or cost of successfully performing the Work.

Authority assumes no responsibility for any conclusions or interpretations made by the Proposer on the basis of the information made available by the Authority.

Each Proposer, in preparing Proposals, shall use complete sets of RFP Documents. Authority assumes no responsibility for any errors, omissions, or misinterpretations resulting from the use of incomplete sets of RFP Documents by any Proposer or from the Proposer's failure to attend any site visit and/or Pre-Proposal Conference.

2.23 EVALUATION OF PROPOSALS

Proposal Opening. The Authority reserves the right to accept or reject any or all Proposals and be the sole judge regarding the suitability of the products, services, or supplies offered and/or to waive any irregularities or informalities in any Proposals or in the RFP process. The Authority further reserves the right to purchase all or fewer than all items or quantities of each item listed in the RFP Documents. The award of the Contract, if made by the Authority, shall be to the Best Value Proposer.

Responsiveness. The Authority will perform a preliminary evaluation to determine whether each Proposal is responsive to this RFP immediately after receipt of the Proposal Documents. Authority may exclude from further consideration any Proposal that is non-responsive. A responsive Proposal is a Proposal that conforms, in all material respects, to the RFP Documents.

Responsibility. A responsible Proposer is a Proposer who has demonstrated the attributes of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily fulfill the requirements of the Contract Documents.

Competency of Proposers and Mandatory Prequalification. The Authority must prequalify all Proposers submitting Proposals. A Proposal shall be rejected and returned unopened if the Authority has not prequalified the Proposer. In addition, each Proposer shall provide an Update to the Proposer's Qualification Statement as part of its Proposal identifying any change in the Proposer's bonding capacity, business structure, Design-Build Team members, or other factors relating to the Proposer's qualification status. In selecting the Best Value Proposer, consideration will be given not only to the financial standing but also to the general competency of the Proposer for the performance of the Work covered by the Proposal, including, but not limited to, the experience of the Proposer in construction of public works for public agencies. By submitting a Proposal, each Proposer agrees that the Authority, in determining the successful Proposer and its eligibility for the award, may consider the Proposer's experience with similar types of construction projects and facilities, conduct and performance under other contracts, financial condition,

reputation in the industry, safety record and protocols and other factors which could affect the Proposer's performance of the Work.

Evidence of Responsibility and Additional Information. The Authority reserves the right to determine whether a Proposer can perform the various items of Work or can satisfy the specific requirements contained in the RFP Documents. The Authority may, at any time, request additional information or clarification from the Proposer and from any design professional team members or from third parties. If the available evidence of competency of any Proposer is not satisfactory, the Proposal of such Proposer may be rejected.

2.24 BASIS OF AWARD OF CONTRACT

The Authority intends to award the contract based on the Best Value valuation method from a responsible Proposer. The Authority will utilize the trade-off method, which allows for trade-offs between priced and non-priced factors. The Authority will not utilize the Acceptable Technical Lowest Price selection method.

a) Evaluation Method and Scoring

An Evaluation Committee will be selected to review all responsive and responsible proposals received in response to this RFP. The Evaluation Committee will be comprised of Authority Staff and may include other outside personnel or experts of the Authority's choosing. Each Evaluation Committee member will independently review each proposal, noting strengths and areas of opportunity using the scoring system described in Table 1. During the evaluation process, the Authority may request that selected Proposers appear for oral interviews after reviewing the written Proposals. Proposers should be prepared to have key management personnel identified in the proposal available for these interviews. If interviews are conducted, the Authority will notify the Proposer of the interview date, time, and location. The Authority may also request clarifications or additional information from one or more Proposers to facilitate its evaluation. Requests for clarification shall not constitute discussions or negotiations unless expressly authorized by the Authority. The evaluation committee will then convene to discuss the evaluations and develop a consensus score for each proposal based on the evaluation criteria. The consensus scores will be used to determine the final ranking of Proposers. The following weighting is provided for evaluation purposes.

Table 1: Proposal Scoring

Proposal Evaluation Criteria *(In order of relative importance)*
Price
Technical Design and Construction Expertise
Life-cycle costs over 15 or more years
Proposal Exceptions and Deviations

b) Evaluation Criteria

The Proposal will be scored based on the following criteria:

Price Proposal

- Form I – Schedule of Proposal Prices will be evaluated based upon the **total base proposal price**. Proposal Betterments/Alternates will be considered after selection of the Design-Builder and may be accepted at the Authority's discretion.
- Proposer's total base price shall be evaluated relative to the lowest total base price submitted by a responsive Proposer. The contract will be awarded based upon the base proposal price.

Technical Design and Construction Expertise

- Proposer and Subcontractor qualifications and experience in delivering similar projects utilizing the design-build project delivery method.
- Strength, stability, and prior collaborations of the Proposer and Subcontractors
- Quality of References for projects
- Qualifications of Proposer and Subcontractor Key Personnel, including review of all personnel proposed in the RFQ and evaluation of any proposed additions, substitutions, or changes to key personnel since the RFQ stage.
- Experience in projects of a similar nature utilizing the design-build delivery method
- Agreement to restrictions on changes to Key Personnel
- Achieves the Authority's operational objectives for both current and future facility needs.
- Clearly describes specific equipment utilized in the solution
- Clear site layout with adherence to any site and area restrictions
- Clear description of why this is the best solution for the Authority
- Comprehensive understanding of project requirements, scope, and overall organization
- Logical development of a work plan that clearly describes each task that will be performed in sequential order
- Completeness of deliverables and adherence to technical and procedural requirements
- Reasonableness of schedule and adherence to target dates
- Submit a detailed project schedule identifying all major activities, milestones, deliverables, dependencies, and key decision points, demonstrating the ability to achieve commercial operations by June 30, 2029.

Life Cycle Costs

- Provide itemized costs over a minimum 15-year evaluation period, including acquisition, design, installation, commissioning, operations, maintenance, energy/fuel consumption, repairs, and equipment replacement, as applicable.
- Identify quantities, unit costs, escalation rates, useful-life estimates, residual values, and other assumptions used to calculate life-cycle costs.
- Provide a year-by-year breakdown of anticipated costs over the evaluation period, identifying recurring and nonrecurring expenses.
- Identify excluded costs and provide supporting documentation sufficient to verify and compare proposed life-cycle costs.
- The life cycle costs from each proposal shall be compared.

Proposal Exceptions and Deviations

- Proposers are strongly encouraged to submit proposals that fully comply with all requirements, terms, and conditions of this solicitation.
- Any exception, deviation, qualification, assumption, condition, or proposed modification to the terms, conditions, specifications, or requirements of this solicitation shall be clearly identified in the Proposal utilizing (Form R – Exceptions and Deviations). Failure to identify an exception shall constitute the Proposer's acceptance of the solicitation requirements as issued.
- The Authority will evaluate the extent to which a Proposer's Proposal takes exception to the terms, conditions, specifications, or requirements of this solicitation. The Authority may consider the nature and significance of any exceptions in assessing the Proposal's overall acceptability, risk, responsiveness to the solicitation, and likelihood of successful contract performance.
- Exceptions that are determined by the Authority to be material, including but not limited to exceptions affecting contractual rights, performance requirements, pricing provisions, indemnification obligations, insurance requirements, intellectual property rights, confidentiality obligations, security requirements, compliance requirements, or other essential solicitation requirements, may render a Proposal unacceptable.
- The Authority reserves the right, in its sole discretion, to reject, exclude from further consideration, or otherwise determine ineligible for award any Proposal containing material exceptions. The determination as to whether an exception is material shall be made solely by the Authority.
- The Authority is under no obligation to enter into discussions regarding exceptions identified in a Proposal and reserves the right to award a contract without discussions. Proposers are advised that Proposals accepting all solicitation terms and conditions without exception will be evaluated more favorably than Proposals containing exceptions, qualifications, or proposed modifications.

c) Evaluation Procedure

Step 1: Proposal Evaluation

Proposals will be evaluated according to the criteria specified in Division 2, 2.24, and the scoring outlined in Table 1. Each committee member will independently score each proposal, and a final score will be assigned based on the total of all committee members' scores. Project Cost Proposals that include design-build costs and lifecycle analysis will be assessed based on the best value offered to the Authority. As part of the evaluation, the Authority may request clarifications or seek additional details from individual applicants.

Step 2: Interviews

The Authority will establish a competitive range based on the evaluation scores, and only those proposals within this range will undergo further evaluation. Applicants in the competitive range may be invited to interviews to address additional questions and provide a presentation of their Next Gen Transit Facility solution. Applicants will receive the questions and required clarifications in advance of the interview. If conducted, interviews will last approximately 90 minutes, with Applicants giving a 45-minute presentation to address questions and clarify details while highlighting the key elements and strengths of their Next Gen Transit Facility solution. A 45-minute Q&A session will follow this presentation, although the full time may not be necessary. The Authority reserves the right to award proposals at their initial prices without conducting interviews or negotiations.

Step 3: Negotiations

The Authority may enter negotiations with any Applicant within the competitive range. All aspects of the Applicant’s proposal may be subject to negotiation, including the scope of work, schedule, technical details, and pricing. The Authority may request a revised proposal (Best and Final Offer) to be submitted for rescoring based on these negotiations. The Authority reserves the right to discontinue negotiations at any time. The Authority also reserves the right to award proposals at their initial prices without conducting interviews or negotiations.

Step 4: Final Evaluation

Proposals within the competitive range may be reassessed and rescored based on information provided during interviews, negotiations, and/or revised proposals submitted in the Best and Final Offer phase. Proposals in the competitive range will be ranked, and the highest-ranking proposal will be recommended to the Authority’s Board of Directors for approval of the award.

After the Best Value Proposal is determined and a responsive and responsible Proposer is recommended for the award of the Contract, the Authority reserves the right, at its sole discretion, to select any, all, or none of the Proposal Alternates for

inclusion in the Work at the time of the Contract award, regardless of whether those Proposal Alternates were used to assess the Best Value Proposal.

The Proposer awarded the Contract must be capable of performing the various items of the Work Proposal and must meet the specific requirements outlined in Division V, Technical Specifications.

The Authority reserves the right to reject any or all Proposals, waive any or all information or technical defects, as the Authority's interests may require, and cancel the award before the Parties finalize the Agreement without any liability on the part of the Authority.

The Authority has the discretion to award the Contract immediately, irrespective of any pending protests.

2.25 NOTICE OF INTENT TO AWARD

Following the evaluation of Proposals, the Authority's receipt of any required post-Proposal submissions, and the determination of the Best Value Proposer, the Authority will issue a notice of intent to award the Contract to all Proposers who submitted Proposals before the Proposal Due Date. The agenda for the Board meeting will include a recommendation to award the Contract.

2.26 EXECUTION OF CONTRACT

a. Within fourteen (14) calendar days of the Authority's Notice of Award of the Contract, the Design-Builder shall submit the following documents to the Authority:

- Two (2) copies of the Contract in the form included herein, properly executed by Design-Builder and, if the Design-Builder is a corporation, evidence of its corporate existence and that the persons signing the Contract are authorized to do so. All signatures must be notarized.

- Properly executed copies of the (a) Performance Bond and (b) Labor and Material (Payment) Bond, in accordance with the requirements set forth in Article 11 of Attachment B-General Conditions of Exhibit 1 in Division IV and in the forms shown in Exhibit 2-Project Forms of Division IV. All signatures must be notarized.

- Properly executed policies of (a) the Commercial General Liability Insurance, (b) the Automotive Liability Insurance, (c) the Excess or Liability Insurance, (d) the Waiver of Subrogation Clause, (e) Professional Liability, and (f) the corresponding endorsements for each policy in accordance with the requirements set forth in Article 11 of Attachment B-General Conditions of Exhibit 1 in Division IV.

b. In the event that the fourteenth calendar day falls on Saturday, Sunday, a legal holiday for the State of California, or on days when the Authority is closed, the aforesaid documents shall be delivered by the following working day.

c. After receipt of said documents within said time period or any extension thereof granted by the Authority, the Authority shall execute the Contract and return one (1) of said two (2) copies to Design-Builder.

d. In no event shall Proposer commence Work until Proposer has furnished the bonds and insurance documentation in forms acceptable to the Authority. If a Proposer is unable to provide the required forms, the Authority, at its discretion, may make an award to the next Proposer offering the best value, and such Proposer shall fulfill each stipulation embraced herein as if he were the party to whom the first award was made. A corporation to which an award is made may be required, before the Contract is finally assigned, to furnish evidence of its corporate existence, its right to do business in California, and the authority of the officer to sign the Agreement and bonds for the corporation.

2.27 PREVAILING WAGES RATES

a. Payment of Prevailing Wage Rates. The Proposer and all Subcontractors and Design Consultants, as applicable, shall utilize the relevant prevailing wage rate determinations in effect on the date Authority first issued the Request for Proposals in preparing the Proposal Prices and all component price quotations, provided, however, that when Davis Bacon wage rates apply, such rates are subject to increase by written notice, issued by Addendum not less than 10 calendar days before the Proposal Due Date. Pursuant to California Labor Code Section 1770 et seq., the Director of the Department of Industrial Relations of the State of California and the United States Secretary of Labor have determined the general prevailing wage rates in the locality in which the Work is to be performed. Said rate schedules are available on the internet at http://dir.ca.gov/DLSR/PWD/ and https://sam.gov/wage-determinations. If there is a difference in the Federal and State prevailing wage rates for similar classifications of labor, the Design-Builder and its Subcontractors and Design Consultants, as applicable, shall pay the highest wage rate. The wage rate for any classification not listed but which may be required to execute the Work shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. To comply with California Labor Code Section 1773.2, the Design-Builder shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall also comply with the requirements of California Labor Code Section 1773 et seq.

b. Apprenticeship Committee Contract Award Information. Pursuant to California Labor Code Section 1777.5 and Title 8 of the California Code of Regulations Section 230, the Design-Builder and Subcontractors of any tier who are not already approved to train by an apprenticeship program sponsor shall, within ten (10) calendar days of signing the Contract or subcontract, as applicable, but in any event prior to the first day in which the Design-Builder or Subcontractor or Design Consultant, as applicable, has workers employed on the Project, submit the Public Works Contract Award Information form (DAS Form 140) to the appropriate local apprenticeship committees

whose geographic area of operation include the area of the Project and who can supply apprentices to the Project. The Authority reserves the right to require the Design-Builder, Subcontractors, and Design Consultants, as applicable, to submit a copy of the said form to the Authority.

c. Statement of Employer Fringe Benefit Payments. Within five (5) calendar days of signing the Contract or subcontract, as applicable, the Statement of Employer Payments (DLSE Form PW 26) shall be completed for the Design-Builder and Subcontractors of any tier and Design Consultants, as applicable, who pay benefits to a third-party trust, plan or fund for health and welfare benefits, vacation funds or makes pension contributions. The form must include, for each worker classification, the fund, plan or trust name, address, administrator, the amount contributed per hour, and the frequency of contributions. Training fund contributions must also be reported on this form. The Authority reserves the right to require the Design-Builder, Subcontractors, and Design Consultants, as applicable, to submit a copy of this form to the Authority.

d. Notice to Subcontractors. Proposers shall notify all potential Design Consultants and Subcontractors submitting price quotations for portions of the Work of the requirements concerning payment of prevailing wage rates. The Authority reserves the right to require the Design-Builder to provide proof of notification to each Design Consultant and Subcontractor.

2.28 AUTHORIZED SIGNATURES

The Proposer shall sign the Proposal. If the Proposal is submitted by:

a) **A sole proprietorship**, the signature must be the full name of the individual whose address must be given.

b) **A partnership**, it must be signed by each partner or accompanied by proof that the person(s) signing is/are authorized to bind the partnership. The name and address of the partnership and the address of person signing must be provided.

c) **A corporation**, it must be signed by an officer. A signature other than a corporate officer's will be accepted only if signature authority is conferred in the Incumbency Certificate submitted with the Proposal.

d) **A limited liability company**, it must be signed by the managing member(s), and the name and address of the limited liability company and the address of each person signing must be provided.

e) **A joint venture**, it must be signed in accordance with a – d above, based on the applicable situation, and the name and address of joint venture and the address of each person signing must be provided.

2.29 RELEASE OF PUBLIC RECORDS

A. All Proposals become the property of the Authority and are subject to the California Public Records Act (Gov. Code 7920.000 et seq.). The Authority will not release Proposals before it issues the Notice of Intent to Award, except as required by law. After that, Proposals are public records except for material that is exempt from disclosure.

B. A Proposer that claims any part of its Proposal is exempt from disclosure must submit (1) one unredacted copy with each page containing claimed exempt material clearly marked; (2) one redacted copy; and (3) a confidentiality index identifying, by section and page, each item claimed to be exempt, the specific legal basis for the exemption (for example, Gov. Code 7927.705 and Evid. Code 1060 for trade secrets), and the facts supporting the claim. A Proposer may not designate its entire Proposal, or its prices, as exempt.

C. By submitting a Proposal, the Proposer consents to the release of its redacted copy and of any material not listed in its confidentiality index and waives all claims against the Authority and its directors, officers, employees and agents arising from any disclosure made in accordance with this Section. If the Authority receives a request for material listed in the index and determines the material is not exempt, it will give the Proposer reasonable notice before release, unless the law requires release sooner. The Proposer may seek a court order to prevent release at its own expense.

D. The Proposer shall indemnify, defend and hold harmless the Authority and its directors, officers, employees and agents from any claim, action, judgment, award of attorney fees to a requester, cost or expense arising from the Authority's withholding of material the Proposer designated as exempt. The Authority may tender the defense of any such claim to the Proposer. If the Proposer does not accept the tender, the Authority may resolve the claim as it sees fit, without limiting its rights under this Section.

-END OF INSTRUCTIONS TO PROPOSERS-

DIVISION 3 – PROPOSAL FORMS AND SUBMITTALS FOR PROPOSAL

This division sets out the forms and documents to be completed by each Proposer. The Proposer's submission shall include Proposal Forms A through R.

Proposal Forms

Form A – Proposal Cover Page

Form B – Incumbency Certificate

Form C – Federal Tax Delinquency

Form D – California Levine Act

Form E – Insurance Requirements Affidavit

Form F – Non-collusion Declaration

Form G – Update to Proposer's Statement of Qualifications

Form H – List of Design Consultants and Subcontractors

Form I – Schedule of Proposal Prices

Form J – Federal Lobby Certification

Form K – Federal Buy America Certification – Construction

Form L – Disadvantaged Business Enterprise (DBE)*

Form M – Clean Air and Clean Water Certification

Form N – Certification Regarding Debarment and Suspension

Form O – Compliance with Labor Code §3700 Compliance

Form P – Project Schedule

Form Q – Technical Proposal

Form R – Exceptions and Deviations

FORM A – PROPOSAL COVER PAGE

Response to Request for Proposal for the

Next Generation Transit Facility

Design-Build Entity Legal Name: _____

Principal Office Street Address: _____

City, State, Zip: _____

Phone Number: _____

Contact Person: _____

Contact E-mail: _____

Design-Build Entity Legal Structure: ❑Corporation ❑Sole Proprietorship ❑Partnership ❑Joint Venture

❑Other (Specify): _____

Date of Formation or Incorporation: _____

Under the Laws of Which State: _____

Tax Identification Number: _____

Surety Company: _____

Department of Industrial Relations Public Works Contractor Registration Number
(California Labor Code Sections 1725.5 & 1771.1) _____

Contractor's License Number: _____

License Class: _____

License Expiration Date: _____

Enclosed with Form A – Proposal Cover Page, and by this reference incorporated herein and made a part of this Proposal are the following **Proposal Documents**:

- ❑ Form B – Incumbency Certificate
- ❑ Form C – Federal Tax Delinquency
- ❑ Form D – California Levine Act
- ❑ Form E – Insurance Requirements Affidavit
- ❑ Form F – Non-collusion Declaration
- ❑ Form G – Update to Proposer's Statement of Qualifications
- ❑ Form H – List of Design Consultants and Subcontractors
- ❑ Form I – Schedule of Proposal Prices
- ❑ Form J – Federal Lobbying Certification
- ❑ Form K – Federal Buy America Certification – Construction
- ❑ Form L – Disadvantaged Business Enterprise (DBE)
- ❑ Form M – Clean Air and Clean Water Certification
- ❑ Form N – Certification Regarding Debarment
- ❑ Form O – Design-Builder's Certification Under Labor Code §1861 of Labor Code §3700 Compliance
- ❑ Form P – Project Schedule
- ❑ Form Q – Technical Proposal
- ❑ Form R – Exceptions and Deviations

CERTIFICATIONS AND ASSURANCES

Inspection of the Work and RFP Documents. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of the RFP Documents and said RFP Documents contain sufficient detail regarding the Work to be performed; that it has notified Authority of any errors or omissions in the RFP Documents and/or any unusual site conditions; that it has carefully checked all words, prices, and statements in the Proposal Documents; and it has visited the Project Site and conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal.

Site Inspection. Proposer hereby certifies that he/she has his/her Design Consultants and Subcontractors have inspected the site and related Preliminary Design Documents and fully acquainted themselves with all conditions and matters which may in any way affect the Work, time of completion, or the costs thereof. Proposer also certifies he/she has observed the designated contractor Work areas and access routes, if disclosed or shown, as part of the Work in this Contract.

Guaranty of Contract Sum. Proposer agrees that the costs of all Work shown in the RFP Documents, including Work reasonably inferable therefrom and necessary thereto shall be included in the Schedule of Proposal Prices. All Work shown in the RFP for which a specific line item is not provided in the Schedule of Proposal Prices shall be performed by the Design-Builder, and the cost of such Work shall be included in the Total Proposal

Price. Proposer agrees that Authority will not be responsible for any errors or omissions on the part of the undersigned in making this Proposal.

Period of Irrevocability. Proposer agrees that this Proposal shall remain open and shall not be withdrawn for a period of not less than one hundred twenty (120) calendar days from the Proposal Due Date, or until rejected by the Authority, whichever period is shorter.

Addenda. Proposer hereby acknowledges that it has received and read the following Addenda:

Addenda #_____
Addenda #_____
Addenda #_____
Addenda #_____
Addenda #_____

Ineligible Proposer. The undersigned certifies that the individual or firm is eligible to submit a Proposal on this project and to enter into a contract with Yuba-Sutter Transit Authority and is not listed either (1) on the Federal Controller General's List of Ineligible Proposers/Contractors or (2) on the debarred list of the Labor Commissioner of the State of California.

Proposal Dispute Indemnification. In the event of a dispute or protest based upon the Proposer's submission of this Proposal and the Authority's acceptance of same, the Proposer receiving an award of the Contract will be required to indemnify, defend (with counsel acceptable to the Authority), and hold harmless at Proposer's expense, the Authority, its Board Members, its agents, employees and officers from liability, claims, demands, damages and costs arising therefrom.

Statement of Warranty. The Yuba-Sutter Transit Authority has established specific warranties for all equipment installed by the Design-Builder and its Subcontractors in the technical specifications attached to this RFP titled "Next Generation Transit Facility Project Manual". Yuba-Sutter Transit Authority has also set forth a minimum warranty on all construction Work in Attachment B - General Conditions of Exhibit 1 in Division IV, Paragraph 3.5.4 of this Request for Proposal. Please state below your best standard warranty, which meets or exceeds these standards:

Proposer Warranty Statement:

If there should be a difference between Yuba-Sutter Transit Authority's minimum warranty and the Proposer's best warranty, the Proposer agrees to be bound by the warranty, which is most advantageous to the Authority.

Contractor's License. The California Contractor's license number listed above has been issued to the undersigned Proposer. This license has not been revoked or suspended and is in full force and effect and authorizes the undersigned Proposer to perform the Work under these Contract Documents. If Proposer is a joint venture and has not yet been issued a license, indicate the license number to be used for the joint venture and attach documentation providing assurances that the license will be issued on or before the award of the Contract.

The undersigned is/are a legally authorized representative(s) of the Design-Build Entity, and hereby certify that I am/we are submitting this Proposal in response to the Request for Proposals ("RFP") issued by the Authority on or about November 2026 to design and construct the Project in accordance with the Contract Documents. I am/we are duly authorized to sign this Proposal on behalf of the above named firm; that the Proposal has been checked for errors and omissions; I/we have read all the answers herein and know all of their contents; and that all information set forth in this Proposal and all attachments hereto are, to the best of my/our knowledge, true, accurate, current, and complete as of its submission date.

The undersigned certifies and declares, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed in Yuba County, California, on _____(Date).

DESIGN-BUILD ENTITY SIGNATURE(S)

No Proposal shall be accepted unless it has been signed in ink in the appropriate space below. Select the appropriate legal structure for executing the certification.

1. If Design-Build Entity is an **INDIVIDUAL**, sign here (include a notarized affidavit attesting to the authenticity of said signature):

   Printed Name:_____ Title:_____

   Signature:_____ Date: _____

2. If Design-Build Entity is a **PARTNERSHIP** or **JOINT VENTURE**, all general Partners or members shall sign here (include a notarized affidavit attesting to the authenticity of said signatures).

   Partnership/Joint Venture Name: _____

   Member/Partner Name:_____ Title:_____

   Member/Partner Signature: _____

   Date: _____

   Member/Partner Name:_____ Title:_____

   Member/Partner Signature: _____

   Date: _____

   Member/Partner Name:_____ Title:_____

   Member/Partner Signature:_____ Date: _____

3. If Design-Build Entity is a **CORPORATION**, the duly authorized officer (s) shall sign as follows:

   The undersigned certify that they are respectively _____ (Title) and_____(Title) of the corporation named below; that they are designated to sign this RFP Transmittal Cover Page by resolution (*attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization*) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

   Corporation Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date: _____

4. If Respondent is another **legal entity**, an authorized representative of the entityshall sign here (include a notarized affidavit attesting to the authenticity of said signatures).

   Entity Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date: _____

5. If the Design-Build Entity is a **FIRM THAT HAS NOT YET BEEN FORMED**, all entities and other parties proposed to comprise such Design-Build Entity shall sign here (include a notarized affidavit attesting to the authenticity of said signatures), the individual signatories making the certification described above on behalf of such entitles/parties:

   Proposed Design-Build Entity Name: _____

   On Behalf of Proposed Member/Partner Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date:_____

   On Behalf of Proposed Member/Partner Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date:_____

   On Behalf of Proposed Member/Partner Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date:_____

   On Behalf of Proposed Member/Partner Name: _____

   Printed Name:_____ Title:_____

   Signature:_____ Date: _____

-End of FORM A-

FORM B – INCUMBENCY CERTIFICATE

Print legibly the names and titles of the president and all officers of the company who are authorized to sign the Proposal Forms:

PRESIDENT'S & OFFICERS' NAME:	TITLE:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The undersigned hereby certifies to Yuba Sutter Transit Authority that he/she is the duly elected and acting Secretary of _____ (the "Company") and that, as such, he/she is authorized to execute this Incumbency Certificate on behalf of the Company, and further certifies that the persons named above are the duly elected, qualified and acting officers of the Company, holding on the date hereof, the titles and positions set forth opposite their names and are authorized to sign the Proposal Forms.

IN WITNESS WHEREOF, the undersigned has executed this Incumbency Certificate this _____ day of _____, 2026.

_____
Secretary's Name-Printed

_____
Secretary's Signature

- End of FORM B –

FORM C – FEDERAL TAX DELINQUENCY

The Proposer **must complete the following two certification statements**.

The Proposer **must indicate** its current status as it relates to tax delinquency and felony conviction by indicating in following spaces below the applicable response. The Proposer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

1. **Delinquency:** The Proposer represents that it **is** ☐ or **is not** ☐ **,**

a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Conviction:** The Proposer represents that it **is** ☐ or **is not** ☐ **,**

a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If a Proposer responds in the affirmative to either of the above representations, the Proposer is ineligible to receive an award. If the prospective Third Party Participant cannot so certify, the Agency will refer the matter to FTA and not to enter into any Third Party Agreement with the Third Party Participant without FTA's written approval

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

_____ _____

Date Signature

_____ _____

Company Name Title

NOTE: No award can be made without this form being completed.

FORM D – CALIFORNIA LEVINE ACT

California Government Code Section 84308 (commonly referred to as the "Levine Act") prohibits any Agency Board Member from participating in any action related to a contract, if he or she receives any political contributions totaling more than $500 from the person or company awarded the contract within the previous twelve (12) months, and for three (3) months following the date a final decision concerning the contract has been made. The Levine Act also requires a member of the Agency Board who has received such a contribution to disclose the contribution on the record of the proceeding.

Proposers also are required to disclose such contributions, if any; and are responsible for accessing the links below to review the names of Board members prior to answering the below questions:

Board Members: https://www.yubasuttertransit.com/board-members

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than $500 to any Agency Board Member in the twelve (12) months preceding the date of the submission of your proposal(s) or the anticipated date of any Board action related to this contract?

__ YES __ NO. If yes, please identify the Board Member(s):

_____

_____

_____

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than $500 to any Agency Board Member in the three (3) months following any Board action related to this contract?

__ YES __ NO. If yes, please identify the Board Member(s):

_____

_____

_____

Answering yes to either of the two (2) questions above does not preclude the Agency from awarding a contract to your firm or taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this solicitation and resulting contract(s).

– End of FORM D –

FORM E – INSURANCE REQUIREMENTS AFFIDAVIT

THIS FORM IS TO BE COMPLETED THOROUGHLY BY PROPOSER'S INSURANCE BROKER/AGENT AND PROPOSER. **If Proposer has multiple Brokers/Agents, make copy of form and have each Broker/Agent supply information accordingly.**

I, the undersigned (Please check one box) ❑ underwriter ❑agent, certify that Broker/Agent and Proposer listed below have jointly reviewed the "Insurance Requirements" (See Division IV Exhibits and Insurance Requirements contained therein). If Yuba-Sutter Transit Authority ("Authority") awards Proposer the Contract for the named project, I, Broker/Agent, will be able – within **fourteen (14)** calendar days after the award of the contract – to furnish the Authority with all the required Insurance Certificate(s) and Endorsement(s) as listed in "Insurance Requirements".

Project Name: **Next Generation Transit Facility**

Request for Proposal Number: **25-02**

NAME OF INSURANCE COMPANY: _____

Broker/Agent Name (Printed): _____

Broker/Agent (Signature): _____

Business Address: _____

City, State, Zip _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Date: _____

PROPOSER'S COMPANY NAME: _____

Proposer's Name (Printed): _____

Proposer's Name (Signature): _____

Business Address: _____

City, State, Zip _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Date: _____

DO NOT write "Will Provide," "To Be Determined," "When Required," or similar phrases.

Place a checkmark (✓) next to each line of coverage the Broker/Agent will provide, and furnish the name of the Carrier next to each coverage:

- ❑ Commercial General Liability _____
- ❑ Automobile Liability _____
- ❑ Workers' Compensation Liability _____
- ❑ Professional Liability _____
- ❑ Pollution Liability _____

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

Affidavit is executed on_____, at_____,_.

Date City State

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

- End of FORM E –

FORM F – NONCOLLUSION DECLARATION

STATE OF CALIFORNIA COUNTY OF _____

The undersigned_____declares:

1. I am the_____(title of office if a corporation, "sole owner," "Partner," or other proper title) of_____, (hereinafter called "Design-Builder") who has submitted to Yuba-Sutter Transit Authority a Proposal for the design and construction of the Next Generation Transit Facility;

2. The Proposal is genuine and not collusive or sham;

3. I am fully informed with respect to the preparation and contents of the attached Proposal and all pertinent circumstances respecting such Proposal;

4. Neither the said Proposing Company nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Proposer, Bidding Sub-contractor, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from submitting a proposal in connection with such Contract or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Proposing company,firm or person to fix the price or prices in the referenced proposal or of any other Bidding or Proposing Company, or to fix any overhead, profit or cost element of the proposed price or theproposed price of any other Bidding or Proposing Company, or to secure through any collusion conspiracy, connivance or unlawful agreement any advantage against any person interested in the proposed Contract; and the Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal, or to refrain from bidding;

5. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposing Company or any of its agents, representatives, owners, employees, or parties in interest, including the undersigned.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity hereby represents that he or she has full power to execute and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true, accurate, and correct and that this Declaration is executed on

_____, at_____,_____.
Date City State

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

- End of FORM F –

FORM G – UPDATE TO PROPOSER'S STATEMENT OF QUALIFICATIONS

❑ **No Changes to Proposer Statement of Qualifications**

Name of Proposer: _____

FEIN: _____

Company Address: _____

Prequalification Contact: _____

Telephone Number: _____

1. List all of your company's BONDED PROJECTS (BOTH PUBLIC AND PRIVATE), WHICH WERE 100% COMPLETED SINCE THE DATE YOUR PREQUALIFICATION WAS ISSUED: (Please add additional page(s) if required)

Name of Project	Owner of Project	Date Project Completed	Total Contract Amount

2. List all of your company's BONDED PROJECTS (BOTH PUBLIC AND PRIVATE), WHICH WERE STARTED SINCE THE DATE YOUR PREQUALIFICATION WAS ISSUED: (Please add additional page(s) if required)

Name of Project	Owner of Project	Total Contract Amount	% Complete	Work Remaining ($)
		Total $ Amount of Work Remaining □		

3. List the names and titles of the personnel who will have supervisory responsibility for the performance of the contract being Proposal on, which have changed since the date of your prequalification was issued. (Please add additional page(s) if required)

Individual Name	Title of Individual

4. Have there been any changes in your company's financial condition or business organization or any change in the information provided in your response to the Authority's RFQ that might affect your company's ability to successfully complete this contract?

Yes ☐ No ☐

If yes, please explain. (Please attach additional page(s) if required)

_____

_____

_____

_____

I certify under penalty of perjury under the laws of the State of California that all of the information obtained in this Update to Proposer's Statement of Qualifications is true and correct as of the date below.

Executed this

_____, at_____,_____.
Date City State

Signature of Proposer's Authorized Official:_____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

- End of FORM G -

FORM H – LIST OF DESIGN CONSULTANTS AND SUBCONTRACTORS

Please use additional sheets as necessary

Name of Proposer: _____

Description of Trade/Work Design Discipline	Name of Design-Builder, Design Consultant, or Subcontractor Performing the Work	Business Location	Design or Contractor License Number	Dollar ($) Value	DIR Registration Number

- End of FORM H –

FORM I – SCHEDULE OF PROPOSAL PRICES

Proposer Name: _____

Note: Proposal prices will be evaluated based on the **total base proposal price**. The contract will be awarded based on the base proposal price. Betterments/Alternates may be considered and accepted at the Authority's discretion after Design-Builder selection.

Proposer acknowledges that after a responsive and responsible Proposer is recommended for award of the Contract, the Authority reserves the right, in its sole discretion, to select any, all, or none of the Proposal Betterments/Alternates for inclusion in the Work at the time of award of the Contract.

Item	Description	Price
A	Equals the proposed cost for design services of Proposer and its Consultants for all aspects of the Project	$
B	Equals the proposed cost for all construction efforts (excluding design), not including additive proposal alternates.	$
C	Equals the sum of A and B. **Total Base Proposal Price**	$
	Proposal Betterments/Alternates	
D	Equals the fully burdened design and construction fees for Proposal Betterment #1: [Charging Infrastructure] (Provide Lump Sum Cost).	$
E	Equals the fully burdened design and construction fees for Proposal Betterment #2: [BESS] (Provide Lump Sum Cost).	$
F	Equals the fully burdened design and construction fees for Proposal Betterment #3: [Solar/PV] (Provide Lump Sum Cost).	$
G	Equals the fully burdened design and construction fees for Proposal Betterment #4: [Generator] (Provide Lump Sum Cost).	$
H	Equals the fully burdened design and construction fees for Proposal Betterment #5: [Pick-up/Drop-off Zone & Potential Future Fueling Yard] (Provide Lump Sum Cost).	$
I	Equals the fully burdened design and construction fees for Proposal Betterment #6: [Charge Management System (CMS)] (Provide Lump Sum Cost).	$
J	Equals the fully burdened design and construction fees for Proposal Betterment #7: [Sawtooth Roof on Maintenance Building] (Provide Lump Sum Cost).	$
K	Equals the fully burdened design and construction fees for Proposal Betterment #8: [Hanging Mezzanine in Maintenance Building] (Provide Lump Sum Cost).	$
L	Equals the fully burdened design and construction fees for Proposal Betterment #9: [Nanawall in Admin/Ops break room] (Provide Lump Sum Cost).	$
M	Equals the fully burdened design and construction fees for Proposal Betterment #10: [Space maker Trellis] (Provide Lump Sum Cost).	$
N	Equals the sum of C + D + E + F + G + H + I + J + K + L + M **Total Base + Betterments/Alternates Proposal Price**	$

See Division 1, Notice Requesting Proposal to Prequalified Design-Build Firms, Section 1.5 for Design-Builder responsibilities for Permits, Inspections, Plan Checks, Governmental Approvals, Utility Fees, and similar authorizations.

- END OF FORM I -

FORM J – FEDERAL LOBBYING CERTIFICATION

The undersigned Proposer certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an Authority, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any Authority, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.,)]

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Proposer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. §3801, *et seq*., *apply* to this certification and disclosure, if any.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

- End of FORM J –

FORM K – FEDERAL BUY AMERICA CERTIFICATION

Buy America. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content.

A Proposer or Offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all Proposals or offers on FTA-funded contracts, except those subject to a general waiver. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certificate of Compliance with Buy America Requirements

The Proposer or Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

Certificate of Non-Compliance with Buy America Requirements

The Proposer or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulation in 49 CFR 661.7.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

- End of Form K -

FORM L – DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Proposer's Name: _____

Subcontractor/Subconsultant/Supplier		Caltrans DBE Cert No.	Age of Firm	Firm's Annual Gross Receipts	Description of Work/Type of Materials/Supplies	Dollar Amount of Work/Supplies
1	Name:					
	Address:					
	Contact Person:					
	Phone:					
2	Name:					
	Address:					
	Contact Person:					
	Phone:					
3	Name:					
	Address:					
	Contact Person:					
	Phone:					

4	Name:					
	Address:					
	Contact Person:					
	Phone:					
5	Name:					
	Address:					
	Contact Person:					
	Phone:					
6	Name:					
	Address:					
	Contact Person:					
	Phone:					
7	Name:					
	Address:					
	Contact Person:					
	Phone:					

8	Name:					
	Address:					
	Contact Person:					
	Phone:					

DBE Amount: $_____ = _____% Proposer's DBE Achievement

Total Proposal Amount: $_____

Name of the First-Tier subcontractors, including DBEs, whose Proposals are accepted shall be consistent, where applicable, with the names in the "List of Subcontractors" submitted with the Proposal pursuant to the Subcontractors Listing Law.

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s), and/or supplier(s) whose Proposal/quote was accepted conditioned upon the execution of a contract with the Authority. The Proposer certifies that any DBE listed whose quote was accepted with commercially useful function on the contract. I certify under penalty of perjury that the information included on this form is accurate and true.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form L-

FORM M – CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The undersigned certifies that:

Clean Air Act:

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Authority Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

Water Pollution Control Act:

1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Authority Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form M-

FORM N – GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant will provide the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 CFR part 180,

2. To the best of its knowledge and belief, its Principals and Subrecipients at the first tier:

   a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

      1. Debarred
      2. Suspended
      3. Proposed for debarment
      4. Declared ineligible
      5. Voluntarily excluded
      6. Disqualified

   b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

      1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction,
      2. Violation of any Federal or State antitrust statute, or
      3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property

   c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with the commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

   d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

   e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to the Authority and the FTA,

   f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

      1. Equals or exceeds $25,000,
      2. Is for audit services, or
      3. Requires the consent of a Federal official, and

   g. It will require that each covered lower-tier contractor and subcontractor:

      1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
      2. Assure that each lower-tier participant in its Project is not presently declared by any Federal department or agency to be:
         a. Debarred from participation in its federally funded Project,

b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project or
f. Disqualified from participation in its federally funded Project and

3. It will provide a written explanation as indicated on a page attached in FTA's TRAMS Web or the Signature Page if it or any of its principals, including any of its first-tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form N-

FORM O – COMPLIANCE WITH CALIFORNIA LABOR CODE §3700

Design-Builder must execute the following form as required by California Labor Code Section 1861:

1. I certify that:

   - I have read, and I am familiar with, California Labor Code Section 3700, which states in part:

     "Every employer except the state shall secure the payment of [workers'] compensation in one or more of the following ways:

     (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

     (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees."

   - I am aware of the provisions of Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code.

2. I affirm that before starting the Work of this Contract, and at all times while performing the Work, I will comply with the Labor Code provisions. I have a certificate of consent to self-insure, or a certificate of workers' compensation insurance, and I will give it to the Authority before I begin the Work.

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

Executed on_____, 20__, at_____, California.

DESIGN-BUILDER:

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form O-

FORM P – PROJECT SCHEDULE

Each Proposer shall submit a detailed project schedule, reflecting, at aminimum:

1. Project Start date
2. All major activities, milestones, and project deliverables
3. Graph/chart showing each phase of work
4. Dependencies and key decision points
5. Project Completion date

The Project Schedule provided by the Proposer shall be attached to this form.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form P-

FORM Q – TECHNICAL PROPOSAL

Each Proposer shall submit a Technical Proposal, reflecting, at a minimum:

Technical Solution: Describe your proposed solution to Authority's objectives. Identify specific equipment to be utilized, site layout, utility requirements and upgrades, and site improvements necessary to support the proposed solution. Provide the basis for why the proposed solution is of highest benefit to the Authority considering the initial deployment of diesel buses and battery electric buses and the anticipated future expansion of hydrogen fuel cell buses. Describe your qualifications and experience, along with those of your subcontractors, delivering similar projects through the design-build method. Describe the life cycle costs associated with your proposed solution for the Authority.

Work Plan: Describe the proposed work plan with a clear understanding of requirements and overall work. Describe each task that will be performed and their logical sequencing. Describe deliverables and adherence to technical and procedural requirements. Discuss the reasonableness of the schedule and adherence to target dates, raising any concerns regarding meeting these target dates.

Proposal Alternates/Betterments: Describe each proposed Betterment (#1 – #10, Items D–M of Form I) and clearly explain your proposed solution, including how it will improve the Project and/or provide value to the Authority. Identify all additional work (e.g., trenching), equipment, site layout requirements, utility requirements and upgrades, and site improvements necessary to support the proposed betterments.

Signature of Proposer's Authorized Official: _____

Name of Proposer's Authorized Official: _____

Title of Proposer's Authorized Official: _____

Date: _____

-End of Form Q-

FORM R – EXCEPTIONS AND DEVIATIONS

Proposers must submit any requested exceptions to the Agreement on this Form submitted with their Proposal. The Authority may reject any exception.

Each Proposer shall submit this form with its Proposal, even if it has no exceptions.

☐ The Proposer takes no exceptions to the RFP or the Agreement.

☐ The Proposer takes the exceptions listed below.

No.	Section	Exception	Proposed revised language
1			
2			
3			
4			

Attach additional pages if needed, using the same format.

The Proposer agrees that, except for the exceptions listed above, it will sign the Agreement in Division 4 of the RFP as issued, including all addenda.

Submitted by:

Proposer (company name)	
Name of authorized signer	
Title	
Signature	

-End of Form R-

DIVISION 4 – SAMPLE DESIGN-BUILD AGREEMENT, ATTACHMENTS, AND PROJECT FORMS

Exhibit 1 Sample Design-Build Agreement, Attachments

Attachment A – Insurance Requirements
Attachment B – General and Special Conditions
Attachment C – Federal Terms and Conditions

Exhibit 2 Project Forms

Form 1 – Performance Bond
Form 2 – Payment Bond
Form 3 – Notice to Proceed
Form 4 – Change Order
Form 5 – Or Equal Substitution
Form 6 – Statutory Forms of Waiver and Release Upon Payment
Form 7 – DAS Form 140
Form 8 – DAS Form 142
Form 9 – DLSE Form PW26
Form 10 – Escrow Agreement for Securities in Lieu of Retention
Form 11 – Solid Waste Disposal and Diversion
Form 12 – Claims for Additional Cost and/or Time

EXHIBIT 1 SAMPLE AGREEMENT

The proposed Contract is set forth below. ***THIS IS A DRAFT VERSION OF THE CONTRACT.*** The Authority reserves the right to revise this proposed Contract, including its service-related terms, conditions, requirements, specifications, or minimum performance standards. ***THE FINAL VERSION MAY CONTAIN NEW OR DIFFERENT TERMS.***

CONTRACT No. _____

GENERAL SERVICES AGREEMENT

BETWEEN THE YUBA-SUTTER TRANSIT AUTHORITY AND

_____

FOR THE DESIGN AND CONSTRUCTION OF THE NEXT GENERATION TRANSIT FACILITY

THIS GENERAL SERVICES AGREEMENT ("Agreement") is made and entered into as of _____, 20___(the "Effective Date"), between the Yuba-Sutter Transit Authority ("AUTHORITY"), a municipal corporation, and___("CONTRACTOR"), a [(Name of State) corporation/ partnership/ limited partnership/ limited liability company/ a sole proprietor/ an individual] (collectively, "PARTIES" or individually, "PARTY").

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1. SERVICES BY CONTRACTOR

1.1. Scope of Services. In compliance with all terms and conditions of this Agreement, the CONTRACTOR shall perform the "services" (or "work") described in the "Specifications" attached as Exhibit "A" and incorporated herein by this reference.

1.2. Written Authorization.

(A) CONTRACTOR shall not make changes in the Scope of Services, perform any additional work, or provide any additional material, without first obtaining written authorization from AUTHORITY. If CONTRACTOR provides additional services or materials without written authorization, or if CONTRACTOR exceeds the Maximum Cost in Paragraph 4.4 of this Agreement, CONTRACTOR proceeds at CONTRACTOR's own risk and without payment. CONTRACTOR hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be costlier or time consuming than CONTRACTOR anticipates and that CONTRACTOR shall not be entitled to additional compensation therefor.

(B) AUTHORITY will authorize CONTRACTOR to proceed with discrete tasks by issuing written Task Orders. Receipt of a written Task Order, signed by AUTHORITY's Project Manager, is a prerequisite for CONTRACTOR to proceed with each task.

Services will be authorized by AUTHORITY, as needed, with a Task Order assigned and approved by AUTHORITY's Project Manager. Each Task Order shall designate an AUTHORITY Project Manager and shall contain a specific scope of work, a specific schedule for performance and a specific not-to-exceed price for completion of the task. The total price of all Task Orders issued under this Agreement shall not exceed the Maximum Cost in Paragraph 4.4 of this Agreement. Issuance of a Task Order neither authorizes CONTRACTOR to incur expenditures in excess of the Maximum Cost, nor relieves CONTRACTOR from its responsibility for completing all of the Services within the Maximum Cost.

1.3. Contractor's Proposal. The Scope of Services shall include the CONTRACTOR's proposal which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.4. Compliance with Law. All services performed, and work rendered shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the AUTHORITY and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. CONTRACTOR represents and warrants that CONTRACTOR engages persons and entities who are duly registered or licensed as necessary to perform the services in the State of California. By delivering the completed work, CONTRACTOR represents and certifies that the work conforms to: the requirements of this Agreement; all applicable (federal, state, county, local, AUTHORITY) laws, rules, regulations, orders, and procedures; and the professional standard of care in California.

1.5. Licenses, Permits, Fees and Assessments. CONTRACTOR shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. CONTRACTOR shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONTRACTOR's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City.

1.6. Standard of Care. During this Agreement's Term:

(A) CONTRACTOR employees, and agents (collectively, "CONTRACTOR PARTIES") represent and warrant that CONTRACTOR PARTIES have the expertise and qualifications to complete the services described in Article 1 of the this Agreement and that every individual charged with the performance of the services has sufficient skills and experience and is duly licensed or certified, to the extent such licensing or certification is required by law, to perform the services. AUTHORITY expressly relies on CONTRACTOR's representations regarding its skills, knowledge and certifications.

(B) CONTRACTOR PARTIES shall perform all work described in accordance with the highest professional standards and practices of the industry and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of CONTRACTOR PARTIES' trade or profession currently practicing in California. All materials will be of good quality, fit for the purpose intended.

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(C) By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (1) has thoroughly investigated and considered the scope of services tobe performed, (2) has carefully considered how the services should be performed, and

(3) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. CONTRACTOR PARTIES are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities; seismic, geologic, soils, hydrologic, geographic, climatic conditions; applicable (federal, state, county, local, AUTHORITY) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, or any other information or documents that AUTHORITY provides relating to site, local, or other conditions arenot warranted or guaranteed, either expressly or implied, by AUTHORITY.

(D) When the Scope of Work requires or permits AUTHORITY's review, approval, conditional approval, or disapproval, CONTRACTOR acknowledges that AUTHORITY's review, approval, conditional approval, or disapproval:

(1) Is solely for the purposes of administering this Agreement and determining whether CONTRACTOR is entitled to payment for its Services;

(2) Is not to be construed as a waiver of any breach, or acceptance by AUTHORITY, of any responsibility— professional or otherwise— for the Services or CONTRACTOR's work product;

(3) Does not relieve CONTRACTOR of the responsibility for complying with the standard of performance or professional care; or laws, regulations, or industry standards; and

(4) Does not relieve CONTRACTOR from liability for damages arising out of CONTRACTOR's: negligent acts, errors, or omissions; recklessness; willful misconduct; or noncompliance with industry standards.

(E) Without additional compensation to CONTRACTOR and at no cost to AUTHORITY, CONTRACTOR shall correct or revise all errors, mistakes, or deficiencies in its work product, studies, reports, designs, drawings, specifications, or other services.

1.7. Warranty. CONTRACTOR shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by Authority, except such losses or damages as may be caused by Authority's sole negligence. CONTRACTOR warrants all work under the

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Agreement to be of good quality and free from any defective or faulty material and workmanship. CONTRACTOR agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, CONTRACTOR shall within ten (10) days after being notified in writing by the Authority of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at the CONTRACTOR's sole cost and expense.

2. TIME FOR PERFORMANCE

2.1. Term. The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the AUTHORITY. If the AUTHORITY's issuance of an Notice to Proceed is delayed due to CONTRACTOR's failure to return a fully-executed Agreement, insurance documents or bonds, within **fourteen (14)** calendar days after the date of the AUTHORITY's Notice of Award of the Contract, one (1) calendar day will be deducted from the number of days to achieve Substantial Completion of the Work for every day of delay in the AUTHORITY's receipt of such documents. This right is in addition to and does not affect the AUTHORITY's right to demand forfeiture of the CONTRACTOR's Bid Security, or any other rights or remedies available to the AUTHORITY if the CONTRACTOR persistently delays in providing the required documentation. CONTRACTOR agrees to promptly commence the authorized Work after the Notice to Proceed is issued by the AUTHORITY. The total contract duration is the time approved by the AUTHORITY in the CONTRACTOR's schedule ("Contract Time"). The CONTRACTOR must achieve Final Completion of the Work within the time established by the AUTHORITY in the Certificate of Substantial Completion. The Contract Time may be adjusted only as permitted by this Agreement and the General Conditions.

2.2. Time of the Essence.

(A) Except when this Agreement states otherwise, time is of the essence in this Agreement. CONTRACTOR acknowledges that this Agreement's time limits and deadlines are reasonable for CONTRACTOR's performing the Services under this Agreement.

(B) Unless this Agreement specifies otherwise, any reference to "day" or "days" means calendar and not business days. If the last day for giving notice or performing an act under this Agreement falls on a weekend, a legal holiday listed in either the Authority's Municipal Code or California's Government Code, or a day when City Hall is closed, the period is extended to and including the next day that AUTHORITY is open for business. A reference to the time of day refers to local time for Yuba, California.

(C) Agreement on Damages.
Time is an essential element of this Contract and is of the essence. The cost to AUTHORITY of the administration of this Contract, including engineering,

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inspection, and supervision, will be increased as the time occupied by the Work is lengthened. Further, the public is subject to harm and inconvenience when full use cannot be made due to an incomplete project, and/or traffic is disrupted and impacted by the Project. The CONTRACTOR understands and agrees that if it fails to complete the Work in accordance with the Contract Documents, AUTHORITY will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, the CONTRACTOR and AUTHORITY have agreed to stipulate the amount payable by the CONTRACTOR in the event of its failure to meet a Completion Deadline or to otherwise comply with certain Contract schedule requirements.

(D) The CONTRACTOR acknowledges and agrees that the Liquidated Damages are intended to compensate AUTHORITY solely for the CONTRACTOR's failure to meet the Completion Deadline(s) that are set forth in the Project Manual, RFP, or for failure to comply with other Contract schedule requirements and shall not excuse the CONTRACTOR from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that AUTHORITY has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude AUTHORITY from exercising its other rights and remedies respecting any such delay.

(E) Amount of Liquidated Damages.
In the event the CONTRACTOR fails to achieve Substantial Completion by the Substantial Completion Deadline, the CONTRACTOR agrees to pay to AUTHORITY Liquidated Damages in the amount of $2,000 per day as compensation for AUTHORITY's additional costs of administering this Contract (including engineering, legal, accounting and administrative costs) and for inconvenience to the public due to delays, commencing on the day after the Substantial Completion Deadline and ending on the date Substantial Completion is achieved.

(F) Cap on Liquidated Damages
There shall be no cap on Liquidated Damages.

(G) Reasonableness of Liquidated Damages.
The CONTRACTOR acknowledges and agrees that the foregoing damages have been set based on an evaluation by AUTHORITY of damages to AUTHORITY and the public caused by late completion. The CONTRACTOR and AUTHORITY agree that the amount of such damages is impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix CONTRACTORS' costs and to avoid later disputes over which items are properly chargeable to the CONTRACTOR. It is understood and agreed by the CONTRACTOR that any Liquidated Damages payable in accordance with this Article are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The CONTRACTOR further acknowledges and

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agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

(H) Payment and Deductions.
Liquidated Damages shall be payable by the CONTRACTOR to AUTHORITY within ten (10) Days after the CONTRACTOR's receipt of an invoice therefor from AUTHORITY. In addition, AUTHORITY shall have the right to deduct any amount owed by the CONTRACTOR to AUTHORITY hereunder from any amounts owed by AUTHORITY to the CONTRACTOR, including any retainage which may be payable by AUTHORITY to the CONTRACTOR.

(I) No Waiver.
Permitting or requiring the CONTRACTOR to continue and finish the Work or any part thereof after the Substantial Completion Deadline or any other Completion Deadline shall not act as a waiver of AUTHORITY's right to receive Liquidated Damages hereunder or any other rights or remedies available to AUTHORITY under this Contract.

(J) Independent and Cumulative Damages.
The categories of Liquidated Damages hereof are independent in nature and may be cumulative; the assessment of one category does not affect AUTHORITY's right to assess and collect a different category.

(K) Overall Limitation.
The CONTRACTOR's liability to AUTHORITY for damages resulting from breach of the Contract shall not exceed the sum of (1) all those costs reasonably incurred by AUTHORITY or any party acting on AUTHORITY's behalf in completing or correcting the Work or having the Work completed or corrected by another Person; plus (2) an amount equal to twenty percent (20%) of the Contract Price (which amount shall specifically include any Liquidated Damages paid pursuant to this Article as well as any payments made by the CONTRACTOR pursuant to its indemnification obligations, but shall specifically exclude any amounts paid by the CONTRACTOR that are covered by insurance proceeds).

(L) Exclusion from Limitation.
This limitation of liability shall not apply with regard to any illegal activities, fraud, criminal conduct, gross negligence, recklessness, or intentional misconduct on the part of the CONTRACTOR or any CONTRACTOR-Related Entity.

2.3. <u>Schedule of Performance</u>. CONTRACTOR shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the Term of this Agreement in a reasonably prompt and timely manner based upon the circumstances and director communicated to CONTRACTOR, and if applicable, in accordance with the schedule set forth in the "Services Time Schedule" attached hereto as Exhibit B, and incorporated into it by this reference. If the Project Time Schedule calls for performance of the Services in phases or discrete increments, CONTRACTOR shall <u>not</u> proceed from one phase or increment to the next without written authorization from AUTHORITY's Project

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Manager.

2.4. *Force Majeure*. If an event or condition constituting a "force majeure"— including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster— prevents or delays a PARTY from performing or fulfilling an obligation under this Agreement, the PARTY is not in Default, under Paragraph 11.1 of this Agreement, of the obligation. A delay beyond a PARTY's control automatically extends the time, in an amount equal to the period of the delay, for the PARTY to perform the obligation under this Agreement. The PARTIES shall prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

3. COORDINATION OF WORK

3.1. Project Management. Each PARTY shall appoint a Project Manager. The Project Managers shall meet as needed to coordinate, review, and ensure CONTRACTOR's performance under this Agreement. AUTHORITY's Project Manager will oversee the administration of CONTRACTOR's tasks under this Agreement.

3.2. Key Personnel. CONTRACTOR's project team shall work under the direction of the following Key Personnel [**IDENTIFY CONTRACTOR'S KEY PERSONNEL AND TITLE**]_____. CONTRACTOR represents that its Key Personnel is authorized to act in its behalf with respect to the work and make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Key Personnel were a substantial inducement for AUTHORITY to enter into this Agreement. Therefore, the foregoing Key Personnel shall be responsible during the term of this Agreement for directing all activities of CONTRACTOR and devoting sufficient time to personally supervise the services.

CONTRACTOR shall minimize changes to its key personnel. AUTHORITY may request key personnel changes, and AUTHORITY may review and approve key personnel changes proposed by CONTRACTOR. AUTHORITY will not unreasonably withhold approval of key personnel assignments and changes.

3.3. Use of Agents or Assistants. With AUTHORITY's prior written approval, CONTRACTOR may employ, engage, or retain the services of persons or entities ("Subcontractors") that CONTRACTOR may deem proper to aid or assist in the proper performance of CONTRACTOR's duties. AUTHORITY is an intended beneficiary of all work that the Subcontractors perform for purposes of establishing a duty of care between the Subcontractors and AUTHORITY. CONTRACTOR is as responsible for the performance of its Subcontractors as it would be if it had rendered the Services itself. All costs of the tasks performed, or the expenses incurred by the Subcontractors are chargeable directly to CONTRACTOR. Nothing in this Agreement constitutes or creates a contractual relationship between AUTHORITY and anyone other than CONTRACTOR.

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3.4. Independent Contractor.

(A) CONTRACTOR understands and acknowledges that CONTRACTOR is an independent CONTRACTOR, not an employee, partner, agent, or principal of AUTHORITY. This Agreement does not create a partnership, joint venture, association, or employer- employee relationship between the PARTIES. At its own expense, CONTRACTOR is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for CONTRACTOR and for CONTRACTOR's employees. CONTRACTOR has, andshall retain, the right to exercise full control over the employment, direction, compensation,and discharge of all persons whom CONTRACTOR uses in performing the Services under this Agreement. CONTRACTOR shall provide the Services in CONTRACTOR's own manner and method, except as this Agreement specifies. CONTRACTOR shall treat a provision in this Agreement that may appear either to give AUTHORITY the right to direct CONTRACTOR as to the details of doing the work, or to exercise a measure of control overthe work, as giving CONTRACTOR direction only as to the work's end result.

(B) CONTRACTOR shall indemnify, defend (including CONTRACTOR's providing and paying for legal counsel for AUTHORITY), and hold harmless AUTHORITY for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that AUTHORITY may be required to make on behalf of CONTRACTOR, an employee of CONTRACTOR, or any employee of CONTRACTOR construed to be an employee of AUTHORITY, for the work done under this Agreement.

3.4. Non-Discrimination in Employment. CONTRACTOR shall not discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

3.5. Disability Access Laws. CONTRACTOR represents and certifies that the work product, studies, reports, designs, drawings, and specifications that CONTRACTOR prepares under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the California Code of Regulations— when the Scope of Services requires or calls for compliance with those laws, regulations, or standards.

3.7 California Department of Industrial Relations (DIR) — Public Works CONTRACTOR Registration.

(A) Beginning July 1, 2014, under the Public Works CONTRACTOR Registration Law (California Senate Bill No. 854 – See Labor Code Section 1725.5), CONTRACTORs must register and meet requirements using the online application

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https://www.dir.ca.gov/public-works/contractor-registration.html before bidding on public works contracts in California. The application also provides agencies that administer public works programs with a searchable database of qualified CONTRACTORs. Application and renewal are completed online with a non-refundable fee. More information is available at the following links:

http://www.dir.ca.gov/Public-Works/PublicWorksSB854.html

http://www.dir.ca.gov/Public-Works/CONTRACTORs.html

(B) Beginning April 1, 2015, the Authority must award public works projects only to CONTRACTORs and SUBCONTRACTORs who comply with the Public Works CONTRACTOR Registration Law.

(C) Notice to Proposers and SUBCONTRACTORs:

- No CONTRACTOR or SUBCONTRACTOR may be listed on a bid for a public works project (**submitted on or after March 1, 2015**) unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

- No CONTRACTOR or SUBCONTRACTOR may be awarded a contract for public work on a public works project (**awarded on or after April 1, 2015**) unless registered with the DIR pursuant to Labor Code section 1725.5.

- This Project is subject to compliance monitoring and enforcement by the DIR.

- The prime CONTRACTOR must post job site notices prescribed by regulation. (See 8 Calif. Code Reg. Section 16451(d) for the notice that previously was required for projects monitored by the DIR Compliance Monitoring Unit.)

(D) **For all new projects awarded on or after April 1, 2015**, CONTRACTORs and SUBCONTRACTORs must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).

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3.8 Prevailing Wage Laws

(A) Work Subject to Prevailing Wages Laws. One or more service(s) inthe Scope of Work provided through this Agreement may constitute a “public work” subject to the provisions of California Labor Code §§ 1720, *et seq*. (hereinafter “Work”).

CONTRACTOR and all Subcontractors of any tier shall not pay less than the minimum prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Work. The Director of Industrial Relations of the State of California, pursuant to the California Labor Code, and the United States Secretary of Labor, pursuantto the Davis-Bacon Act, has determined the general prevailing rates of wages in the locality in which the Work is to be performed. The rates determined by the California Director of Industrial Relations are available online at: www.dir.ca.gov/DLSR/PWD/, andthe rates determine by the United States Secretary

of Labor are available online at: www.access.gpo.gov/davisbacon/. To the extent that there are any differences in the federal and state prevailing wage rates for similar classifications of labor, CONTRACTORand its Subcontractors shall pay the highest wage rate. CONTRACTOR shall post a copyof the general prevailing rate of per diem wages at the job site.

(B) Penalty. CONTRACTOR and any Subcontractor under it/him/her shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the Work. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining contract applicable to the particular craft, classification, or type of worker employed to perform the Work. CONTRACTOR shall, as a penalty to the State or the City, forfeit not less than Forty Dollars ($40.00) and not more than Two Hundred Dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the Work or craft in which the worker is employed under contract by CONTRACTOR or by any Subcontractor under it/him/her. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by CONTRACTOR. The specified wage rates are minimum rates only and AUTHORITY will not consider and shall not be liable for any claims for additional compensation made by CONTRACTOR because of payment by it/him/her of any wage rate in excess of the general prevailing rates. All disputes with respect to the payment of wages in excess of those specified herein shall be adjusted by CONTRACTOR at its/his/her own expense.

(C) Payroll Records.

(1) One or more service(s) in the Scope of Work provided through this Agreement may be subject to compliance monitoring and enforcement by the California Department of Industrial Relations (“CDIR”). CONTRACTOR shall post job site notices prescribed by regulation. CONTRACTOR shall maintain its registration with the CDIR and comply with any guidelines thereof, and, shall furnish Electronic Certified Payroll Records directly to the Labor Commissioner/aka Division of Labor Standards Enforcement. CONTRACTOR shall keep an accurate payroll records that comply with CDIR requirements, showing the name, address, social security number, Work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work.

(2) The payroll records shall be certified and shall be available for inspection. CONTRACTOR shall inform AUTHORITY of the location of the payroll records, including the street address, city and county, and shall, within five (5) Working Days, provide a notice of change in location and address. Upon request by the Director, the CONTRACTOR shall provide a copy of the certified payroll records along with a statement of compliance. CONTRACTOR shall have ten (10) calendar days in which to comply, subsequent to receipt of written request

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regarding Certified Payroll Records or Basic Payroll Records. In the event CONTRACTOR fails to strictly comply after such 10-day period, CONTRACTOR shall, as a penalty to the State or AUTHORITY, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from any portion of the contract price then or thereafter due the CONTRACTOR.

(D) Apprenticeship Standards.

(1) Compliance with California Labor Code § 1777.5 requires allpublic works CONTRACTORs to:

(a) Prior to commencing work on a public works contract, submit Contract Award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. Use Form DAS-140 (Appendix 7). AUTHORITY reserves the right to require CONTRACTOR to submit a copy of said form to AUTHORITY;

(b) Employ apprentices for the public work at a ratio of no less than one (1) hour of apprentice work for every five (5) hours or labor performed by a journeyman. To request dispatch of apprentices, use Form DAS-142 (Appendix 8). AUTHORITY reserves the right to require CONTRACTOR to submit a copy of said form to AUTHORITY;

(c) Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code § 3077; and

(d) Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeyman and apprentices. CONTRACTORs who choose not to contribute to the local training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA 94142.

(2) Pursuant to Labor Code § 1777.1, failing to comply with the provisions of California Labor Code § 1777.5 may result in the loss of the right to bid on all public works projects for a period of one to three years and the imposition of a civil penalty of Five Thousand Dollars ($5,000) for each calendar day of noncompliance.

(3) Payroll Records: CONTRACTOR shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman apprentice, worker or other employee employed

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in connection with the work. The payroll records shall be certified and shall be submitted to the Project Manager every two weeks.

(4) Statement of Employer Fringe Benefit Payments: Within five (5) calendar days of signing the Contract or Subcontract, as applicable, the Statement of Employer Payments (DLSE Form PW 26, Appendix 9) shall be completed for each CONTRACTOR of any tier who pays benefits to a third-party trust, plan or fund for health and welfare benefits, vacation funds or makes pension contributions. The form must contain, for each worker classification, the fund, plan or trust name, address, administrator, the amount per hour contributed and the frequency of contributions. Training fund contributions shall also be reported in this form. City reserves the right to require CONTRACTORS to submit a copy of said form to the City.

(E) Employment of Apprentices. In the performance of this Agreement, CONTRACTOR shall comply with the provisions concerning the employment of apprentices in the Labor Code of the State of California and any amendments thereof. In the event CONTRACTOR willfully fails to comply with the aforesaid provisions of the Labor Code, CONTRACTOR shall be subject to the penalties for noncompliance in the Labor Code of the State of California and any amendments thereof.

(F) Indemnity for Violation of Prevailing Wage Laws. If a dispute based upon the prevailing wage laws occurs, CONTRACTOR, at its expense, shall indemnify, defend (including CONTRACTOR'S providing and paying for legal counsel for AUTHORITY), and hold harmless AUTHORITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to or arising out of, the prevailing wage laws.

3.9. Workers' Compensation. CONTRACTOR understands and acknowledges that all persons furnishing services to AUTHORITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of CONTRACTOR and not of AUTHORITY. In performing the Services or the work under this Agreement, CONTRACTOR is liable for providing workers' compensation benefits to CONTRACTOR'S employees, or anyone whom CONTRACTOR directly or indirectly hires, employs, or uses. AUTHORITY is not responsible for any claims at law or in equity caused by CONTRACTOR's failure to comply with this Paragraph.

3.10. Damage to Public or Private Property. CONTRACTOR shall, at its sole expense, repair in kind, or pay for, as AUTHORITY shall direct, any damage to public or private property, facilities, streets or structures arising out of arising out of CONTRACTOR'S use, occupation, operation, or activities in, upon, under, or over any portion of them. AUTHORITY may decline to approve and may withhold payment in whole or in part to such extent as may be necessary to protect AUTHORITY from loss because of defective work not remedied or other damage to AUTHORITY occurring in connection with CONTRACTOR'S performance of the services.

3.11 Executive Order N-6-22 – Russia Sanctions.

(A) AUTHORITY may be using State of California grant funds for this Agreement.

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Accordingly, because AUTHORITY may be paying, awarding, or providing CONTRACTOR with that State grant money, in whole or in part, CONTRACTOR must fully comply with the Governor's March 4, 2022, Executive Order N-6-22 (https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive- Order.pdf) ("State Executive Order"). The State Executive Order concerns economic sanctions ("Economic Sanctions") and other sanctions imposed by the U.S. government, and the State of California, in response to Russia's actions in Ukraine.

(B) CONTRACTOR is solely responsible for reviewing the State Executive Order in full and complying with its requirements, as applicable. CONTRACTOR states and represents that CONTRACTOR has read the State Executive Order, is not the subject or target of any Economic Sanctions and will comply with any request to report information or submit documents to the State, or AUTHORITY, or both, before or after the expiration, termination, or cancellation of this Agreement.

(C) At any time and upon written notice to CONTRACTOR, AUTHORITY, in its sole discretion, may either immediately invoke any one or more of the remedies listed in Paragraph 13.3 for Default under Paragraph 13.1(B), or terminate this Agreement for AUTHORITY's convenience under Paragraph 13.4, if AUTHORITY determines that any one or more of the following circumstances or events have occurred:

(1) CONTRACTOR is the subject or target of Economic Sanctions;

(2) CONTRACTOR is conducting prohibited transactions with sanctioned individuals or entities; or

(3) CONTRACTOR has failed to comply, in any manner, with the State Executive Order.

4. COMPENSATION

4.1. AUTHORITY's payment to CONTRACTOR will be based upon CONTRACTOR's Fee Schedule, which is attached as Schedule of Values as defined in the General Conditions to this Agreement and is incorporated into it by this reference. Except as itemized in the Fee Schedule, CONTRACTOR shall pay for all expenses, including reimbursable or out-of-pocket expenses, that CONTRACTOR incurs in performing the Services. The Fee Schedule will remain in effect for the Agreement's Term.

4.2. Fee. AUTHORITY shall pay for the Services that CONTRACTOR performs in accordance with this Agreement at the amount(s) specified in the approved Schedule of Values and Division 3 Form I – Schedule of Proposal Prices. (), the TOTAL amount of which is not to exceed_____ dollars ($_____).

4.3. If AUTHORITY requires additional work not included in this Agreement, CONTRACTOR and AUTHORITY shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

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4.4. Maximum Cost. CONTRACTOR expressly acknowledges that the total cost to complete all tasks must not exceed _____ dollars ($_____) ("Maximum Cost").

4.5. Taxes. CONTRACTOR shall pay all applicable (federal, state, county, local, AUTHORITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONTRACTOR's services under this Agreement.

4.6. Invoices. CONTRACTOR shall submit an itemized progress payment application to the AUTHORITY for review and approval no more frequently than monthly, using AIA Document G702, Application and Certificate for Payment, and AIA Document G703, Continuation Sheet. Each application shall identify the work performed during the applicable billing period, costs by task or phase, total costs to date, amounts previously billed and paid, retainage, approved change orders, and the current amount requested for payment. CONTRACTOR shall provide supporting documentation and any additional information reasonably requested by the AUTHORITY to substantiate the application. All applications shall be complete and consistent with the Contract Documents and shall be subject to the AUTHORITY's review and approval before payment.

4.7. Payment Terms. AUTHORITY shall compensate CONTRACTOR for the performance of the Work under this Agreement on a firm fixed price basis, in accordance with the AUTHORITY-approved Schedule of Values. Payments shall be made for completed Work based on the values assigned to each line item in the Schedule of Values, subject to the terms and conditions of this Agreement.

4.8. Retainage. Subject to California Civil Code Section 3320 and California Public Contract Code Section 7201, AUTHORITY shall retain 5% of all invoiced sums until AUTHORITY has accepted the completed Project as defined in the Project Manual and Scope of Work, and such acceptance shall not be unreasonably withheld. Within sixty (60) days of the AUTHORITY's acceptance of the Project, as defined in Public Contract Code 7107(c), the 5% retention held in relation thereto shall be remitted to the CONTRACTOR as provided herein. The retention described herein is separate from, and shall not limit, AUTHORITY's rights to withhold, deduct, offset, or retain amounts otherwise authorized under this Agreement, including the provisions of the Retention of Funds Section 11.4.

5. AUDIT BY AUTHORITY

5.1. During this Agreement's Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONTRACTOR shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONTRACTOR's performance of this Agreement; and

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(B) Permit AUTHORITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONTRACTOR'S performance of this Agreement including, but not limited to: direct and indirect charges, and detailed documentation, for work CONTRACTOR has performed or will perform under this Agreement.

6. DATA, RECORDS, PROPRIETARY RIGHTS

6.1. Copies of Data. CONTRACTOR shall provide AUTHORITY with copies or originals of all data that CONTRACTOR generates, uses, collects, or stores in relation to all work associated with this Agreement. Data that CONTRACTOR generates, uses, collects, stores, or provides must be in a form acceptable to and agreed upon by, AUTHORITY.

6.2. Ownership and Use.

(A) Unless AUTHORITY states otherwise in writing, each document— including, but not limited to, each report, draft, record, drawing, or specification (collectively, "work product")— that CONTRACTOR prepares, reproduces, or causes its preparation or reproduction for this Agreement is AUTHORITY's exclusive property.

(B) CONTRACTOR acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work. CONTRACTOR makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

6.3. Intellectual Property.

(C) If CONTRACTOR uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONTRACTOR's work product, CONTRACTOR represents that:

(1) CONTRACTOR holds the patent, trademark, or copyright to the work, idea, or product; or

(2) CONTRACTOR is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

(D) Unless AUTHORITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from the creation of the work under this Agreement vest in AUTHORITY. CONTRACTOR waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of AUTHORITY.

(E) CONTRACTOR shall indemnify, defend (including CONTRACTOR's providing

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and paying for legal counsel for AUTHORITY), and hold harmless AUTHORITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

6.4. Confidentiality.

The CONTRACTOR shall not use any information that it obtains from performing the Services for any purpose other than to fulfill the CONTRACTOR'S Scope of Work. Without AUTHORITY'S prior written authorization, CONTRACTOR shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— data, drawings, designs, specifications, reports, or other information relating to the Services or the work that AUTHORITY assigns to CONTRACTOR or to which CONTRACTOR has access.

6.5. California Public Records Act.

(F) CONTRACTOR acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act (Government Code Sections 7920.000 *et seq.*), including its exemptions. CONTRACTOR acknowledges that AUTHORITY has no obligation to notify CONTRACTOR when a request for records is received.

(G) CONTRACTOR shall identify in advance all records, or portions of them, that CONTRACTOR believes are exempt from production under the Public Records Act.

(H) If CONTRACTOR claims a privilege against public disclosure or otherwise objects to the records' disclosure, then:

(1) CONTRACTOR may when notified by AUTHORITY of the request, seek protection from disclosure by timely applying for relief in a court of competent jurisdiction or

(2) AUTHORITY may either decline to produce the requested information or redact portions of the documents and produce the redacted records.

(I) If CONTRACTOR fails to identify one or more protectable documents, in AUTHORITY's sole discretion, and without its being in breach of this Agreement or its incurring liability to CONTRACTOR, AUTHORITY may produce the records— in whole, in part, or redacted— or may decline to produce them.

(J) CONTRACTOR shall indemnify, defend (including CONTRACTOR's providing and paying for legal counsel for AUTHORITY), and hold harmless AUTHORITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging AUTHORITY's refusal to publicly disclose one or more records that CONTRACTOR identifies as protectable, or asserts is protectable.

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7. CONFLICT OF INTEREST

7.1. Conflict of Interest. CONTRACTOR represents and certifies that:

(A) CONTRACTOR's personnel are not currently officers, agents, employees, representatives, or elected officials of AUTHORITY;

(B) CONTRACTOR will not employ or hire an AUTHORITY officer, agent, employee, representative, or elected official during this Agreement's Term;

(C) AUTHORITY's officers, agents, employees, representatives, and elected officials do not, and will not, have any direct or indirect financial interest in this Agreement;and
(D) During this Agreement's Term, CONTRACTOR will inform AUTHORITY about any possible conflict of interest that may arise as a result of any change in circumstances.

8. INSURANCE

8.1. When CONTRACTOR signs and delivers this Agreement to AUTHORITY, and during this Agreement's Term, CONTRACTOR shall furnish AUTHORITY with insurance forms that fully meet the requirements of— and contain provisions entirely consistent with— all of the "Insurance Requirements," which are attached as "Attachment A" to this Agreement and are incorporated into it by this reference.

8.2. This Agreement's insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 9 of the Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 9 of the Agreement.

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9. INDEMNITY

9.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONTRACTOR, its employees, agents, and persons whom CONTRACTOR employs or hires (individually and collectively, "CONTRACTOR INDEMNITOR") shall indemnify, defend, and hold harmless AUTHORITY, its officers, agents, employees, and representatives (individually and collectively, "AUTHORITY INDEMNITEE") from and against a "**liability**" [as defined in Subparagraph (A) below], or an "**expense**" [as defined in Subparagraph (B) below], or both, that arise out of, pertain to, or relate to an act, error, or omission of CONTRACTOR INDEMNITOR:

(A) "**Liability**" means claims, suits, actions, causes of action, proceedings,

judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

(1) Actual or alleged;

(2) In contract or in tort;

(3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage; or

(4) For any liability arising out of the CONTRACTOR's performance of this Agreement.

(B) "**Expense**" means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

(1) Attorney's fees;

(2) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;

(3) Fees of an accountant, expert witness, CONTRACTOR, or other professional; or

(4) Pre or post: judgment interest or settlement interest.

9.2. Under this Article, CONTRACTOR INDEMNITOR's defense and indemnification obligations:

(A) Apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of an AUTHORITY INDEMNITEE, but

(B) Do not apply to the extent that a **liability**, an expense, or both is attributable to the active negligence or willful misconduct of an OWNER INDEMNITEE.

9.3. To the extent that CONTRACTOR INDEMNITOR's insurance policy provides an upfront defense to AUTHORITY, CONTRACTOR INDEMNITOR's obligation to defend a AUTHORITY INDEMNITEE under this Article:

(A) Means that CONTRACTOR INDEMNITOR shall provide and pay for legal counsel acceptable to AUTHORITY for the AUTHORITY INDEMNITEE;

(B) Occurs when a claim, suit, complaint, pleading, or action against an AUTHORITY INDEMNITEE arises out of, pertains to, relates to, or asserts an act, error, or omission of CONTRACTOR INDEMNITOR; and

(C) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies CONTRACTOR INDEMNITOR.

9.4. Paragraph 9.3 does not limit or extinguish the CONTRACTOR INDEMNITOR'S obligation to reimburse an AUTHORITY INDEMNITEE for the costs of defending the

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AUTHORITY INDEMNITEE against a liability, an **expense**, or both. An AUTHORITY INDEMNITEE's right to recover defense costs and attorney's fees under this Article does not require, and is not contingent upon, the AUTHORITY INDEMNITEE's first:

(A) Requesting that CONTRACTOR INDEMNITOR provide a defense to the AUTHORITY INDEMNITEE; or

(B) Obtaining the CONTRACTOR INDEMNITOR's consent to the AUTHORITY INDEMNITEE's tender of defense.

9.5. CONTRACTOR INDEMNITOR's obligation to indemnify, defend, and hold harmless AUTHORITY will remain in effect and will be binding upon CONTRACTOR INDEMNITOR whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement's expiration, cancellation, or termination.

9.6. Except for Paragraph 9.3, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 8. In addition, the indemnification and defense provisions in this Article:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 8; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 8.

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10. BONDS

10.1 Concurrently with execution of this Agreement, CONTRACTOR shall deliver to AUTHORITY a performance bond and payment bond in an amount equal to one hundred percent of the full amount of the estimated construction costs to guarantee faithful performance and payments. To provide performance and payment bonds, the estimated construction cost for this Project is 100% of the Project Value indicated in Division 5, Project Manual in the form provided by AUTHORITY. The bonds shall be unconditional andeither remain in force or be renewed annually during the entire term of the Agreement and shall be null and void only if CONTRACTOR promptly and faithfully performs all termsand conditions of the Agreement.

11. ENFORCEMENT OF THE AGREEMENT

11.1 Default. Default under this Agreement occurs upon any one or more of the following events:

(A) CONTRACTOR refuses or fails — whether partially, fully, temporarily, or otherwise— to:

(1) Provide or maintain enough properly trained personnel, or licensed personnel, or both, to perform the Services that this Agreement requires;

(2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;

(3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONTRACTOR, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

(1) Disregards or violates a law, ordinance, rule, procedure, regulation, directive, or order;

(2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;

(3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;

(4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement; or

(C) CONTRACTOR:

(1) Or another party for or on behalf of CONTRACTOR: institutes proceedings under any bankruptcy, reorganization, receivership, or other insolvency; or assigns or transfers assets to its creditors;

(2) Delegates — whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying AUTHORITY, or without AUTHORITY's written authorization;

(3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying AUTHORITY, or without AUTHORITY's written authorization;

(4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONTRACTOR's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager or a designee.

11.2. Notice of Default. If AUTHORITY deems that CONTRACTOR is in Default, or that CONTRACTOR has failed in any other respect to satisfactorily perform the Services specified in this Agreement, AUTHORITY may give written notice to CONTRACTOR specifying the Default(s) that CONTRACTOR shall remedy within 48 hours after receiving the notice. The Notice of Default will set forth one or more bases

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for any dissatisfaction and may suggest corrective measures.

11.3. Remedies upon Default. Within 48 hours after receiving AUTHORITY's Notice of Default, if CONTRACTOR refuses or fails to remedy the Default(s), or if CONTRACTOR does not commence steps to remedy the Default(s) to AUTHORITY's reasonable satisfaction, AUTHORITY may exercise any one or more of the following remedies:

(A) AUTHORITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as CONTRACTOR has corrected the Default;

(B) AUTHORITY may provide for the Services either through its own forces or from another CONTRACTOR, and may withhold any money due (or may become owing to) CONTRACTOR for a task related to the claimed Default;

(C) AUTHORITY may withhold all money, or a sum of money, due CONTRACTOR under this Agreement, which in AUTHORITY's sole determination, are sufficient to secure CONTRACTOR's performance of its duties and obligations under this Agreement;

(D) AUTHORITY may immediately terminate the Agreement;

(E) AUTHORITY may exercise any legal remedy or equitable remedy, or both, including, but not limited to, filing and action in court:

(1) Seeking CONTRACTOR's specific performance of all or any part of this Agreement; or

(2) Recovering damages for CONTRACTOR's Default, breach, or violation of this Agreement; or

(F) AUTHORITY may pursue any other available, lawful right, remedy, or action.

11.4. Retention of Funds. CONTRACTOR authorizes AUTHORITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate AUTHORITY for any losses, costs, liabilities, or damages suffered by AUTHORITY, and all amounts for which AUTHORITY may be liable to third parties, by reason of CONTRACTOR's acts or omissions in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is

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made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, AUTHORITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of AUTHORITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect AUTHORITY as elsewhere provided in this Agreement.

11.5. Resolution of Public Contract Code §§ 9204, 20104 Claims.

(A) Public Contract Code § 9204 Claims. If the services in this Agreement constitute a "Public Works Project", defined in Public Contract Code 9204(c)(4) as "the erection, construction, alteration, repair, or improvement of any public structure, building, road or other public improvement of any kind", Public Contract Code Section 9204 Claims and Dispute Resolution Procedures apply. Click the following link for the full text of the Public Contract Code Section 9204: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=9204&lawCode=PCC

(B) Public Contract Code §20104 Claims. If the services in this Agreement constitute a "Public Works Contract", defined in Public Contract Code §1101 as "the erection, construction, alteration, repair, or improvement of any public structure, building, road or other public improvement of any kind" and the claim does not exceed the sum of $375,000, the requirements of Public Contract Code Section 20104 through 20104.6 shall apply. Click the following link for the full text of the Public Contract Code Sections 20104 through 20104.6
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=20104.&nodeTreePath=3.4.1.3&lawCode=PCC

11.6. Termination for Convenience. Independent of the remedies provided in Paragraph 11.3, AUTHORITY may elect to terminate this Agreement at any time upon 15 days' prior written notice. Upon termination, the CONTRACTOR shall receive compensation only for the work that the CONTRACTOR has satisfactorily completed to the termination date subject to the provisions of Section 14.7.3 in the General Conditions.

12.0 GENERAL PROVISIONS

12.1. Entire Agreement. This Agreement represents the entire and integrated agreement between the PARTIES. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONTRACTOR nor AUTHORITY has made any promises or representations, other than those contained in this Agreement or those implied by law. The PARTIES may modify this Agreement, or any part of it, by a written amendment with AUTHORITY's and CONTRACTOR's signature.

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12.2. Interpretation. This Agreement is the product of negotiation and compromise by both PARTIES. Every provision in this Agreement must be interpreted as though the PARTIES equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the Agreement must not be construed against the PARTY causing the uncertainty to exist. In interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies, with the terms and conditions in the document higher on the list governing those lower on the list:

(1) Attachment C (Federal Terms and Conditions)
(2) Attachment B (General and Special Conditions)
(3) Amendments to this Agreement, the most recent controlling;
(4) This Agreement.
(5) Attachment A (Insurance Requirements)
(6) Project Manual (Yuba-Sutter Transit Authority Next Generation Transit Facility Project Manual, dated April 2026)
(7) Request For Proposals 25-02 and all Addenda
(8) Request For Qualifications 05-26 and all Addenda
(9) CONTRACTOR's Proposal, including its Best and Final Offer
(10) CONTRACTOR's Qualifications Submittal under 05-26

12.3. Headings. All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

12.4. Governing Law and Jurisdiction.

(A) California's laws govern the Agreement's construction and interpretation without regard to conflict of law principles. Unless the Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendment, modifications, and successor legislation. If CONTRACTOR or AUTHORITY brings a lawsuit to enforce or interpret one or more provisions of the Agreement, jurisdiction is in the Superior Court of the County of Yuba, California, or where otherwise appropriate, in the United States District Court, Eastern District of California. CONTRACTOR and AUTHORITY acknowledge that the Contract Documents were negotiated, entered into, and executed—and the Work was performed—in the City of Marysville, California.

12.5. Waiver of Breach. If either PARTY fails to require the other to perform any term in this Agreement, that failure does not prevent the PARTY from later enforcing that term, or any other term. If either PARTY waives the other's breach of a term, that waiver is not treated as waiving a later breach of the term. A waiver of a term is valid

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only if it is in writing and signed by the PARTY waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a PARTY's exercise of any one of them.

12.6. Attorney's Fees. Each Party shall bear their own attorneys' fees with respect to any action at law or in equity to enforce or interpret one or more provisions of this Agreement.

12.7. Further Assurances. Upon AUTHORITY's request at any time, CONTRACTOR shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

12.8. Assignment.

(A) This Agreement does not give any rights or benefits to anyone other than AUTHORITY and CONTRACTOR. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of AUTHORITY and CONTRACTOR, and are not for the benefit of another person, entity, or organization. Without AUTHORITY's prior written authorization, CONTRACTOR shall not do any one or more of the following:

(1) Assign or transfer a right or interest— whether in whole, inpart, temporarily, or otherwise— in this Agreement; or

(2) Delegate a duty or obligation owed— whether in whole, inpart, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONTRACTOR, without AUTHORITY's prior written authorization, is wholly void and totally ineffective for all purposes and does not postpone, delay, alter, extinguish, or terminate CONTRACTOR's duties, obligations, or responsibilities under this Agreement.

(C) If AUTHORITY consents to an assignment of rights, a delegation of duties, or both, CONTRACTOR's assignee or legal representative shall agree in writing to personally assume, perform, and be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

12.9. Successors and Assigns. Subject to the provisions in Paragraph 12.8, this

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Agreement is binding on the heirs, executors, administrators, successors, andassigns of the respective PARTIES.

12.10. Recycled Paper. CONTRACTOR shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

12.11. Notices.

(A) The PARTIES shall submit in writing all notices and correspondence that this Agreement requires or permits and shall use the following delivery method:

(1) Personal delivery;

(2) U.S. mail, first class postage prepaid;

(3) "Certified" U.S. mail, postage prepaid, return receipt requested;

(4) Facsimile; or

(5) Email.

(B) All written notices or correspondence done in the manner described in Subparagraph (A) above with the street address or place, facsimile number, or email address listed in Subparagraph (C) below will be presumed "given" to a PARTY on whichever date occurs earliest:

(1) The date of personal delivery;

(2) The third (3rd) business day following deposit in the U.S. mail,when sent by "first class" mail;

(3) The date on which the PARTY or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form when sent by"certified" mail; or

(4) The date of transmission when sent by facsimile or email.

(C) The AUTHORITY and the CONTRACTOR designate the following contact person, street address or place, telephone or facsimile number, or email address for giving notice.

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AUTHORITY:

Yuba-Sutter Transit Authority

2100 B Street,

Marysville, CA

95901

Attn: _____

Tel. No.: _____

Fax. No.: _____Email: _____

CONTRACTOR:

_____

_____

Attn: _____

Tel. No.: _____

Fax. No.: _____Email: _____

(D) At any time, by providing written notice to the other PARTY, AUTHORITY or CONTRACTOR may change the contact information listed in Subparagraph (C) above.

12.12. Survival. This Paragraph and the obligations set forth in Paragraphs 3.4, 3.6, 3.7, 3.8, 3.9, 4.5, 5.0, 6.1, 6.2, 6.3, 6.4, 6.5, 8.1, 8.2, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 11.3, 12.5, 12.6, 12.7, 12.8, 12.9, and 12.11 survive this Agreement's expiration, cancellation, or termination. In addition to the foregoing, any provision of this Agreement which by its nature remains unsatisfied upon this Agreement's expiration, cancellation, or termination shall survive until its provisions are satisfied.

12.13. Severability. The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

12.14. Counterparts. This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The PARTIES shall sign a sufficient number of counterparts so that each PARTY will receive a fully executed original of this Agreement.

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12.15. <u>Representations – Authority</u>. The PARTIES represent that:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its terms; and

(C) They have executed this Agreement on the date opposite their signature.

[*Signatures on Following Page*]

DRAFT

Executed in Marysville, California.

AUTHORITY OF YUBA SUTTER TRANSIT AUTHORITY:

By_____ Date: _____

(Name)_____

(Title)_____

CONTRACTOR:

SIGNATURE MUST BE ACKNOWLEDGED BEFORE A NOTARY (USE Attachment B inBid Forms Packet)

BIDDER:

By _____
Signature

Name _____
Printed

Its _____
Title

Address _____

_____

Telephone_____

CSLB No. _____

D.I.R. Registration No. _____

IF BIDDER IS A CORPORATION, PLACE THE IMPRINT OF THE CORPORATE SEAL BELOW:

SEAL

IF BIDDER IS A PARTNERSHIP, JOINT VENTURE, OR OTHER LEGAL ENTITY, THEN EACH PARTNER, PRINCIPAL, OR INDIVIDUAL MUST

SIGN THIS BID ON Attachment A in Bid FormsPacket, IN FRONT OF A NOTARY

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of _____)

On _____ before me, _____,

Date *Insert Name and Title of the Officer*

personally appeared _____

Name(s) of Signer(s)

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

Place Notary Seal Above

DRAFT

APPROVED AS TO FORM

(AUTHORITY USE ONLY)

NAME:_____

TITLE:_____

SIGNATURE:_____

DATE: _____

DRAFT

Incorporated Attachments

The attachments listed below are hereby incorporated into and made part of this Agreement by reference as though fully set forth herein. CONTRACTOR shall comply with all applicable requirements, terms, and conditions contained in the incorporated attachments.

1. Attachment A (Insurance Requirements)
2. Attachment B (General and Special Conditions)
3. Attachment C (Federal Terms and Conditions)
4. Project Manual (Yuba-Sutter Transit Authority Next Generation Transit Facility Project Manual, dated April 2026)
5. Request For Proposals 25-02 and all Addenda
6. Request For Qualifications 05-26 and all Addenda
7. CONTRACTOR's Proposal dated (), including its Best and Final Offer dated ()
8. CONTRACTOR's Qualifications Submittal under 05-26 dated ()

ATTACHMENT A: INSURANCE REQUIREMENTS

(Design-Build)

1.0 REQUIRED INSURANCE POLICIES

At its own expense, DB Entity shall obtain, pay for, and maintain— and shall require each of its Subcontractors to obtain and maintain— for the duration of the Construction Contract, policies of insurance meeting the following requirements:

A. Workers' Compensation/Employer's Liability Insurance.

1. Complete Workers' Compensation insurance, meeting or exceeding the coverages and amounts that California law requires and

2. Employer's Liability insurance must be in an amount not less than:

a. ONE MILLION DOLLARS ($1,000,000) per accident for bodily injury or disease;

b. ONE MILLION DOLLARS ($1,000,000) per employee for bodily injury or disease; and

c. ONE MILLION DOLLARS ($1,000,000) policy limit.

B. Commercial General Liability ("CGL") Insurance (primary).

1. (CGL) written on an occurrence basis, and such coverage shall be at least as broad as the broadest available version of Insurance Services Office form CG 00 01 or equivalent with no amending or exclusionary endorsements material to any parties' obligations in the Contract may be attached. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract. The policy shall provide for the separation of insureds and contain no insured vs. insured exclusion.

The policy shall be endorsed using Insurance Services Office (ISO) forms CG 20 10 and GC 20 37 (or their equivalent if acceptable to the Authority) to add the Authority and its officers, agents, employees, and representatives as additional insureds for ongoing and completed operations under the CGL policy. The additional insured endorsement shall not limit coverage for the additional insured to "ongoing operations" or in any way exclude coverage for completed operations. Coverage must apply on a primary, noncontributing basis about any other insurance or self-insurance, primary or excess, available to the Authority or any officer, agent, employee, or representative of the Authority (collectively, "Authority and its representatives"). Coverage must not be limited to the vicarious liability or supervisory role of any additional insured.

2. The policy shall allow for or be endorsed to provide a Waiver of Transfer of Rights of Recovery Against Others to Us, form CG2404, or equivalent endorsement in favor of the Authority and its officers, agents, employees, and representatives. Coverage afforded to the "Authority and its representatives" must be at least as broad as that afforded to DB Entity. If DB Entity has higher

limits than the limits specified in these insurance requirements, or has additional broader coverage, or has both, the insurer shall make available the higher limits and broader coverage to the "Authority and its representatives."

3. Coverage must not contain a contractors' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

4. CGL insurance must be written in an amount not less than:

    a. five million dollars ($5,000,000) for each occurrence of bodily injury and property damage or the full occurrence limit of the policy, whichever is greater
    b. five million dollars ($5,000,000) personal and advertising injury liability of any one person or organization or the full personal and advertising injury liability limit of the policy, whichever is greater
    c. ten million dollars ($10,000,000) general aggregate or the full general aggregate limit of the policy, whichever is greater
    d. five million dollars ($5,000,000) products-completed operations aggregate or the policy's full products-completed operations aggregate limit, whichever is greater.

    The policy shall contain an endorsement granting a general aggregate limit for the Project per project or location.

5. CGL insurance must include all major divisions of coverage and must cover the following:

    a. Premises Operations (including Explosion, Collapse, and Underground ["X, C, U"] coverages as applicable:
    b. Independent Contractors;
    c. Personal and Advertising Injury (with Employer's Liability Exclusion deleted);
    d. Contractual Liability (including specified provision for DB Entity's obligation under the General Conditions); and

6. Additional insured coverage for all completed work (including fueling stations) operations shall be maintained at the limit required above until five (5) years after the recordation of the Notice of Completion.;

    If provided, Umbrella or Excess Liability Insurance (over primary) must be at least as broad as any underlying coverage. Umbrella or excess liability coverage must apply on a primary, non-contributory basis for the benefit of the "Authority and its representatives" before the umbrella or excess liability insurer calls upon the "Authority and its representatives'" primary insurance policy, or self-insurance program, or umbrella or excess liability insurance, or any

combination of these insurance policies or programs. Coverage must be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. The policy must not have a cross-liability exclusion, a contractor’s limitation endorsement, or both. The policy must have starting and ending dates concurrent with the underlying coverages. The Named Insured may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed here.

7. Project-Specific Application. The insurance requirements and limits established under RFP No. 25-02 shall apply solely to the work and services procured under that RFP and performed pursuant to the resulting Agreement for the design and construction of the next generation transit facility (the "Project"). Those limits do not apply to, establish insurance requirements for, or measure the adequacy of insurance maintained for any other project, operation, or contract of the DB Entity.

8. Separate Availability of Limits. To the extent any required policy covers operations or projects other than the Project, the DB Entity shall obtain endorsements or otherwise structure the coverage so that claims, losses, payments, or expenses arising from any other project, operation, or contract do not reduce or exhaust any aggregate limit required for the Project. Each required aggregate limit shall apply separately to the Project.

9. No Limitation of Liability. The Project-specific insurance limits do not limit the DB Entity's liability or its defense, indemnity, or other obligations under this Contract.

C. Professional Liability Insurance.

1. Without limiting DB Entity’s liability, DB Entity (at DB Entity’s sole expense) shall obtain, pay for, and maintain— and shall require each of its subcontractors, who provide professional design services, to obtain and maintain— a Professional Liability Insurance policy.

2. The Professional Liability policy must:

a. Include “errors and omissions coverage” or “malpractice” coverage, and coverage shall apply to liability for a professional error, act, omission, or negligence arising out of the DB’s services or any person or entity for whose performance the DB is legally liable. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of the Contract;

b. Cover a claim or claims arising out of the performance of professional services by DB Entity, its Subcontractors, or by anyone it directly or indirectly employs, or by anyone for whose acts any of them may be liable, including liability assumed under and arising from the Contract;

c. Provide limits of liability in an amount not less than TWO MILLION DOLLARS ($2,000,000) per claim; and

TWO MILLION DOLLARS ($2,000,000) in the aggregate; and

d. Provide coverage throughout the term of the Contract and for at least five (5) years after the Project's completion:

i. DB Entity shall obtain, pay for, and maintain an endorsement that adds an "extended reporting period" ("ERP") or a "discovery" feature— to allow the Authority to report a claim— for not less than five (5) years following the initial policy's expiration, or following the Authority's recordation of its "notice of completion" for the Project, whichever date is later. The endorsement for the ERP or discovery feature must provide identical policy limits and meet the conditions described in subparagraphs C.1.a. through C.1.c. above; or

ii. DB Entity shall obtain, pay for, and maintain successive renewal or replacement policies (with "prior acts" coverage) for five (5) years following the initial policy's expiration or the Authority's recordation of its "notice of completion" for the Project, whichever date is later. Each policy must have a "retroactive date" that coincides with or is earlier than the Contract's Effective Date. Additionally, each policy must provide identical limits and meet the conditions described in subparagraphs C.1.a. through C.1.c. above.

3. All ERP or discovery endorsements, renewal policies, and replacement coverage policies are subject to the Authority's review and approval in its sole discretion.

4. DB Entity shall pay the full amount of a deductible, self-insured retention, or both per claim for coverage under the Professional Liability Insurance policy.

D. Business Automobile Liability Insurance

1. Business Automobile Liability Insurance must cover all vehicles, whether rented, leased, hired, scheduled, owned, or non-owned. If DB Entity does not own any vehicles, this requirement may be satisfied by a non-owned and hired vehicle endorsement to the general and umbrella liability policies. Business Automobile Liability Insurance coverage amounts must not be less than the following:

a. FIVE MILLION DOLLARS ($5,000,000) per occurrence for bodily injury (including accidental death) to any one person; and

b. FIVE MILLION DOLLARS ($5,000,000) per occurrence for property damage; or

c. FIVE MILLION DOLLARS ($5,000,000) combined single limit.

E. Contractors Pollution Liability Insurance (CPL). –

1. DB Entity or Subcontractor shall obtain, pay for, and maintain for the duration of the Contract Contractor Pollution Liability insurance that provides coverage for liability caused by pollution conditions arising out of the operations of the DB Entity. Coverage must be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured.

2. The policy limit must provide coverage of at least two million dollars ($2,000,000) per occurrence and in the aggregate. Coverage must apply to bodily injury, property damage, including loss of use of damaged property or property that has not been physically inured, cleanup costs, and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

3. All activities contemplated in the Contract must be specifically scheduled on the CPL policy as "covered operations." In addition, the policy must provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

4. The policy must specifically provide for a duty to defend on the insurer's part. By endorsement, the Authority, its officers, agents, employees, and representatives must be added to the policy as additional insureds. Coverage afforded to the "Authority and its representatives" must be at least as broad as that afforded to DB Entity. If DB Entity has higher limits than the limits specified in these insurance requirements, or has additional broader coverage, or has both, the insurer shall make available the higher limits and broader coverage to the "Authority and its representatives."

F. Builder's Risk Insurance.

1. The Authority will purchase a builder's risk policy for the Project instead of a contractor-purchased policy. The bidder should not include the cost of this coverage in the bid.

2.0 GENERAL REQUIREMENTS—ALL POLICIES

A. Qualifications of Insurer. At all times during the term of this Contract, DB Entity's insurance company must meet all of the following requirements:

1. "Admitted" insurer by the State of California Department of Insurance or be listed on the California Department of Insurance's "List of Approved Surplus Line Insurers" ("LASLI");

2. Domiciled within and organized under the laws of a State of the United States; and

3. Carry an A.M. Best & Company minimum rating of “A-: VII.”

B. Continuation Coverage. For insurance coverages required to remain in force after the Final Payment, and if reasonably available, DB Entity shall submit to the Authority, with the final Application for Payment, all certificates and additional insured endorsements evidencing the continuation of such coverage.

C. Deductibles or Self-Insured Retentions. All deductibles or self-insured retentions are subject to the Authority's review and approval at its sole discretion. Any “self-insured retention” must be declared. The Authority reserves the right to require the self-insured retention to be eliminated or replaced by a deductible. Self-funding, policy fronting, or other mechanisms to avoid risk transfer are not acceptable. If DB Entity has such a program, DB Entity shall fully disclose such a program to the Authority.

D. Commercial General Liability and Business Automobile insurance policies must be written on an “occurrence” basis. They must add the Authority and its officers, agents, employees, and representatives as additional insureds as described in (Section 1.0 Required Insurance Policies) above.

E. DB Entity’s Insurance Primary. Other insurance (whether primary, excess, contingent, or self-insurance, or any other basis) available to the “Authority and its representatives” is excess over DB Entity’s insurance (whether primary, excess, contingent, or self-insurance or any other basis). The “Authority and its representatives’” insurance (whether primary, excess, contingent, self-insurance, or any other basis) will not contribute to DB Entity’s insurance policy or policies.

F. Waiver of Subrogation. DB Entity and DB Entity’s insurance company waive— and shall not exercise— any right of recovery or subrogation that DB Entity or the insurer may have against the “Authority and its representatives.”

G. Separation of Insureds. DB Entity’s insurance policy applies separately to each insured or additional insured seeking coverage against whom a claim is made or a suit is brought, except that naming multiple insureds will not increase an insurance company’s liability limits.

H. Claims by Other Insureds. DB Entity’s insurance policy applies to a claim or suit brought by an additional insured against a Named Insured or other insured, arising from bodily injury, personal injury, advertising injury, or property damage.

I. A liability policy must not contain any provision or definition that would eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.

J. Premiums. The Authority is not liable for a premium payment or another expense under DB Entity’s policy.

K. At any time during the duration of this Contract, the Authority may do any one or more of the following:

1. Review the insurance coverage requirements;

2. Require that DB Entity obtain, pay for, and maintain more insurance depending

on the Authority's assessment of any one or more of the following factors:

a. Authority's risk of liability or exposure arising out of or in any way connected with the services of DB Entity under the Contract;

b. The nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, the services of DB Entity under the Contract; or

c. The availability, affordability, or both of increased liability insurance coverage.

3. Obtain, pay for, or maintain a bond (as a replacement for insurance coverage) from a California corporate surety, guaranteeing payment to the Authority for liability, costs, or both, that the Authority incurs during the Authority's investigation, administration, or defense of a claim or a suit arising out of the Contract; or

L. DB Entity shall maintain the insurance policy without interruption from the Project's commencement date to the Final Payment date or until a date that the Authority specifies for any coverage that DB Entity must maintain after the Final Payment.

M. DB Entity shall not allow any insurance to expire, cancel, terminate, lapse, or not renew. Design-Builder's insurance company shall mail the Authority written notice at least thirty (30) days in advance of the policy's cancellation, termination, non-renewal, or reduction in coverage and ten (10) days before its insurance policy's expiration, cancellation, termination, or non-renewal, DB Entity shall deliver to the Authority evidence of the required coverage as proof that DB Entity's insurance policy has been renewed or replaced with another insurance policy which, during the duration of the Contract, meets all of these insurance requirements.

N. At any time, upon the Authority's request, DB Entity shall furnish satisfactory proof of each type of insurance coverage required— including a certified copy of the insurance policy or policies; certificates, endorsements, renewals, or replacements; and documents comprising DB Entity's self-insurance program— all in a form and content acceptable to the Authority's Attorney or the Authority's Risk Manager.

O. If DB Entity hires, employs, or uses one or more Subcontractor(s) to perform work, services, operations, or activities on DB Entity's behalf, DB Entity shall enter into a written agreement with each party, including an indemnification in favor of the Authority's and attaching these requirements and:

1. Ensure and verify that the Subcontractor meets and fully complies with these insurance requirements. DB Entity shall monitor and review all such coverage and assumes all responsibility for ensuring that all required coverage is provided and

2. Furnish the Authority at any time upon request with a complete copy of the Subcontractor's insurance policy or policies for the Authority's review, approval, or both. Failure of the Authority to request copies of the documents

does not impose any liability on the Authority or its employees.

P. DB Entity shall immediately notify the Authority of any claim or loss against DB Entity that includes the Authority or any other indemnitee as a defendant. The Authority assumes no obligation or liability by such notice. Still, it has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the Authority.

Q. DB Entity's failure to comply with an insurance provision constitutes a material breach upon which the Authority may immediately terminate or suspend DB Entity's performance of the Contract or invoke another remedy that the Contract or the law allows. At its discretion and without waiving any other rights it may have under law, the Authority has the right but not a duty to obtain or renew the insurance and pay all or part of the premiums. Upon demand, DB Entity shall repay the Authority for all sums or monies that the Authority paid to obtain, renew, or reinstate the insurance. Alternatively, the Authority may offset the premium cost against any sums or monies that the Authority may owe DB Entity.

3.0 DESIGN-BUILDERS SUBMITTAL OF CERTIFICATES AND ENDORSEMENTS

A. DB Entity shall have its insurance carrier(s) or self-insurance administrator(s) complete and execute the following insurance documents and shall deliver the documents at the same time DB Entity delivers the Contract to the Authority. The Authority will neither sign the Contract nor issue a "Notice to Proceed" until the Authority Attorney or Risk Manager has reviewed and approved all insurance documents. The Authority's decision regarding the acceptability of all insurance documents is final.

B. Required Submittals for Commercial General Liability, Business Automobile Insurance, and DB Entity's Pollution Liability Insurance. The following submittals must be on forms satisfactory to the Authority Attorney or Risk Manager and signed by the insurance carrier or its authorized representative – which fully meet the requirements of and contain provisions entirely consistent with all of the insurance requirements outlined in this document:

1. "Certificate of Insurance";
2. "Additional Insured Endorsement"; and
3. Subrogation Endorsement: "Waiver of Transfer to Rights of Recovery Against Others."

C. Certificates of Insurance and Additional Insured Endorsements must read: "The Authority and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the Authority. The Authority's insurance and self-insurance will apply in excess of and will not contribute to this insurance. This insurance applies separately to each insured or additional insured seeking coverage or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the Authority for any policy cancellation, termination, non-renewal, or reduction in

coverage."

D. Required Submittals for Workers' Compensation Insurance. DB Entity shall provide the Authority with a certificate of insurance and a subrogation endorsement on forms satisfactory to the Authority Attorney or Risk Manager and signed by the insurance carrier or its authorized representative – which fully meet the requirements of and contain provisions entirely consistent with the worker's compensation insurance requirements. If DB Entity is self-insured for workers' compensation, a copy of the "Certificate of Consent to Self-insure" from the State of California is required; or if DB Entity is lawfully exempt from workers' compensation laws, an "Affirmation of Exemption from Labor Code § 3700" form is required.

- END OF ATTACHMENT A -

ATTACHMENT B: GENERAL AND SPECIAL CONDITIONS

ARTICLE 1 – GENERAL PROVISIONS

1.1 Basic Definitions.

1.1.1. Acceptance of the Work (Final Acceptance). The written action by the Project Manager, accepting the Work of improvement as complete. After Acceptance of the Work the Project Manger may, in his or her discretion, record a Notice of Completion.

1.1.2. Acceptance Testing. The performance and reliability testing to be performed prior to receiving Certificate of Substantial Completion. Acceptance Testing procedures are defined in the Project Manual.

1.1.3. Acceleration Proposal Request. Agency's written request to Design-Builder to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work.

1.1.4. Addenda. The Addenda or Addendum consist of the written clarifications of the Proposal Requirements, Preliminary Design Documents, or the Contract Documents issued by the Agency prior to the execution of the Agreement.

1.1.5. Admitted Surety Insurer. A surety authorized to transact surety insurance in the State of California, as evidenced by a valid Certificate of Authority issued by the California Department of Insurance in accordance with California Insurance Code Section 12070 *et seq.*

1.1.6. Adverse Weather Condition. An "Adverse Weather Condition" must prevent the Design-Builder from progressing with seventy-five percent (75%) of the normal labor and equipment force toward completion of the day's current controlling items of Work on

the Agency- accepted Project Schedule for a period of at least five (5) hours, and the crew must be dismissed from the Work site as a result thereof.

1.1.7. Allowance. A line item dollar value cost estimate established by the Agency to be carried in the Proposal Prices, Contract Sum and Schedule of Values for Payment for a particular item of Work, which cannot be sufficiently defined so as to allow the Design-Builder to adequately determine fair value before the Proposal Due Date or before the Contract Sum is established. Allowances include estimated amounts established: (1) by the Agency for certain construction elements that have not yet been fully designed or authorized for inclusion in the Work: (2) to permit deferred approval or selection of actual materials and equipment to a later date when additional information is available for evaluation; or (3) to cover the cost of unforeseen or differing site conditions.

1.1.8. Applicable Law. State, federal, county and municipal laws, statutes, ordinances, building codes, rules, regulations, building inspection assessments and recommendations, fire marshal approvals, lawful orders of Governmental Authorities and life safety codes relating to the Work as may be amended from time to time, including, but not limited to, the Americans with Disabilities Act ("ADA").

1.1.9. As-Builts. The documents prepared by Design-Builder, in accordance with Paragraph 3.11 of these General Conditions, showing the condition of the Work as actually built, including, without limitation, all changes and the exact locations of all mechanical, electrical, plumbing, HVAC, or other portions of the Work that are shown diagrammatically in the Contract Documents.

1.1.10. Base Proposal. The price stated in the Schedule of Proposal Prices for which the Proposer offers to perform Work described in the Contract Documents as the base Contract Work (e.g., not designated as part of a Proposal Alternate. See also Base Proposal Price.

1.1.11. Baseline Project Schedule/Project Schedule. See Paragraph **3.10** of these General Conditions.

1.1.12. Proposal Alternate. An Item of Work described in the RFP Documents as a Proposal Alternate and the price the Proposer indicates in the Schedule of Proposal Prices form that will be added to or deducted from the Scope of Work of the Total Proposal Price to meet Project Budget requirements, which will be the Design-Builder's responsibility to perform only if the Agency accepts the Proposal Alternate.

1.1.13. Proposal Due Date. The date and time established in the Request for Proposal and Proposal for Proposer's submission of Proposal Documents.

1.1.14. Proposal Forms. The Agency-prescribed forms which the Proposer shall complete and use to submit a Proposal. The Proposal Forms are included in the Instruction to Proposers.

1.1.15. Proposal Price. The total sum stated in the Schedule of Proposal Prices for

which the Proposer offers to perform all the Work described in the Contract Documents. The Proposal Price shall include the Allowance amount(s), if any, described in the RFP.

1.1.16. Proposal Security. A bond or monetary deposit submitted with a Proposal to guarantee to the Agency that the Proposer, if awarded the Contract, will sign the Contract, furnish bonds, insurance, and other documents required by the RFP Documents.

1.1.17. Proposer. The individual, partnership, firm, corporation, joint venture, limited liability company, or other legal entity submitting a Proposal on these Contract Documents. The Proposer shall hold a California contractor's license in the classification established in the RFP.

1.1.18. Certificate of Substantial Completion. The written documents issued by the Project Manager, which establishes the date of Substantial Completion, attaches Agency's Punch List of Work remaining to be completed or corrected and fixes the time within which the Design-Builder shall finish all items on the Punch List and otherwise achieve Final Completion of the Work.

1.1.19. Change Order. A Change Order is a written document prepared by the Agency reflecting the agreement between the Agency and Design-Builder for: a change in the terms or conditions of the Contract, if any; a specific Scope Change in the Work; the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time.

1.1.20. Change Order Request (COR). As more specifically described in Paragraph 7.7 below, a Change Order Request is a written document originated by the Design-Builder, which describes an instruction issued by the Agency after the effective date of the Contract, which Design-Builder believes to be an Unanticipated Scope Change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Design-Builder.

1.1.21. Agency or Owner. Yuba Sutter Transit Authority, acting through its Board of Directors or other officials authorized to act for the Agency, acting in its proprietary rather than regulatory capacity in connection with the Project.

1.1.22. Construction Documents (CDs). All technical drawings, shop drawings, Drawings, Specifications, schedules, diagrams, and samples, prepared by or on behalf of the Design-Builder, setting forth in detail the requirements necessary for construction of the Project in accordance with the Contract Documents, after such approval. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All changes to the Construction Documents must be approved by the Agency in writing prior to incorporation into the Contract and prior to the construction of the Work affected by the change.

1.1.23. Contract. Collectively, the Contract Documents, which establish the respective rights and obligations of the Agency and Design-Builder with respect to the Project, form the Design-Build Contract ("Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Agency and the Design-Builder. There shall be no third-party beneficiaries of the Contract Documents.

1.1.24. Contract Documents. The Contract Documents, except for Modifications issued after execution of the Contract, are enumerated in the Agreement between Agency and Design-Builder. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.1.25. Contract Sum. The total amount of compensation stated in the Design-Build Agreement that is payable to Design-Builder for the complete performance of the Work in accordance with the Contract Documents.

1.1.26. Contract Time. The total number of days set forth in the Design-Build Agreement within which Substantial Completion of the Work must be achieved, beginning with the Date of Commencement established in the Notice to Proceed, subject to adjustments in accordance with the terms of the Contract Documents. The Contract Time for the Design-Builder's performance of the Work is measured in calendar days (not Work Days).

1.1.27. Correction Period. Correction Period is synonymous with the terms of the correction guarantee period used in the Contract Documents.

1.1.28. Critical Path. The "Critical Path" or "Critical Path Management" ("CPM") is a method of scheduling the Work in which the Critical Path represents the sequence of activities yielding the longest chain of interrelated activities in terms of time from the beginning of the Project to the end that has a Float value of zero indicating that any delay in any one activity along this path will delay the completion of the overall Work.

1.1.29. Date of Commencement. The date for commencement of the Work is fixed by the Agency in a Notice to Proceed to the Design-Builder.

1.1.30. Day. The terms "day" or "days" mean calendar days unless otherwise specifically designated in the Contract Documents. The term "Work Day" or "Working Day" shall mean any calendar day except Saturdays, Sundays, and Agency-recognized legal holidays.

1.1.31. Department. Yuba Sutter Transit Authority.

1.1.32. Design-Build. The terms “Design-Build” and “Design-Build Services” mean a method of construction in which the Design-Builder/Contractor furnishes both professional design services and construction services for portions of the Work designated in the Contract Documents. Design-Builder is solely responsible for all design, construction means and methods, cost overruns, defects, errors, omissions, and schedule delays arising from its Design-Build Services.

1.1.33. Design-Build/Contractor. The individual, partnership, firm, corporation, joint venture, limited liability company, or other legal entity with whom the Contract is made by the Agency, or the agent or legal representative who may be appointed to represent such individual, partnership, firm, corporation, joint venture, limited liability company, or other legal entity in the execution of the Contract as general contractor for construction of the Work. The Design-Builder shall hold a California contractor's license in the classification established in the RFP.

1.1.34. Design-Build Team. The Design-Builder and its licensed Design Consultants identified during the Request for Qualifications phase of the selection process.

1.1.35. Design Consultant/Design Professional. A qualified licensed design professional, who is either an employee of Design-Builder or is a person or entity retained under contract by Design-Builder, who furnishes architectural, engineering, and other professional design services required by the Contract Documents. The term "Design Consultant" is referred to throughout the Contract Documents as if singular in number and means a Design Consultant or an authorized representative of the Design Consultant.

1.1.36. Design Consultant and Subcontractor List. List submitted by Proposer with Proposal that sets forth the name and business address for each entity (whether Proposer, a Design Consultant, Design Subconsultant, or a Subcontractor) who will perform the design Services and trade Work as identified by the Agency on the Design Consultant and Subcontractor List.

1.1.37. Design Subconsultant. A qualified licensed design professional who is a person or entity that has a direct contract with a Design Consultant to perform architectural, engineering, and other professional design services required by the Contract Documents. The term "Design Subconsultant" is referred to throughout the Contract Documents as if singular in number and means a Design Subconsultant or an authorized representative of the Design Subconsultant.

1.1.38. Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents prepared by Design-Builder or provided by Agency showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.39. Extraordinary Measures. Measures implemented by Design-Builder at Agency's direction to expedite the progress of design or construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures, as more specifically described in Paragraph **2.7** below.

1.1.40. Final Completion. The date stated in the written acceptance of the Work by the Agency, that the Agency accepts the Work as complete and, in its discretion, records

a Notice of Completion. Final Completion is the stage of performance of the Work when (1) all Work required by the Contract Documents has been fully completed in compliance with the Contract Documents and all Applicable Laws including, but not limited to, correction or completion of all punch list items noted by Agency upon Substantial Completion; (2) Design-Builder has delivered to Agency an Application for Final Payment and all closeout documentation including, but not limited to, all design documents, record documents, as-built schedule, surveys, test data, training, operations and maintenance manuals and other deliverables required by the Contract Documents; (3) the Work passes the Project Manager's or Agency Chief's final inspection; (4) documentation of all final Governmental Approvals has been submitted to Agency including, but not limited to a final Certificate of Occupancy or equivalent Building Department sign-off has been issued covering the entire Project site without exception or conditions; (5) Design-Builder shall have delivered to Agency a certification representing that there are no outstanding claims of the Design-Builder, Subcontractor, supplier, or laborer with respect to the Work, other than any previously submitted unresolved claims of Contractor or contested claims of Subcontractors, suppliers, or laborers; and (6) the Chief issues a written final Acceptance of the Work and, it his or her discretion, records a Notice of Completion.

1.1.41. Final Payment. Agency's payment of the Contract Sum due to the Design-Builder for the entire Work, less only the sums which the Agency is specifically allowed to withhold under the terms of the Contract Documents and Applicable Law.

1.1.42. Float. The amount of time that any activity or path of activities may be delayed without impacting the date for Substantial Completion of the Work.

1.1.43. Force Majeure. "Force Majeure" shall mean any of the following events, which materially and adversely affect Design-Builder's obligations hereunder and which event could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder: fires, explosions, floods, earthquakes or other acts of God; epidemic, blockade, rebellion, war, terrorism, riot, act of sabotage, insurrection, or acts of civil disobedience/civil commotion; industry- wide labor dispute/strike which has a material adverse impact on the Project; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the Site which is required to be reported to the Federal or California Environmental Protection Agency, Toxic Substances Control; discovery at, near, or on the Site of any species listed as "threatened" or "endangered" under the Federal or California Endangered Species Act; or unusually severe weather conditions (subject to the allowance for Rain Days, in accordance with Paragraph 8.2.1.2).

1.1.44. Fragnet. A contemporaneous, fragmentary schedule network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a compensable delay or excusable delay, with logic ties to all affected existing activities noted on the Project Schedule.

1.1.45. Governmental Approval. Any approval, authorization, inspection,

certification,consent, exemption, filing, permit, registration, plan check, ruling or similar authorization requiredby any federal, state or local law, regulation or procedures in order for Design-Builder to performthe Work.

1.1.46. Governmental Authority(ies). Applicable governmental and quasi-governmental agencies having authority over the Project including, but not limited to, the United States of America, the State, County and City and any political subdivision thereof, and any other agency,authority, or court having jurisdiction over the Work or Design-Builder

1.1.47. Guarantee. Assurance to Agency by Design-Builder or product manufacturer or other specified party, as guarantor, that the specified warranty will be fulfilled by the guarantor inthe event of default by the warrantor.

1.1.48. Request for Proposal ("RFP"). The Request for Proposal issued by the Agency including any and all Addenda and all documents included or referenced in the Request for Proposals.

1.1.49. RFP Requirements. The RFP Requirements consist of the Request for Proposal, and any other documents required to be submitted to the Agency on or before the Proposal Due Date.

1.1.50. Milestone. A deadline for completion of a portion of the Work established in the Agreement or the Baseline Project Schedule that is critical to the timely and orderly completion of the Work.

1.1.51. Modification. A modification is (i) a written amendment to the Agreement signed by duly authorized representatives of the Parties, (ii) a Change Order, or (iii) a Construction Change Directive.

1.1.52. Notice of Completion. A written notice executed by the Project Manager, in his or her discretion, after Agency's final acceptance of the Work, recorded in the County of Yuba Recorder's office to provide a public record of the name and location of the Project, name of Design-Builder and its Surety and the date of final Acceptance of the Work.

1.1.53. Notice to Proceed. The Notice to Proceed is a document issued by the Agency fixing the date for commencement for the Work or Services.

1.1.54. Or Equal Substitution. The material, product, equipment, or process proposed by Design-Builder for use in the Work as equivalent to that specified in the Preliminary Design Documents.

1.1.55. Parties. The Agency and Design-Builder may be referred to in the Contract Documents from time to time as the Parties.

1.1.56. Preliminary Design Documents. Preliminary Design Documents set forth the scope of the Work and may include, but are not limited to: conceptual documents;

preliminary drawings; outline/performance specifications covering the quality of materials, equipment, and workmanship, design and performance criteria; and other documents provided to Proposers by the Agency establishing the Project's basic elements, size, type, scale, desired design character of the buildings and the site(s), layouts, or other information deemed necessary to describe adequately the Agency's needs.

1.1.57. Project. The Project is the total design and construction of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by the Agency or by Separate Contractors.

1.1.58. Project Manager/Owner's Representative. Agency's Project Manager or Owner's Representative, identified by Agency in writing, is Agency's Project Representative, who enforces Agency's policies, makes recommendations, who renders decisions with respect to Design-Builder's performance of the Work, recommends approval of Design-Builder Applications For Payment, reviews and recommends approval of Design-Builder schedules and submittals, reviews and recommends to the CEO/General Manager approvals of Change Order Requests and Change Orders, reviews all quantity calculations related to pay quantities, reviews and recommends to the CEO/General Manager approval of changes in the Contract Time, concurs in any defective Work notification, and reviews and recommends the determination of Substantial Completion of the Work and Final Completion of the Work. The extent and limits of the authority of any designee of the Agency's Project Manager shall be set forth in writing. Design-Builder shall be entitled to rely on the decisions and information provided by such written designee, subject to the limitations of authority set forth in writing. All correspondence and electronic communication shall flow through the Project Manager.

1.1.59. Project Manual. The volumes of design documents (including Plans, Specifications, and Instructions) prepared by AECOM and assembled to communicate the minimum technical requirements of the Work made available to Proposers. Also called "Technical Specifications."

1.1.60. Project Representative. Those individuals designated by the Parties in writing with authority to render a decision in connection with the Work and the Contract Documents. A complete and properly executed offer by the Design-Builder to perform the Work for the sums stipulated therein, submitted in accordance with the Proposal Documents.

1.1.61. Punch List. The list of Work which remains to be completed after achieving Substantial Completion and is limited to minor incidental items of Work necessary to correct imperfections, which have no effect on the safety or operability of the Project.

1.1.62. Reasonably Inferable. The expression "reasonably inferable" and similar terms in the Contract Documents means reasonably inferable by a Design-Builder familiar with the Project and exercising the care, skill, and diligence required of the Design-Builder by the Contract Documents.

1.1.63. Record Documents. The Drawings, Specifications, addenda, requests for information, bulletins, Change Orders, and other modifications to the Contract Documents, approved shop drawings, product data, samples, mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders. Record Documents shall include a set of “As-Built” Drawings and Specifications, which shall be continuously updated during the prosecution of the Work.

1.1.64. Reference Documents. Drawings and documents showing existing Site conditions or previous improvements made available to Proposers as general background information about the Project. No guarantee is made that existing conditions or previous improvements are accurately shown or described on the Reference Documents.

1.1.65. Request for Information (“RFI”). A document issued by the Design-Builder requesting information or clarification of the Contract Documents.

1.1.66. Separate Contractors. The term Separate Contractors or Agency’s Separate Contractors means licensed contractors performing portions of the Project under separate contracts with the Agency.

1.1.67. Services. When capitalized, Services means the total productive and operative efforts required to generate the results specified in, included in, or reasonably inferable from the Contract Documents. The term Services, when used in the Contract Documents is interchangeable with the term “Work.”

1.1.68. Site. The physical area designated in the Contract Documents for Design-Builder’s performance of the Work.

1.1.69. Special Conditions. Special Conditions are conditions of the Contract, if any, that are unique to the Project and supplements the General Conditions.

1.1.70. Special Notice. A notice in writing required to be provided under the Contract Documents within a specified interval of time (e.g., 48 hours) prior to commencement of the contemplated action. See Section 13.3 herein for methods of service of Special Notice.

1.1.71. Specification. The volumes of design documents (including Plans, Specifications, and Instructions), Contract Documents, and reference documents assembled for the Work are made available to Proposers.

1.1.72. Specifications. The Project Manuals, as well as the Specifications included in the Construction Documents prepared by Design-Builder and approved by the Agency, consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, warranties, and performance of related Services.

1.1.73. Subcontractor. A Subcontractor is a person or entity who has a direct contract with the Design-Builder to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number

and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor.

1.1.74. Sub-subcontractor. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor.

1.1.75. Substantial Completion. Substantial Completion is defined to mean the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the Agency so that the Agency can occupy and utilize the Work for its intended use (for which a Temporary Certificate of Occupancy ("TCO") has been issued by the Agency unless a TCO is not required to operate that type of facility) and as further defined in the Contract Documents.

1.1.76. Trade Package. A discrete scope of trade work subcontracted by the Design- Builder.

1.1.77. Unanticipated Scope Change. Work that is not reasonably inferable from the Contract Documents by a design-build contractor of similar skill, experiences, and expertise as necessary for the proper, timely, and orderly completion of the Work or a project of this type and quality and:

(i) is an Agency-requested change that is materially inconsistent with the Contract Documents or a material change in the quantity, quality, or other substantial deviation from the Contract Documents;

(ii) is the result of differing site conditions as defined in section 10.3.1 of the General Conditions.

Whenever the Contract Documents refer to compensation to Design-Builder for changes in the Work, it shall be deemed to refer to Unanticipated Scope Changes only.

1.1.78. Unilateral Change Order. After issuance of a Construction Change Directive if the Agency and Design-Builder cannot agree, Agency may issue a Unilateral Change Order to adjust the Contract Sum and Contract Time, and Design-Builder may pursue a claim for all remaining disputes.

1.1.79. Utility Costs. The costs charged by any public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, water, gas, oil, petroleum, steam, chemicals, sewage, storm water or similar commodity including, but not limited to fees for temporary utilities and refuse hauling.

1.1.80. Value Engineering. The structured approach to solving problems and

reducing life-cycle costs by applying systematic analysis techniques to the evaluation of the purpose, form, and function of the Work or elements of the Work in order to identify opportunities for cost savings or cost-effective enhancements. Design-Builder may submit Value Engineering Cost Proposal (VECP) for Agency approval whenever it identifies potential savings in the cost of the Work or savings in life-cycle costs can be achieved.

1.1.81. Warranty. Assurance to Agency by Design-Builder, contractor, installer, supplier, manufacturer or other party responsible as warrantor, for the quantity, quality, performance and other representations of a product, system or service of the Work.

1.1.82. Work. The term "Work" means all labor, materials, equipment, tools and Services, including Design Professional Services, required by, and reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project. The term “Work” is interchangeable with the term “Services.”

1.1.83. Work Directive/Disputed Work Directive. A Work Directive is a unilateral written order issued by Agency directing Design-Builder to perform or continue performance of the Work or a disputed item of Work pending resolution of a dispute concerning the Scope of the Work.

1.2 Correlation and Intent of the Contract Documents.

1.2.1 Entire Agreement. The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

1.2.2 Complementary Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Design-Builder as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others.

1.2.3 Order of Precedence. In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Design-Builder shall prevail. The Design-Builder shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by the Agency in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Design-Builder, the controlling provision shall be that which is found in the document with higher precedence. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence, with “(1)” being the highest:

(1) Governmental Approvals including, but not limited to, permits required for the Work;
(2) Modifications issued after execution of the Contract (including modifications to Drawings and Specifications);
(3) The Agreement, including all exhibits, attachments, and Addenda with later Addenda having priority over earlier Addenda;
(4) Special Conditions, if any;
(5) General Conditions;
(6) The most current Construction Documents prepared by Design-Builder and approved by Agency;
(7) Preliminary Design Documents prepared by Agency; and
(8) RFP Proposal Documents (other than Preliminary Design Documents).

1.2.3.1 Nothing herein shall relieve the Design-Builder of its obligation to notify the Agency of any inconsistencies in the Contract Documents. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Design-Builder shall apply to the Agency in writing for such further written explanations as may be necessary.

1.2.3.2 All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Agency.

1.2.4 Organization. Organization of the Preliminary Design Documents into divisions, sections, and articles, and the sequential order of Drawings shall not control the Design-Builder in dividing the Work among Design Consultants or Subcontractors or in establishing the extent of Work to be performed.

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

1.2.6 Design-Builder Deviations. No deviation by the Design-Builder from the Contract Documents relating to any portion of the Services, materials, labor, or equipment required for the Work shall be construed to set a precedent with respect to subsequent interpretation of the Contract Documents or performance of the Work unless such a deviation is memorialized in a Modification to the Contract.

1.3 Capitalization.

Terms capitalized in these General Conditions include those which are (i) specifically defined, (ii) the titles of numbered articles, and identified references to paragraphs, subparagraphs, and clauses in the document, or (iii) the titles of other Contract Documents or forms.

1.4 Interpretation.

1.4.1 Omitted Articles. In the interest of brevity, the Contract Documents frequently

omit articles such as "the" and "an," but the fact that an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.4.2 References to Contract Documents. Where “as indicated,” “as detailed,” or words of similar import are used, it shall be understood that the reference is made to any one of the Contract Documents.

1.4.3 Severability. In the event any article, provision, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable such determination, declaration, or adjudication shall in no manner affect the other articles, provisions, sections, sub articles, paragraphs, subparagraphs, sentences, clauses, or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub article, paragraph, subparagraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally contained in the Contract Documents.

If any article, provision, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase contained in the Contract Documents is ruled invalid by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such article, provision, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Sum to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

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

1.4.5 Headings Not Controlling. The various headings contained in the Contract Documents are inserted for convenience only, shall not affect the meaning or interpretation of the Contract or any provision thereof, and shall not be deemed part of the Contract Documents or considered in construing the Contract.

1.4.6 Neutral Interpretation. The Contract Documents shall be construed neither against nor in favor of either Party but shall be construed in a neutral manner.

1.5 Execution of Contract Documents.

1.5.1 Signatures and Furnishing of Contract Documents. The Agreement shall be signed by the Agency and Design-Builder. The Agency will furnish free of charge to the Design-Builder, a maximum of one (1) set of Contract Documents. The Design-Builder shall pay for the costs of any additional sets or portions thereof. The Design-Builder shall be responsible to see that all sets are the same as the up to date of the Agency approved set.

1.5.2 Design-Builder Representations Concerning Contract Documents and Site Investigation. By executing the Agreement, Design-Builder represents and warrants that: (i) the Contract Documents are sufficiently detailed to enable Design-Builder to determine the cost of the Work within the Contract Sum and Contract Time; (ii) it has visited the Project Site, familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by the Design-Builder, and the conditions reflected on any Site surveys provided to or obtained by the Design-Builder; (iii) it is fully experienced, qualified and competent to perform the Services set forth in the Contract Documents; (iv) it is properly equipped, organized and financed to perform the Work; (v) it is properly permitted and licensed by the State of the Project and all other governmental entities to perform the Work required by the Contract and that it will retain only properly licensed Design Consultants and Subcontractors to perform the Work of the Contract; (vi) it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials; (vii) it has familiarized itself with the availability of labor, water, electric power, and roads; (viii) it has familiarized itself with uncertainties of weather or similar observable physical conditions at the Project Site; (ix) it has familiarized itself with the character of equipment and facilities needed preliminary to and during performance of the Work; (x) it has familiarized itself with the staging and material storage constraints of the Project Site and surrounding buildings and will confine its staging and storage operations to approved areas; (xi) it shall maintain the immediate surrounding areas of the Project Site in a clean and safe manner at all times; (xii) it will coordinate its design construction activities with Agency's Separate Contractors performing work on the Project Site; (xiii) it will adhere to the assigned transit route identified by the Agency; and (xiv) it will adhere to and be bound by conditions set forth in the Contract Documents and any regulatory agency, utility, or governmental entity with jurisdiction over the Project. In addition, and without limiting the foregoing warranties, Design-Builder represents and warrants to Agency that prior to executing the Agreement:

(1) Design-Builder has familiarized itself and will continuously familiarize itself throughout performance of the Work with the nature and extent of the Contract Documents, the Work, the Project Site, the identified as-built conditions of the Project Site and locality, and all laws, rules, ordinances, and regulations of all government authorities and utilities having jurisdiction over the Project that may affect costs, progress, performance, or furnishing of the Work;

(2) Design-Builder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the Project Site or conditions which otherwise may affect the cost, progress, performance or furnishing of the Work, as Design-Builder considers necessary for the performance hereinafter defined, within the Contract Time and Project Schedule and in accordance with the other terms and conditions of the Contract Documents and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Design-Builder for such purposes. Design-Builder may rely upon the accuracy of the technical data contained in such documents but not upon nontechnical data, interpretations, opinions or conditional statements contained therein or for the completeness thereof for Design-Builder's purposes.

(3) Design-Builder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Project Site;

(4) Design-Builder has coordinated the results of all observations, examinations, investigations, explorations, tests, reports, and studies provided to the Design-Builder as part of the Contract Documents;

(5) As of the effective date of the Agreement, Design-Builder has no knowledge of any conflicts, errors, or discrepancies in the Contract Documents other than those which Design-Builder has notified Agency of in writing prior to executing the Agreement;

(6) Design-Builder is experienced and competent in the interpretation and use of Specifications and Drawings, and in the use of materials, equipment, and construction techniques as are required to successfully complete the Project. Design-Builder shall, at its own expense, employ any and all experts necessary to successfully complete the construction Work required by the Contract Documents; and

The Agency assumes no responsibility for any conclusions or interpretations made by the Design-Builder based on the information made available by the Agency. Nor does the Agency assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its Project Managers or agents before the execution of this Contract, unless that understanding, or representation is expressly stated in the Contract Documents or any Addenda thereto.

1.6 Ownership and Use of Drawings, Specifications, and Other Instruments of Service.

1.6.1 Ownership of Contract Documents. All Preliminary Design Documents,

sketches, and other documents, and copies thereof furnished by the Agency are and shall remain the property of the Agency. They are to be used only with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Agency's common law copyright or other reserved rights.

1.6.2 Design-Builder's Assignment of Copyrights. The Construction Documents, Project-related documents created, prepared, or issued by Design-Builder or its Design Consultants or Subcontractors, including certain design Drawings, Specifications, and electronic data, are "work for hire", and shall become the property of Agency when prepared and shall be delivered to Agency whenever requested. The Design-Builder hereby assigns to the Agency, without reservation, all copyrights to all Project-related documents, models, photographs, and other written expressions created by the Design-Builder. Among these Project-related documents are certain "Instruments of Service," including drawings, specifications, and other documents required by the Contract Documents. Design-Builder shall obtain a valid written assignment of copyrights from its Design Consultants with items identical to this subparagraph, which copyrights Design-Builder hereby assigns to Agency. The Agency, in return, hereby grants the Design-Builder a non-exclusive license to reproduce the documents for purposes relating to the Design-Builder's performance of this Project.

1.6.3 Submissions to Agency. A copy of every technical memorandum and report prepared by Design-Builder shall be submitted to the Agency to demonstrate progress toward completion of Work. In the event Agency rejects or has comments on any such work product or Instrument of Service, Agency shall identify specific requirements for satisfactory completion by Design-Builder. Design-Builder shall provide Agency with Project-related documents in reproducible or electronic format, upon Agency's written request. Complete Record Documents shall be turned over to Agency upon termination of this Agreement or Final Completion, whichever occurs first. If the Agency subsequently reproduces Project-related documents or creates (or causes to create) a derivative work based upon Project-related documents created by the Design-Builder, the Agency shall remove or completely obliterate the original professional seals, logos, and other indications on the documents of the identity of the Design-Builder and its Design Consultants. However, where required by law, such identification with appropriate qualifying language or other statutorily prescribed information identifying the original Agency or the scopes of the reuse of the documents may remain or be applied. In the event this Agreement is terminated prior to completion of the Work, Agency may terminate the license and Agency is authorized to allow another Design-Builder, architect, contractor, or Agency, to use the documents prepared for the Agency's benefit for the Project and all said documents deemed to be the property of the Agency.

1.7 Design-Builder's Interaction with the Media and the Public.

1.7.1 Contact with News Media. Design-Builder shall refer all inquiries from the news media to Agency and shall comply with the procedures of Agency's Communications & Customer Relations Department staff regarding statements to the media relating to the Contract or the Work.

1.7.2 Coordinating with the Public. Design-Builder shall designate a staff person acceptable to Agency to keep Agency informed of all impacts on the community resulting from the Work of the Contract. This designated staff person may be the Design-Builder's project superintendent, project engineer, or other employee acceptable to Agency; the person does not need to be full time.

1.7.3 Complaints. If Design-Builder receives a complaint from a citizen or the community, Design-Builder shall inform Agency of the nature of the complaint and any action which was taken to alleviate the situation.

ARTICLE 2 – AGENCY

2.1 General.

The Agency is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Agency shall designate the representatives defined in Paragraphs **4.1** of these General Conditions, in writing. Whenever the Contract Documents require or permit the Agency to take or request an action or approve or disapprove of a n action or request made by another Party, the reference to "Agency" shall mean the Agency's Project Manager unless the Contract Documents or context make it clear that another person is authorized to act as the Agency's representative. All communications to the Agency shall be made through the Agency's Project Manager.

2.2 Information and Services Required of the Agency.

2.2.1 Approvals for Permanent Structures. Except for the cost of administration and coordination of Governmental Approvals and Utility Fees, and other such items set forth under Subparagraph **3.7.1** that are the responsibility of the Design-Builder under the Contract Documents, the Agency shall reimburse for Permit, Fees and necessary assessments and charges reasonably required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.2 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code § 4215, the Agency shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project Site if such utilities are not identified in the Contract Documents or Reference Documents provided by Agency. Design-Builder shall be compensated for the costs of locating, repairing damage not due to the Design-Builder's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the

Contract Documents or Reference Documents with reasonable accuracy and for equipment on the Project Site necessarily idled during such work. Design- Builder shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the Agency or the utility provider to provide for removal or relocation of such utility facilities. Nothing in this Paragraph shall be deemed to require the Agency to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Project Site. If the Design-Builder encounters utility facilities not identified by the Agency in the Contract Documents, the Design-Builder shall immediately notify, in writing, the Agency and the utility provider. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Design-Builder to do such repairs or relocation work at a price determined in accordance with Article 7 herein.

2.2.3 Right of Way. The site for the installation of equipment or the right of way for the Work to be constructed under this Contract will be provided by the Agency. The Agency will provide the appropriate rights of way and property for pipelines and structures. Upon prior written approval by the Project Manager, the Design-Builder may, without cost, use portions of any of the Agency's rights of way or property which may be suitable for working space and for storage of equipment and materials. The Design-Builder will be held responsible for any damage to structures, streets, and roads, trees and landscaping, and for any damage that may result from his/her use of Agency property. In case areas additional to those available on the Agency's rights of way or property are required by the Design-Builder for his/her operations, he/she shall make arrangements with the property owners for the use of such additional areas at his/her own expense.

2.2.4 Time for Furnishing. Information or services required of the Agency by the Contract Documents shall be furnished by the Agency with reasonable promptness.

2.3 Agency's Right to Stop the Work.

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph **12.2** or fails to carry out Work in accordance with the Contract Documents, the Agency may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Agency to stop the Work shall not give rise to a duty on the part of the Agency to exercise this right for the benefit of the Design-Builder or any other person or entity. The Agency's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the Agency.

2.4 Agency's Right to Carry out the Work.

Notwithstanding other remedies available to the Agency, if the Design-Builder defaults, fails to perform Work required by the Contract Documents, or otherwise neglects to carry out the Work in accordance with the Contract Documents and fails within a **forty-eight**

(48) hour period after receipt of written notice from the Agency to commence and correct such default, failure to perform, or neglect with diligence and promptness, the Agency, at its sole discretion and without obligation, may, with its own or outside forces, perform the Work Design-Builder has failed to perform and/or replace or correct deficiencies in the Work. In such case, a Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Design-Builder the cost of completion, replacement or correction of such deficiencies, including compensation for additional services by the Agency's project management staff, the Agency's consultants made necessary by such default, failure to perform, or neglect, plus 15% for Agency's overhead expenses. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Agency immediately. This remedy is cumulative.

The Agency also has the right, but not the obligation, to self-perform or have outside forces perform portions of the Work previously assigned to Design-Builder. In such case a Change Order or Construction Change Directive shall be issued, reducing the Contract Sum in accordance with Paragraph 7.4 of these General Conditions.

2.5 Suspension of Operations.

In addition to the Agency's right to stop the Work set forth in these General Conditions, the Design-Builder shall, upon receipt of Agency's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the Agency may deem advisable and designate in said notice in accordance with Article 14 of these General Conditions.

2.6 Prohibited Interests.

No official of Agency who is authorized in such capacity and on behalf of Agency to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, City, attorney, engineer or inspector of or for Agency who is authorized in such capacity and on behalf of Agency to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Contract in any part thereof. Design-Builder shall receive no compensation and shall repay Agency for any compensation received by Design-Builder hereunder, should Design-Builder aid, abet or knowingly participate in violation of this Article.

2.7 Agency's Right to Order Extraordinary Measures.

2.7.1 Non-Compensable Extraordinary Measures. In the event the Agency determines that the performance of the Work, or any portion thereof, has not progressed

or reached the level of completion required by the Contract Documents due to causes within the control of Design-Builder, the Agency shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures as defined as Extraordinary Measures in Paragraph **1.1** above. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the Agency under or pursuant to this section. The Agency may exercise the rights furnished to the Agency under or pursuant to this section as frequently as the Agency deems necessary to ensure that the Design-Builder's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Design-Builder or its Design Consultants or Subcontractors fail to implement or commence Extraordinary Measures within **forty-eight (48)** hours of Agency's written demand, Agency may, without prejudice to other remedies take corrective action at the expense of the Design-Builder and shall reduce the Contract Sum.

2.7.2 Compensable Extraordinary Measures. Agency, in its discretion, may issue a written request to the Design-Builder asking Design-Builder to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work, due to no fault of the Design-Builder, in a form acceptable to Agency within **ten (10) calendar days** after Agency's issuance of the Acceleration Proposal Request.

ARTICLE 3 – DESIGN-BUILDER

3.1 General.

The Design-Builder shall perform the Work in accordance with the Contract Documents. The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Agency or Agency's Separate Consultants in their administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

3.2 Review of Preliminary Design Documents and Field Conditions by Design-Builder, Its Design Consultants and Subcontractors.

3.2.1 Suitability of Preliminary Design Documents. Design-Builder acknowledges that the Preliminary Design Documents are conceptual in nature and that Design-Builder is responsible for correcting any errors, omissions or defects in the Preliminary Design Documents, which can reasonably be corrected through the design and/or construction process, subject to Change Orders only for scope changes, and that it has satisfied itself regarding the adequacy and accuracy of the design information contained in the Preliminary Design Documents and agrees to assume all risk and sole responsibility for

all conditions in or among the various parts of the Preliminary Design Documents that (i) constitute errors, omissions, conflicts, ambiguities, or violations of Applicable Laws, or (ii) are unsuitable for construction.

3.2.2 Field Measurements. Prior to commencement of the Work, or portions thereof, the Design-Builder shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Design-Builder with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered must be reported to the Agency at once.

3.2.3 Request for Information ("RFI"). If the Design-Builder encounters any condition which the Design-Builder believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively the "Conditions"), it shall be the affirmative obligation of the Design-Builder to timely notify the Agency, in writing, of the Conditions encountered and to request information from the Agency necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Design-Builder fails to timely notify the Agency in writing of any Conditions encountered and the Design-Builder proceeds to perform any portion of the Work containing or affected by such Conditions, the Design-Builder shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Sum. The Contract Time shall not be subject to adjustment in the event that the Design-Builder fails to timely request information from the Agency.

3.2.4 Resolution of Uncertainties. Agency and Design-Builder acknowledge that questions may arise concerning the level and scope of performance required under the Preliminary Design Documents. Agency and Design-Builder will in good faith attempt to resolve such conflicts and uncertainties in a manner that is consistent with the express design intent of the Preliminary Design Documents and without adjustment to the Contract Sum or Contract Time. In recognition of their mutual desire that such questions not result in a compromise of the high standards they mutually intend be followed for design and construction of the Project, Agency and Design-Builder agree that all such unresolved conflicts or uncertainties in respect to the standard of quality shall be interpreted so as to require Design-Builder to perform the Work, without adjustment to the Contract Sum or Contract Time, in a manner that reflects the higher or better standard indicated by the Preliminary Design Documents.

3.3 Supervision and Construction Procedures.

3.3.1 Design-Builder's Means and Methods. The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be responsible for and have control over construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under

the Contract.

3.3.2 Design-Builder’s Vicarious Liability. Design-Builder shall be responsible to Agency for acts and omissions of Design-Builder's employees, Design Consultants, Design Subconsultants, Subcontractors, Sub-subcontractors, and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract (or other arrangement) with the Design-Builder.

3.3.3 Property Lines and Encroachments. Prior to the commencement of the Work on the Project Site, Design-Builder shall have all property corners and benchmarks verified and established by a state licensed land surveyor, shall locate the Project, together with all grades, lines, and levels necessary for the Work, on the Project Site, establishing necessary reference marks from which the Work can progress accurately and shall furnish Agency with reasonable evidence of such verification, (where required) noting any errors, inconsistencies, or omissions discovered during such verification. After all lines are staked out and before foundation Work is commenced, Design-Builder shall review with Agency the placement of all buildings and other permanent facilities to be constructed on the Site. Any encroachments resulting from the Design-Builder’s locating or constructing the Work on adjacent properties to the Project Site as revealed by a survey of the foundations or an "as-built" survey, except for encroachments arising from errors or omissions not reasonably discoverable by Design-Builder in the Contract Documents, shall be the sole responsibility of Design-Builder, and Design-Builder shall commence the remedy of such encroachments within **thirty (30) calendar days** after discovery thereof (unless circumstances require a more rapid response), at Design-Builder's sole cost and expense, either by the removal of the encroaching improvement (and the subsequent reconstruction of such improvement on the Project Site) or by agreement with the owners of the adjacent property, in a form and substance satisfactory to Agency in its sole discretion, providing a permanent easement for such encroachment.

3.3.4 Inspection of Work in Place. The Design-Builder shall be responsible for the inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 Delivery of Design Materials. The Design-Builder is required to deliver to the Agency, if requested, any and all design materials, including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

3.4 Labor and Materials.

3.4.1 Coordination. The Design-Builder shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Design-Builder shall be responsible for the space requirements, locations, and staging of its equipment in areas and locations approved by Agency. Where the proper

and most effective space requirements, locations, and routing cannot be made as indicated in the Contract Documents, the Design-Builder shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

3.4.2 Temporary or Permanent Work. Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, sewer and electrical utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.3 Labor Discipline. The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.4 Skilled Labor. None but skilled workmen shall be employed on any portion of the Work. When required in writing by the Agency, the Design-Builder or any Design Consultant, Subcontractor shall discharge any person who is, in the reasonable opinion of the Agency, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the written consent of the Agency. Such discharge shall not be the basis of any claim for compensation or damages against the Agency or any of its officers or agents.

3.4.5 Procurement and Installation of Materials and Equipment. Design-Builder shall: (i) place orders for all materials and equipment, taking into account current market and delivery conditions necessary to meet the Project Schedule; (ii) purchase and expedite the procurement of long lead time items to obtain their delivery by the required dates; and (iii) arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Design-Builder fail in this duty, Agency reserves the right to order such materials and equipment as the Agency may deem advisable to maintain the schedule for the Work or the Contract Time and all expenses shall be charged to and paid for by Design-Builder within the Contract Sum. Design-Builder shall keep the Agency informed of the status of procurement and shall promptly notify Agency in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project. The Design-Builder shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Design-Builder shall meet with all others involved, including, but not limited to, Agency, Design Consultants, and Subcontractors before installation, to plan the most effective and efficient method of overall installation.

3.4.6 Substitution of Materials, Process or Equipment and Value Engineering Change Proposals (“VECP”).

3.4.6.1 Whenever any particular material, process, or equipment is indicated in the Contract Documents by patent, proprietary, manufacturer, or brand name, with or without the words “or equal,” only such items shall be provided unless the Agency’s prior written approval is obtained for the substitution. The burden of proving the quality of any material, process, or equipment proposed for substitution shall rest with the Design-Builder.

3.4.6.2 If any substitution request offered by the Design-Builder is not found to be equivalent or cannot be delivered to the Site in compliance with the Project Schedule, Design-Builder shall furnish and install the material specified in the Contract Documents.

3.4.6.3 Proposals for substitutions and VECPs shall be submitted to the Project Manager using an approved format. Unless otherwise approved in writing by the Agency, no substitution will be considered or allowed without Design-Builder’s delivery of the following to the Project Manager:

(1) A full explanation of the proposed substitution and submittal of all supporting data including technical information, complete manufacturers catalogs, brochures, drawings, samples, warranties, certified copies of test results, installation instructions, operating procedures, and other descriptive information to substantiate Design-Builder’s claim of equivalent quality and necessary for a complete evaluation of the proposal;

(2) A complete description of the difference between the requirements of the Contract Documents and the proposed substitution, the comparative advantages and disadvantages of each, and the reasons the substitution is advantageous and necessary, including the benefits to the Agency and the Work in the event the substitution is acceptable;

(3) An itemized description of aspects of the Contract Documents affected by the proposal (e.g., Drawing numbers and Specification sections);

(4) The adjustment, if any, in the Contract Sum in the event the substitution is acceptable;

(5) The reduction, if any, in the Contract Time and impact to the Project Schedule;

(6) A list of projects, to the extent known, where the subject of the request was used and the results; and

(7) Other information reasonably necessary to fully evaluate the proposal request.

3.4.6.4 By submitting a substitution request to the Agency, Design-Builder will be deemed to certify to the Agency that (i) the proposed substitution is equal to or

exceeds all requirements of the pertinent Contract Documents as reasonably determined by Design-Builder; (ii) Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified; (iii) the cost data presented is complete and includes all related costs under the Contract, including an estimate of the redesign costs, (iv) Design-Builder will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (v) Design-Builder waives all Claims for additional costs related to the substitution which subsequently become apparent; and (vi) Design-Builder accepts all responsibility for direct or indirect costs and/or time impacts as result of the substitution including impacts to Work not identified in the proposal.

3.4.6.5 The Agency shall review the technical and aesthetic qualities of materials specified, and in no case will the Agency accept a substitution of a product with a lower cost which does not extend credit to the Agency.

3.4.6.6 No incomplete request for substitution will be considered by the Agency, and products for which insufficient information is submitted will be disapproved by the Agency for lack of substantiating data.

3.4.6.7 Failure of the Design-Builder to submit proposed substitutions for approval in the manner described may be deemed sufficient cause for disapproval by the Agency of any substitution otherwise proposed.

3.4.6.8 Design-Builder shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any value engineering proposal or substitution request unless the Agency approves such request in a written order. In the event the Agency approves a value engineering modification or substitution request and Design-Builder furnishes a material, process or article more expensive than that specified, the difference in cost shall be borne entirely by Design-Builder. Any engineering, design fees or agency fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted item shall be borne entirely by Design-Builder.

3.4.7 Reference Standards. Any material specified by reference to the number, symbol, or title of a standard such as that of the American Society for Testing Materials ("ASTM"), Underwriters Laboratories, Factory Mutual, a product or commercial standard, or similar standards, shall comply with the requirements of the latest revisions thereof and any supplement or amendment thereto in effect on the date of the Agreement. The standards referred to, except as specifically modified in the specifications, shall have the same force as if they were printed in full within the Contract Documents. Whenever a product is specified in accordance with such a Reference Standard, the Design-Builder shall present a certification from the manufacturer and test data to substantiate compliance, when requested by the Agency or required in the Specifications, certifying that the product complies with the particular standard or specification.

3.4.8 Manufacturer’s Instructions. Where it is required in the Contract Documents

that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the jobsite. Unless otherwise stated, Design-Builder shall furnish one copy of said instructions to Agency. If there is a conflict between manufacturer's instructions and Applicable Law or the Contract Documents, Design-Builder shall notify Agency in writing to request clarification.

3.5 Warranty and Correction.

3.5.1 Warranty. The Design-Builder warrants to the Agency that: (i) materials and equipment furnished under the Contract will be and are of good quality and new unless otherwise required or permitted by the Contract Documents; (ii) the design and construction Work will be and are of good quality and free from defects; (iii) the Work will conform to the requirements of the Contract Documents; (iv) all design Work furnished pursuant to the Contract Documents shall conform to all professional architectural engineering principles generally accepted as standards of the industry in the State, shall be suitable for its intended purpose and shall be free of errors, omissions, inconsistencies, inaccuracies, deficiencies or other defects; and, (v) the construction Work furnished pursuant to the Contract Documents will be performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State. Work not conforming to these requirements, including substitutions not properly approved by the Agency, shall be deemed defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Agency, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph **12.3** herein. Design-Builder's Performance Bond Surety shall be liable for breaches of these warranties and the correction guarantees described in Paragraph **12.3**.

3.5.2 Overlap. Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Design-Builder will be bound by the more stringent requirements.

3.5.3 Procurement and Assignment of Warranties. Design-Builder shall: obtain in the name of and for the benefit of Agency, and hereby assigns to Agency or Agency's designee prior to the time of Final Completion of the Work, form all Subcontractors, Sub-subcontractors, manufacturers and suppliers, any and all warranties or guarantees that would be given in normal commercial practice; perform the Work in such a manner so as to preserve any and all such warranties; and enforce all warranties for the benefit of Agency. Design-Builder shall secure written warranties from all Subcontractors in the form

approved by Agency, which shall be written so as to survive all inspections and tests by Agency and Design-Builder and shall run directly to and be enforceable by the Design-Builder and/or the Agency and their respective successors and assigns. Design-Builder and its Subcontractors shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system installed in the Work to the Agency. Design-Builder shall deliver to Agency all warranty and guarantee documents and policies.

3.5.4 Commencement of Correction Periods. In accordance with Paragraph 12.3 herein, in addition to warranties required elsewhere in the Contract Documents, Design-Builder shall, and hereby does, warrant all equipment according to the warranty period outlined in the technical specifications and all construction Work for a period of one (1) year commencing from the date of Final Completion of the Work, and shall repair or replace any and all such Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials, without any expense whatsoever to the Agency.

3.5.5 No Limitation. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder might have under the Contract Documents. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work. Neither the making of Final Payment nor the use or occupancy of the Work, in whole or in part, by Agency, shall constitute acceptance of Work not in accordance with the Contract Documents or relieve the Design-Builder from liability for faulty or defective Work. In the case of partial occupancy or use of the Work, the Agency will not assume responsibility or liability for any injury to persons or property caused by any non-conforming Work or caused by any willful or negligent act or omission by the Design-Builder, Design Consultants, Subcontractors, or their officers, employees, or agents.

3.5.6 Survival of Warranties. The provisions of this Paragraph **3.5** shall survive Design- Builder’s completion of the Work or termination of Design-Builder’s performance of the Work.

3.6 Taxes.

3.6.1 Payment. The Design-Builder shall pay all applicable sales, consumer, use, and similar taxes for the Work provided by the Design-Builder and such taxes shall be included in the Contract Sum.

3.6.2 Liability for Employee Payments. Design-Builder accepts full liability for the payment of any and all contributions, deductions, or taxes for social security, unemployment insurance, old age and survivor’s benefits, medical and health benefits, or

for any other purpose now or hereafter imposed under any Applicable Law measured by the wages, salary or other remuneration paid to persons employed by or on behalf of Design-Builder for the Work. Design-Builder covenants and agrees to observe and fully comply with all Applicable Law, including procurement of any necessary occupational licenses, permits and inspection certificates.

3.7 Permits, Notices, Compliance with Applicable Laws and Differing Site Conditions.

3.7.1 Permits, Governmental Approvals and Utility Fees.

3.7.1.1 All permits, inspections, plan check, Governmental Approvals and Utility Fees shall be obtained, paid for and issued in the name of the Design-Builder and the Agency will reimburse the Design-Builder for these costs.

3.7.1.2 Design-Builder shall provide Agency's Project Manager with a minimum of **48 hours** written notice before construction permits, and similar Governmental Approvals and Utility Fees must be issued for performance of the Work. The Agency will reimburse Design-Builder monthly for the documented actual direct cost paid to governmental agencies or utilities for all Permit Costs according to the payment provisions of the Contract Documents after submission to the Agency of the Design-Builder's and/or Subcontractors' original receipts from the governmental entities or utilities ("Permit Cost Reimbursement"). Design-Builder shall deliver the original receipt to the Agency's Project Manager with each permit. All Permit Costs shall be separately itemized in each Application for Payment, and copies of the receipt(s) and permit(s) must be attached. The Proposal Price / Contract Sum shall exclude the cost of all Permit Costs and shall include the cost of administration and coordination for all Governmental Approvals and Utility Fees.

3.7.1.3 All documents evidencing Design-Builder's satisfaction of all Governmental Approvals and Utility Fees must be submitted to the Agency prior to submission of the Application for Final Payment.

3.7.1.4 Where requirements of the Governmental Approvals differ from those of the Drawings and Specifications, the more stringent requirements shall apply.

3.7.1.5 Unless otherwise specified in the Contract Documents, Design-Builder shall be responsible for payments of all Utility consumption costs from the Date of Commencement until Agency's Final Acceptance of the Work.

3.7.2 Notices. Design-Builder shall comply with and give notices required by Applicable laws and lawful orders of Governmental Authorities.

3.7.3 Compliance with Applicable Law.

3.7.3.1 Design-Builder is responsible to ascertain that the Design-Builder's design, submittals, deliverables, including Design-Builder's Construction Documents in CADD (or Revit) format, and Work, are in accordance with Applicable Laws, including life safety codes, storm water runoff, Americans with Disabilities Act (ADA), and other federal

and state disabled access requirements. Design-Builder is responsible to perform all Work in accordance with the requirements of local agencies and inspectors having jurisdiction over the Work. If the Design- Builder observes that any portions of the Contract Documents are at variance with Applicable Law, Design-Builder shall promptly notify the Agency in writing.

3.7.3.2 If the Design-Builder performs any Work when the Design-Builder knows or should have reasonably known it would be contrary to Applicable Law, Design-Builder shall assume full responsibility therefore and shall bear all costs (within the Contract Sum) directly or indirectly attributable to the correction of the Work. If Design-Builder fails to comply with any such codes, laws, ordinances, rules, and regulations, Agency may (without prejudice to any of its other rights or remedies) issue an order suspending all or any part of the Work.

3.7.4 Differing Site Conditions.

3.7.4.1 Differing Site Conditions Defined. The Design-Builder shall promptly, and before such conditions are disturbed, notify the Agency's Project Manager in writing of any Differing Site Conditions. Differing Site Conditions are those conditions, located at the project site or in existing improvements and not otherwise ascertainable by Contractor through the exercise of due diligence in the performance of its inspection obligations in the Contract Documents, encountered by Design-Builder in digging trenches or other excavations(s) that extend deeper than four feet below the surface of the ground that constitute:

(1) Material that the Design-Builder believes may be material that is hazardous waste as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing materially from those indicated in these Contract Documents.

(3) Unknown physical conditions at the site, of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in these Contract Documents.

3.7.4.2 Notice by Design-Builder. If the Design-Builder encounters conditions it believes constitute Differing Site Conditions, then notice of such conditions shall, before such conditions are disturbed, be promptly reported to the Agency's Project Manager followed within twenty-four (24) hours by a further written notice stating a detailed description of the conditions encountered.

3.7.4.3 Prompt Investigation. The Agency's Project Manager will promptly investigate the conditions and if he/she finds that such conditions do materially differ, or do involve hazardous waste, and do cause an increase or decrease in the Design-

Builder's cost of, or time required for, performance of any part of the Work under this Contract, an equitable adjustment will be made, as determined by the CEO/General Manager.

3.7.4.4 Change Order Request. If Design-Builder intends to seek an adjustment to the Contract Sum or Contract Time based upon Differing Site Conditions, it must, within ten (10) days after the discovery date relative to such conditions, submit a Change Order Request setting forth a detailed cost breakdown and Time Impact Analysis, in the form required by Article 7 of these General Conditions, of the additional Allowable Costs and Excusable Delay resulting from such Differing Site Conditions.

3.7.4.5 Failure to Comply. Failure by Design-Builder to strictly comply with the requirements of this Paragraph concerning the timing and content of any notice of Differing Site Conditions or request for adjustment in Contract Sum or Contract Time based on Differing Site Conditions shall be deemed waiver of any right by the Design-Builder for an adjustment in the Contract Sum or Contract Time by reason of such conditions.

3.7.4.6 Final Completion. No claim by the Design-Builder for additional compensation for Differing Site Conditions shall be allowed if asserted after Final Payment.

3.7.4.7 No Excuse. In the event of disagreement between the Design-Builder and the Agency whether the conditions do materially differ or whether a hazardous waste is involved or whether the conditions cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, the Design-Builder shall not be excused from any completion date required by the Contract, but shall proceed with all Work to be performed under the Contract Documents.

3.7.4.8 Design-Builder Responsibility. Except as otherwise provided in this Paragraph for Differing Site Conditions, Design-Builder agrees to solely bear the risk of additional cost and delay due to concealed or unknown conditions, surface or subsurface, at the Site or in existing improvements, without adjustment to the Contract Sum or Contract Time.

3.7.5 Discovery of Cultural Resources. If, in the course of the Work, the Design-Builder encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Agency. Upon receipt of such notice, Agency shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Agency but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 4.

3.8 Allowances

Design-Builder shall include in the Contract Sum and Schedule of Values for Payment, the Agency's estimated cost established for each Work item covered by an Allowance stated in the Contract Documents. See Paragraph 1.1.6 for definition of Allowance.

3.8.1. The line item cost estimate established by the Agency for Work covered by an Allowance **includes** the cost to Design-Builder of: all materials and equipment, preparation of submittals; labor; transportation; delivery; handling; installation; supervision; overhead; profit; licenses; bonds; insurance; all sales, use and other taxes legally chargeable; and all other costs and expenses incidental to such Work. Work items covered by Allowances shall be supplied with such materials and equipment and for such prices approved in advance by Agency. Design-Builder shall notify and request Agency's approval of material equipment, and pricing information for Work covered by an Allowance before ordering the material or equipment and in sufficient time to avoid delay to the Work. Agency shall provide approval of materials, equipment, and prices with reasonable promptness. The material, equipment, and pricing information submitted by the Design-Builder to the Agency's Project Manager shall, at a minimum, include product data and detailed costs of material, equipment, and labor to complete such Work, itemized by costs incurred by Design-Builder and each Design Consultant or Subcontractor associated with the performance of such Work. Design-Builder shall not order materials or equipment or proceed with Work covered by an Allowance until the material, equipment, and pricing information for such Work items have been submitted to the Agency's Project Manager for review and the Design-Builder has received Agency's approval to proceed with a Work item covered by an Allowance.

3.8.2. All expenditures for Allowance Work shall be separately itemized in each Application for Payment.

3.8.3. To the extent that the cost of Work items covered by an Allowance is less than theAllowance cost estimate established by the Agency, the Contract Sum shall be reduced by Change Order or Construction Change Directive to reflect the actual cost of the Allowance item. Similarly, to the extent the cost of Work items covered by an Allowance is greater than the Allowance cost estimate, the Contract Sum shall be increased by Change Order or Construction Change Directive to reflect the actual cost of the Allowanceitem. If Work items covered by an Allowance are not performed or the Agency deletes such items from the Scope of Work, the Contract Sum shall be reduced by Change Orderor Construction Change Directive to deduct the Cost of the unused Allowance item.

3.9 Design-Builder's Key Personnel, Design Consultants and Subcontractors.

3.9.1 Design-Builder's Project Manager. The Design-Builder's Project Manager, as

is designated in an Addendum to the Agreement or as otherwise approved in writing by Agency, shall: (i) be present at the Project Site at all times that any Work is in progress and at any time that any Design Consultants, Subcontractor or employee of Design-Builder is present at the Site; (ii) attend all job meetings; (iii) be actively involved throughout all phases of design and construction of the Project; (iv) maintain oversight of the Project at all times; (v) have full authority to represent and act on behalf of the Design-Builder for all purposes under this Agreement; (vi) supervise and direct the Work using his or her best skill and attention; (vii) be responsible for the means, methods, techniques, sequences, and procedures used for the Work; (viii) adequately coordinate all portions of the Work; and (ix) act as the principal contact with Agency and all Subcontractors and inspectors on the Project.

3.9.2 Design-Builder's Key Personnel. In addition to its designated Project Manager, Design-Builder represents to Agency that certain additional key personnel, including identified in the Design-Builders response to the statement of Qualifications shall be retained for this project.

3.9.3 Changes in Design-Builder's Project Manager, Key Personnel, Design Consultants and Subcontractors. Design-Builder understands and acknowledges that its selection by Agency was, in part, based on the Design-Builder's Project Manager, prequalified and listed Design Consultants, Subcontractors, and key personnel. Design-Builder shall not make changes to its Project Manager, Design Consultants, key personnel or Subcontractors, or reduce their responsibilities for this Project without the prior written approval of the Agency. Prior to making any changes to the Project Manager, key personnel, Design Consultants or Subcontractors, the Design-Builder shall submit the qualifications and experience of the Design-Builder's proposed replacement for the Agency's approval. If Agency determines, in its sole discretion, that the performance of any person or entity employed by Design-Builder is unsatisfactory, then at the written request of Agency, Design-Builder shall remove, reassign, or replace such individual or entity without increase in the Contract Sum and such individual or entity shall not be reemployed on the Project without the prior written approval of Agency.

3.9.4 Qualifications and Licenses. Work furnished by or on behalf of Design-Builder shall be performed by persons: (i) qualified to perform the Work assigned to them; (ii) licensed to practice their respective trades or professions where required by Applicable Law in the State where the Project is located; and (iii) who shall assume professional responsibility for any design documents furnished by them. Design-Builder's Project Manager, key personnel, Design Consultants and Subcontractors shall be experienced in projects of similar nature and complexity to the Project and must provide Agency with resumes of education, training, and relevant experience whenever requested and shall be approved by Agency prior to their assignment to the Project.

3.10 Design-Builder's Schedules.

3.10.1 Baseline Project Schedule. Unless otherwise provided in the Agreement,

within **fourteen (14) calendar days** after the Date of Commencement fixed in the Agency's Notice to Proceed, Design-Builder shall submit a Baseline Project Schedule for the Work, showing in detail how the Design-Builder plans to execute and coordinate the design and construction Work, for comment and approval by Agency. The Baseline Project Schedule shall: (i) not exceed time limits currently set forth in the Contract Documents; (ii) be updated at appropriate intervals as required by the conditions of the Work and the Project; (iii) be related to the entire Project; and (iv) provide for expeditious and practicable execution of the Work.

3.10.2 Format.

A. The Baseline Project Schedule shall be in a detailed precedence critical path management ("CPM") or Microsoft Project or Primavera-type format satisfactory to the Agency, in "live/native" electronic format, so that Agency is able to see the relationships and logic of the activity data points

B. The Baseline Project Schedule shall: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of design, construction and maintenance; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents. At a minimum, the Baseline Project Schedule activities shall be coded on a work discipline basis (in accordance with CSI format) and by geographic area or location on the Project. The Baseline Project Schedule shall include a detailed description of each activity code. The Baseline Project Schedule shall be based on and incorporate Milestone and completion dates specified in the Contract Documents. It shall depict events, jobs, and their interrelationships and shall recognize the progress that must be made on one task before subsequent tasks can begin. The Baseline Project Schedule shall be comprehensive and shall include all logical interdependencies and interactions required to perform the Work of the Project.

C. The Baseline Project Schedule shall include: (i) a schedule of the Construction Documents issuance dates, including sequentially issued documents for phased construction; (ii) proposed activity sequences and durations; (iii) Milestone dates for receipt and approval of pertinent information, including Agency-supplied information and approvals by public authorities having jurisdiction over the Project; (iv) dates for preparation and processing of Design Documents, Construction Documents, Shop Drawings, Product Data, and Samples; (v) dates for delivery of materials or equipment requiring long-lead time procurement; (vi) Agency's occupancy/use requirements showing portions of the Project having occupancy priority; (vii) the estimated date of Substantial Completion; and (viii) other information reasonably required by Agency.

3.10.3 Agency Approval. The Agency will review the submitted Baseline Project Schedule for conformance with these scheduling requirements. Within fourteen (14) calendar days after receipt, the Agency will accept the proposed Baseline Project Schedule or will return it with comments. If the proposed Baseline Project Schedule is

accepted by the Agency, it shall be deemed part of the Contract Documents. If the Baseline Project Schedule is not accepted by Agency, Contractor shall revise the Baseline Project Schedule, in accordance with the recommendations of the Agency, and re-submit same for acceptance, no later than seven (7) calendar days after receipt of said recommendation. Acceptance of Baseline Project Schedule by Agency, or Design-Builder's failure to include an element of work, or inaccuracy in Baseline Project Schedule shall not relieve Contractor from the responsibility for accomplishing the Work in accordance with the Contract Documents. Any revisions or updates to the Baseline Project Schedule are subject to review and approval by Agency.

3.10.4 Schedule Updates.

A. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the latest Agency-approved version of the Project Schedule and shall update the Project Schedule on a **weekly** basis to reflect the current status of the Project, showing the bassline/as-planned schedule vs. as-built construction schedule. In the event any update to the Project Schedule identifies delays, Design-Builder shall promptly advise Agency and Project Manager in writing of actual or potential delays and shall propose an affirmative plan to eliminate or mitigate the delay, including Extraordinary Measures.

B. With each Application for Payment submitted by Design-Builder (other than the final Application for Payment), the Design-Builder shall submit to the Agency an updated Project Schedule, in "live/native" electronic format, revised to indicate the portion of the Work executed, comparing the baseline/as-planned schedule with the as-built schedule, all progress slippages, corrective actions taken, or slippage carry-over, for all anticipated delays or difficulties, and all other information required to accurately present the actual status of the progress of the Work as of the date of the Application for Payment. If the Design-Builder does not submit an updated Project Schedule with an Application for Payment, Agency may withhold payment, in whole or in part. In the event any update to the Project Schedule indicates any delays to the Contract Time that are the fault of Design-Builder or others for whom Design-Builder is responsible, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Project Schedule update constitute an adjustment in the Contract Time, any Milestone, any deadline, or the Contract Sum unless any such adjustment is agreed to by the Agency and authorized pursuant to Change Order or Construction Change Directive.

C. At no time shall historical data contained within the updated Project Schedule (i.e. completed activities) be removed and/or altered in any way. This historical data is to be preserved within each of the updated Project Schedules and submitted with the final schedule update to reflect the actual start and finish dates for each activity within the Project Schedule.

D. Any work stoppages within individual work activities that exceed seven (7) calendar days in duration shall be clearly indicated within the updated Project Schedule.

In cases where unplanned activity work stoppages exceed seven (7) calendar days activities shall be added to the Project Schedule to clearly indicate the work stoppage period and identify forecasted resumption and completion of the activity where work has stopped. Contractor shall clearly note all schedule revisions when Project Schedule updates are submitted, as required in above.

3.10.5 Extraordinary Measures. In the event the Agency determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Agency shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, the Extraordinary Measures as provided in Paragraph **2.7** herein.

3.10.6 Float.

3.10.6.1 Critical Work activities are defined as Work activities which, if delayed or extended, will delay the scheduled completion of the Milestones and/or time of completion. All other Work activities are defined as non-critical Work activities and are considered to have Float. Float is considered a Project resource available to either party or both parties as needed. Once identified, Design-Builder shall monitor, account for, and maintain float in accordance with Critical Path Methodology.

3.10.6.2 Delays of any non-critical Work shall not be the basis for an extension of Contract Time until the delays consume all Float associated with that non-critical Work activity and cause the Work activity to become critical.

3.10.6.3 It is acknowledged that Agency-caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract Documents, approval of substitution requests or VECPs which result in a savings of time for Design-Builder, etc.) create shared Float. Accordingly, Agency-caused delays may be offset by Agency-caused time savings.

3.10.7 Agency is Exempt from Liability for Early Completion Delay Damages. While the Design-Builder may schedule completion of the Work, or portions thereof, earlier than the date established by the Contract Documents, Agency is exempt from liability and no additional compensation or damages shall become due the Design-Builder for the use of Float or for Design-Builder's inability to complete Work earlier than the Contract time for any reason whatsoever including, but not limited to, delay caused by the Agency or other Excusable Delay.

3.10.8 Schedule of Submittals. Unless otherwise provided in the Agreement, within ten (10) calendar days after the Date of Commencement, the Design-Builder shall prepare and keep current, for the Agency’s review and approval, a Schedule of Submittals for Preliminary Design Documents, Construction Documents, Shop Drawings, Product Data, Samples, and similar Submittals, coordinated with the baseline Project Schedule and allowing the Agency reasonable time to review. Design-Builder shall be solely responsible for any delay, disruption, impact, loss of efficiency or other loss, arising

directly or indirectly from Design-Builder's failure to manage submittals properly.

3.10.9 Procurement Schedule. Unless otherwise provided in the Agreement, within ten (10) calendar days after the Date of Commencement, Design-Builder shall prepare and keep current, for Agency's approval, a schedule for procurement of materials and equipment which is coordinated with the baseline Project Schedule and allows the Agency reasonable time to review. Design-Builder is solely responsible for any delay, disruption, impact, loss of efficiency, or other loss arising directly or indirectly from Design-Builder's failure to properly manage procurement of equipment and materials.

3.10.10 Performance. The Design-Builder shall perform the Work in accordance with the most recent Project Schedule and Schedule of Submittals approved by the Agency. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the Agency of any delays or potential delays.

3.10.11 Rain/Inclement Weather Delays. In scheduling the Work, Design-Builder shall account for the number of inclement weather Work Days, by month, set forth in Paragraph 8.2.1.2 herein, for which the effects of rainfall are expected to prevent Work.

3.11 Documents and Samples at the Site.

3.11.1 As-Built and Record Documents. Design-Builder shall maintain at the Project Site and shall make available to Agency at all times, one copy of the Preliminary Design Documents, Addenda, requests for information, bulletins, Change Orders and other Modifications to the Contract Documents, approved Construction Documents, Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders in good order (the "Record Documents"). The Record Documents shall include a set of "As-Built" Construction Documents, which shall be continuously updated during the prosecution of the Work. The prints for As-Built Construction Documents (except for design-build systems, as addressed below) will be a set of blackline prints produced by Design-Builder and approved by Agency at the start of construction. Design-Builder shall maintain said set in good condition and shall use colored pencils to markup said set with "record information" in a legible manner to show: (i) deviations from the Agency-approved Construction Documents made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Construction Documents; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub outs; and (v) such other information as Agency may reasonably request. In addition, Design-Builder shall continuously update its Construction Documents in AutoCAD or Revit format.

3.11.2 Condition to Payment. Design-Builder's obligation to keep Record Documents current, including As-Built Construction Documents, and to make them available to Agency is a condition precedent to Agency's duty to process Applications for

Payment. The Design-Builder shall provide a written certification of this monthly review, signed by the Agency's Project Manager, and attach same to each Application for Payment. **Within thirty (30) calendar days** after Substantial Completion or earlier termination of the Agreement and as a condition precedent to Final Payment, Design-Builder shall provide final approved Record Documents including, but not limited to, As-Built Construction Documents and approved Shop Drawings. Design-Builder's obligations under Paragraph **3.12** shall survive completion of the Work or termination of Design-Builder's performance of the Work.

3.11.3 Daily Construction Reports.

3.11.3.1 The Contractor shall prepare a daily construction report recording the following information concerning events at Project site:

(1) List of Subcontractors and Design Consultants at Project site.
(2) List of other contractors at Project site.
(3) Approximate count of personnel at Project site.
(4) Equipment at Project site.
(5) Material deliveries.
(6) High and low temperatures and general weather conditions, including presence of rain or snow.
(7) Accidents.
(8) Meetings and significant decisions.
(9) Unusual events.
(10) Stoppages, delays, shortages, and losses.
(11) Meter readings and similar recordings.
(12) Emergency procedures.
(13) Orders and requests of authorities having jurisdiction.
(14) Change Orders received and implemented.
(15) Construction Change Directives received and implemented.
(16) Services connected and disconnected.
(17) Equipment or system tests and startups.
(18) Partial completions and occupancies.
(19) Substantial Completions authorized.

3.11.3.2 The daily construction reports must be: signed by Design-Builder's Superintendent, submitted within 24 hours (next Working Day) to the Agency's Project Manager, and shall be made available to others as directed by Agency.

3.12 Shop Drawings, Product Data and Samples.

3.12.1 Shop Drawings. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

3.12.2 Product Data. Product Data are illustrations, standard schedules,

performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples. Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.12.4 Purpose. Shop Drawings, Product Data, Samples, and similar submittals ("Submittals") are not Contract Documents. The purpose of these Submittals is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Agency is subject to the limitations of Subparagraph 3.12.6 herein. Informational submittals upon which the Agency is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Agency without action.

3.12.5 Design-Builder's Submittals.

3.12.5.1 Prompt Submittals. The Design-Builder shall review for compliance with the Contract Documents, confirm, and deliver to the Agency, Submittals within the timeframes required by the Contract Documents. Design-Builder's complete and timely submission of Submittals in conformity with the Submittal Schedule is a material consideration of the Contract. In the event that the Agency reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re-submission more than one (1) time, Design-Builder shall bear all costs (within the Contract Sum) associated with the review and approval of such resubmitted Submittals. No adjustment to the Contract Time or the Contract Sum shall be granted by the Agency to the Design-Builder on account of its failure to make timely submission of any Submittals.

3.12.5.2 Design-Builder's Confirmation of Submittals. After checking and verifying all field measurements and after complying with applicable procedures specified in the Specifications, Design-Builder shall submit to Agency in compliance with the Submittal Schedule for review and approval, or for other appropriate action, one (1) reproducible transparency (sepia) and four (4) opaque prints of all Shop Drawings and other Submittals, which shall bear a stamp or specific written indication that Design-Builder has satisfied Design-Builder's responsibilities under the Contract Documents with respect to the review of the Submittal. All Submittals will be identified as the Agency may reasonably require. The data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data in order to enable Agency to review the information as required.

1. Before submission of each Submittal, Design-Builder shall have determined and verified quantities and dimensions, specified performance criteria,

installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.

2. At the time of each submission, Design-Builder shall give Agency specific written notice of each variation that the Submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each submittal submitted to Agency for review and approval of each such variation.

3. By reviewing and submitting Shop Drawings, Product Data, Samples, and similar Submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

3.12.6 Review by Agency. Unless Design-Builder is notified in writing of a specific need for an extended period of time due to the nature or extent of the Submittals being submitted, Agency shall utilize its best efforts to complete Submittal review within a maximum of ten (10) calendar days. Agency's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Design-Builder shall make corrections required by Agency and shall return the required number of corrected copies of Submittals and submit as required new Submittals for review and approval. Design-Builder shall direct specific attention in writing to any and all revisions other than the corrections called for by Agency on previous Submittals.

3.12.7 Performance. The Design-Builder shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective Submittal has been approved by the Agency, with no exceptions taken. Such Work shall be in accordance with approved Submittals and the Contract Documents.

3.12.8 Approved Submittals. The Work shall be performed in accordance with approved Submittals required by the Contract Documents and the Design-Builder shall not be relieved of responsibility for variations from requirements of the Contract Documents by the Agency's approval of Shop Drawings, Product Data, Samples, or similar Submittals unless the Design-Builder has specifically informed the Agency in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued, authorizing the variations. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by the Agency's approval thereof.

3.12.9 Resubmission. Design-Builder shall direct specific attention, in writing on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions

other than those requested by the Agency on previous submittals. In the absence of such written notice the Agency's approval of a resubmission shall not apply to such revisions.

3.12.10 Professional Services.

3.12.10.1 The professional design services and certifications by a Design Consultant related to systems, materials, or equipment shall comply with the design and performance criteria set forth in the Preliminary Design Documents prepared by Agency. The Design-Builder shall cause such services or certifications to be provided by a properly licensed design professional, who shall comply with the reasonable requirements of Agency regarding qualifications and insurance and whose signature and seal shall appear on all Drawings, calculations, specifications, certifications, Shop Drawings, and other Submittals prepared by such professional.

3.12.10.2 Design-Builder's Design Consultants shall certify that design-build Work invoiced in each Application for Payment is installed in accordance with the design prepared by such professional. Shop Drawings and other Submittals related to the Work designed or certified by such professional shall bear such professional's written approval when submitted to the Agency. The Agency shall be entitled to rely upon the adequacy, accuracy and completeness of the Services, certifications or approvals performed by such design professionals. The Agency will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the Preliminary Design Documents. The Design-Builder shall not be responsible for the adequacy of the performance or design criteria required by the Preliminary Design Documents but must notify the Agency of any inadequacy or errors in the Preliminary Design Documents.

3.13 Use of Site.

3.13.1 Site Constraints. Prior to mobilization on the Project Site, the Design-Builder shall submit to the Agency for approval a Site Constraint Plan including layout drawings to scale as required to fully describe the proposed locations of all temporary construction facilities and controls. This plan shall show the proposed activities in each portion of the Work area and identify the areas of limited use or nonuse. This plan shall also show proposed vehicle access routes and traffic control. Design-Builder shall confine operations at the Project to the areas designated in the Contract Documents and the approved Site Constraint Plan and within the hours permitted by all codes, laws, ordinances, permits, or the Agency, and shall not unreasonably encumber the Project Site or the adjoining sidewalks, streets, and alleyways with any material, equipment, or debris. In that regard, Design-Builder shall keep the Site and surroundings clean and in a safe condition in accordance with Paragraph **3.15** herein and the Specifications. Design-Builder shall use only those locations designated on the approved Site Construction Plan for locating Design- Builder's trailers, staging areas, lay-down areas, and other construction operations. The Design- Builder shall not unreasonably encumber the Site with any materials or equipment, nor permit any persons on the Site, or any activity at the

Site, except as the presence of those persons, or that activity, is directly related to the Project. The Design-Builder shall be liable for any and all damage caused by it to the Agency's premises.

3.13.2 Coordination. Design-Builder expressly acknowledges that Agency, its own forces, and Agency's Separate Contractors may be working simultaneously with Design-Builder on the Project during certain periods of time in certain portions of the Project Site. Design-Builder and Agency will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by Agency's Separate Contractors and personnel to minimize any interruption of services to such persons, including, without limitation, utilities, ingress and egress, and parking. Design-Builder further agrees to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation. Design-Builder shall meet and consult with Agency from time to time at Agency's request to ensure that Design-Builder and Agency are fully advised of all other construction activities on the Project Site, and Design-Builder shall take such steps as are reasonably necessary at Agency's request to coordinate its Work with the Work of Agency's Separate Design-Builders on the Project Site.

3.13.3 Security. The Design-Builder shall be responsible for providing security at the Site of the Work with all such costs included in the Contract Sum. A temporary fence shall surround the Project Site unless otherwise requested by Agency. All security provided by Design-Builder shall be coordinated with Agency's existing security personnel, if any. In addition, the Design- Builder shall take all necessary precautions and provide enclosures, barricades, security guards, signs, notices, shoring, bracing, passageways, lights, and such other materials, equipment, and services as may be required (including, without limitation, such protections as may be required by Applicable Law) for the protection of: (i) all persons who may be on the Project Site or in other areas affected by the Design-Builder's operations; and (ii) the Agency's and any third Party's personal or real property. Design-Builder shall execute all repairs to land, roadways, structures, utilities, sidewalks, parkways and alleys damaged by the operations under this Contract.

3.13.4 Utility Interruption. When it is necessary to interrupt any existing utility service, a minimum of fourteen (14) calendar days advance written request for interruption of services shall be given by the Design-Builder to the Agency. Interruption of these services shall be of the shortest possible duration and shall be approved by the Agency in advance of such interruption. In the event that such notices and approvals are not secured prior to interruption in utility services the Design-Builder shall be financially liable for any and all damages suffered by the Agency and third parties due to unauthorized interruption.

3.13.5 Parking. The Design-Builder shall coordinate and obtain all construction-related parking. The cost of all Design-Builder parking shall be included in the Contract

Sum.

3.13.6 Design-Builder's Operations/Storage Yard. In the event the Design-Builder requires space for the storage and/or staging of construction materials, supplies, equipment, stockpiling of debris, or any other needs required for construction operations, he/she shall acquire at his/her own expense such areas as he/she may desire. For properties within the Agency, the staging area must be enclosed at Design-Builder's expense with construction fencing covered with a mesh screen to limit visibility to the site. Private property used for storage of construction material or debris shall be restored to a legal condition with regard to appearance and maintenance upon conclusion of the project. Property should be graded and free of weeds and debris when project is completed.

3.14 Cutting and Patching.

3.14.1 Responsibility. Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Separate Contractors. Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Agency or Agency's Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Design-Builder shall not cut or otherwise alter such construction by the Agency or a Separate Contractor except with written consent of the Agency.

3.14.3 Finish Surfaces. Cutting, drilling or other mechanical change to surfaces constituting final finish, including but not limited to, glass, marble, tile mosaic, finish wood, finish metals, etc., necessary for the fastening, installation, securing, and/or insertion of any devices, equipment, and/or materials shall be accomplished with special care. If requested by the Agency, Design-Builder shall submit procedures for finish changes for the Agency's review and approval. Specific approval must be obtained from the Agency for such finish changes to be done by any trades other than the one installing the specific finish material. Failure to obtain Agency approval shall place full responsibility upon the Design-Builder for any extra cost occasioned by unacceptable finish-surface.

3.15 Cleaning Up.

3.15.1 Continuous Obligations. The Design-Builder shall keep the Project Site and surrounding area free from accumulation of waste materials or rubbish at all times. As construction is completed on a daily basis, paved surfaces adjoining the Project shall be swept clean and other surfaces of the Project Site raked clean. If the Design-Builder defaults or neglects to maintain the Project free from accumulation of waste and rubbish as set forth above, and fails within a twenty-four (24) hour period after receipt of oral notice, subsequently confirmed in writing, to commence and continue correction of such default or neglect with diligence and promptness, the Agency may after such twenty-four (24) hour period, immediately, without prejudice to other remedies the Agency may have, correct such deficiencies. In such case, an appropriate Construction Change Directive

shall be issued deducting from payments then or thereafter due the Design-Builder the cost of correcting such deficiencies. If payment then or thereafter due the Design-Builder is not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Agency on demand.

3.15.2 Cleaning and Environmental Controls.

(1) Maintain areas free of waste materials, debris, and rubbish. Maintain Site in a clean and orderly condition.
(2) Remove waste materials, debris, and rubbish from the Site and dispose of them off-site legally.
(3) The Design-Builder shall furnish and operate a self-loading motor sweeper with spray nozzles as directed by the Agency's Project Manager to maintain the Project in a condition of cleanliness acceptable to the Agency at all locations affected by the Design-Builder's operation. These affected areas include all haul routes to and from the Project and all areas of construction and restoration which have not been completed. The Design-Builder shall not proceed with Work until job site is clean to the satisfaction of the Agency's Project Manager.
(4) The Design-Builder shall take appropriate action to ensure that no dust originates from the Project Site.
(5) Spoil Site shall not be located where spoil shall be washed back into a street gutter, storm drain, runoff conveyance or ocean.
(6) Water containing mud, silt, or other pollutants from activities, shall not be allowed to enter the ocean or placed in locations that may be subject to storm runoff.
(7) Any equipment or vehicles driven and/or operated within or adjacent to a street gutter, storm drain, runoff conveyance or ocean shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
(8) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction, or associated activity or whatever nature shall be allowed to enter into or placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
(9) The Design-Builder shall comply with all litter and pollution laws. All Subcontractors and employees shall also obey these laws, and it shall be the responsibility of the Design-Builder to ensure compliance.

3.15.3 Water Pollution Control.

3.15.3.1 Water Quality Protection Requirements for Construction Projects with Less than One (1) Acre of Disturbed Soil. All construction projects, regardless of size, will be required to implement best management practices (BMPs) necessary to reduce pollutants to the Maximum Extent Practicable (MEP) to meet the minimum water quality protection requirements as defined in the table below.

Minimum Water Quality Protection Requirements for Construction Projects		
Category	Minimum Requirements	BMPs
1. Sediment Control	Sediments generated on the project site shall be retained using adequate Treatment Control or Structural BMPs.	Sediment Control
2. Construction Materials Control	Construction-related materials, wastes, spills or residues shall be retained at the project site to avoid discharge to streets, drainage facilities, receiving waters, or adjacent properties by wind or runoff. Non-storm water runoff from equipment and vehicle washing and any other activity shall be contained at the project Site.	Site Management; Material and Waste Management
3. Erosion Control	Erosion from slopes and channels shall be controlled by implementing an effective combination of BMPs, such as the limiting of grading scheduled during the wet season; inspecting graded areas during rain events; planting and maintenance of vegetation on slopes; and covering erosion susceptible slopes.	Erosion Control

Please refer to the California Stormwater Quality Association's Construction Handbook (available on their website www.casqa.org/resources/bmp-handbooks) for further information regarding the BMPs listed in the above table.

3.15.3.2 Water Quality Protection Requirements for Construction Projects with One (1) Acre (or greater) or Disturbed Soil. Prior to commencement of construction activities, the Permit Registration Documents (PRDs) must be submitted electronically by Design-Builder in the Storm Water Multi-Application Report Tracking System (SMARTS) (https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.xhtml). PRDs consist of the Notice of Intent, Risk Assessment, Post-Construction Calculations, a Site Map, the Storm Water Pollution Prevention Plan (SWPPP), a signed certification statement by the Legally Responsible Person (LRP), and the first annual fee (see http://swrcb.ca.gov/water_issues/programs/stormwater/construction.html for more information). Design-Builder is responsible for all annual renewals, including payment of all renewal fees, until Final Completion of the Work. A Waste Discharger Identification (WDID) will be emailed to the LRP after the PRDs have been submitted and are deemed

complete. Construction activities cannot begin until a WDID is issued by the State Water Resources Control Board. Contractor shall bear the costs of any delays to the Project caused by a delay in obtaining its WDID.

The SWPPP shall include:

(1) The name, location, period of construction, and a brief description of the project;
(2) Contact information for the owner and contractor;
(3) The building permit number for the project;
(4) The grading permit number for the project (where applicable);
(5) A list of major construction materials, wastes, and activities at the project site;
(6) A list of best management practices to be used to control pollutant discharges from major construction materials, wastes, and activities;
(7) A site plan (construction plans may be used) indicating the selection of BMPs and their location where appropriate;
(8) Non-storm water discharges, their locations, and the BMPs necessary to prevent the discharge;
(9) A maintenance and self-inspection schedule of the BMPs to determine the effectiveness and necessary repairs of the BMPs; and
(10) A certification statement that all required and selected BMPs will be effectively implemented.
(11) Within 7 days after the Agency awards the Contract, the Design-Builder shall submit seven (7) copies of the proposed SWPPP to the Agency. The Agency shall review the SWPPP within 14 days of receipt of the plan. If revisions are required, the Design-Builder shall revise and re-submit the document within 7 days of its receipt of the Agency's comments. The Agency shall then have 7 days to consider the revisions made by the Design-Builder and approve the SWPPP.
(12) The Design-Builder shall maintain a minimum of two readily accessible copies of the SWPPP at the Project site and evidence of payment of all applicable fees. Requests by environmental groups and the public shall be directed to the Agency.

3.15.3.3 Best Management Practices. The objective of the SWPPP is to identify potential sources of pollution that may reasonably affect the quality of storm water discharge associated with construction activities. The plan will describe and ensure the implementation of Best Management Practices (BMPs) which will be used to reduce pollutants in the storm water discharges from the construction site. A Best Management Practice is defined as any program, technology, process, operating method, measure, or

device that controls, prevents, removes, or reduces pollution. The Contractor shall select appropriate BMPs from the California Stormwater BMP Handbook, Municipal, Industrial, New Development, and Construction Volumes (www.casqa.org/resources/bmp-handbooks) in conjunction with all activities and construction operations:

(1) Construction Practices (NS2, NS3, NS4, and NS6)
(2) Material and Waste Management (WM01, WM02, and WM04)
(3) Vehicle and Equipment Management (NS8, NS9, and NS10)
(4) Physical Stabilization (EC7, EC12, NS4, TC1, and TC2)
(5) Sediment Control Practices (SE1, SE9, SE8, SE10, SE3, and SE2)

Copies of the California Stormwater BMP Handbooks may be obtained from:

California Stormwater Quality Association
1201 N. Catalina Ave. #4227 Redondo Beach, CA 90277
www.casqa.org/resources/bmp-handbooks

Implementation. The Design-Builder will be responsible throughout the duration of the Project for the installation, monitoring, inspection, and maintenance of the BMPs included in the SWPPP and for removing and disposing of temporary BMPs. The Contractor may be required to implement additional BMPs as a result of changes in actual field conditions, contractor's activities, or construction operations.

The Design-Builder shall demonstrate the ability and preparedness to fully deploy these SWPPP control measures to protect soil-disturbed areas of the project site before the onset of precipitation and shall maintain a detailed plan for the mobilization of sufficient labor and equipment to fully deploy these control measures. Throughout the winter season, active soil-disturbed areas of the project site shall be fully protected at the end of each day with these control measures unless fair weather is predicted through the following day. The Design-Builder shall monitor daily weather forecasts. If precipitation is predicted prior to the end of the following workday, construction scheduling shall be modified, as required, and the Design-Builder shall deploy functioning control measures prior to the onset of the precipitation.

The Agency may order the suspension of construction operations which are creating water pollution if the Design-Builder fails to conform to the requirements of this Paragraph **3.15.3**. Unless otherwise directed by the Agency, the Design-Builder's responsibility for SWPPP implementation shall continue throughout any temporary suspension until Final Completion of the Work.

3.15.3.4 Sewage Spill Telephone Notification. Should a sewage spill occur, the Design-Builder shall immediately report the incident to the appropriate Yuba County agency as well as the fire department dispatch center by calling 911.

The Design-Builder is encouraged to obtain telephone numbers, pager numbers and cellular telephone numbers of Agency representatives such as Project Managers and Inspectors. However, if these Agency representatives are not available, then the Design-Builder shall immediately call:

Yuba County Department of Environmental Health
Yuba County Department of Community Development
Central Valley Regional Water Quality Control Board (CVRWQCB)
State Office of Emergency Services

(For any significant volume of material that entered the storm drain or receiving water)

3.15.3.5 Sewage Spill Written Notification. The Design-Builder shall prepare and submit a written report within three (3) Working Days from the occurrence of a spill to the Agency Project Manager. This report shall describe the following information related to the spill:

(1) The exact location;
(2) The nature and volume;
(3) The date, time and duration;
(4) The cause;
(5) The type of remedial and/or cleanup measures taken and date and time implemented;
(6) The corrective and preventive action taken;
(7) The water body impacted and results of necessary monitoring; and
(8) Enforcement.

The Agency is subject to enforcement actions by the CVRWQCB, U.S. EPA, environmental groups, and private citizens. The Design-Builder shall indemnify, defend and hold Agency, its officers, agents and employees harmless from Contractor's failure to comply and/or fulfill the requirements set forth in this Paragraph. Design-Builder shall be responsible for all costs and liabilities imposed by law as result of Design-Builder's failure to comply and/or fulfill the requirements set forth in this Paragraph. The costs and liabilities include, but are not limited to fines, penalties and damages whether assessed against the Agency or the Design-Builder.

In addition to any remedy authorized by law, any money due to the Design-Builder under this Contract shall be retained by the Agency until all costs and liabilities imposed by law against the Agency or Design-Builder have been satisfied.

3.15.3.6 Maintenance. The Design-Builder shall ensure the proper implementation and functioning of BMP control measures and shall regularly inspect and maintain the construction site for the BMPs identified in the SWPPP. The Design-Builder shall identify corrective actions and time frames in order to properly address any damaged measure or reinitiate any BMPs that have been discontinued.

If the Agency identifies a deficiency in the deployment or functioning of identified control measures, the deficiency shall be corrected by the Design-Builder immediately or by a later date and time if agreed to by Agency Project Manager and if requested in writing, but not later than the onset of the subsequent precipitation events. The correction of deficiencies shall be at no additional cost to the Agency.

3.15.3.7 Payment. All costs involved in the implementation of the SWPPP, including furnishing all labor, materials, tools, equipment and all incidentals; and for doing all the work involved in installing, constructing, maintaining, removing, and disposing of control measures, except those that were installed as a part of another structure, shall be included in the unit prices Proposal for the various related items of work otherwise included in the Total Proposal Price/Contract Sum and no additional compensation to Design-Builder will be made therefore.

3.15.4 Solid Waste Disposal and Diversion. The Design-Builder shall submit to the Agency's Project Manager the following summary of solid waste generated by the Work, disposed in Class III landfills, or diverted from disposal through recycling. Report disposal of inert fill separately. This form must be accompanied by legible copies of weight tickets, receipts, or invoices that specifically identify the project generating the material. Said documents must be from recyclers and/or disposal site operators that are acceptable to the Agency's Project Manager. Further, the documents must be submitted to the Agency's Project Manager with each application for progress payment. Failure to submit the form and its supporting documentation will render the application for progress payment incomplete and delay progress payments.

SUMMARY OF SOLID WASTE DISPOSAL AND DIVERSION

Project Title: Next Generation Transit Facility

Type of Material	(a) Disposed in Class III Landfills	(b) Diverted from Class III Landfills by Recycling	(c) [Leave ThisColumn Blank]	(d) Disposed inInert Fills
	Tons/CY	Tons/CY	Tons/CY	Tons/CY
Asphalt				
Concrete				
Metal				
Other Segregated Materials (Describe):				
Miscellaneous Construction Waste				
Total				

Signature: _____

Title: _____

Date: _____

3.15.5 Recycled, Reusable and Recyclable Products. The Design-Builder is encouraged to support the Agency in recycling efforts. It is Agency policy that all Agency Departments and Sections shall utilize recycled, reusable, and recyclable products to the maximum extent practicable. Preference will be given to recycled, reusable and recyclable products, over non- recycled, non-reusable and non-recyclable products, fitness and quality being equal, whenever available at no more than the total cost of non-recycled, non-reusable and non-recyclable products.

Contractors are encouraged to propose recycled, reusable and recyclable products for use by the Agency. Those items should be clearly identified. The Agency

may require further information or documentation to ascertain the suitability/appropriateness of a proposed product.

All contractors that provide goods, supplies, or equipment to the Agency that contain recycled material shall provide in writing to the Agency's Project Manager the following information:

(1) The minimum, if not the exact, percentage of recycled material, both post-consumer waste and/or secondary waste, in the goods, supplies, or equipment; and
(2) The quantity and total dollar amount of the goods, supplies or equipment provided to the Agency with recycled material content.

3.15.6 Final Completion. In order to achieve Final Completion of the Work, the Design-Builder must remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery, and surplus materials as well as the requirements set forth in the Preliminary Design Documents and other Contract Documents. In addition to the general cleaning, the Design-Builder must perform the following special cleaning requirements:

(1) Remove putty stains from glazing, then wash and polish glazing;
(2) Remove marks, stains, fingerprints, and other soil or dirt from glass, painted, stained, or decorated work;
(3) Remove temporary protection and clean and polish floors and waxed surfaces;
(4) Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster, and paint;
(5) Remove spots, soil, plaster, and paint from tile work, and wash tile;
(6) Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces;
(7) Vacuum-clean carpeted surfaces and remove any stains; and
(8) Remove debris from roofs, downspout, and drainage system.

3.16 Access to Work.

The Design-Builder shall provide the Agency and its representative's access to the Work in preparation and progress wherever located.

3.17 Royalties, Patents, and Copyrights.

3.17.1 Design-Builder Must Secure Rights. The Design-Builder shall secure in writing from all patentees, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, Drawings, Contract Documents, Specifications, documents in computer form, etc.) as necessary to allow the Agency the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization or expansion of the Project. The Design-Builder shall immediately convey all such copyrights, assignments, and licenses to the Agency without reservation except that which is expressly allowed in

Subparagraph **1.6.2** herein. In the case of products, materials, systems, etc., protected by patent, the Design-Builder and its Design Consultants shall not specify or cause to be specified any infringing use of a patent. The Design-Builder shall pay all royalties and license fees.

3.17.2 Infringement. Should the Design-Builder become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, in addition to its indemnity obligation, the Design-Builder shall (a) immediately cease the copying and any other activity which is the potential source of infringement; (b) within seven (7) calendar days, investigate the potential infringement; (c) submit to the Agency copies of all documents relating to that awareness, the notice, or the object thereof; and (d) issue to the Agency a complete written response and analysis of the potential infringement and the course of action recommended by the Design-Builder. The Design-Builder shall submit to the Agency a supplement of the initial report within seven (7) calendar days of the Design-Builder's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve the Design-Builder of its obligations under this Article, nor shall the Agency's receipt of the information indicated in this Article give rise to any duty or obligation on the part of Agency.

3.17.3 Assignment of Clayton Act Rights. The Design-Builder offers and agrees to assign to the Agency all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code of the State of California], arising from purchases of goods, services or materials pursuant to the performance of the Work. This assignment will be made and become effective at the time the Agency tenders Final Payment to the Design-Builder, without further acknowledgement by the Parties.

3.18 Indemnification and Defense.

3.18.1 Indemnity for Design Professional Liability.

3.18.1.1 To the maximum extent permitted by law, including, but not limited to, California Civil Code Sections 2778 and 2782.8, Design-Builder, its employees, agents, Design Consultants, Design Subconsultants, Subcontractors and persons whom Design-Builder employs or hires (individually and collectively, “Indemnitor”) shall indemnify, defend, and hold harmless, Agency, its officers, agents, employees, and representatives (individually and collectively, “Indemnitee”) from and against a “Liability” (as defined in Subparagraph (A) below), or an “Expense” (as defined in Subparagraph (B) below), or both, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of a Professional Indemnitor:

A. “Liability” means claims, suits, actions, causes of action, proceedings, judgements, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the Liability is:

(1) Actual or alleged, even if the allegations are false, fraudulent, or groundless;
(2) In contract or in tort; or
(3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

B. "Expense" means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

3.18.1.2 Under this Section 3.18.1, Indemnitor's defense and indemnification obligations:

(1) Apply to a Liability, or an Expense, or both, that arise out of, pertain to or relate to the actual or alleged passive negligence of an indemnitee.
(2) Apply to a Liability, or an Expense, or both, that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the Indemnitor, regardless of whether an Indemnitee's own fault or negligence contributed, in part, to a Liability, or Expense, or both.
(3) Do not apply to a Liability, or an Expense, or both, that arise out of pertain to, or relate to the active negligence or willful misconduct of an Indemnitee.

3.18.1.3 To the extent that an Indemnitor's insurance policy provides an upfront defense to an Indemnitee, an Indemnitor's obligation to defend an Indemnitee under this Section 3.18.1:

(1) Means that an Indemnitor shall provide and pay for legal counsel, acceptable to Agency, for the Indemnitee;
(2) Occurs when a claim, suit, complaint, pleading, or action against an Indemnitee arises out of, pertains to, relates to, or asserts the negligence, recklessness, or willful misconduct of an Indemnitor; and
(3) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies an Indemnitor.

3.18.1.4 If an Indemnitor fails to provide a defense to an Indemnitee, Paragraph 3.18.1.3 does not limit or extinguish Indemnitor's obligation to reimburse an Indemnitee for the costs of defending the Indemnitee against a Liability, or an Expense, or both. An Indemnitee's right to recover defense costs and attorneys' fees under this Section 3.18.1 does not require, and is not contingent upon, the Indemnitee first:

(1) Requesting that the Indemnitor provide a defense to the Indemnitee; or
(2) Obtaining the Indemnitor's consent to the Indemnitee's tender of defense.

3.18.1.5 If Design-Builder subcontracts all or any portion of the Services under this Agreement to Design Consultants, Design-Builder shall provide Agency with a written agreement from each Design Consultant, who must indemnify, defend, and hold

harmless the Indemnitees under the terms in this Section 3.18.1.

3.18.1.6 Each Indemnitor's obligation to indemnify, defend, and hold harmless Indemnitees will remain in effect and will be binding upon the Indemnitor whether the Liability, or the Expense, or both, accrues, or is discovered, before or after this Agreement's expiration, cancellation, or termination.

3.18.1.7 Except for Paragraph 3.18.1.3, the indemnification and defense provisions of this Section 3.18.1 are separate and independent from the insurance provisions in the Contract Documents. In addition, the indemnification and defense provisions in this Section 3.18.1:

(1) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in the Contract Documents; and
(2) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in the Contract Documents.

3.18.2 Indemnity for Other than Design Professional Liability.

3.18.2.1 To the fullest extent permitted by law, Design-Builder assumes liability for and agrees, at Design-Builder's sole cost and expense, to promptly and fully indemnify, protect, hold harmless and defend (even if the allegations are false, fraudulent, or groundless), Indemnitees (as defined in Paragraph 3.18.1.1 above), from and against any and all Liabilities and Expenses (as those terms are defined in Paragraph 3.18.1.1 above) - whether actual, threatened or alleged - arising out of, resulting from, or in any way (either directly or indirectly), related to the Work, the Project or any breach of the Contract by Design-Builder or any of its officers, agents, employees, Subcontractors, and Sub-subcontractors, or any person performing any of the Work, under a direct or indirect contract with the Design-Builder. Liabilities and Expenses include, but are not limited to any one or more of the following:

(1) An activity on or use of the Agency's premises or facilities;
(2) A Liability incurred due to Design-Builder's acting outside the scope of its authority under the Contract, regardless of whether caused in part by an Indemnitee;
(3) The failure of Design-Builder or the Work to comply with an Applicable Law, permit or order;
(4) A misrepresentation, misstatement or omission with respect to any statement made in the Contract Documents or any document furnished by Design-Builder;
(5) A breach of a duty, obligation or requirement under the Contract Documents, including, but not limited to any breach of Design-Builder's warranties, representations or agreements set forth in the Contract Documents;
(6) A failure to coordinate the Work with Agency's Separate Contractors;

(7) A failure to provide notice to any Party as required under the Contract Documents;

(8) A failure to act in such a manner as to protect the Project from loss, cost, expense or liability;

(9) Bodily or personal injury, emotional injury, sickness or disease, or death at any time to any person or persons, including without limitation employees of Design-Builder;

(10) Damage or injury to real property or personal property, equipment and materials (including, but without limitation, property under the care and custody of the Design-Builder or Agency) sustained by any person or persons (including, but not limited to, companies, corporations, utility company or property owner, Design-Builder and its employees or agents, and members of the general public);

(11) A Liability imposed by Applicable Law, including, but not limited to, a criminal or civil fine or penalty;

(12) A dangerous, hazardous, unsafe or defective condition of, in or on the Site, of any nature whatsoever, which may exist by reason of an act, omission, neglect, or a use or the occupation of the Site by Design-Builder, its officers, agents, employees, Subcontractors, or Sub-subcontractors;

(13) An operation conducted upon or a use or the occupation of the Site by Design-Builder, its officers, agents, employees, Subcontractors, or Sub- subcontractors under the Contract's provisions;

(14) An act, error, omission or negligence of Design-Builder, its officers, agents, employees, Subcontractors, or Sub-subcontractors;

(15) Infringement of a patent right, license, copyright or intellectual property which may be brought against the Design-Builder or Agency arising out of Design-Builder's Work, for which the Design-Builder is responsible; or

(16) A claim against Agency seeking compensation for labor performed or materials used, or furnished to be used, in the Work, or alleged to have been furnished on the Project, including all incidental or consequential damages resulting to Agency from such claims.

3.18.2.2 Effect of Indemnitee's Active Negligence. Design-Builder's obligations to indemnify, defend and hold harmless Indemnitee **exclude** only such portion of any Liability or Expense which is attributable to the active negligence or willful misconduct of Indemnitee, if the active negligence or willful misconduct is determined by agreement of the parties or by findings of a court of competent jurisdiction. In instances where Indemnitee's active negligence accounts for only a percentage of the Liability or Expense involved, the obligation of Design-Builder will be for that entire percentage of the Liability or Expense not attributable to the active negligence or willful misconduct of Indemnitee. This obligation must not be construed to negate, abridge or otherwise reduce

any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 3.18.2. Subject to the limits set forth this Section 3.18.2, Design-Builder, at its own expense, shall satisfy a resulting judgment that may be rendered against an Indemnitee arising from a Liability or Expense. Design-Builder shall consult with an Indemnitee concerning any proposed settlement.

3.18.2.3 Subcontractor Requirements. In addition to the requirements set forth in this Section 3.18.2, Design-Builder shall ensure, by written subcontract agreement, that each of Design-Builder's Subcontractors of every tier shall protect, defend, indemnify and hold harmless Indemnitee concerning a claim for indemnity, or a request for defense, or both, arising out of, in connection with, or in any way related to each Subcontractors' Work on the Project in the same manner in which Design-Builder is required to protect, defend, indemnify and hold Indemnitees harmless. If Design-Builder fails to obtain the defense and indemnity obligations from others as required, Design-Builder shall be fully responsible to the Indemnitee according to the terms of this Section 3.18.2.

3.18.3 General Indemnity Requirements. Paragraph 3.18.3's provisions are applicable to Liability under Paragraphs 3.18.1 ("Indemnity for Design Professional Liability") and 3.18.2 ("Indemnity for Other than Design Professional Liability").

3.18.3.1 Independent Defense Obligation. Indemnitor's duty to indemnify and hold harmless Indemnitee includes the separate and independent duty to defend the Indemnitee, which duty arises immediately upon receipt by Indemnitor of the tender of any Liability or Expense from Indemnitee. Indemnitor's obligation to defend Indemnitee is at the Indemnitor's sole expense and is not excused because of Indemnitor's inability to evaluate Liability or because Indemnitor evaluates Liability and determines that Indemnitor is not liable. This duty to defend applies regardless of whether a Liability or Expense has merit or is meritless, or which involves a claim or allegation that any Indemnitee or all Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that Indemnitees are responsible for any Liability or Expense. Indemnitor shall respond within thirty (30) calendar days to an Indemnitee's tender of a Liability or Expense for defense, or indemnification, or both, unless Indemnitee agrees in writing to an extension of this time. The Indemnitor shall provide Indemnitee with well qualified, adequately insured and experienced legal counsel acceptable to Agency. If an Indemnitor fails to provide a defense after tender by Indemnitee, Indemnitor shall pay for - as part of its indemnity obligations and as determined by agreement of the Parties or by findings of a court of competent jurisdiction, to the maximum extent permitted by law - the actual expert and attorneys' fees and costs incurred by Indemnitee for the defense of a Liability or Expense.

3.18.3.2 Intent of Parties Regarding Scope of Indemnity. The Parties' intent is that Indemnitor and Subcontractors of all tiers shall provide Indemnitee with the broadest defense and indemnity permitted by Applicable Law If a defense, indemnity or

hold harmless provision in the Contract Documents is found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation be given effect in favor of providing defense, or indemnification, or both, to Indemnitee.

3.18.3.3 Waiver of Indemnity Rights Against Indemnitees. With respect to third party claims against Design-Builder, to the fullest extent permitted by law, Design-Builder waives any and all rights to any type of express or implied indemnity against Indemnitees.

3.18.3.4 No Limitation or Waiver of Rights. An Indemnitor's obligations under this Section 3.18 are in addition to any other rights or remedies which Indemnitee may have under the law or under the Contract Documents. An Indemnitor's indemnification and defense obligations set forth in this Section 3.18 are separate and independent from the insurance provisions set forth in the Contract Documents, and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by Indemnitor with respect to the obligations required this Section 3.18 be construed as fulfilling or discharging those obligations. In any and all claims against Indemnitee by any employee of Indemnitor, any Subcontractor, any supplier of Design-Builder or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Section 3.18 is not limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Indemnitor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Agency's failure to monitor compliance with these requirements imposes no additional obligations on Agency and will in no way act as a waiver of any rights under the Contract Documents.

3.18.3.5 Withholding to Secure Obligations. If a Liability or Expense arises before to final payment to Design-Builder, Agency may, in its sole discretion, reserve, retain or apply any monies due Design-Builder for the purpose of resolving the Liability or Expense; except that Agency may release the funds if Design-Builder provides Agency with reasonable assurances of protection of Indemnitees' interests. Agency shall, in its sole discretion, determine whether the assurances are reasonable.

3.18.3.6 Survival of Indemnity Obligations. An Indemnitor's obligations under this Section 3.18 are binding on Indemnitor's and Subcontractors' successors, heirs and assigns and survive the completion of the Work or termination of Design-Builder's performance of the Work.

3.19 Signs and Advertising.

Design-Builder shall not place or maintain any advertising signs, bills, or posters, nor shall it allow the same to be placed in or about the Project Site, or on any structure, fence, or barricade located on the Site, except as may be specified herein or approved in writing by the Agency, which approval shall not be unreasonably withheld, delayed, or

conditioned. Agency shall have the right to reasonably approve the size, style, text, and location of any Design-Builder sign placed on the Project Site or on any structure, fence, or barricade located at the Project Site. Notwithstanding any other provision of the Contract Documents, Agency shall have complete discretion with respect to placement of Consultant and Subcontractor signs on the Project Site.

3.20 Coordination with Neighboring Property.

Design-Builder shall coordinate with adjoining property, cities, businesses, tenants, and their customers and contractors to provide access to neighboring property and shall implement measures to minimize disruption to operations and occupancy of neighboring property cities, businesses, tenants, and their customers and contractors.

3.21 Nondiscrimination.

In connection with the performance of Work under this Contract, the Design-Builder agrees it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, marital status, sexual preference/orientation, age, national origin, ancestry, disability, or medical condition, except to the extent such discrimination is permitted by pertinent State or Federal law or Executive Order.

3.22 Obligation to Continue Work.

In the event of a dispute or controversy between the Agency and Design-Builder over any matter whatsoever, Design-Builder shall not cause any delay or cessation in or of the Work but shall proceed under the Contract Documents with the performance of the Work required thereby.

3.23 Design-Builder's Responsibilities for Losses or Liabilities.

3.23.1 Risk of Loss. Except as otherwise provided in the Contract Documents and except as to the cost of repair or restoration of damage to the Work caused by force majeure, the Design-Builder shall bear all losses resulting to him/her on account of the amount or character of the Work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the Work, or because the nature of the ground in or on which the Work is done is different from what is assumed. The Design-Builder shall bear the risk for any Agency equipment, material, or supplies with which he/she has been entrusted.

3.23.2 Materials and Facilities. The Design-Builder shall be responsible for materials and facilities as hereinafter provided, and in the event of his/her failure to carry out said responsibilities, the same may be carried out by the Agency at the expense of the Design-Builder:

(1) The Design-Builder shall be responsible for any materials so furnished and for the care of all Work until its completion and final acceptance, and he/she shall at his/her own expense replace damaged or lost materials

and repair damaged parts of the Work.

(2) The Design-Builder shall protect Agency facilities from damage resulting from his/her Work. Agency facilities damaged by, or as a result of, the Design-Builder's Work under this Contract shall be repaired or replaced, as directed by the Project Manager, at the Design-Builder's expense.

(3) The Design-Builder shall remove from the vicinity of the completed Work all buildings, rubbish, unused material, concrete forms, and other materials belonging or used under his/her direction during construction. If Design-Builder fails to completely remove such items within a reasonable time, the Agency may do so at the Design-Builder's expense.

3.23.2.1 The Design-Builder shall obey all Applicable Law that in any manner affects those engaged or employed on the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency should be discovered in this Contract, or in the Construction Drawings herein referred to, in relation to any such Applicable Law, he/she shall forthwith report the same in writing to the Project Manager.

3.23.2.2 Design-Builder shall, at all times, cause all his/her agents and employees to observe and comply with all such Applicable Laws in effect or which may become effective before Final Completion of this Contract.

3.23.2.3 Nothing in the Contract Documents shall be construed to permit Work not conforming to such Applicable Law. If the Design-Builder ascertains at any time that any requirement of this Contract is at variance with such Applicable Law requirement, he/she shall promptly notify the Agency's Project Manager.

3.23.2.4 If such Applicable Law requirement was not in effect on the date of submission of Proposals, any necessary adjustment of the Contract price shall be made as provided in Article 7 (changes clause) of the General Conditions. If such Applicable Law requirement was in effect on said date of Proposal submission, no adjustment of Contract Sum will be considered.

3.23.2.5 The Design-Builder at his/her own expense, shall pay all taxes properly assessed against his/her equipment, materials, or property used or required in connection with the Work.

3.24 Surveys, Lines, Grades and Measurements.

3.24.1 Design-Builder shall be responsible for locating, and shall locate prior to performing any Work, all utility lines, including telephone, cable, television, and fiber optic lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines.

3.24.2 All lines and grades will be established by the Contractor. The Contractors shall carefully preserve all survey stakes and reference points as far as possible. Should any stakes or points be removed or destroyed unnecessarily by any act of the Contractor or his/her employees, they must be reset to the satisfaction of the Agency's Project Manager, at the Contractor's expense.

3.24.3 The Contractor shall inform the Agency's Project Manager 48 hours (two Work Days) in advance of the times and places at which he/she intends to Work in order that inspection may be provided, and that necessary measurements for records and payments may be made with minimum inconvenience.

3.24.4 No direct payment will be made for the cost to the Contractor of any of the Work or delay occasioned by giving lines and grades, by making other necessary measurements, or by inspection.

3.25 Project Management Software.

3.25.1 The Design-Builder shall furnish, implement, maintain, and bear all costs associated with a web-based project management and document control system for use throughout the duration of the Contract. The system shall support, at a minimum, the management and tracking of Requests for Information (RFIs), submittals, daily reports, meeting minutes, correspondence, action items, change management, schedules, document control, punch lists, and other project records as required by the Contract.

The selected platform shall provide secure, role-based access for the Owner, Owner's representatives, Design-Builder, subcontractors, and other authorized project participants, and shall maintain a complete audit trail of project communications and document revisions. The Design-Builder shall provide all required licenses, user access, setup, administration, training, technical support, data storage, and system maintenance at no additional cost to the Owner.

Software platforms such as Procore or equivalent systems may be utilized, subject to the Owner's review and approval. Approval of the platform by the Owner shall not relieve the Design-Builder of responsibility for ensuring that the system adequately supports the Contract requirements and project administration needs.

Upon Project completion, the Design-Builder shall provide the Owner with a complete, organized, and searchable electronic archive of all project records and data maintained within the system in a format acceptable to the Owner.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.1 Agency's Project Representatives.

The Agency's Project Manager identified by the Agency in writing shall serve as lead contact for transmission of Agency's instructions and approvals, and receive all

information required to be provided by Design-Builder. Agency's Project Manager shall monitor progress, quality of Work, and contract and schedule compliance.

The Project Manager shall make all decisions and interpretations to be made by the Agency under the provisions of the Contract Documents relating to scope, time, payment, changes, completion, and termination.

The CEO/General Manager has sole authority to sign Change Orders.

4.2 Administration of the Contract.

4.2.1 Site Visits. The Agency's Project Manager will visit the Site at intervals appropriate to the stage of the Design-Builder's operations to become familiar with the progress and quality of the portion of the Work completed and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

4.2.2 No Estoppel. Neither the Agency nor its Project Manager will be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Contract Documents. The Agency and its Project Manager will not be responsible for acts or omissions of the Design-Builder, Design Consultants, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Approval and/or acceptance of all or any portion of the Work shall in no way relieve the Design-Builder from its obligation to construct each portion of the Work in accordance with the Contract Documents and the Agency shall not be estopped or otherwise prevented from asserting any claim it might have against the Design- Builder as a result of any such acceptance or approval.

4.2.3 Determination of Payment Amounts by Project Manager. The Agency's Project Manager will review Design-Builder's Applications for Payment and determine the amount of payment due Design-Builder and make recommendations to the Agency for payment.

4.2.4 Rejection of Work Testing and Inspection. The Agency's Project Manager has the authority to reject Work that does not conform to the Contract Documents. Whenever the Agency considers it necessary or advisable, it will require inspection or testing of the Work in accordance with Paragraph **13.9**, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Agency to the Design-Builder, its Design Consultants, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.5 Submittal Review. The Agency's Project Manager will review and approve or take other appropriate action upon the Design-Builder's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for

conformance with information given and the design concept expressed in the Contract Documents as described in Paragraph **3.12.6** herein.

4.2.6 Contract Modifications. The Agency will prepare Change Orders, Construction Change Directives and Work Directives for signature by the CEO/General Manager, as applicable.

4.2.7 Substantial Completion and Project Closeout. The Agency's Project Manager will conduct inspections and oversee Acceptance Testing to determine the date or dates of Substantial Completion and the date of Final Completion, review written warranties and related close-out documents required by the Contract and assembled by the Design-Builder, and will issue a final Certificate for Payment upon Design-Builder's satisfaction of the requirements of the Contract Documents.

4.3 Claims and Disputes.

4.3.1 Events Giving Rise to a Claim.

4.3.1.1 Scope of Change. When Design-Builder has a claim for an increase in the Contract Sum or Contract Time due to an Unanticipated Scope Change which has not yet become final, a "Claim" will be deemed to arise once the Project Manager has issued a decision denying, in whole or in part, the Design-Builder's Change Order Request.

4.3.1.2 Other Claims. In the case of a Claim by Design-Builder that does not involve an adjustment to the Contract Sum or Contract Time due to an Unanticipated Scope Change and which has not become final, the Claim may be asserted if, and only if, Design-Builder gives written notice to Agency of intent to file the Claim within three (3) days of the date of discovery relative to such circumstances (even if Design-Builder has not yet been damaged or delayed). Such written notice of intent to file a Claim shall be valid if, and only if, it identifies the event or condition giving rise to the Claim, states its probable effect, if any with respect to Design- Builder's entitlement to an adjustment of the Contract Sum or Contract Time and complies with the requirements of Paragraph 4.3.3 below. For purposes of this Paragraph, a Claim for which such written notice is required and has been given by Design-Builder shall be deemed to arise on the date that such written notice is received by Agency.

4.3.2 Notification of Third-Party Claims. Agency shall provide Design-Builder with prompt written notice upon Agency's receipt of any third-Party claim relating to the Contract.

4.3.3 Submission of Claims. Claims shall be first submitted to the Agency for decision by the Project Manager.

A. Time for Filing. If the Contractor wishes to make a Claim for an increase in the Contract Sum, or for an extension of the Contract Time, or that Contractor's performance is excused because of the acts or omissions of

Agency, the Design- Builder shall give the Agency written notice of All such Claims and supporting documentation and certifications must be filed within **thirty (30) days** after the Claim arises. No Claims shall be filed after Final Payment.

B. Conditions Precedent. No Claim may be asserted unless Design-Builder has strictly complied with the requirements of this Paragraph, which shall be considered conditions precedent to Design-Builder's right to assert the Claim and to initiate the Dispute Resolution Process described in Paragraph **4.4** below with respect to such Claim. No Claims shall be filed after Final Payment.

4.3.4 Resolutions. The Agency will issue a Change Order or a Construction Change Directive to Design-Builder within a reasonable period of time after Agency's approval of any Claim, specifying the additional cost and/or time, if any, approved by Agency.

4.3.5 Continuing Contract Performance. Design-Builder shall not delay, slow, postpone, or stop any Work pending resolution of any disputes or disagreements, except as the Agency and Design-Builder may otherwise agree in writing. Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Contract, and the Agency shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed work, Agency shall have the right to unilaterally issue a Work Directive, and Design-Builder shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in Paragraph **7.4** herein.

4.3.6 Claims for Additional Cost and/or Time. General. If Design-Builder wishes to make a Claim for an increase in the Contract Sum and/or Contract Time, Design-Builder shall provide written notice as provided in Paragraph **4.3.3** herein. Prior notice is not required for Claims relating to an emergency endangering life or property.

4.3.6.1 Content of Claim. A claim by Design-Builder must include all of the following:

(1) A statement that it is a Claim and a request for a decision on the Claim;
(2) A detailed description of the act, error, omission, unforeseen condition, event, or other circumstance giving rise to the Claim.
(3) If the Claim involves an adjustment to the Contract Sum or Contract Time due to a change in scope, a statement demonstrating that all requisite notices were provided, including, without limitation, timely written notice and a Change Order Request as required by Article 7 herein and timely notice of delay and request for extension of time in accordance with Article 8 herein. If the Claim does not involve an adjustment to the Contract Sum or Contract Time due to a change in scope, a statement

demonstrating that a notice of intent to file the Claim was timely submitted as required above;

(4) A detailed justification for any remedy or relief sought by the Claim including without limitation, a detailed cost breakdown in the form required for submittal of Change Order Requests and actual job cost records demonstrating that the costs have been incurred;

(5) If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents and written substantiation (including, without limitation, a time impact analysis) demonstrating that Design-Builder is entitled to an extension of time under the Contract Documents; and

(6) A written certification signed by a managing officer of Design-Builder's organization, who has the authority to sign contracts and purchase orders on behalf of Design-Builder and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

"I hereby certify under penalty of perjury that I am a managing officer of (Design-Builder's name) and that I have reviewed the Claim presented herewith on Design-Builder's behalf and/or on behalf of (Design Consultant’s or Subcontractor's name) and that, to the best of my knowledge after conducting a diligent inquiry into the facts of the Claim, the following statements are true and correct:

The facts alleged in or that form the basis for the Claim are, to the best of my knowledge following diligent inquiry, true and accurate; and,

(a) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(b) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Design-Builder and by any Design Consultant or Subcontractor, of any tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages suffered by Design-Builder and/or such Design Consultant or Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(c) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Design-Builder and the Design Consultant or Subcontractor of any tier, that is asserting all or any portion of the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Design-Builder and/or such Design Consultant or Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and

(d) I have not received payment from Agency for, nor has Design-Builder previously released Agency from, any portion of the Claim."

Signature: _____ **Date:** _____

Name: _____

Title: _____

Company: _____

4.3.6.2 Noncompliance. Failure to submit any of the information, documentation, or certifications required above shall result in the Claim being returned to Design-Builder without any decision.

4.3.6.3 Remedies Related to Delays.

(1) For Claims relating to Excusable Compensable Delays, as defined in Paragraph 8.2.2 herein, Design-Builder may be entitled to an equitable adjustment of the Contract Sum and Contract Time, provided Design-Builder otherwise complies with this Paragraph.
(2) For Claims relating to Excusable Non-Compensable Delays, as defined in Paragraph 8.2.1 herein, Design-Builder may be entitled to an equitable adjustment of the Contract Time, subject to the limitations set forth in Article 8 below, but shall

not be entitled to adjustment of the Contract Sum.

(3) For Claims relating to extensions of the Contract Time due to rain delays/inclement weather, Design-Builder shall not be entitled to adjustment of the Contract Time unless and until the number of unworkable days due to the effects of rain/inclement weather exceed the number of days set forth in Paragraph 8.2.1.2 below. In such event, the Contract Time shall be equitably adjusted, but Design-Builder shall not be entitled to adjust of the Contract Sum.

4.4 Dispute Resolution.

4.4.1 Claims. This Paragraph applies to any Claim arising from or related to the Contract or performance of the Work. “Claim” means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner under the Contract for this Project; (B) payment by the Owner of money or damages arising from work done by, or on behalf of, the claimant pursuant to the Contract for this Project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; and (C) payment of an amount that is disputed by the Owner.

4.4.2. Form and Contents of Claim.

4.4.2.1. The Contractor’s written claim must be submitted via registered mail or certified mail with return receipt requested and must identify itself as a “Claim” under this Paragraph and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the Claim’s accuracy. The Claim shall be submitted to the Project Manager and the Owner within thirty (30) calendar days of receiving the Owner’s written decision, or the date the Contractor contends such decision was due, and shall be priced like a Change Order according to Paragraph 7.7, and must be updated monthly as to cost and entitlement if a continuing Claim. Routine contract materials, for example, correspondence, requests for information, change order requests, or payment requests shall not constitute a Claim. The Contractor shall bear all costs incurred in the preparation and submission of a Claim.

4.4.2.2. Upon receipt of a Claim, the Project Manager and the Owner shall conduct a reasonable review of the Claim. Within 45 days, or such extended period as the Owner and the Contractor may agree, the Project

Manager or the Owner shall provide the Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed.

4.4.2.3. If the Owner's governing body must approve the Owner's response to the Claim and the governing body has not met within the 45-day (or extended) period, then the Owner shall provide its written statement within three (3) days of the governing body's meeting.

4.4.2.4. The Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.

4.4.2.5. Claims must be submitted on or before the day of final payment. Claims not submitted before final payment are deemed waived.

4.4.2.6. Notwithstanding and pending the resolution of any Claim or dispute, the Contractor shall diligently prosecute the disputed work to final completion in accordance with the Project Manager's determination.

4.4.3. Informal Conference After Claim Submission.

4.4.3.1. If the Contractor disputes the Owner's response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. The Owner shall schedule such a meet and confer conference within 30 days for settlement of the dispute.

4.4.3.2. Within ten (10) days of the meet and confer conference, the Owner shall provide the Contractor with a written statement identifying the portion(s) of the Claim that remain in dispute and the portion(s) that are undisputed.

4.4.3.3. The Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of any written statement identifying an undisputed portion.

4.4.4. Mediation.

4.4.4.1. If the Contractor disputes the Owner's statement provided under subparagraph 4.4.3.2 it shall inform the Owner and the parties shall mutually agree to a mediator within 10 business days of the date of the written statement. If the parties 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.

4.4.4.2. Mediation shall be confidential and non-binding. Unless otherwise agreed by the parties or as provided in this Paragraph 4.4, the mediation shall be pursuant to the construction mediation procedures of JAMS and held at the JAMS office closest to the Project site.

4.4.4.3. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of mediation and upon notice to the other party, exchange relevant, non-privileged Project documents in compliance with Code of Civil Procedure Sections 2031.010, et seq. The parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et seq. The mediator will undertake to resolve any discovery disputes relating to the mediation.

4.4.4.4. For Claims under $375,000, unless the parties agree otherwise in writing, mediation pursuant to this Paragraph 4.4 shall excuse the mediation obligation under Public Contract Code Section 20104.4(a).

4.4.4.5. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be resolved as otherwise provided by the Contract and applicable law.

4.4.4.6. Following receipt of a Claim, the parties may mutually agree, in writing, to waive the mediation requirements of this Paragraph 4.4.4.6 and proceed to the commencement of a civil action.

4.4.4.7. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion.

4.4.5. Dispute Procedures for Claims Under $375,000 (PCC §§ 20104, et seq.)

4.4.5.1. Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than $375,000, which are set forth below, and constitute a part of this Contract.

4.4.5.2. For the purposes of this Paragraph, “Claim” means a separate demand by the Contractor of $375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of the Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by the Owner. In order to qualify as a Claim, the written demand must state that it is a Claim submitted under Paragraph 4.4 of these General Conditions and be submitted in compliance with all requirements of Paragraph 4.4 of these General Conditions. Separate Contractor Claims that together total more than $375,000 do not qualify as a “separate demand of $375,000 or less,” as referenced above, and are not subject to this Paragraph.

4.4.5.3. A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim for purposes of this Paragraph. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under this Paragraph by submitting a separate claim in compliance with Contract Documents claim submission requirements.

4.4.5.4. Caution. This Paragraph does not apply to tort claims, and nothing in this Paragraph is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.

4.4.5.5. Procedure.

4.4.5.5.1. The Claim must be in writing, submitted in compliance with all requirements of these General Conditions, Paragraph 4.4, including, without limitation, the time prescribed by and including the documents necessary to substantiate the Claim, pursuant to General Conditions, sub-paragraph 4.4.2. Claims must be filed on or before the day of final payment. Nothing in this Paragraph is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in these General Conditions, Paragraph 4.4, or elsewhere in the Contract Documents.

4.4.5.5.2. For Claims of fifty thousand dollars ($50,000) or less, Owner shall respond in writing within forty-five (45) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with

this Paragraph upon mutual agreement of Owner and Claimant. Owner's written response to the Claim, as further documented, shall be submitted to Claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

4.4.5.5.3. For Claims over Fifty Thousand Dollars ($50,000) and less than or equal to $375,000: Owner shall respond in writing within sixty (60) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this Paragraph, upon mutual agreement of Owner and Claimant; Owner's written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

4.4.5.5.4. Meet and Confer: If Claimant disputes Owner's written response, or Owner fails to respond within the time prescribed above, Claimant shall notify Owner, in writing, either within fifteen (15) days of receipt of Owner's response or within fifteen (15) days of Owner's failure to timely respond and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand Owner will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

4.4.5.5.5. Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided under the Contract Documents and applicable law.

4.4.6. Other Matters

4.4.6.1. The provisions of this Paragraph 4.4 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code claim. Contractor shall bear all costs incurred in the preparation, submission, and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the Claims procedure herein and the previous dispositions under subparagraphs 4.4.3 and 4.4.4

above of the claims asserted. No suit may be brought against Owner arising out of or in connection with the Contract unless and until Contractor presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910, et seq. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion, or termination of the contract, whichever occurs first. In all other respects, the Government Code shall apply unchanged.

4.4.6.2. Failure to submit and administer Claims as required in Paragraph 4.4 shall waive Contractor's right to claim on any specific issues not included in a timely submitted Claim. Claim(s) or issue(s) not raised in a timely protest and timely Claim submitted under this Paragraph 4.4 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

4.4.6.3. The Contractor shall submit Subcontractor claims in the same manner as other Claims. In the event a Subcontractor (on behalf of the Subcontractor or a lower-tier subcontractor) requests the Contractor in writing to present a Claim to the Owner and furnishes reasonable documentation supporting the Claim, the Contractor shall, within 45 days of receipt of the written request, notify the Subcontractor in writing as to whether the Contractor presented the claim to the Owner and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not doing so.

4.4.6.4. All waivers or modifications of this Paragraph 4.4 may only be made in a writing signed by the Owner and the Contractor, and approved as to form by legal counsel for both. Oral or implied modifications shall be ineffective.

4.4.6.5. Any failure by the Owner to respond within any time frame contained in subparagraphs 4.4.3 through 4.4.5 of this Paragraph shall result in the Claim being deemed rejected in its entirety. No failure to meet a time requirement shall constitute an adverse finding with regards to the merits of the Claim or the responsibility or qualifications of the Contractor.

4.4.7. Compliance with Statutory Procedures. The foregoing provisions of Paragraph 4.4 and all subparagraphs thereto are intended to comply with Public Contract Code Section 9204 and, to the extent applicable, Public Contract Code Section 20104, et seq. In the event of any conflict, the applicable Public Contract Code provision will apply.

ARTICLE 5 – SUBCONTRACTORS AND DESIGN CONSULTANTS

5.1 Award of Subcontracts and Other Contracts for Portions of the Work.

5.1.1 Subcontractor Bidding Procedures. Following award of the design-build contract, the design-build entity shall comply with PCC §22166 in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work. The Design-Build entity must establish reasonable qualification criteria for selection of Subcontractors. Once a Subcontractor approved by the Agency has been selected for any such Work, Design- Builder shall not have the right to make any substitution of such Subcontractor except in accordance with the provisions of the Subcontracting Fair Practices Act, Public Contract Code § 4100 et seq.

5.1.1.1 Substitution Process. Any request of the Design-Builder to substitute a listed Subcontractor will be considered by the Agency only if such request is in strict conformity with this Paragraph and California Public Contract Code § 4107. All costs and fees incurred by the Agency in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Design-Builder; such costs and fees may be deducted by the Agency from the Contract Sum then or thereafter due the Design-Builder.

5.1.1.2 Responsibilities of Design-Builder Upon Substitution of Subcontractor. Neither the substitution nor the Agency's consent to Design-Builder's substitution of a listed Subcontractor shall relieve Design-Builder from its obligation to complete the Work within the Contract Time and for the Contract Sum. In the event that the Agency determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Agency shall promptly notify the Design-Builder, in writing, of such requirement and the time for Submittal. In the event that the revised or additional Submittals are not submitted by Design-Builder within the time specified, Design-Builder shall be solely responsible for delays in the Work arising from the untimely submittal. Design-Builder shall reimburse the Agency for all fees and costs incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this paragraph; the Agency may deduct such fees and costs from any portion of the Contract Sum then or thereafter due the Design-Builder. In the event that additional or revised Submittals are required pursuant to this Section, such requirement shall not result in an increase to the Contract Time or the Contract Price.

5.2 Design Consultant and Subcontractor Relations.

5.2.1 Agreements. By appropriate written agreement, the Design-Builder shall require each Design Consultant and Subcontractor, to the extent of the Work to be performed by the Design Consultant and Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all the obligations and responsibilities, including the responsibility for safety of the Design Consultant or Subcontractor's Work, which the Design-Builder, by Contract

Documents, assumes toward the Agency. Each such agreement shall preserve and protect the rights of the Agency under the Contract Documents with respect to the Work to be performed by the Design Consultant or Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Design Consultant or Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Agency. The Design-Builder shall require each Design Consultant or Subcontractor to enter into similar agreements with their Sub-subcontractors. The Design-Builder shall make available to each proposed Design Consultant or Subcontractor, prior to the execution of the agreement, copies of the Contract Documents to which the Design Consultant or Subcontractor will be bound by this Paragraph. At a minimum, each agreement shall:

(1) Require that the Work being performed pursuant to such agreement, as the case may be, be performed in accordance with the requirements and intent of the Contract Documents and provide no less than five percent (5%) retainage unless otherwise indicated in Agreement Between the Agency and Design-Builder;
(2) Require submission of Applications for Payment in the form required by the Contract Documents, together with invoices and billings supporting such applications and conditional and unconditional lien releases in the form required by the Contract Documents completed by it and by its Design Subconsultants and/or Sub-Subcontractors as a condition to the disbursement of any progress payment next due and owing to it;
(3) Require the Design Consultant, Design Subconsultant, Subcontractor, Sub-Subcontractor, or supplier, as the case may be, to maintain insurance coverage as provided in the Contract Documents and to file required certificates of such coverage and additional insured endorsements with Agency, and, upon Agency’s request, to provide copies of such insurance policies to Agency;
(4) Require each Design Consultant, Design Subconsultant, Subcontractor, Sub-Subcontractor, and supplier to furnish to Design- Builder or the applicable Subcontractor, as the case may be, in a timely fashion all information necessary for transmittal of Submittals and the reports required herein;
(5) Require that each Design Consultant, Design Subconsultant, Subcontractor, Sub-Subcontractor, and supplier continue to perform under its subcontract if the Contract is terminated and if Agency takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance;

(6) Require each Design Consultant, Design Subconsultant, Subcontractor, Sub-subcontractor, and supplier to remove all debris created by its activities;
(7) Provide that in the event that Agency accepts the conditional assignment of the subcontract, Agency shall only be responsible to the Design Consultant or Subcontractor for those obligations that accrue subsequent to Agency's acceptance of the assignment; and
(8) Require the Design Consultant or Subcontractor to resolve all disputes involving Agency according to the dispute resolution procedure established in Paragraph 4.4 herein.

5.2.1.1 As a condition to the Agency's obligation to make progress payments to Design-Builder, Design-Builder shall, within a reasonable time after execution, submit a copy of each agreement Design-Builder enters into with Design Consultants and/or Subcontractors.

5.2.1 Precedence. If any provision of any subcontract or supply agreement is inconsistent with any provision of the Contract Documents or the intent of the Contract Documents, then the Contract Documents shall control.

5.2.2 Payments. Agency hereby reserves the right, upon written notice to Design-Builder, to make, at any time, and from time-to-time, payments directly to each Subcontractor, and, if such rights shall be exercised by Agency, then such amount shall be credited against the Contract Sum due to Design-Builder hereunder and Agency shall be relieved and released from the obligation to make such payment to Design-Builder and Design-Builder shall be relieved and released as to Agency from the obligation to make such payments to each Design Consultant or Subcontractor paid by Agency, but not from any of the other obligations and responsibilities of Design-Builder to Agency under the Contract Documents.

5.3 Contingent Assignment of Design Consultant, Subcontractor and Material Supply Agreements.

Each Design Consultant, Subcontractor, and supplier agreement for a portion of the Work is assigned by the Design-Builder to the Agency provided that:

(1) Assignment is effective only after termination of the Contract by the Agency only for those subcontracts which the Agency accepts by notifying the Design Consultant, Subcontractor or supplier, and Design- Builder in writing;
(2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract; and
(3) Upon exercise of this right of assignment, Agency has the right to reassign the agreement.

5.4 Arm's Length Transactions and Commercially Useful Function of Design Consultants, Subcontractors and Suppliers.

5.4.1 To assure competitive Proposals and to assure that no Proposal rigging, unfair practices, collusion or conflicts of interest occur in connection with the Work, Design-Builder agrees that all agreements between Design-Builder and Design Consultants, Subcontractors and suppliers for performance of the Work shall be pursuant to arm's length transactions, with unrelated and unaffiliated firms (a "related" or "affiliated" firm is one which is subject to the control of the same persons through joint ownership or otherwise). In all such agreements, each firm shall act in its own best interest, for compensation that reflects the fair market values of the materials or services that are the subject of the transaction.

5.4.2 Design-Builder further agrees that each Design Consultant, Subcontractor and supplier for the Work will perform a commercially useful function (i.e. is responsible for the performance, management and supervision of a distinct element of the Work). A Design Consultant, Subcontractor or supplier does not perform a commercially useful function when, for example: the Work is outside the firm's experience or qualifications; the firm provides little or no supervision of the Work; more than fifty percent (50%) of the Work designated to be performed by a Subcontractor is performed by a Sub-subcontractor or supplier; the Subcontractor only purchases materials while performing little or no Work; the firm works for only one prime contractor; or the same employees work for the firm and the Design-Builder.

5.4.3 If, upon Agency's request, Design-Builder fails to provide adequate assurances of arm's length transactions or that all Design-Consultants, Subcontractors and suppliers will perform a commercially useful function, Design-Builder shall remove such Design Consultant, Subcontractor or supplier from the Project, exclude the cost associated with such firm from all Applications for Payment and change order requests and, if necessary, propose another Design Consultant, Subcontractor or supplier to whom the Agency has no objection, without increase to the Contract Sum or Contract Time.

ARTICLE 6 – CONSTRUCTION BY AGENCY OR BY SEPARATE CONTRACTORS

6.1 Agency's Right to Perform Construction and to Award Separate Contracts.

6.1.1 Agency's Right to Perform. The Agency reserves the right to perform construction or operations related to the Project with the Agency's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. If the Design-Builder claims that delay or additional cost is involved because of such action by the Agency, the Design-Builder shall make such Claim as provided in Paragraph **4.3** herein.

6.1.2 Interpretation of Contract Documents. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "contractor" in the Contract Documents in each case shall mean the Agency's Separate Contractor who executes each Separate Contractor agreement.

6.1.3 Coordination. The Agency shall provide for coordination of the activities of the **Agency's** own forces and of each Separate Contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate

with other Separate Contractors and the Agency in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the Project Schedule deemed necessary after a joint review and mutual agreement. Upon Agency's written approval, the revised Project Schedule shall then constitute the schedule to be used by the Design-Builder, Separate Contractors, and the Agency until subsequently revised and approved by Agency.

6.2 Agency's Right to Clean Up.

If a dispute arises among the Design-Builder, Separate Contractors, and the Agency as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Agency may clean up and allocate the cost among those responsible.

6.3 Independent Testing

6.3.1 Agency Testing. The Agency will employ and pay for services of an independent testing laboratory to perform services specifically required by the governing code authority, and as additionally requested by Agency.

6.3.2 Design-Builder Duties. The Design-Builder shall:

(1) Notify the Agency and the testing laboratory sufficiently in advance of the required test to allow for its assignment of personnel and scheduling of tests;
(2) Cooperate with testing and inspection personnel, provide access to the work and to off-Site fabrication facilities;
(3) Furnish copies and records of mill test reports;
(4) Employ and pay for services of the same independent testing laboratory to perform additional inspections, sampling, and testing required when initial tests indicate Work does not comply with Contract requirements;
(5) Be responsible for all scheduling of inspections and tests; and
(6) Not proceed with Work requiring inspection if the appropriate inspector is absent.

ARTICLE 7 – CHANGES IN THE WORK

7.1 General.

7.1.1 Agency's Right to Order Changes. The Agency, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order or Construction Change Directive and Design- Builder shall perform such changes in the Work according to the applicable requirements of the Contract Documents.

7.1.2 Basis for Agreement. A Change Order shall be based upon agreement among the Agency and Design-Builder. A Construction Change Directive may or may not be agreed to by the Design-Builder.

7.1.3 No Estoppel. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Design-Builder shall proceed promptly with the change, unless otherwise provided in the Change Order or Construction Change Directive. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Construction Change Directive. Accordingly, no verbal directions, course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work and no Claim that the Contract has been abandoned or the Agency has been unjustly enriched by any alteration or addition to the Work shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.2 Change Orders.

7.2.1 Computation. Methods used in determining adjustments to the Contract Sum by Change Order may include those listed in Paragraph **7.4** below.

7.2.2 Accord and Satisfaction. Agreement on any Change Order shall be a full compromise and settlement of all adjustments to Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing Site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called “Impacts”), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. By execution of any Change Order, Design-Builder agrees that the Change Order constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Change Order. No action, conduct, omission, product failure or course of dealing by the Agency shall act to waive, modify, change, or alter the requirement that (i) Change Order’s must be in writing, signed by the Agency and Design-Builder and; (ii) that such written Change Orders are the exclusive method for effectuating any change to the Contract Sum and/or Contract Time.

7.3 Construction Change Directives.

7.3.1 Use. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. The Agency may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contact Time being adjusted accordingly.

7.3.2 Duty to Proceed. Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in Work involved and advise the Agency of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.3 Disagreement. If the Design-Builder does not indicate its disagreement

with the method of pricing provided in the Construction Change Directive within seven (7) calendar days of issuance of the Construction Change Directive, Design-Builder shall be deemed to agree with the method of pricing the change. If the Design-Builder indicates its disagreement with the method of pricing or if no method of pricing is provided in the Construction Change Directive, the increase in cost or credit to the Contract Sum for the change shall be determined by cost in accordance with Subparagraph 7.4.1(3) and the provisions of Subparagraphs 7.4.2, 7.4.3 and 7.4.4 shall apply to the change.

7.3.4 Agreement. A Construction Change Directive is effective immediately whether or not it is signed by the Design-Builder. If the Design-Builder signs a Construction Change Directive such agreement shall be effective immediately and shall be recorded as a Change Order.

7.4 Computation of Cost or Credit for Changes.

7.4.1 Cost or Credit. The cost or credit to the Agency resulting from a change in the Work shall be determined by Agency by one or more of the following methods:

(1) Mutual acceptance of a lump sum proposal from Design-Builder properly itemized and supported by sufficient substantiating data to permit evaluation. Such lump sum shall be based solely on Allowable Costs, as defined in Paragraph 7.4.3, and Allowable Mark-Ups, as defined in Paragraph 7.4.5, and shall not include any costs or expense that is not permitted by the terms of any provisions of the Contract Documents;

(2) Unit prices contained in Design-Builder's original **Proposal** and incorporated in the Contract Documents or fixed by subsequent agreement between Agency and Design-Builder. Unless otherwise stated in the **RFP** Documents, unit prices stated in the Contract Documents or agreed upon by the Agency and Design-Builder shall be deemed to include and encompass all Allowable Mark-Ups;

(3) Time and Materials. By calculating the actual Allowable Costs directly incurred, plus a sum for Allowable Mark-Ups on such Allowable Costs.

(4) Credit for Deletion of Work. Credits for Deleted Work.

(i) Agency has the right, in its sole discretion, to determine whether any or all of the Work described in the Contract Documents shall be deleted or whether to terminate Design-Builder's performance, in whole or in part, under the Contract Documents without any penalty being incurred by Agency.

(ii) When Work is deleted from the Contract, the value for such deleted Work established in the Agency approved detailed Schedule of Values shall be used to calculate the credit amount, less the value of any Work of such item performed, and shall have at least seven percent (7%)

markup of such costs included as a credit for the Design-Builder's saved General Conditions Costs and a proportionate share of home office overhead and profit attributable to such deleted Work.

7.4.2 Design-Builder Maintenance of Daily Records for Changes.

7.4.2.1 In the event that Design-Builder is directed to perform any Extra Work, or should Design-Builder encounter conditions which the Design-Builder believes would obligate the Agency to adjust the Contract Sum and/or the Contract Time, Design-Builder shall maintain detailed records of the cost of such changes on a daily basis summarized in a daily report supplemented by back-up records. Such records shall include without limitation.

(1) Labor. At the close of each day on which such Extra Work is performed, Design-Builder shall submit an Extra Work labor report to Agency Project Manager that sets forth a list of the actual hours spent in performing the Extra Work, that clearly differentiates between the labor expended on the Extra Work and other Work, and the Allowable Costs for such Extra Work performed that day showing the names of workers, their classifications, hours worked and hourly rates.

(2) Materials, Equipment. A list of Allowable Costs of materials and equipment consumed in the performance of the Extra Work on the day on which such Extra Work is performed, together with copies of applicable delivery tickets and unit prices for all materials and for all equipment used the type of equipment, identification number, hours of operation (including loading and transportation) and hourly/daily rates involved for that day.

(3) Other Services or Expenditures. A list of other services and expenditures constituting Allowable Costs incurred in performance of the Extra Work on the day on which such Extra Work is performed, along with documentation verifying the amounts thereof in such detail as Agency Project Manager may require.

7.4.2.2 In the event that more than one change to the Work is performed by the Design-Builder in a calendar day, Design-Builder shall maintain separate records of labor, construction equipment, materials, and equipment for each such change. In the event that any Design Consultant or Subcontractor of any tier shall provide or perform any portion of any change to the Work, Design-Builder shall require that each such Design Consultant or Subcontractor maintain records in accordance with this Section.

7.4.2.3 Each daily record maintained hereunder shall be signed by Design-Builder; such signature shall be deemed Design-Builder's representation and warranty that all information contained therein is true, accurate, complete, and relates only to the change referenced therein. All records maintained by Design Consultants

and Subcontractors of any tier, relating to the costs of a change in the Work shall be signed by such Design Consultant's or Subcontractor's authorized project manager or superintendent.

7.4.2.4 All such records shall be forwarded to the Agency Project Manager on the day the Work is performed (same day) for independent verification. The Agency Project Manager shall attempt to review and reconcile costs for changes on a daily basis. Records not available on the day on which the Extra Work is performed, such as, but not limited to, material invoices, shall be submitted as soon as they are available but not later than five (5) calendar days after the earlier of the day of delivery or incorporation of the particular item of Extra Work at the Site.

7.4.2.5 The Agency Project Manager may additionally require authentication of all time and material tickets and invoices by persons designated by the Project Manager for such purpose. In the event that Design-Builder shall fail or refuse, for any reason, to maintain or make available for inspection, review, and/or reproduction such records, adjustments to the Contract Sum or Contract Time, if any, on account of any change to the Work may be deemed waived for that day. Design-Builder's obligation to maintain back-up records hereunder is in addition to, and not in lieu of, any other Design-Builder obligation under the Contract Documents with respect to changes to the Work.

7.4.2.6 Waiver by Design-Builder. Failure to submit such records as are required by this Paragraph daily shall waive any rights for recovery of Allowable Costs incurred for Extra Work performed that day. The failure of the Design-Builder to secure any required authentication shall, if the Agency elects in its sole discretion to treat it as such, constitute a waiver by the Design- Builder of any right to adjustment of the Contract Sum for the Allowable Cost of all or that portion of the Extra Work covered by such non-authenticated ticket or invoice.

7.4.3 Allowable Costs.

7.4.3.1 The term "Allowable Costs" shall mean in the case of Extra Work actual costs incurred by Design-Builder and/or any Design Consultant or Subcontractor, regardless of tier, and necessarily involved in direct performance of the Extra Work, or in the case of deleted work the actual costs that would have been incurred in performing deleted work by Design-Builder and/or any Design Consultant or Subcontractor, regardless of tier, and shall be limited to the following costs:

(1) Labor. Straight-time wages or salaries, and overtime wages and salaries specifically authorized by Agency in writing, for employees employed at the site, or at fabrication Site off the site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the deleted work, based on the actual cost for wages prevailing locally for each craft or type of workers at the time the Extra Work is done or the deleted work is ordered eliminated. Labor costs for

equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The use of labor classification which would increase the Allowable Cost for Extra Work will not be permitted unless Contractor establishes the necessity for such additional costs.

(2) Benefits. Payroll taxes, insurance, health and welfare, pension, vacation, apprenticeship funds and benefits required by lawful collective bargaining agreements for employees on straight-time wages or salaries, and on overtime wages and salaries specifically authorized by Agency in writing, for employees employed at the site, or at fabrication Site off the site, in the direct performance of the Extra Work or that would have been incurred in the direct performance of the deleted work.

(3) Materials, Consumables. Costs of materials and consumable items which are furnished and incorporated into the Work, as approved by Agency, or that would have been incorporated into the Work in the case of deleted work shall be at the lowest price available to Design-Builder but in no event shall such costs exceed competitive wholesale prices obtainable from other Design Consultants, Subcontractors, suppliers, manufacturers and distributors in the general vicinity of the site. If Agency determines, in its discretion, that the cost of materials is excessive, or if Design-Builder fails to furnish satisfactory evidence of the cost from the actual supplier thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Agency reserves the right to furnish such materials as it deems advisable, and Design-Builder shall have no claim for costs or profits on materials so furnished.

(4) Taxes. Sales taxes on the costs of materials and consumable items described in Paragraph 7.4.3.1.3 above.

(5) Tool, Equipment Rental. Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by Agency, exclusive of hand tools, used directly in the performance of the Extra Work or that would have been used in the direct performance of the deleted work. Regardless of ownership, such rental charges shall not exceed the hourly rate derived from the most recently published CalTrans Equipment Rates website (https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surcharge), which is in effect at the time of commencement of the changed work (the “Blue Book”). Contractor shall attach a copy of the rate schedule to the daily reports required by Paragraph 7.4.2, above. The charges for any

machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work or deleted work. No charge shall be allowed for use of equipment or tools which have a replacement value of $500 or less. The allowable rental rates shall include the cost of fuel, power oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Notwithstanding the provisions of Paragraph 7.4.5 below, no markup shall be allowed for overhead, profit or bond premiums for use of equipment if the equipment is supplied by an equipment rental firm. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to Agency than holding it at the Site, it shall be returned, unless Design-Builder elects to keep it at the Site at no expense to Agency. Costs incurred while equipment is inoperative due to breakdowns, regular maintenance, or for non-Working Days shall not be allowed. The rental time shall include the time required to move the equipment to the Work from the nearest available source for rental of such equipment and to return it to the source. If such equipment is not moved by its own power, then loading and transportation will be allowed. Neither moving time nor loading and transportation costs will be paid if the equipment is for use on the Project unrelated to the Extra Work. All equipment shall be acceptable to Agency, in good working condition, and suitable for the purpose for which it is to be used.

(6) Royalties. Additional or saved costs of royalties due to the performance of the Extra Work or deleted work.

(7) Insurance, Bonds. Additional or saved costs of insurance and bonds, provided, however, that for Extra Work such costs shall not exceed one percent (1%) of Items 1 through 6 above.

7.4.4 Costs Not Allowed.

Allowable costs shall not include any of the following:

(1) Wages, salaries, fringe benefits and payroll taxes of Design-Builder's and all Design Consultants and Subcontractor's non-craft labor (above a Foreman level);

(2) Overhead, administrative or general expenses of any kind including engineering, estimating, scheduling, drafting, detailing, etc., incurred in connection with Extra Work;

(3) Vehicles not dedicated solely for the performance of the extra of deleted work;

(4) Small tools (replacement value not exceeding $500);

(5) Office expenses, including secretarial and administrative staff, materials and supplies;
(6) On-site and off-site trailer and storage rental and expenses;
(7) Site fencing;
(8) Utilities, including gas, electric, sewer, water, telephone, telefax, copier equipment;
(9) Computer and data processing personnel, equipment and software;
(10) Federal, state of local business income and franchise taxes;
(11) Losses of efficiency or productivity; and
(12) Costs and expenses of any kind or item not specifically andexpressly included in Paragraph **7.4.3**

7.4.5 Allowable Mark-Up.

7.4.5.1 If the Net Cost of Extra Work is less than or equal to $25,000, the Allowable Mark-Up shall be computed as follows unless a Subcontractor can demonstrate to the satisfaction of Agency, that such Subcontractor's standard accounting practices require a different method of calculation:

(1) For Extra Work performed directly by the Design-Builder's forces, the added cost for all expenses of overhead, profit, bond and insurance ("Allowable Mark-Up") shall not exceed fifteen percent (15%) of the net cost of the Extra Work.
(2) For Extra Work performed by a Design Consultant or Subcontractor, the added cost of combined expenses, Allowable Mark-Up for Design-Builder and all Design Consultant(s) and Subcontractor(s) shall not exceed twenty percent (20%) of the net cost of all Design Consultant(s)'s and Subcontractor(s)'s Extra Work.

7.4.5.2 If the net cost of Extra Work is greater than $25,000 and less than or equal to $100,000, the Allowable Mark-up shall be computed as follows unless a Subcontractor can demonstrate to the satisfaction of Agency, that such Subcontractor's standard accounting practices require a different method of calculation:

(1) For Extra Work performed directly by the Design-Builder's forces the added cost for Allowable Mark-Up shall not exceed twelve percent (12%) of the net cost of the Extra Work.
(2) For Extra Work performed by a Design Consultant or Subcontractor, the added cost of combined expenses for Allowable Mark-Up for Design- Builder and all Design Consultants and Subcontractor(s) shall not exceed seventeen percent (17%) of the net cost of all Design Consultant(s)'s and Subcontractor(s)'s Extra Work.

7.4.5.3 If the net cost of Extra Work is greater than $100,000,

the Allowable Mark-up shall be computed as follows unless a Subcontractor can demonstrate to the satisfaction of Agency, that such Subcontractor's standard accounting practices require a different method of calculation:

(1) For Extra Work performed directly by the Design-Builder's forces the added cost for Allowable Mark-Up shall not exceed ten percent (10%) of the net cost of the Extra Work.
(2) For Extra Work performed by a Design Consultant or Subcontractor, the added cost of combined expenses for Allowable Mark-Up for Design- Builder and all Design Consultant(s)'s and Subcontractor(s) shall not exceed fifteen percent (15%) of the net cost of all Design Consultant(s)'s and Subcontractor(s)'s Extra Work.

7.4.6 Net Allowable Costs. If any single scope change involves both Extra Work and deleted work in the same portion of the Work and the additive allowable costs exceed the deductive allowable costs, the Allowable Mark-Ups on the Extra Work will be only the difference between the two amounts.

7.4.7 Payment of Undisputed Amounts. Pending final determination of the total cost of a Change, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an approved Change Order or Work Directive, indicating the Parties' agreement with part or all of such costs.

7.5 Authority to Approve Changes.

7.5.1 Agency's Project Manager's Authority. The Agency's Project Manager is not authorized to sign change orders. The CEO/General Manager must authorize any changes in the Work and all change orders must be signed by the CEO/General Manager. Such changes shall be effected by written order and shall be binding on the Design-Builder.

7.5.2 Unauthorized Work. Any Work performed by the Design-Builder not indicated on the Contract Documents or any changes in the Work performed or provided by the Design-Builder without written authorization from the Agency shall be considered unauthorized by the Agency and performed at the sole expense of the Design-Builder. Unauthorized work so performed will not be measured or paid for, and no extension of Contract Time will be granted on account thereof. Any such unauthorized work may be ordered removed at the Design-Builder's sole cost and expense. The failure of the Agency to direct or order removal of such unauthorized work shall not constitute acceptance or approval of such work nor relieve the Design-Builder from any liability on account thereof.

7.6 Agency Originated Request for Itemized Change Order Proposal.

Agency may issue a Construction Change Directive or other request, in writing, to Design-Builder, describing a proposed change to the Work and requesting the Design-Builder submit an itemized change order proposal in a format acceptable to Agency

within **ten (10) calendar days** after Agency issues the request. The Design-Builder's change order proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, change Work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in the Agreement and/or Paragraph **7.4** herein), and Design-Builder's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Design-Builder fails to submit a written change order proposal within such period of time, it shall be presumed that the change described in the Agency's original proposal request will not result in an increase to the Contract Sum or Contract Time, and the change shall be performed by Design-Builder without additional compensation. Agency's request for an itemized change order proposal does not authorize the Design-Builder to commence performance of the change, unless otherwise specified in writing. If Agency desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Construction Change Directive procedures set forth above.

7.7 Design-Builder Originated Change Order Request (COR).

If the Design-Builder believes that instructions issued by the Agency after the effective date of the Contract may result in changes to the Contract Sum or Contract Time or if the Design-Builder otherwise becomes aware of the need for or desirability of a change in the Work, Design-Builder may submit a written Change Order Request ("COR") to the Agency in writing, in a format acceptable to Agency and in accordance with the notice provisions and other requirements of Paragraph **4.3** above for Claims. The COR must specify the reasons for the proposed change, cost impacts, and relevant circumstances and impacts on the Project Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the Costs and credits claimed by the Design-Builder. A CPM schedule analysis is required to support and justify any additional Time of performance requested by the Design-Builder. The Agency will not review any COR which is incomplete. The Design-Builder may request additional compensation and/or time through a COR but not for instances that occurred more than ten **(10) calendar days** prior to the notice date. Design-Builder's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within **thirty (30) calendar days** of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the Agency will be incorporated in a Change Order or Construction Change Directive. If the COR is denied but the Design-Builder believes that it does have merit, the Design-Builder shall proceed with the disputed Work and may submit a Claim in accordance with the procedures set forth herein.

7.8 Continued Performance of Disputed Work.

In the event of a dispute as to whether a change to the Work is required, the Agency shall have the right to unilaterally issue a Work directive; Design-Builder shall continue performance of disputed Work pending resolution and shall maintain and submit to

Agency all accounting and cost data necessary to substantiate Design-Builder's cost of such disputed Work.

ARTICLE 8 – TIME

8.1 Progress and Completion.

8.1.1 Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and any Modifications relating to Substantial Completion or Contract Time the Design-Builder agrees and confirms that the Contract Time is a reasonable period for performing the Work.

8.1.2 Commencement. The Design-Builder is not authorized to perform any Work in the Contract Documents until receipt from the Agency an official notification to commence Work. The date on which the notification is received by the Design-Builder is herein referred to as the Notice to Proceed. The Design-Builder shall commence Work on the Date of Commencement established in the Notice to Proceed is issued. The Notice to Proceed shall be issued after the Contract is properly executed, bonds are furnished and approved, and insurance has been submitted and approved.

8.1.3 Prosecution of the Work. Work shall be continued at all times with such force and equipment as will be sufficient to complete it within the specified time. The Design-Builder expressly proposes that he/she has taken into consideration and made allowances for all ordinary delays and hindrances to the Work to be performed and that he/she will complete the Work within the specified time.

8.1.4 Completion. The Design-Builder shall proceed expeditiously with adequate labor and supervision to achieve Substantial Completion within the Contract Time.

8.2 Delays and Extensions of Time.

8.2.1 Excusable Non-Compensable Delay. The Parties acknowledge that "Force Majeure" events, defined herein, are not within the responsibility or contract of Agency or are reasonable contemplated to by the Parties to occur during the course of performance of the Work, and may impact the schedule for performance of the Work and may entitle Design-Builder to an extension of the Contract Time ("Excusable Non-Compensable Delays"). If the Critical Path of the Work is delayed by Excusable Non-Compensable Delays, provided that such delays did not result from the acts of Design-Builder and further provided that Design-Builder takes reasonable precautions to prevent further delays owing to such causes, then the Contract Time and/or Milestones shall be extended by a Change Order or Construction Change Directive.

8.2.1.1 Sole Remedy. An extension to the Contract Time, Milestones, and/or Substantial Completion date identified in the Contract Documents shall be the Design-Builder's sole remedy for Excusable Non-Compensable delays. In no event shall Design-Builder be entitled to any compensation or recovery of any damages in connection with the Excusable Non-Compensable Delays defined above.

8.2.1.2 Rain Days/Inclement Weather. For purposes of granting time extensions pursuant to this subparagraph and in accordance with the Claims procedures set forth in Paragraph **4.3** herein, resulting from unworkable days due to rain/inclement weather which were not reasonably foreseeable, the Design-Builder and Agency agree that the impact of rainfall/inclement weather for which the Design-Builder is not entitled to a time extension is a total of **ten (10) Work Days per year** ("Rain Days"). The Design-Builder shall account for the above number of Work Days for which the effects of rainfall/inclement weather are expected to prevent Work in the Project Schedule as set forth in Subparagraph **3.10** herein and shall obtain Agency's approval of Design-Builder's use of each Rain Day before requesting extension of the Contract Time.

8.2.2 Excusable Compensable Delays. "Excusable Compensable Delay" means any delay to the Critical Path of the Work occurring after commencement and prior to Substantial Completion of the Work: (1) which directly impacts the date for Substantial Completion established in the Agreement; (2) for which Agency is responsible, is unreasonable under the circumstances involved and not within the contemplation of the Parties; and (3) is not due, in whole or in part, to the breach, negligence, or fault of Design-Builder, its Design Consultants, Subcontractors, or suppliers. Design-Builder's remedy for Excusable Compensable Delay shall be an extension to the date for Substantial Completion and Milestones and reimbursement of actual costs directly resulting from such delays and mark-up established according to Article 7 herein.

8.2.3 Inexcusable Delays. If any delay to the Work is caused by circumstances within the Design-Builder's control, it is not excusable and not compensable, and the Design-Builder will not be entitled to any extension of time or to any other compensation for damages resulting directly or indirectly therefrom.

8.2.4 Concurrent Delays. To the extent the Design-Builder is entitled to an extension of time due to an Excusable Non-Compensable Delay or Excusable Compensable Delay, but the performance of the Work would have been suspended, delayed, or interrupted due to an Inexcusable Delay, the Design-Builder shall not be entitled to any additional compensation whatsoever during the period of such concurrency.

8.2.5 Claim for Additional Time. Any claim for extension of the Contract Time shall be made in writing to the Agency and Agency in accordance with the requirements of Paragraph **4.3** herein.

8.2.6 Shortage of Materials. An extension of time will not be granted by the Agency for a delay caused by a shortage of materials, except Agency -furnished materials, unless the Design- Builder furnishes to the Agency documented proof that the Design-Builder has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Design-Builder shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in Final Completion of the Work which could not be compensated for by revising the sequence of operations. Agency will consider only the physical shortage of material as a cause for extension of time.

The Agency will not consider any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the Agency that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

8.2.7 Utility and Agency Delays. Design-Builder is aware that governmental agencies, gas companies, electrical utility companies, water districts, and other utilities and agencies may be required to approve Design-Builder-prepared drawings or approve a proposed installation. Design-Builder has endeavored and will continue to use its best efforts to include the cost of such anticipated delays and related costs which may be caused by such utilities and agencies in the Contract Sum. Thus, Design-Builder is not entitled to make claim upon the Agency for damages or delays arising from the delays caused by such utilities and agencies. Furthermore, the Design-Builder has included time periods for such governmental approval in the Project Schedule and is not entitled to an extension of time for delays caused by governmental agencies from which Design-Builder must obtain approvals.

8.2.8 Design-Builder Fault. No extension of time will be granted under this Article 8 for any delay to the extent: (i) that performance was so delayed by any Design-Builder induced causes, including but not limited to the fault or negligence of the Design-Builder or its Design Consultants or Subcontractors; or (ii) for which any remedies are provided for or excluded by any other provision of the Contract.

8.2.9 Contract Modification. A Change Order or Construction Change Directive will be issued by the Agency to the Design-Builder within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, and the new date or number of calendar days after the Date of Commencement for completion of the Work or specified portions of the Work.

8.2.10 No Release of Surety. An extension of time granted shall not release the Design-Builder's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until Final Completion of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

8.2.11 No Waiver. Neither the grant of an extension of time beyond the date fixed for Substantial Completion of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for Substantial Completion of the Work, shall be deemed to be a grant of any future extensions, a wavier by the Agency of the Agency's right to abrogate this Contract for abandonment or failure to complete within the time specified, or to impose and deduct damages as may be provided in the Contract Documents.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 Contract Sum.

9.1.1 The Contract Sum, including authorized adjustments, is the total maximum amount payable by the Agency to the Design-Builder for performance of the Work under the Contract Documents.

9.2 Schedule of Values.

9.2.1 Submission. Within **fourteen (14) calendar days** after the Date of Commencement fixed in the Agency's Notice to Proceed, Design-Builder shall submit to the Agency a detailed Schedule of Values allocated to various portions of the Work. The properly balanced Schedule of Values shall be prepared in such a manner that each major item of Work assigned to Design- Builder and to each separate Design Consultant and Subcontractor is shown as a single line item on AIA Document G703 (or other form as required by Agency) and supported by such data to substantiate its accuracy as the Agency may require. The approved Schedule of Values shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

9.2.2 Content. The Schedule of Values shall be in sufficient detail as the Agency's Project Manager may, in his/her discretion, deem necessary to evaluate progress at any point in the performance of the Work. Unless otherwise specified in the Contract Documents, the Schedule of Values shall include, without limitation, a breakdown of the general categories of Design Consultant and Subcontractor work, direct overhead, profit and contingency, and a further breakdown of the general categories of Design Consultant and Subcontractor work into separate trade line items of costs for Design Consultant and Subcontractor services, labor and material, which is based on actual Design Consultant and Subcontractor contract, subcontract, purchase order or vendor prices. If requested by Agency's Project Manager, Design-Builder shall revise the Schedule of Values to allocate sums for Design-Builder overhead, profit and/or contingency among the individual line items for trade portions of the Work. No amounts shall be reflected in the Schedule of Values or Application for Payment for Extra Work or Deleted Work for which a Change Order has not been executed by Design-Builder and Agency or for which a Construction Change Directive has not been issued by Agency. Amounts that have been mutually agreed to by Change Order or unilaterally determined by Agency pursuant to a Construction Change Directive shall be segregated from the cost of the base Contract Work and separately listed by line item in the Schedule of Values. The Schedule of Values must be prepared in sufficient detail and supported by sufficient data to substantiate its accuracy as the Agency's Project Manager may require.

9.2.3 Applications for Payment. The Schedule of Values, when approved by the Project Manager, shall be used as a basis for Design-Builder's Applications for Payment and may be considered as fixing a basis for adjustments to the Contract Sum.

9.2.4 Revisions. If, at any time, it is determined that the Schedule of Values does not allocate the Contract Sum in a manner that reasonably and fairly reflects the actual costs anticipated to be progressively incurred by Contractor, it shall be revised and resubmitted for approval by the Project Manager.

9.3 Applications for Payment.

9.3.1 Marked Schedule of Values. Five (5) calendar days prior to the date set forth in Paragraph **9.3.2** below for the monthly progress payment meeting, Design-Builder shall submit to Agency's Project Manager a copy of the proposed Schedule of Values, marked to show the percentage of completion certified by Design-Builder for each line item in the Schedule of Values, including any stored materials approved for payment by Agency pursuant to Paragraph **9.3.4** below and any withholdings from Design-Builder proposed by Agency's Project Manager. Such Application shall be supported by such data substantiating the Design-Builder's right to payment as the Agency may require.

9.3.1.1 As provided in Article 7 herein, such Applications for Payment may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such Applications for Payment shall not include requests for payment of amounts the Design-Builder does not intend to pay to a Design Consultant, Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

9.3.2 Monthly Review. For the purpose of expediting the progress payment procedure, Design-Builder shall meet with the Agency's Project Manager on or before the twentieth (20th) day of each month to review the Design-Builder's marked Schedule of Values prepared in accordance with Paragraph 9.3.1 above. The Agency's Project Manager shall revise as appropriate and sign the marked Schedule of Values to verify such review. If any item in the marked Schedule of Values submitted for payment is disputed during this review, Design-Builder agrees to use its best efforts to resolve the disputed items with the Agency's Project Manager before submitting its Application for Payment. If the Agency's Project Manager and Design-Builder cannot agree, then the percentage completion shall be established at such percentage as the Agency's Project Manager, in good faith, determines is appropriate to the actual progress of the Work. No inaccuracy or error in the Agency's Project Manager's good faith estimate shall operate to release Design-Builder or Surety from any responsibility or liability arising from or related to performance of the Work. The Agency's Project Manager shall have the right subsequently to correct any error and dispute any item submitted in Design-Builder's Application for Payment, regardless of whether an item was identified as disputed in the review process provided for herein.

9.3.3 Certification. Each Application for Payment shall be signed by Design-Builder with a certification by Design-Builder to Agency that:

(1) The data comprising the Application for Payment is accurate and the Work has progressed to the point indicated;
(2) To the best of Design-Builder's knowledge, information and belief, the Work is in accordance with the Contract

Documents;

(3) Design-Builder is entitled to payment in the amount certified; and

(4) All sums previously applied for by Design-Builder on account of Work performed by Design Consultants and Subcontractors and that have been paid by Agency have been paid to the Design Consultants and Subcontractors performing such Work, without any retention, withholding, or back charge by Design-Builder.

9.3.4 Stored Materials. In general, the Agency pays only for installed Work. Payments may be made by Agency, at its discretion, on account of "big ticket" materials or equipment not incorporated into the Work but delivered on the ground at the Site and suitably stored by Design-Builder or stored off-Site under the control of **Agency only** if the following conditions are met; (a) such materials are in accordance with the Contract Documents; (b) submission by Design-Builder of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Work and that the material is satisfactorily stored, protected and insured, and that such other procedures are in place satisfactory to Agency to protect Agency's interests; (c) procedures satisfactory to Agency have been established by which title to such materials or equipment will vest in Agency upon Agency's payment therefore; and (d) Agency provides express written authorization for payment **BEFORE** such materials are ordered. To be considered for payment, materials or equipment stored off-Site shall, in addition to the above requirements and unless otherwise specifically approved by Agency in writing, be stored in a bonded warehouse, fully insured, and available to Agency for inspection. Agency shall have sole discretion to determine the amount of material and equipment that may be stored on the Site at any given time.

9.4 Progress Payments.

9.4.1 Conditions to Progress Payments. Design-Builder shall submit its Application for Payment to the Agency's Project Manager, using such forms as required by Agency, once a month on or before the first (1st) day of the month following the month in which the Work that is the subject of such Application for Payment was performed. Without limitation to any other provisions of the Contract Documents, in order to be considered a "proper" Application for Payment, the following shall be conditions precedent to a proper submission and to the Agency's Project Manager approval of each Application for Payment:

(1) submission of a Schedule of Values that reflects the percentages of completion either agreed to or determined by Agency's Project Manager in accordance with Paragraph 9.3.2 above;

(2) submission of the Design-Builder's certification required by Paragraph 9.3.3 above;

(3) submission of all subcontracts with Design Consultants and Subcontractors that performed Work during the time period covered by the current Application for Payment;

(4) submission of conditional releases of stop payment notice, if any, and bond rights upon progress payment, complying with

California Civil Code Section 8132, for all Work performed during the time period covered by the current Application for Payment, signed by Design-Builder, its Design Consultants, Design Subconsultants, and Subcontractors of every tier, and all material suppliers to each, and (2) forms of unconditional release of stop payment notice and bond rights upon progress payment, complying with California Civil Code Section 8134, for all Work performed during the time period covered by the previous Application for Payment, signed by Design-Builder, its Design Consultants, Design Subconsultants, and Subcontractors of every tier, and all material suppliers to each;

(5) compliance by Design-Builder with its obligation for maintenance of As-Builts as required by the Contract Documents;

(6) compliance by Design-Builder with its obligation for submission of monthly and daily reports as required by the Contract Documents;

(7) compliance by Design-Builder with its obligations for submission of scheduling information and updating of the Project Schedule as required by Article 3 herein and other provisions of the Contract Documents pertaining to preparation or updating of schedule information;

(8) submission of certified payroll records as required by the Contract Documents;

(9) submission of certifications by Design-Builder and each Design Consultant and Subcontractor as required by applicable collective bargaining agreements certifying that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full; and

(10) compliance by Design-Builder with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Design-Builder's right to receive payment for Work performed.

9.4.2 Payments by Agency. Pursuant to California Public Contract Code Section 20104.50, Agency shall make progress payment of undisputed sums due within thirty (30) days after receipt by the Yuba Project Manager of an undisputed and properly submitted Application for Payment, pending Agency Board approval, calculated on the basis of ninety-five percent (95%) of value determined pursuant to Paragraph **9.3.2** above of the following:

(1) the portion of the Work permanently installed and in place;

(2) plus, the value of materials delivered on the ground or in storage as approved by Agency pursuant to Paragraph

9.3.4 above,

(3) less, the aggregate of previous payments, and

(4) less, any other withholdings authorized by the Contract Documents.

9.4.3 Rejection by Agency. Any Application for Payment determined not to be undisputed, proper and suitable for payment shall be returned to Design-Builder as soon as practicable, but not later than seven (7) days after receipt by Agency accompanied by a written explanation of the reasons why the payment request was rejected. Failure by Agency to either timely reject an Application for Payment or specify any grounds for rejection shall not constitute a waiver of any rights by Agency. Applications for Payment that are rejected shall be corrected and resubmitted within seven (7) days after receipt by Design-Builder.

9.4.4 Interest. If Agency fails to make a progress payment to Design-Builder as required by Paragraph **9.4.2** above, Agency shall pay interest to Design-Builder equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure Section 685.010. The number of days available to Agency to make payment pursuant to Paragraph **9.4.2** without incurring interest pursuant to this Paragraph shall be reduced by the number of days by which Agency exceeds the seven (7) day return requirement applicable to Agency as set forth in Paragraph **9.4.3** above.

9.5 Final Completion and Final Acceptance by Agency.

Upon request by the Design-Builder, the Project Manager shall conduct a final inspection of the Work. If, in the Project Manager's opinion, Final Completion has been achieved, the Project Manager will accept the Work by issuing a "Notice of Completion" of the Work to the Design- Builder. Upon the issuance of the Notice of Completion the Design-Builder will be relieved from responsibility to protect the Work. Within fifteen (15) calendar days after issuing the Notice of Completion, the Agency will record the Notice of Completion with the Yuba County Recorder.

9.6 Final Payment.

9.6.1 Retention. In addition to withholdings permitted by Paragraph **9.6.4** below, a sum equal to five percent (5%) of all sums otherwise due to Design-Builder as progress payments shall be withheld by Agency pursuant to Paragraph **9.4.2** from each progress payment ("Retention") and retained until such time as it is due as described below.

9.6.2 Conditions to Final Payment. Design-Builder shall submit its Application for Final Payment, using such forms as required by Agency's Project Manager, prior to requesting a final inspection of the Work in accordance with Paragraph **9.5** above. Such Application for Final Payment shall be accompanied by all the following:

(1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which Agency or Agency 's property or funds might be liable have been paid or otherwise satisfied;

(2) Contractor's certification as required by Paragraph 9.3.3 above;

(3) consent of surety, if any, to Final Payment;

(4) a certificate evidencing that the insurance required by the Contract Documents is in force;
(5) Conditional Waiver and Release Upon Final Payment in the form attached in Exhibit 6 – Form 6, and consistent with the provisions of the California Civil Code in effect at the time of payment, executed by Design-Builder, all Design Consultants and Subcontractors of every tier, and by all material suppliers of each, covering the final payment period;
(6) Unconditional Waiver and Release Upon Progress Payment in the form attached in Exhibit 6 – Form 6, and consistent with the provisions of the California Civil Code in effect at the time of payment, executed by Design- Builder, all Design Consultants and Subcontractors of every tier, and by all material suppliers of each, covering the previous payment period;
(7) all Record Documents (including, without limitation, complete and accurate As-Built drawings which shall be kept up to date during the performance of the Work);
(8) documentation that Design-Builder has inspected, tested, and adjusted performance if every system or facility of the Work to ensure that overall performance is in compliance with the terms of the Contract Documents;
(9) four (4) copies of all warranties from vendors, Design Consultants, and Subcontractors, operation and maintenance manuals, instructions and related agreements, and equipment certifications and similar documents;
(10) certifications by Design-Builder and each Design Consultant and Subcontractor as required by applicable collective bargaining agreements that all employee benefit contributions due and owing pursuant to any applicable collective bargaining agreement have been paid in full;
(11) releases of rights and claims relating to patents and trademarks, as required by the Contract Documents; and
(12) any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

9.6.3 Final Payment Conditions. Pursuant to the Public Contract Code Section 7107, within sixty (60) days after Agency issues the Notice of Completion to Design-Builder, the Final Payment, including Retention withheld, shall be released to Design-Builder, subject to the Agency's right to withhold 150% of any disputed amounts.

9.6.4 Disputed Amounts. Pursuant to California Public Contract Code 7107, Agency may deduct and withhold from the Final Payment due under Paragraph 9.6.3 an amount up to 150% of any disputed amounts, including, without limitation, amounts to protect Agency against any loss caused or threatened as a result of Design-Builder's failing to fully perform all of those obligations that are required to be fulfilled by Design-Builder as a condition to Final Completion and Final Payment. Alternatively, Agency

may elect, in its sole discretion, to accept the Work without correction or completion and adjust the Contract Sum pursuant to the Contract Documents.

9.6.5 Acceptance of Final Payment. Acceptance of Final Payment by Design-Builder shall constitute a waiver of all rights by Design-Builder against Agency for recovery of any loss, excepting only those Claims that have been submitted by Design-Builder in the manner required by the Contract Documents prior to or at the time of the Final Payment.

9.7 Miscellaneous.

9.7.1 Joint or Direct Payments to Subcontractors and Design Consultants. Agency shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Design-Builder and any Design Consultant(s) or Subcontractor(s) of any tier or to make direct payments to any Design Consultant(s) or Subcontractor(s). The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check or direct payment be construed to create any contract between Agency and a Design Consultant or Subcontractor of any tier, any obligation from Agency to such Design Consultant or Subcontractor, or any third-party rights against Agency or CEO/General Manager.

9.7.2 Withholding/Duly to Proceed. The payment, withholding or retention of all or any portion of any payment claimed to be due and owing to Design-Builder shall not operate in any way to relieve Design-Builder from its obligations under the Contract Documents. Design-Builder shall continue diligently to prosecute the Work without reference to the payment, withholding or retention of any payment. The partial payment, withholding or retention by Agency in good faith of any disputed portion of a payment, whether ultimately determined to be correctly or incorrectly asserted, shall not constitute a breach by Agency of the Construction Contract and shall not be grounds for an adjustment of the Contract Sum or Contract Time.

9.7.3 No Acceptance. No payment by Agency or partial or entire use of the Work by Agency shall be construed as approval or acceptance of the Work, or any portion thereof.

9.7.4 Design-Builder Payment Warranty. Submission of an Application for Payment shall constitute a representation and warranty by Design-Builder that:

(1) Title to Work covered by an Application for Payment will pass to Agency either by incorporation into the construction or upon receipt of payment by Design-Builder, whichever occurs first; and

(2) Work covered by previous Applications for Payment are free and clear of liens, stop payment notices, claims, security interests or encumbrances imposed by the Design-Builder or any other person.

9.7.5 Corrections. No inaccuracy or error in any Application for Payment provided by Design-Builder shall operate to release Design-Builder from the error, or from losses arising from the Work, or from any obligation imposed by the Contract Documents. Agency retains the right to subsequently correct any error made in any previously approved Application for Payment, or progress payment issued, by adjustments to subsequent payments.

9.8 Substantial Completion.

9.8.1 Design-Builder Request for Punch List Inspection and Acceptance Testing. When the Design-Builder considers that it has achieved Substantial Completion of the Work, or designated portion thereof, Design-Builder shall prepare and submit to the Agency's Project Manager a request for inspection and a comprehensive punch list of items to be completed or corrected prior to Final Payment. Failure to include an item on such punch list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents. The Design-Builder shall also prepare and submit to the Agency's Project Manager a request for Acceptance Testing.

9.8.2 Agency Inspection. Upon receipt of the Design-Builder's punch list, the Agency's Project Manager will inspect to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included on the Design-Builder's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Agency can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before Agency 's issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Agency. The Design- Builder shall then submit a request for another inspection by Agency to determine Substantial Completion.

9.8.3 Acceptance Testing. Upon receipt of the Design-Builder's request for Acceptance Testing, the Agency's Project Manager will prepare the Agency's fleet to be ready for the proposed Acceptance Testing date in the request. Acceptance Testing will occur according to the specifications in the Project Manual. If the Acceptance Testing discloses any item, which is not sufficiently complete in accordance with the Contract Documents so that the Agency can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before Agency 's issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Agency. The Design-Builder shall then submit a request for another Acceptance Testing to Agency to determine Substantial Completion.

9.8.4 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete as determined by Inspection and Acceptance Testing, the Project Manager will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Agency and Design-Builder for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Design-Builder shall finish all items on the Design-Builder's punch list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial

Completion of the Work. Design-Builder shall deliver to Agency all warranty and guarantee documents and policies.

9.8.5 Agency's Acceptance. The Certificate of Substantial Completion prepared by the Project Manager shall be submitted to the Design-Builder for written acceptance of responsibilities assigned to Design-Builder and Agency in such Certificate. Upon such acceptance and consent of surety, provided the requirements for Substantial Completion Payment set forth in the Agreement are met, the Agency shall make payment to the Design-Builder for the cost of undisputed Work in place. Agency, however, shall be entitled to withhold retainage equaling 150% of the estimated cost of the following items until Final Completion:

(1) Punch List items;
(2) All items necessary to pass the Acceptance Testing;
(3) All items necessary to obtain the Final Certificate of Occupancy identified in the Contract Documents as the Work of Design-Builder (unless same cannot be obtained due to unit Agency upgrades);
(4) As-Built and Record Documents;
(5) Potential lien claims of individuals or entities who have not provided conditional waivers and releases upon Final Payment; and
(6) Any Claims the Agency may have against the Design-Builder.

If the Design-Builder has not completed all items enumerated above, within **thirty (30) calendar days** after the issuance of the Certificate of Substantial Completion, the Agency shall have the right to demand completion or correction of the items within a 48-hour period. If the Design-Builder does not commence the requested Work within the 48-hour period or provide Agency with written notice of a legitimate reason why Design-Builder cannot commence the Work within the 48-hour period, the Agency shall have the unilateral right to complete the Work and deduct the cost of completion of the Work from any money held pending Final Completion.

9.9 Payments by Design-Builder.

Design-Builder shall not include in its Applications for Payment sums on account of any Design Consultant's or Subcontractor's portion of the Work that it does not intend to pay to such Design Consultant or Subcontractor. Upon receipt of payment from Agency, Design-Builder shall pay the Design Consultant or Subcontractor performing Work on the Project, out of the amount paid to Design-Builder on account of such Design Consultant's or Subcontractor's portion of the Work, the amount to which said Design Consultant or Subcontractor is entitled in accordance with the terms of its contract with Design-Builder and Applicable Law, including, without limitation, California Business and Professions Code Section 7108.5, California Public Contract Code Section 7107, and California Civil Code Section 3221. Design-Builder shall remain responsible notwithstanding a withholding by Agency pursuant to the terms of these Contract Documents, to promptly satisfy from its own funds sums due to all Design Consultants and Subcontractors who have performed Work that is included in

Design-Builder's Application for Payment. Design-Builder shall, by appropriate agreement, require each Design Consultant and Subcontractor to make payments to its subconsultants, subcontractors and material suppliers in similar manner. Agency shall have no obligation to pay or be responsible in any way for payment to a Design Consultant or Subcontractor of any tier or material supplier**.**

9.10 Payments Withheld.

9.10.1 Withholding by Agency. In addition to any other amounts which Agency may have the right to retain under the Contract Documents, Agency may withhold a sufficient amount of any payment otherwise due to Design-Builder as Agency, in its sole discretion, may deem necessary to cover actual or threatened loss due to any of the following:

(1) Third Party Claims. Third-party claims or stop payment notices filed or reasonable evidence indicating probable filing of such claims or stop payment notices;
(2) Defective Work. Defective Work not remedied;
(3) Nonpayment. Failure of Design-Builder to make proper payments to its Design Consultants or Subcontractors for services, labor, materials or equipment;
(4) Inability to Complete. Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Sum or within the Contract Time;
(5) Violation of Applicable Laws. Failure of Design-Builder or its Design Consultants or Subcontractors to comply with Applicable Law or lawful orders of governmental authorities;
(6) Penalty. Any claim or penalty asserted against Agency by virtue of Design- Builder’s failure to comply with Applicable Law or lawful orders of governmental authorities (including, without limitation labor laws);
(7) Failure to Meet Contract Time. Any damages which may accrue as a result of Design-Builder failing to meet the Project Schedule or failing to perform within the Contract Time;
(8) Setoff. Any reason specified elsewhere in the Contract Documents as grounds for a withholding offset or set off or that would legally entitle Agency to a set-off or recoupment;
(9) Consultant Services. Additional professional, consultant or inspection services required due to Design-Builder’s failure to comply with the Contract Documents.
(10) Liquidated Damages. Liquidated damages assessed against Design- Builder.
(11) Materials. Materials ordered by Agency pursuant to the Contract Documents.
(12) Damages. Loss caused by Design-Builder, Design Consultant, or Subcontractor to Agency, Separate Contractors or any other person or entity under contract to

Agency.

(13) Clean Up. Clean up performed by Agency and chargeable to Design-Builder pursuant to the Contract Documents.

(14) Employee Benefits. Failure of Design-Builder to pay contributions due and owing to employee benefits funds pursuant to any applicable collective bargaining agreement or trust agreement.

(15) Required Documents. Failure of Design-Builder to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, Project Schedule updates, 'look ahead' schedules, Submittals, Schedules of Values, information on Design Consultants or Subcontractors, Change Orders, certifications and other required reports or documentation.

(16) Other Breach. A breach of any obligation or provision of the Contract Documents.

9.10.2 Release of Withholding. If and when Agency determines, in its sole discretion, that the above grounds for withholding have been removed and that all losses incurred or threatened have been paid, credited or otherwise satisfied, then payment shall be made for amounts withheld because of them.

9.10.3 Application of Withholding. Agency may apply sums withheld pursuant to Paragraph **9.10.1** above, in payment of any loss or threatened loss as Agency determines, in its sole discretion, to be appropriate. Such payments may be made without a prior judicial determination of Agency's actual rights with respect to such loss. Design-Builder agrees and hereby designates Agency as its agent for such purposes and agrees that such payments shall be considered as payments made under the Construction Contract by Agency to Design-Builder. Agency shall not be liable to Design-Builder for such payments made in good faith. Agency shall submit to Design-Builder an accounting of such funds disbursed on behalf of Design-Builder. As an alternative to such payment, Agency may, in its sole discretion, elect to exercise its right to adjust the Contract Sum as provided in the Contract Documents.

9.10.4 Continuous Performance. Provided Agency pays the undisputed portion, if any, of funds withheld in good faith, Design-Builder shall maintain continuous and uninterrupted performance of the Work during the pendency of any disputes or disagreements with Agency.

9.11 Substitution of Securities.

9.11.1 Public Contract Code. Pursuant to the requirements of California Public Contract Code Section 22300, upon Design-Builder's request, Agency will make payment to Design-Builder of any funds withheld from payments to ensure performance under the Contract Documents if Design-Builder deposits with Agency, or in escrow with a California or federally chartered bank in California acceptable to Agency ("Escrow Agent"), in accordance with the terms and conditions of the escrow agreement included as **Form 10** in the Proposal Documents.

9.11.2 Substitute Security. To minimize the expense caused by such substitution of securities, Design-Builder shall, prior to or at the time Design-Builder requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security fall below the amount for which it was substituted, or any other amounts which the Agency withholds pursuant to the Contract Documents, Design-Builder shall immediately and at Design-Builder's expense and at no cost to Agency deposit additional security qualifying under said Section 22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

9.11.3 Deposit of Retentions. Alternatively, subject to the conditions set forth in Paragraph 9.4.1 above, upon request of Design-Builder, Agency shall make payment of retentions directly to Escrow Agent at the expense of Design-Builder, provided that Design-Builder, Agency and Escrow Agent shall, as a prerequisite such payment, enter into an escrow agreement in the same form as prescribed in Paragraph 9.11.1 above. At the expense of Design-Builder and at no cost to Agency, Design-Builder may direct the investment of the payments into securities and interest-bearing accounts, and Design-Builder shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by Agency under the same terms provided herein for securities deposited by Design-Builder. Upon satisfactory Final Completion of the Work, Design-Builder shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from Agency, less escrow fees and charges of the Escrow Account, according to the terms of California Public Contract Code Section 22300 and the Contract Documents.

9.11.4 Time for Election of Substitution of Securities. Notwithstanding the provision of 9.4.1, 9.4.2, and 9.4.3 above and California Public Contract Code Section 22300, the failure of Design-Builder to request the substitution of eligible securities for monies to be withheld by Agency within ten (10) days of the award of Contract to Design-Builder shall be deemed to be a waiver of all such rights.

ARTICLE 10 – SAFETY

10.1 Protection of Persons and Property.

10.1.1 Design-Builder's Responsibility. Notwithstanding any other provision of the Contract Documents, the Design-Builder shall be solely and completely responsible for conditions of the job site, including safety of all persons and property, during performance of the Work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to all applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

10.2 Protection from Hazards.

10.2.1 Trench Excavation. Excavation for any trench four (4) feet or more in depth shall not begin until the Design-Builder has received approval from the Project Manager of the Design-Builder's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health, and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Director in the State of California.

10.2.2 Confined Spaces. Design-Builder shall comply with all of the provisions of General Industry Safety Orders of the California Code of Regulations. Entry of a confined space shall not be allowed until the Design-Builder has received approval from the Project Manager of the Design-Builder's program for confined space entry. Confined space means a space that (1) is large enough and so configured that an employee can bodily enter and perform assigned Work; and (2) has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and (3) is not designed for continuous employee occupancy. Failure to submit a confined space entry program may result in actions as provided in Article 14: "Termination or Suspension of the Contract."

10.2.3 Material Safety Data Sheet. Design-Builder shall comply with all of the provisions of General Industry Safety Orders of the California Administrative Code. The Design-Builder shall submit to the Project Manager a Material Safety Data Sheet (MSDS) for each hazardous substance proposed to be used, ten (10) days prior to the delivery of such materials to the job site or use of such materials at a manufacturing plant where the Agency's Project Manager is to perform an inspection. For materials which are to be tested in Agency laboratories, the MSDS shall be submitted with the sample(s). Hazardous substance is defined as any substance included in the list (Director's List) of hazardous substances prepared by the Director, California Department of Industrial Relations, pursuant to Labor Code Section 6382. Failure to submit an MSDS for any hazardous substance may result in actions as provided in Article 14, "Termination or Suspension of the Contract."

10.3 Traffic Regulation.

10.3.1 During the performance of the Work the Design-Builder shall erect and maintain necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards as shall be appropriate under the circumstance in his/her judgment for the prevention of accidents; and he/she shall take other precautions as necessary for public safety including, but not limited to, traffic control. Traffic control shall be conducted in accordance with the latest edition of the Work Area Traffic Control ("WATCH") handbook, published by BNI Books, and as directed and approved by the Agency Traffic Engineer.

10.3.2 Design-Builder shall submit at least ten (10) Working Days prior to Work a detailed traffic control plan, that is approved by all agencies having jurisdiction and that conforms to all requirements of the Specifications.

10.3.3 No changes or deviations from the approved detailed traffic control plan shall be made, except temporary changes in emergency situations, without prior approval of the Agency Traffic Engineer and all agencies having jurisdiction.

10.3.4 Design-Builder shall immediately notify the Agency's Project Manager, and the agencies having jurisdiction of occurrences that necessitate modification of the approved traffic control plan.

10.3.5 Design-Builder's failure to comply with this provision may result in actions as provided in Article 14: "Termination or Suspension of the Contract."

10.4 Traffic Control Devices.

10.4.1 Traffic signs, flashing lights, barricades, and other traffic safety devices used to control traffic shall conform to the requirements of the WATCH handbook or the manual of traffic control, whichever is more stringent, and as approved by the Agency Traffic Engineer.

10.4.1.1 Portable signals shall not be used unless permission is given in writing by the agency having jurisdiction.

10.4.1.2 Warning signs used for nighttime conditions shall be reflectorized or illuminated. "Reflectorized signs" shall have a reflectorized background and shall conform to the current State of California Department of Transportation specification for reflective sheeting on highway signs.

10.4.2 If the Design-Builder fails to provide and install any of the signs or traffic control devices required hereby or ordered by the Agency staff, staff may cause such signs or traffic control devices to be placed by others, charge the costs therefore against the Design-Builder, and deduct the same from the next progress payment.

10.5 Notice of Traffic Impact.

10.5.1 The Design-Builder shall provide written notification to the Agency, at least two (2) weeks prior to the beginning of construction at any particular location. Notification will include the specific location, project dates, what lanes of the roadway will be closed and when. Also, the construction project manager's name and business phone number, and the construction inspector's name and business phone number.

10.5.2 The Design-Builder shall notify, by telephone, the Agency at the completion of the posting of temporary no parking signs. Notification will include the times, dates and locations of the posting. When vehicles must be towed for violation of temporary no parking signs, the person who actually posted the signs, or on-view supervisor of that posting, will be present to answer pertinent questions that may be asked.

10.5.3 The Design-Builder shall notify the Fire Department, on a daily basis

during the entire period that construction is in progress, whenever roadways are reduced in width or blocked. Notification shall be made to the Fire Dispatch, and the Design-Builder shall provide the information required to identify which roadways would have accessibility problems due to his/her operations. The Design-Builder shall submit to the Fire Department a schedule of Work for their use and files.

10.5.4 Roads subject to interference from the Work covered by this Contract shall be kept open, and the fences subject to interference shall be kept up by the Design-Builder until the Work is finished. Except where public roads have been approved for closure, traffic shall be permitted to pass through designated traffic lanes with as little inconvenience and delay as possible.

10.5.5 Where alternating one-way traffic has been authorized, the maximum time that traffic will be delayed shall be posted at each end of the one-way traffic section. The maximum delay time shall be approved by the agency having jurisdiction.

10.5.6 Design-Builder shall install temporary traffic markings where required to direct the flow of traffic and shall maintain the traffic markings for the duration of need. Design-Builder shall remove the markings by abrasive blasting when no longer required.

10.5.7 Convenient access to driveways and buildings in the vicinity of Work shall be maintained as much as possible. Temporary approaches to, and crossing of, intersecting traffic lanes shall be provided and kept in good condition.

10.5.8 When leaving a Work area and entering a roadway carrying public traffic, the Design-Builder's equipment, whether empty or loaded, shall in all cases yield to public traffic.

10.6 Flagging.

10.6.1 Design-Builder shall provide flaggers to control traffic where required by the approved traffic control plan.

10.6.2 Flaggers shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flaggers" of the California Department of Transportation.

10.6.3 Flaggers shall be employed full time on traffic control and shall have no other duties.

10.7 Pedestrian Canopies or Barricade Improvements.

Refer to Agency for requirements for building or access road safety improvements that the Design-Builder shall construct during construction period. These devices or improvements, as the Agency deems necessary or prudent, shall be at the expense of the Design-Builder.

10.8 Emergency Work.

10.8.1 During Working Hours. In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Design-Builder shall

act, without previous instructions from the Agency, as the situation may warrant. Design-Builder shall notify the Project Manager of the emergency and the action taken immediately thereafter. Any compensation claimed by the Design-Builder, together with substantiating documents in regard to expense, shall be submitted to the Agency's Project Manager within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work.

10.8.2 Outside of Working Hours. Whenever, in the opinion of the Agency, there shall arise outside of the regular Working hours on the Contract Work of an emergency nature which threatens loss or injury of property, or danger to public safety, the Design-Builder shall act, without previous instructions from the Agency as the situation may warrant. Design-Builder shall notify the Agency's Project Manager of the emergency and the action taken immediately thereafter. Any compensation claimed by the Design-Builder, together with substantiating documents in regard to expense, shall be submitted to the Agency's Project Manager within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as Extra Work. In the event the Design-Builder is not able to respond to an emergency outside of regular working hours, the Agency's forces, or Separate Contractors will handle such emergency Work. If such emergency arises out of or is the result of operations by the Design-Builder, the cost of the corrective measures will be billed to the Contractor and deducted from his/her payment as provided in the Contract Documents. The performance of emergency Work by Agency forces will not relieve the Design-Builder of any of his/her responsibilities, obligations, or liabilities under the Contract.

ARTICLE 11 – INSURANCE AND BONDS

11.1 Condition to Commencement.

Design-Builder shall not commence Work under this Contract until Design-Builder has obtained all insurance and bonds required by the Contract Documents from a company or companies acceptable to Agency, nor shall the Design-Builder allow any Design Consultant or Subcontractor to commence Work on a subcontract until all insurance required of said Design Consultant or Subcontractor has been obtained. Proof of insurance, in the form required by Attachment A to the Agreement, must be submitted by the Design-Builder prior to the Agency's execution of the Contract.

11.2 Minimum Coverage and Limits.

Design-Builder shall maintain the insurance coverage as set forth in Attachment A throughout the term of the Contract.

11.3 Conditions Regarding Insurance Coverage and Limits.

11.3.1 Agency and Design-Builder agree as follows:

(1) All insurance coverage and limits provided pursuant to the Contract Documents shall apply to the full extent of the policies involved, available

or applicable. Nothing contained in the Contract Documents or any other agreement relating to Agency or its operations limits the application of such insurance coverage.

(2) None of the policies required by this Contract shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to Agency and approved in writing by the Agency Attorney or Agency's CEO/General Manager.

11.4 Insurance Obligation is Separate from Indemnity Obligation.

11.4.1 This Contract's insurance provisions:

(1) Are separate and independent from the indemnification and defense provisions in Article 3 of General Conditions; and

(2) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 3 of the General Conditions.

11.5 Required Bonds.

11.5.1 Bonds. Design-Builder shall furnish the following bonds:

(1) A Performance Bond in an amount equal to one hundred percent (100%) of the total Contract Sum in the form shown in Division IV of the RFP.

(2) A Payment Bond (Labor and Materials) in an amount equal to one hundred percent (100%) of the total Contract Sum in the form shown in Division IV of the RFP.

11.5.2 Power of Attorney. All bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety.

11.5.3 Approved Surety. All bonds must be issued by a California admitted surety insurer with the minimum A.M. Best Company Financial strength rating of "A: VII" or better. Bonds issued by a California admitted surety not listed on Treasury Circular 570 will be deemed accepted unless specifically rejected by the Agency. Bonds issued from admitted surety insurers not listed in Treasury Circular 570 must be accompanied by all documents enumerated in California Code of Civil Procedure Section 995.660. All such bonds must be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety. The signature of the person executing the bond on behalf of Surety must be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

11.5.4 Required Provisions. Every bond must display the surety's bond number and incorporate the Contract for by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of time, alteration, or modification of

the Contract Documents or the Work to be performed thereunder shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration, or modification of the Contract Documents.

11.5.5 New or Additional Sureties. If, during the continuance of the Contract, any of the sureties, in the opinion of the Agency, are or become non-responsible or otherwise unacceptable to Agency, Agency may require other new or additional sureties, which the Contractor shall furnish to the satisfaction of Agency within ten (10) days after notice, and in default thereof the Contract may be suspended and the materials may be purchased or the Work completed as provided in Article 14 herein.

11.5.6 Waiver of Modifications and Alterations. No modifications or alterations made in the Work to be performed under the Contract or the time of performance shall operate to release any surety from liability on any bond or bonds required to be given herein. Notice of such events shall be waived by the surety.

11.5.7 Approval of Bonds. The Contract will not be executed by Agency nor the Notice to Proceed issued until the required bonds have been received and approved by Agency. Agency 's decision as to the acceptability of all sureties and bonds is final. No substitution of the form of the documents will be permitted without the prior written consent of Agency.

11.5.8 Bonds are not Contract Documents. Design-Builder agrees that the Payment Bond, and Performance Bond, are for reference purposes only, and shall not be considered part of the Contract. Design-Builder further agrees that said bonds are separate obligations of the Design-Builder and its surety, and that any attorneys' fee provision contained in any payment bond or performance bond shall not apply to the Contract. In the event there is any litigation between the Parties arising from the breach of this Contract, each Party will bear its own attorneys' fees in the litigation.

ARTICLE 12 – QUALITY AND CORRECTION OF WORK

12.1 Quality Assurance/Quality Control Plan

12.1.1 General. Based upon code/industry standards, manufacturer's recommendations, the Design-Builder shall prepare and maintain a Quality Assurance/Quality Control Plan (QA/QCP) to address all quantitative performance/specification requirements in the Preliminary Design Documents, installed conditions, and operating characteristics. The QA/QCP is intended to document those inspections/tests necessary to assure the Agency that product delivery, quality, and performance are as required. It also serves as an inspection coordination took between the Design-Builder and the Agency.

12.1.2 Content. For each requirement, the QA/QCP shall identify: item/system to be tested, exact test(s) to be performed, measured parameters, inspection/testing organization, and the stage of construction development when tests are to be performed. Organize the QA/QCP into volumes. Each inspection/test shall be coded and referenced on timeline charts to identify when tests should be performed. The Design-Builder is not relieved from required performance tests should these not be

included in the plan.

12.1.3 Division. The Design-Builder shall organize inspection/testing descriptions in accordance with Construction Specifications Institute (CSI) divisional headings, UNIFORMAT system headings, chronological/sequence, or combinations thereof to delineate all facets of design and construction.

12.1.4 Component Subdivisions. For each divisional heading, the Design-Builder shall identify all subsystems, equipment items, and/or components which influence operation, function, quality, or demonstrate attainment of performance requirements.

12.1.5 Test Parameters. Identify each test parameter and represent each operating condition and all control modes of operation. For operating equipment, tests shall typically include the following for each mode of operation: capacity, flow rates, inlet/outlet conditions (temperature/pressure), power consumption, efficiency, verification of sequence startup/ shutdown, alarm conditions, utility submetering, noise generation, and observed deficiencies or improper operation. Lighting tests shall identify foot-candle readings, verification of automatic control, and working condition of electrical submetering. Power systems shall typically involve measuring voltage/spikes, current draw, ground resistance, and working condition of electrical submetering. For static architectural/structural systems, tests shall typically include verification of location, item counts, material tests, finish grades clearance/accessibility.

12.1.6 Test Reports. For each inspection/adjustment/test parameter, identify the inspection/test procedures, required preparation, adjustments, adjustments contemplated, test result comparison to that designed, time of occurrence, mode of operation, and the firm(s) to perform/witness the work.

12.1.7 Format. The QA/QCP shall be bound loose in 3-hole binders (for 8/12 x 11-inch paper) to allow insertion of changes and new inspection materials. All text shall be typed. Tabs shall be provided at the component level.

12.1.8 Submission. The QA/QCP shall be prepared during design development and submitted in accordance with the requirements specified. The QA/QCP may be rejected as incomplete if there is any performance, condition or operating test which is not covered therein.

12.1.9 Updating. During construction, the Design-Builder must update the plan at least two weeks prior to performing referenced tests, notifying the Agency of schedule and procedural changes.

12.2 Uncovering of Work.

12.2.1 Specific Request. If a portion of the Work is covered contrary to the Agency’s request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Agency, be uncovered for the Agency examination and be replaced at the Design-Builder's expense within the Contract Sum

and without change in the Contract Time.

12.2.2 No Specific Request. If a portion of the Work has been covered, which the Agency has not specifically requested to examine prior to its being covered, the Agency may request to see such Work, and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Agency's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Design-Builder's expense within the Contract Sum unless the condition was caused by the Agency or a Separate Design-Builder, in which event the Agency shall be responsible for payment of such costs.

12.3 Correction of Work.

12.3.1 Before and After Final Completion. The Design-Builder shall promptly correct Work rejected by the Agency as failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing, inspections, and compensation for the Agency's services and expenses made necessary thereby, shall be at the Design-Builder's expense within the Contract Sum.

12.3.2 After Substantial Completion.

12.3.2.1 In addition to the Design-Builder's warranty obligations under Paragraph **3.5**, if, within three years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Agency to do so. Such corrective work shall be performed without charge or cost to Agency after Final Completion of the Work. The Agency shall give such notice promptly after discovery of the condition. If the Design-Builder failsto correct nonconforming Work within a reasonable time after receipt of notice from the Agency, the Agency may correct the nonconforming work in accordance with Paragraph **2.4**.

12.3.3 Agency’s Right to Correct. If Design-Builder fails to commence corrections within **forty-eight (48) hours** after receipt of written notice, Agency, under the provisions of Article 12 herein, will proceed to have defects repaired and made good at the expense of Design-Builder and its performance bond surety, plus fifteen percent (15%) for Agency’s overhead and administrative expense. Agency may charge such costs against any payment due Design-Builder. If, in the opinion of the Agency, defective work creates a dangerous or hazardous condition or requires immediate correction or attention to prevent further loss to the Agency or to prevent interruption of operations of the Agency, the Agency may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Design-Builder. Such action by the Agency will not relieve the Design-Builder of the warranties provided in this Article or elsewhere in the

Contract Documents.

12.3.3.1 The three-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Paragraph.

12.3.4 Removal. The Design-Builder shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by the Agency.

12.3.5 Destruction or Damage. The Design-Builder shall bear the cost within the Contract Sum of correcting destroyed or damaged construction, whether completed or partially completed, of the Agency or Separate Design-Builders caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.3.6 No Limitation. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the three-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

12.4 Acceptance of Nonconforming Work.

If the Agency prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Agency may do so instead of requiring its removal and correction. In such case, the Contract Sum will be reduced by an amount equal to the cost of replacing the Work to make it as originally specified or intended. Such adjustment shall be effected whether or not Final Payment has been made.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1 Governing Law.

The laws of the State of California govern the construction and interpretation of the Contract Documents, without regard to conflict of law principles. Unless the Contract Documents provide otherwise, any reference to laws, ordinances, rules, or regulations include their later amendment, modifications, and successor legislation. If Design-Builder or Agency brings a lawsuit to enforce or interpret one or more provisions of the Contract Documents, jurisdiction is in the Superior Court of the County of Yuba, California, or where otherwise appropriate, in the United States District Court, Eastern District of California. Design-Builder and Agency acknowledge that the Contract Documents were negotiated, entered into, and executed—and the

Work was performed—in the City of Linda, California. Design-Builder agrees to incorporate this provision into all Design Consultant and Subcontractor agreements.

13.2 Successors and Assigns.

The Contract Documents shall be binding upon and inure to the benefit of Agency and Design-Builder and their permitted successors, assigns, and legal representatives.

13.2.1 Agency may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to (a) any other governmental person as permitted by governmental rules, provided that the successor or assignee has assumed all of Agency's obligations, duties and liabilities under the Contract Document then in effect; and (b) any other person with the prior written approval of Design-Builder 13.2.1.1. may collaterally assign its rights to receive payment under the Contract Documents. Design-Builder may not delegate any of its duties hereunder, except to Design Consultants or Subcontractors as expressly otherwise permitted in the Contract Documents. Design-Builder's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve Design-Builder of its responsibility for the Work assigned or delegated, unless Agency, in its sole discretion, has approved such relief from responsibility.

13.2.2 Any assignment of money shall be subject to all proper set-offs and withholdings in favor of Agency and to all deductions provided for in the Contract. All money withheld, whether assigned or not, shall be subject to being used by Agency for completion of the Work, should Design-Builder be in default.

13.2.3 Except for the limited circumstances set forth in Paragraph **13.2.2**, above, Design-Builder may not, without the prior written consent of Agency in its sole discretion, voluntarily or involuntarily assign or delegate duties, or assign, convey, transfer, pledge, mortgage, or otherwise encumber its rights or interests under the Contract Documents. No partner, joint venture, member, or shareholder of Design-Builder may assign, convey, transfer, pledge, mortgage, or otherwise encumber its ownership interest in Design-Builder without the prior written consent of Agency, in Agency’s sole discretion.

13.3 Written Notices.

13.3.1 Special Notices. When specified in the Contract Documents or directed by the Agency, any notice required to be served in accordance with this section shall be in writing, dated and signed by an authorized representative of the Design-Builder or Agency, as applicable. Written notice shall be deemed to have been duly served if: (a) hand delivered in person to the individual or member of the firm or entity for whom it was intended, with proof of delivery; (b) sent by a nationally recognized overnight mail or courier service; or (c) sent by e-mail communication followed by a hard copy via United States Mail and with receipt confirmed by telephone. Notice shall be deemed effective: (a) upon delivery, if personally delivered; (b) in the case of overnight carrier, on the date indicated on the delivery receipt or in the case of an inability to deliver or

a refusal to accept, three (3) business days after the date of dispatch; or (c) on the date indicated on the email, if sent by e-mail. Design-Builder shall copy Agency on all written correspondence pertaining to the Contract between Design-Builder and any Person other than Design-Builder's Subcontractors, consultants, and attorneys.

13.3.2 Other Notices and Communications. Any technical or other communications pertaining to the Work shall be conducted by Design-Builder's Project Manager and technical representatives designated by Agency. Design-Builder's representatives shall be available at all reasonable times for consultation and shall be authorized to act on behalf of Design-Builder in matters concerning the Work. 13.3.2.1. Design-Builder shall copy Agency on all written correspondence pertaining to the Contract between Design-Builder and any person other than Design-Builder's Design Consultants, Subcontractors, consultants, and attorneys.

13.4 Right and Remedies.

13.4.1 Cumulative Rights. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.4.2 No Waiver. The Agency's failure to enforce any provision in the Contract Documents, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but such provision shall remain in full force and effect.

13.4.3 No Estoppel. Agency shall not, nor shall any officer thereof, be precluded or estopped by any measurement, estimate or certificate made or given by the Agency representative or other officer, agent, or employee of Agency under any provisions of the Contract from at any time (either before or after Final Completion of the Work and Final Payment) pursuant to any such measurement, estimate or certificate showing the true and correct amount and character of the work done, and materials furnished by Design-Builder or any person under the Contract or from showing at any time that any such measurement, estimate or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, Agency shall not be precluded or estopped from recovering from Design-Builder and its Sureties such damages as Agency may sustain by reason of Design-Builder's failure to comply or to have complied with the Contract Documents.

13.5 Tests and Inspections.

13.5.1 Required Tests, Inspections, and Costs. If the Contract Documents, Agency instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, Design-Builder shall give notice, in accordance with such authority, of its readiness for observation or inspection, at least two (2) working days prior to being tested or covered up. If inspection is by authority other than Agency, Design-Builder shall inform Agency of date fixed for such inspection. All required

certificates of inspection shall be secured by Design-Builder. If any Work required to be tested should be covered up without approval or consent of Agency, Design-Builder must, if required by Agency, uncover the Work for examination and satisfactorily reconstruct at Design-Builder's expense within the Contract Sum in compliance with Contract. Cost of testing and any materials found not to be in compliance with the Contract shall be paid by Design-Builder within the Contract Sum. Other costs for tests and inspection of materials shall be paid by Agency. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or Agency's Project Manager, and not by Design-Builder. Design-Builder shall notify Agency a sufficient time in advance of manufacture of materials to be supplied by it under Contract, which must, by terms of contract, be tested, in order that Agency may arrange for testing of same at source of supply. Prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said Project Manager that such testing and inspection will not be required, the materials shall not be incorporated into the Work without prior approval of Agency and subsequent testing and inspection. Re-examination of questioned work may be ordered by Agency and, if so ordered, Work must be uncovered by Design-Builder. If such uncovered Work be found in accordance with Contract Documents, Agency shall pay costs of re- examination and replacement. If such uncovered Work be found not in accordance with Contract Documents, Design-Builder shall pay such costs within the Contract Sum.

13.5.2 Additional Tests and Inspections. If the Agency or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Subparagraph **13.5.1**, the Agency will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Agency, and the Design-Builder shall give timely notice to the Agency of when and where tests and inspections are to be made so that the Agency may be present for such procedures. Such costs shall be at the Agency's expense, if applicable. If such procedures for testing, inspection, or approval under Subparagraphs **13.5.1** and **13.5.2** reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for Agency's testing and inspection services and expenses, shall be at the Design-Builder's expense, within the Contract Sum. Cost of retesting, reinspections, and reapprovals as described herein, including compensation for the Agency's testing and inspection services and expenses, shall be paid for by the Agency and deducted from the Contract Sum by a Change Order or Construction Work Directive.

13.5.3 Documentation. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to the Agency. Delivery of such documentation is a condition precedent to Agency's obligation to make payment to Design-Builder.

13.5.4 Observation of Tests. If the Agency is to observe tests, inspections, or approvals required by the Contract Documents, Agency will do so promptly and, where

practicable, at the normal place of testing.

13.5.5 Time. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 Maintenance, Inspection, and Audit of Records.

All books, account, reports, files, correspondence, data, and other records relating to this Contract shall be maintained by the Design-Builder and shall be subject at all reasonable times to review, inspection, and audit by the Agency or its designated Project Managers for a period of **five (5) years** after Notice of Completion is recorded. Such records shall be produced by the Design-Builder within a reasonable time at a place designated by the Agency, upon written notice to the Design-Builder. The Design-Builder shall furnish the Project Manager reasonable facilities for obtaining such information as he/she may desire respecting the character of the materials and the progress and manner of the Work, including all information necessary to determine its costs, such as the number of persons employed, their pay, the time during which they worked on the various classes of construction, and other pertinent data.

13.7 Independent Contractor.

Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with Agency other than that of Project owner and independent contractor. In no event shall the relationship between Agency and Design-Builder be construed as creating any relationship whatsoever between Agency and Design-Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be an employee of Agency. Except as otherwise specified in the Contract Documents, Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Design Consultants and Subcontractors and for all other persons that Design-Builder or any Design Consultant or Subcontractor hires to perform or assist in performing the Work.

13.8 Keys and Access.

If the Agency furnishes keys and/or access cards to the Design-Builder to provide access to Agency's property, the Design-Builder shall assure that such access instruments are not duplicated and shall return all such instruments in good condition upon request of the Agency or prior to receipt of final payment, whichever is earlier. If the Design-Builder fails to return all access instruments furnished to it, the Design-Builder shall be responsible, within the Contract Sum, for all Work, materials, and costs associated with reestablishing secured access.

13.9 Survival of Terms.

The Contract provisions relating to any obligation to provide insurance or indemnity, any waiver, warranty, guarantee or representation, any Agency right to Subcontractor assignment, joint or direct payment, or audit right given by the Design-Builder to Agency, the claims and dispute resolution provisions and all other provisions

of the Contract Documents, which by their nature should survive termination of the Contract and completion of the Work, shall survive termination of the Contract and completion of the Work and shall be binding upon Design-Builder and Agency until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

13.10 Cooperation with Labor.

13.10.1 General. The Parties agree and declare that Design-Builder and Agency are separate and independent entities and that Design-Builder has full responsibility for performance of the Work and direction of the work force, subject to and under the duty of Design-Builder to cooperate with Agency and its Separate Contractors. Design-Builder recognizes that in the performance of its Work it may be required to work with and near Separate Contractors and representatives of Agency on the jobsite. The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Design-Builder shall also use best efforts to minimize the likelihood of any strike, work stoppage, slowdowns, disputes, or other labor disturbance. If the Work is to be performed by trade unions, the Design-Builder shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Agency and without recourse to the Agency, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the Work of any particular trade. Design-Builder shall be liable to Agency for all damages suffered by Agency as a result of work stoppage, slowdowns, or strikes related to labor disputes.

13.10.2 Picketing.

13.10.2.1 Design-Builder agrees that should there be picketing or a threat of picketing by any labor organization at or near the Site, Design-Builder, in cooperation with Agency, shall establish a reserve gate system and require employees of Design-Builder, Subcontractors, and suppliers to use one or more designated gates. In that event, it shall be the affirmative obligation of Design-Builder, as a material consideration of this Agreement to ensure that employees of Design-Builder, Subcontractors, and suppliers use only the gates or other entryways designated by Agency from time to time on the Project.

13.10.2.2 Notwithstanding the establishment or non-establishment of a reserve gate, in the event employees of Design-Builder, Subcontractors or suppliers refuse to work because of any labor disputes or grievances (including any "secondary" or "sympathy" strike or boycott directed against the Project) not caused by Agency or its Separate Contractors and not the result of an industry-wide strike and that actually prevent performance of the Work, Design-Builder shall not be relieved of its obligation to supply enough properly skilled workers to perform the Work without interruption or further delay.

13.10.3 Labor Disputes. Design-Builder and Agency agree to cooperate fully

with each other and their Project Manager and attorneys with respect to any labor dispute that should arise on the Site, including, but not limited to the giving of testimony and evidence to the agent or judge of the National Labor Relations Board or testimony in connection with proceedings in state or federal court. Design-Builder hereby warrants that it is not now nor, will Design-Builder be delinquent in the payment or reporting to any labor management benefit trust.

13.11 No Personal Liability.

Notwithstanding any contrary provision in this Agreement or the Contract Documents, no member, principal, officer, employee, agent, representative, or subsidiary of Agency (each a "direct affiliate of Agency"), or member, general partner, limited partner, principal, officer, employee, agent, or representative of any direct affiliate of Agency (together with direct affiliates of Agency, the "affiliates of Agency") shall have any personal liability or the performance of any contractual obligations, or in respect of any liability of Agency under this Agreement and no monetary or other judgment shall be sought or enforced against any such individuals or their assets, all such personal contractual liability being expressly waived by Design-Builder. Further, the covenants and obligations contained in this agreement on the part of Agency shall be covenants and obligations of the Agency only, and not of any affiliate of Agency. No affiliate of Agency shall be individually liable for breach of any covenant or obligation of Agency, and no recourse shall be had against the assets of any affiliate of Agency (except to the extent of Agency’s assets but excluding therefrom any negative capital account of any such affiliate of Agency) for payment of any sums due or enforcement of any other relief, based upon any claim made by Design-Builder for breach of any of Agency's covenants or obligations.

13.12 Compliance with Restrictions.

Design-Builder shall comply with all conditions, restrictions and reservations of record, statutes, regulations, and ordinances, including, without limitation, all pollution control, environmental protection, zoning, planning, land use requirements, all restrictions and requirements affecting the Project and adjoining properties, and disabled access imposed by the Agency, the County and all other governmental entities including, without limitation, the requirements of any general plan and environmental requirements in connection with use, occupancy and building permits, and requirements of public utilities which affect construction of the Work in effect at the time of execution of this Agreement.

13.13 Compliance with Applicable Law.

13.13.1 Notices, Compliance. Design-Builder shall give all notices required by governmental authorities and comply with all Applicable Laws and lawful orders of governmental authorities, including but not limited to the provisions of the California Code of Regulations applicable to contractors performing construction and all laws, ordinances, rules, regulations and lawful orders relating to safety, prevailing wage and equal employment opportunities.

13.13.2 Taxes, Employee Benefits. Design-Builder shall pay at its own expense,

at no cost to the Agency and without adjustment to the Contract Sum, all local, state and federal taxes, including, without limitation all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Design-Builder, Design Consultants, Design Subconsultants, or Subcontractors of any tier, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Design-Builder's employees. 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 for its exclusive use, then Agency, upon request, will execute documents necessary to show that is a political subdivision of the State for the purposes of such exemption and that the sale is for the exclusive use of the Agency, in which case no excise tax for such materials shall be included in the Proposal or Contract Sum.

13.13.3 Notice of Violations. Design-Builder shall immediately notify the Agency and Project Manager in writing of any instruction received from the Agency, Agency Representative, or other person or entity that, if implemented, would cause a violation of any Applicable Law or lawful order of a governmental authority. If Design-Builder fails to provide such notice, then Project Manager shall be entitled to assume that such instruction is in compliance with Applicable Law and lawful orders of governmental authorities. If Design-Builder observes that any portion of the Drawings and Specifications or Work are at variance with Applicable Law or lawful orders of governmental authorities or should Design-Builder become aware of conditions not covered by the Contract Documents which will result in Work being at variance therewith, Design-Builder shall promptly notify Project Manager in writing. If, without such notice to Project Manager, Design- Builder or any Subcontractor performs any Work which it knew, or through the exercise of reasonable care should have known, was contrary to lawful orders of governmental authorities or Applicable Law, then Design-Builder shall bear all resulting losses at its own expense, at no cost to Agency and without adjustment to the Contract Sum.

13.14 Limitation on Third Party Beneficiaries.

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between Agency and a Design Consultant or Subcontractor or any other person except Design-Builder.

13.15 Further Assurances.

Design-Builder shall promptly execute and deliver to Agency all such instruments and other documents and assurances as are reasonably requested by Agency to further evidence the obligations of Design-Builder hereunder, including assurances regarding assignments of Design Consultants and Subcontractors contained herein.

ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the Design-Builder.

14.1.1 Design-Builder shall have the right to terminate its performance of the Contract only upon the occurrence of one of the following:

A. The Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Design-Builder, any Design Consultant, Subcontractor, Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, due to:

(i) the issuance of an order of a court or other public authority having jurisdiction; or

(ii) an act of government, such as a declaration of national emergency, making material unavailable;

and Design-Builder has given Agency written notice within ten (10) days of the occurrence of such ground for termination, then the Contractor may, upon thirty (30) additional calendar days written notice to Agency, unless the reason has theretofore been cured, terminate its performance of the Work.

B. The Work is stopped for a period of 120 consecutive days through no act or fault of Contractor, any Design Consultant, Subcontractor, Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, because the Agency has persistently failed to perform any material obligation under the Contract Documents and fails to cure such default within ninety (90) days after the receipt of notice from Design-Builder stating the nature of such default.

14.1.2 If Design-Builder terminates its performance of the Contract in accordance with this Paragraph, the Agency shall pay Contractor for the Work executed through the date of termination as set forth in Paragraph 14.7.3 below.

14.2 Termination by the Agency for Cause.

14.2.1 Grounds. The Agency shall have the right to terminate the Design-Builder's performance of the Contract, in whole or in part, without liability to the Agency if:

(1) Design-Builder fails promptly to begin the Work under

the Contract Documents; or

(2) Design-Builder refuses or fails to supply enough properly skilled workers or proper materials; or

(3) Design-Builder fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or

(4) Design-Builder discontinues the prosecution of the Work (exclusive of work stoppage: (i) due to termination by Agency; or (ii) due to and during the continuance of a Force Majeure event or suspension by Agency); or

(5) Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Agency to do so or (if applicable) after cessation of the event preventing performance; or

(6) Any representation or warranty made by Design-Builder in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made; or

(7) Design-Builder fails to make payment to Design Consultants, Subcontractors, or suppliers for materials or labor in accordance with the respective Contract Documents and Applicable Law; or

(8) Design-Builder disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or

(9) Design-Builder otherwise is guilty of breach of a provision of the Contract Documents; or

(10) Design-Builder becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide Agency with adequate assurances of Design-Builder's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to the Contract. Upon that person's appointment, Agency has, at its option and sole discretion, the right to immediately cancel the Contract and declare it null and void.

14.2.2 Agency's Rights. When any of the reasons specified in Subparagraph 14.2.1 exist, the Agency may, in addition to and without prejudice to any other rights or remedies of the Agency, notify the Design-Builder to discontinue all Work, or any part thereof, by written notice of default. The Agency will advise the Design-Builder's Performance Bond Surety of the default and give the Surety fifteen (15) calendar days to arrange for completion of the Work in accordance with the Contract Documents by

a contractor satisfactory to Agency. Should the Surety fail to effect satisfactory arrangements within said 15-day period, the Agency shall have the right to terminate Design-Builder's performance of the Work, in whole or in part, and to:

(1) Exclude Design-Builder from the site:
(2) Take possession of the Site and of all materials, equipment, tools and construction equipment, and machinery thereon owned by the Design- Builder;
(3) Suspend any further payments to Design-Builder until the Work is finished, withhold from Design-Builder amounts unpaid hereunder and offset such amounts against damages or losses incurred by Agency;
(4) Accept assignment of subcontracts pursuant to Paragraph 5.3; and
(5) Finish the Work by whatever reasonable method the Agency may deem expedient.

14.2.3 Costs. If Agency's costs to complete and damages incurred due to Design-Builder's default exceed the unpaid Contract balance, the Design-Builder shall pay the difference to the Agency. Upon request of the Design-Builder, the Agency shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Agency in finishing the Work.

14.2.4 Wrongful Termination. If it has been adjudicated or otherwise determined that Agency has wrongfully terminated the Design-Builder for cause, then said termination shall be deemed converted to a termination for convenience as set forth in Paragraph 14.7 and Design-Builder's remedy for wrongful termination in such event shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 14.7.

14.3 Partial Deletion or Suspension of Work by the Agency.

14.3.1 Design-Builder agrees that the Agency may determine whether any or all of the Work described in the Contract Documents shall be deleted or performance suspended without electing to terminate the Design-Builder's performance under the Contract and without any penalty being incurred by the Agency. 14.3.1.1. Any such partial deletion or suspension of the Work shall in no way void or invalidate the Contract nor shall it provide Design-Builder with any basis for seeking payment from Agency for Work deleted or suspended except to the extent such Work has already been performed and is otherwise compensable under the Contract. 14.3.1.2. The Agency shall have the right to later have any such suspended or deleted Work performed by Design-Builder or others without any penalty to the Agency. 14.3.1.3. In the event of any partial or complete deletion or suspension of Work, the Agency shall furnish Design-Builder with prompt written notice thereof, and the Agency shall be entitled to take possession of and have as its property all Record Documents, Accounting Records, and other data prepared by Design-Builder or its Design Consultants or Subcontractors.

14.4 Suspension for Convenience.

14.4.1 The Agency may at any time and from time to time, without cause, order the Design-Builder, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Agency may determine. Such order shall be specifically identified as a “Work Suspension Directive” under this Section.

14.4.2 Upon receipt of a Work Suspension Directive, Design-Builder shall, at the Agency’s expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Work Suspension Directive during the period of Work stoppage.

14.4.3 Within the period of suspension, or such extension to that period as is agreed upon by Design-Builder and the Agency, the Agency shall either cancel the Work Suspension Directive or delete the Work covered by such Work Suspension Directive by issuing a Change Order or Construction Change Directive.

14.4.4 If a Work Suspension Directive is cancelled or expires, Design-Builder shall continue the Work. A Change Order or Construction Change Directive will be issued to cover any adjustments of the Contract Sum and Contract Time necessarily caused by such suspension. No adjustment shall be made to the extent:

(1) That performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible; or
(2) That an equitable adjustment is made or denied under another provision of the Contract.

14.5 Suspension for Cause.

14.5.1 Agency has the authority by written order to suspend the Work, in whole or in part, without liability to Agency for Design-Builder’s failure to:

(1) Correct conditions unsafe for the Project personnel or general public; or
(2) Carry out the Contract; or
(3) Carry out orders of Agency.

14.6 Suspension Periods.

Upon receipt of notice to suspend operations, the Design-Builder shall immediately confer with the Agency concerning the probable duration of such suspension and stoppage, delays, and extensions of time resulting there from as well as the reduction and possible elimination of the Design-Builder's field cost and such other costs and expenses as may result directly from such Work stoppage. Upon written notice from the Agency to resume operations, the Design-Builder shall promptly resume all or any part of the Work and operations, including securing of materials required by said resumption notice. During periods that Work is suspended, Design-Builder shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs, or other facilities required to maintain the Project and continue to perform according the Contract Documents.

14.7 Termination by the Agency for Convenience.

14.7.1 Grounds. Without limiting any rights which Agency may have by reason of any default by Design-Builder hereunder, Agency may terminate Design-Builder's performance of the Contract, in whole or in part, at any time, for convenience upon **fifteen (15) calendar days** written notice to Design-Builder.

14.7.2 Contractor Actions. Upon receipt of such notice, Design-Builder shall perform the duties required by Paragraph **14.8** below. At the election of and as directed by the Agency, any or all of the subcontracts and purchase orders entered in to by Design-Builder prior to the effective date of termination shall be terminated or shall be assigned to Agency.

14.7.3 Compensation.

14.7.3.1 If the Parties are unable to agree on the amount of a termination settlement, the Agency shall pay the Contractor the following amounts:

A. For Work performed before the effective date of termination, the total (without duplication of any items) of:

i) The Cost of the Work; and

ii) A sum, as overhead and profit on the Cost of the Work, determined by the Agency to be fair and reasonable.

B. The reasonable costs of settlement of the Work terminated, including:

i) Accounting, clerical, and other expenses reasonably necessary for the preparation

ii) Storage, transportation, and other costs reasonably necessary for the preservation, protection, or disposition of inventory.

14.7.3.2 Such payment shall be Design-Builder's exclusive remedy for termination for convenience and will be due and payable on the same conditions as set forth for final payment to the extent applicable. Upon receipt of such payment, the Design-Builder and Agency shall have no further obligations to each other except for Design-Builder's obligations with respect to warranties, representations, indemnity, maintenance of insurance, and other obligations that survive termination or Final Completion as provided for herein.

14.7.3.3 It is understood and agreed that no fee, anticipated profit, compensation for lost opportunity costs, or other compensation or payment of any kind or character shall be due or payable for unperformed Work regardless of the basis of termination and the inclusion of this provision within this subparagraph shall in no way limit its application to termination under this Paragraph.

14.7.3.4 Design-Builder agrees that each of its subcontracts will reserve for the Design-Builder the same right of termination for convenience provided by this Paragraph.

14.7.4 No Consequential Damages.

Under no circumstances shall Design-Builder be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 14. The payment to Design-Builder determined in accordance with this Article constitutes Design-Builder's exclusive remedy for a termination hereunder.

14.8 Design-Builder's Duties Upon Termination for Cause or Convenience.

If the Agency terminates Design-Builder's performance of Work under the Contract, for cause or convenience, or if Design-Builder terminates a Design Consultant Subcontractor with the Agency's approval, Design-Builder shall:

(1) cease performance of the Work to the extent specified in the notice;
(2) take actions necessary or that the Agency may direct, for the protection and preservation of the Work;
(3) settle outstanding liabilities, as directed by Agency;
(4) transfer title and deliver to Agency Work in progress, specialized equipment necessary to perform the Work;
(5) submit all Record Documents, Accounting Records and other data prepared pursuant to the Contract by Design-Builder and/or its Design Consultants and Subcontractors, as applicable, to the Agency with fifteen (15) calendar days after the Agency's notice of termination in an organized, usable form, in both hard copy and electronic/digital form, with all items properly labeled to the degree of detail specified by the Agency; and,
(6) except for Work directed by Agency to be performed prior to the effective date of termination stated in the notice, incur no further costs or expenses and enter into no further subcontracts and purchase orders.

14.8.2 No compensation shall be due Design-Builder, if any, until Design-Builder complies with the requirements of this Paragraph.

ARTICLE 15 – LABOR PROVISIONS

15.1 Working Hours.

15.1.1 Work or activity of any kind shall be limited to the hours from 7:00 a.m. to 10:00 p.m. No construction noise shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. of the next day.

15.1.2 Work in excess of eight (8) hours per day, on Saturdays, Sundays, or on Agency holidays requires prior consent of the Project Manager and is subject to Cost of Overtime Construction Inspection.

15.1.3 Night, Sunday, and Holiday Work. No Work shall be performed at night, Sunday, or the ten (10) legal holidays to wit: New Year's Day, Martin Luther King, Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's

Day, Thanksgiving Day, Friday following Thanksgiving Day, and Christmas Day, except Work pertaining to the public safety or with the permission of the Project Manager, and accordance with such regulations as he/she shall furnish in writing. Before performing any Work at said times, except Work pertaining to the public safety, the Contractor shall give written notice to the Project Manager so that proper inspection may be provided. “Night” as used in this paragraph shall be deemed to include the hours from 10:00 P.M. to 7:00 A.M. of the next succeeding day.

15.2 Cost of Overtime Construction Services and Inspections.

15.2.1 Overtime construction Work performed at the option of, or for the convenience of, the Design-Builder will be inspected by the Agency at the expense of the Design-Builder. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays, the charges will be determined by the Agency and submitted to the Contractor for payment.

15.2.2 Equipment, materials, or services provided by the Agency, in connection with Design-Builder-initiated overtime construction Work described in Paragraph 15.2.1, will also be at the expense of the Design-Builder. The charges will be determined by the Agency, and submitted to the Design-Builder for payment.

15.2.2.1. There will be no charges to the Design-Builder for the inspection of overtime Work ordered by the Project Manager or required by the Contract Documents.

15.3 Compliance with State Labor Code.

15.3.1 Contractor shall comply with the provisions of the Labor Code of the State of California and any amendments thereof.

15.3.2 The time of service of any worker employed upon the Work shall be limited and restricted to eight (8) hours during any one-calendar day, and 40 hours during any one-calendar week. 15.3.2.1. Work performed by employees of the Design-Builder in excess of eight (8) hours per day, and 40 hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

15.3.3 The Design-Builder and every Design Consultant and Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him/her in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the Agency and to the Division of Labor Standards Enforcement of the State of California.

15.3.4 In the event Agency deems Design-Builder is in violation of this Paragraph, the Design-Builder shall, as a penalty, forfeit Fifty Dollars ($50.00) for each worker employed in the execution of the Contract by the Design-Builder or by any Design Consultant or Subcontractor for each calendar day for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, a (one hundred dollar) $100 penalty shall apply for each

underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to cover underpaid wages. This subparagraph is effective to the extent it does not directly conflict with the overtime penalty provision of California Labor Code Section 558. In the event of such conflict, the California Labor Code governs over this Paragraph.

15.4 Wage Rates.

15.4.1 Prevailing Wages.

15.4.1.1 Design-Builder shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime Work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the Contract. The Director of the Department of Industrial Relations of the State of California (California DIR) (pursuant to California Labor Code) and the United States Secretary of Labor (pursuant to the Davis-Bacon Act) have determined the general prevailing rates of wages in the locality in which the Work is to be performed. The rates are available online at https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm and https://sam.gov/wage-determinations. In addition, the Federal minimum wage rates for this Project as predetermined by the Secretary are included in the RFP. Future effective general prevailing wage rates, which have been predetermined and are on file with the California DIR are referenced but not printed in the general prevailing wage rates. To the extent that there are any differences in the federal and state prevailing wage rates for similar classifications of labor, the Design-Builder and its Design Consultants and Subcontractors shall pay the highest wage rate.

15.4.1.2 The Design-Builder shall post a copy of the general prevailing rate of per diem wages at the job site.

15.4.1.3 The Design-Builder and any Design Consultant or Subcontractor under him/her shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the Contract.

15.4.1.4 The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining Contract applicable to the particular craft, classification, or type of worker employed on the project.

15.4.1.5 The Design-Builder shall, as a penalty to the State or the Agency, forfeit not less than Forty Dollars ($40) up to Two Hundred Dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the Work or craft in which the worker is employed under the Contract by the Design-Builder or by any Design Consultant or Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Design-Builder.

15.4.1.6 The specified wage rates are minimum rates only, and the Agency will not consider and shall not be liable for any claims for additional

compensation made by the Design-Builder because of payment by him/her of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at his/her own expense.

15.4.2 Payroll Records.

15.4.2.1 The Design-Builder and each Design Consultant and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman apprentice, worker or other employee employed in connection with the work. The payroll records shall be certified and shall be submitted to the Agency's Project Manager every two weeks.

15.4.2.2 The Design-Builder shall inform the Agency of the location of the payroll records, including the street address, Agency, and county, and shall, within five (5) Working Days, provide a notice of change in location and address.

15.4.2.3 Upon request by the Agency's Project Manager, the Design-Builder shall provide a copy of the certified payroll records along with a statement of compliance.

15.5 Apprenticeship Standards.

15.5.1 Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

(1) Prior to commencing work on a public works contract, submit Contract Award information to the applicable joint apprenticeship committee, including an estimate of the journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. Use Form DAS-140. The Agency reserves the right to require Design-Builder and Design Consultants and Subcontractors to submit a copy of said forms to the Agency.

(2) Employ apprentices for the public work at a ratio of no less than one (1) hour or apprentice work for every five (5) hours or labor performed by a journeyman. To request dispatch of apprentices, use Form DAS-142. The Agency reserves the right to require Design-Builder and Design Consultants and Subcontractors to submit a copy of said forms to the Agency.

(3) Pay the apprentice rate on public works projects only to those apprentices who are registered, as defined in Labor Code Section 3077.

(4) Contribute to the training fund in the amount identified in the Prevailing Wage Rate publication for journeyman and apprentices. Contractors who choose not to contribute to the local

training trust fund must make their contributions to the California Apprenticeship Council, P.O. Box 511283, Los Angeles, CA 90051-7838.

15.5.2 Failing to comply with the provisions of California Labor Code Section 1777.5 may result in the loss of the right to Proposal on all public works projects for a period of one to three years and the imposition of a civil penalty of Fifty Thousand Dollars ($50,000) for each calendar day of noncompliance. Contractor should make a separate copy of this material for each of his/her Subcontractors.

15.5.3 Statement of Employer Fringe Benefit Payments. Within five (5) calendar days of signing the Contract or Subcontract, as applicable, the Statement of Employer Payments (DLSE Form PW 26,) shall be completed for each Design-Builder, Design Consultant, and Subcontractor of any tier who pays benefits to a third-party trust, plan or fund for health and welfare benefits, vacation funds or makes pension contributions. The form must contain, for each worker classification, the fund, plan or trust name, address, administrator, the amount per hour contributed and the frequency of contributions. Training fund contributions shall also be reported in this form. Agency reserves the right to require Design-Builder, Design Consultants, and Subcontractors to submit a copy of said forms to the Agency.

15.6 Employment of Apprentices.

15.6.1 In the performance of this Contract, the Design-Builder and any Design Consultant and Subcontractor shall comply with the provisions concerning the employment of apprentices in the Labor Code of the State of California and any amendments thereof.

15.6.1.1. In the event the Design-Builder or any Design Consultant or Subcontractor willfully fails to comply with the aforesaid provisions of the Labor Code, such Design-Builder, Design Consultant, or Subcontractor shall be subject to the penalties for noncompliance in the Labor Code of the State of California and any amendments thereof.

15.7 California Department of Industrial Relations – Public Works Contractor Registration

A. Beginning July 1, 2014, under the Public Works Contractor Registration Law (CaliforniaSenate Bill No. 854 - See Labor Code Section 1725.5), contractors must register and meet requirements using the online application found on https://www.dir.ca.gov/Public-Works/Contractor-Registration.html before bidding on public works contracts in California. The application also provides agencies that administer public works programs with a searchable database of qualified contractors. Application and renewal are completed online with a minimum non-refundable fee of $400. More information is available at the following links:

B. https://www.dir.ca.gov/Public-Works/Contractor-Registration.html

C. Beginning April 1, 2015, the Agency may award public works projects only to contractors and subcontractors who comply with the Public Works Contractor Registration Law.

i. Notice to **Proposers** and Subcontractors:

ii. No contractor or subcontractor may be listed on a **Proposal** for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for **Proposal** purposes only under Labor Code section 1771.1(a)].

iii. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

iv. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

v. The prime contractor must post job site notices prescribed by regulation. (See 8 Calif. Code Reg. Section 16451(d) for the notice that previously was required for projects monitored by the California DIR Compliance Monitoring Unit.)

D. Furnishing of Electronic Certified Payroll Records to Labor Commissioner. For all new projects awarded on or after April 1, 2015, contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).

15.8 Character of Workers.

The Design-Builder shall not allow his/her agents or employees, Design Consultants, Subcontractors, or any agent or employee thereof, to trespass on premises or lands in the vicinity of the Work. Only skilled foremen and workers shall be employed on Work requiring special qualifications, and when required by the Agency's Project Manager, the Design-Builder shall discharge any person who commits trespass, or in the opinion of the Agency's Project Manager, acts in a disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable manner. Any employee being intoxicated or bringing or having intoxicating liquors or controlled substances on the Work shall be discharged. Such discharge shall not be the basis of any claim for compensation of damages against the Agency or any of its officers, agents, and employees.

15.9 No Smoking – State Labor Code Section 6404.5

The Design-Builder and its agents, employees, Design Consultants, Subcontractors, representatives, and any person under Design-Builder's control, are prohibited from smoking in— or within a 20-foot distance from—the Site, which is a "place of employment" under California Labor Code § 6404.5.

ARTICLE 16 – LIQUIDATED DAMAGES

16.1 Agreement on Damages.

Time is an essential element of this Contract and is of the essence. The cost to Agency of the administration of this Contract, including engineering, inspection, and supervision, will be increased as the time occupied by the Work is lengthened. Further, the public is subject to harm and inconvenience when full use cannot be made due to an incomplete project, and/or traffic is disrupted and impacted by the Project. The Design-Builder understands and agrees that if it fails to complete the Work in accordance with the Contract Documents, Agency will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, the Design-Builder and Agency have agreed to stipulate the amount payable by the Design-Builder in the event of its failure to meet a Completion Deadline or to otherwise comply with certain Contract schedule requirements.

The Design-Builder acknowledges and agrees that the Liquidated Damages are intended to compensate Agency solely for the Design-Builder's failure to meet the Completion Deadline(s) that are set forth in the Project Manual, or for failure to comply with other Contract schedule requirements, and shall not excuse the Design-Builder from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that Agency has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline shall not preclude Agency from exercising its other rights and remedies respecting any such delay.

16.2. Amounts of Liquidated Damages.

In the event the Design-Builder fails to achieve Substantial Completion by the Substantial Completion Deadline, the Design-Builder agrees to pay to Agency Liquidated Damages in the amount of $2,000 per day as compensation for Agency's additional costs of administering this Contract (including engineering, legal, accounting and administrative costs) and for inconvenience to the public due to delays, commencing on the day after the Substantial Completion Deadline and ending on the date Substantial Completion is achieved.

16.3 Cap on Liquidated Damages.

There shall be no cap on Liquidated Damages.

16.4. Reasonableness of Liquidated Damages.

The Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by Agency of damages to Agency and the public caused by late completion. The Design-Builder and Agency agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix Design-Builders' costs and to avoid later disputes over which items are properly chargeable to the Design-Builder. It is understood and agreed by the Design-Builder that any Liquidated Damages payable in accordance with this Article are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. The Design-Builder further acknowledges

and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

16.5. Payment and Deductions.

Liquidated Damages shall be payable by the Design-Builder to Agency within ten (10) Days after the Design-Builder's receipt of an invoice therefor from Agency. In addition, Agency shall have the right to deduct any amount owed by the Design-Builder to Agency hereunder from any amounts owed by Agency to the Design-Builder, including any retainage which may be payable by Agency to the Design-Builder. No Waiver.

Permitting or requiring the Design-Builder to continue and finish the Work or any part thereof after the Substantial Completion Deadline or any other Completion Deadline shall not act as a waiver of Agency's right to receive Liquidated Damages hereunder or any other rights or remedies available to Agency under this Contract.

16.6. Independent and Cumulative Damages.

The categories of Liquidated Damages in subsection (c) hereof are independent in nature and may be cumulative; the assessment of one category does not affect Agency's right to assess and collect a different category.

16.7. Overall Limitation.

The Design-Builder's liability to Agency for damages resulting from breach of the Contract shall not exceed the sum of (1) all those costs reasonably incurred by Agency or any party acting on Agency's behalf in completing or correcting the Work or having the Work completed or corrected by another Person; plus (2) an amount equal to twenty percent (20%) of the Contract Price (which amount shall specifically include any Liquidated Damages paid pursuant to this Article as well as any payments made by the Design-Builder pursuant to its indemnification obligations under Section 7.11 hereof, but shall specifically exclude any amounts paid by the Design-Builder that are covered by insurance proceeds).

16.8. Exclusion from Limitation.

This limitation of liability shall not apply with regard to any illegal activities, fraud, criminal conduct, gross negligence, recklessness, or intentional misconduct on the part of the Design-Builder or any Design-Builder-Related Entity.

-END OF GENERAL CONDITIONS-

ATTACHMENT C: FEDERAL TERMS AND CONDITIONS

This solicitation and the Agreement to be awarded are subject to Federal requirements. These requirements shall govern any inconsistent provisions otherwise contained in the Solicitation Documents and the Agreement to be entered into, provided any such federal requirement is determined to apply to the product or service to be provided or in the context under which it was written. The term "Contractor" or "Proposer," as may be used in these requirements, shall mean and include any successful Proposer as the context permits or requires. The terms "City," "Grantee," "Authority," "Recipient," or "Agency," as may be used in these requirements, shall mean and include, as the context permits or requires, Yuba Sutter Transit Authority. The clause language is based on FTA's Best Practices Procurement and Lessons Learned Manual, January 2025 FTA Circular 4220.1G Third Party Contracting Guidance, Current FTA Master Agreement, and 2 CFR Part 200; Sections 317-327 Procurement Standards for Federally-Assisted Procurements. If those requirements change, the most recent federal provisions will apply to the project as required. This project will be funded in whole or in part by the Federal Transit Administration (FTA); therefore, the required "federal clauses" and certifications shall be incorporated into the Agreement. The successful Proposer shall cooperate with the Agency to ensure full conformance with its funding agreements with the FTA and will comply with all terms and conditions prescribed for third-party contracts by the FTA.

1. **Incorporation of FTA Terms.** The preceding provisions include, in part, certain terms and conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1G, dated January 17, 2025, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor/Consultant shall not perform any act, fail to perform any act, or refuse to comply with any the Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

2. **Access to Records.** Contractor/Consultant must provide all authorized representatives of the Agency, the FTA Administrator, the State Auditor and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor/Consultant which are related to performance of this Agreement for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor/Consultant also agrees to retain and maintain, and will require its subcontractors to retain and maintain, all books, records, accounts and reports related to this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor/Consultant agrees to maintain the same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

3. **Civil Rights**

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor/Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor/Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor/Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the performance of the Agreement. In addition, the Contractor/Consultant agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor/Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor/Consultant agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor/Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor/Consultant agrees to comply with any implementing requirements FTA may issue.

The Contractor/Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

4. **Disadvantaged Business Enterprises.**

a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other

remedy as Authority deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The Authority does not have a DBE goal for this project. Contractor will be required to report its DBE participation obtained through race neutral means throughout the period of performance of this Agreement.

d. Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 10 days after the Contractor's receipt of payment for that work from the Authority. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The Contractor must promptly notify Authority whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Authority.

5. **Energy Conservation.** The Contractor/Consultant agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act, 42 U.S.C. § 6321 et seq.

6. **Federal Changes**. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Agreement.

7. **Fly America Requirements**. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

8. **Cargo Preference.** The Contractor/Consultant agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement by ocean vessels to the extent such vessels are available at fair and

reasonable rates for United States-flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Agency (through the Contractor/Consultant in the case of a subcontractor’s bill-of-lading); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

9. **Disputes, Breaches, Defaults, and Litigation Notification**. Notification to the Authority; Flow Down Requirement. If a current or prospective legal matter that may affect the Authority or Federal Government emerges, the Contractor must promptly notify the Authority. The Contractor must include a similar notification requirement in its subcontractor contracts. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Authority or Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

10. **EEO.** This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60- 300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

11. **No Government Obligation to Third Parties.** The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement. The Contractor agrees to include the above clause in each subcontract financed in whole or part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

12. **Program Fraud and False or Fraudulent Statements or Related Acts.**

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies” 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the Agreement, the Contractor certifies or

affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA assisted project for which the Services are being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13. **Accessibility**. The Contractor/Consultant agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended; 29 USC § 794; 49 USC § 5301(6); 49 CFR Parts 27, 37, 38, and 39 and any implementing requirements and regulations FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

14. **Davis-Bacon and Copeland Anti-Kickback Acts.**

a. Minimum wages

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full number of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and

mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employee's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and The classification is utilized in the area by the construction industry; and The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work

is performed in the classification.

3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

4. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

5. (A) The contracting officer shall require that any class of laborers or mechanics who is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry;
3. The proposed wage rate, including any bona fide fringe benefits, is reasonable relative to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined

pursuant to paragraphs (a)(1)(v) (B) or (C) of this section shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

b. Withholding - The Authority shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c. Payrolls and basic records

1. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the

Superintendent of Documents (Federal Stock Number 029-005-00014- 1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for all subcontractors submitting copies of payrolls.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR p 3;

3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of “compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

3. The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

d. Apprentices and trainees

1. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not

individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the 'apprentice's level of progress, expressed as a percentage of the journeymen's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training or a State Apprenticeship Agency recognized by the Bureau withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

e. Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

f. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

g. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

h. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this act.

i. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

j. Certification of eligibility –

1. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

15. **Patent and Rights in Data.**

a. Rights in Data

i. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

ii. The following restrictions apply to all subject data first produced in the performance of the Agreement:

1. Except for its own internal use, the Authority or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Authority or Contractor authorize others to do so without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below.

As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Authority or Contractor using Federal assistance in whole or in part provided by.

3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Authority and the Contractor performing experimental, developmental, or research work required by the Agreement agree to permit FTA to make available to the public either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Agreement, is not completed for any reason whatsoever, all data developed under the Agreement shall become subject

data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for the Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

4. Unless prohibited by state law, upon request by the Federal Government, the Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Federal Government.

5. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. Data developed by the Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Agreement is exempt from the requirements of subsections (2), (3), and (4) of this clause, provided that the Authority or Contractor identifies that data in writing at the time of delivery of the contract work.

7. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

iii. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

iv. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

b. Patent Rights

1. General - If any invention, improvement, or discovery is conceived or first

actually reduced to practice in the course of or under the Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Authority and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

16. **Seismic Safety.** The Contractor/Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor/Consultant also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

17. **Recycled Products.** The Contractor/Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

18. **Safe Operation of Motor Vehicles.** The Contractor/Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor/Consultant or the Agency. The Contractor/Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor/Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

19. **Suspension and Debarment.** This Agreement is a covered transaction subject to the requirements of 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 1200, U.S. DOT

regulations, “Nonprocurement Suspension and Debarment.” These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor/Consultant is required to verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: (a) Debarred from participation in any federally assisted Award; (b) Suspended from participation in any federally assisted Award; (c) Proposed for debarment from participation in any federally assisted Award; (d) Declared ineligible to participate in any federally assisted Award; (e) Voluntarily excluded from participation in any federally assisted Award; or (f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C, as supplemented by 2 C.F.R. Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

20. **Clean Water and Air Requirements.** The Contractor/Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et *seq*., and the Clean Air Act, as amended, 42 U.S.C. 7401 et *seq*. The Contractor/Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. The Contractor/Consultant also agrees to include these requirements in each subcontract exceeding $150,000 financed in part or in whole with federal assistance provided by the FTA.

21. **Lobbying.** Contractor/Consultant shall file the certification required by 49 CFR Part 20, “New Restrictions on Lobbying.” Contractor/Consultant shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor/Consultant shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the Agency. Contractor/Consultant shall ensure that all of its subcontractors/subconsultants under this Agreement shall certify the same. The Agency is responsible for keeping the certification of the Contractor/Consultant, who is in turn responsible for keeping the

certification forms of subcontractors/subconsultants. The Bidder shall complete Standard Form SF-LLL, “Disclosure of Lobbying Activities,” which is included with the solicitation documents, including instructions for completion.

22. **Contract Work Hours and Safety Standards.**

1. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidate– damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidate– damages - The Grantee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this on.

23. **Buy America.** The Contractor/Consultant agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR § 661.11. All bidders or proposers must submit the appropriate Buy America

certification to the Agency with their bids or proposals, except those subject to a general waiver. Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

24. **Build America, Buy America Act.** For construction materials used in the Project, the Contractor/Consultant agrees to comply with the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, U.S. DOT, and FTA, unless a waiver applies.

25. **Telecommunications Equipment or Services; Video Surveillance Equipment Or Services.** The Contractor/Consultant represents that the Contractor/Consultant, and its subcontractors and subconsultants, will not provide or use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system, in accordance with Section 889 of the John S. McCain National Defense Authorization Act, in the performance of this Agreement. "Covered telecommunications equipment or services" means any of the following: (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (3) Telecommunications or video surveillance services provided by such entities or using such equipment listed in (1) or (2); or (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service. "Critical technology" includes those critical technologies listed in 48 C.F.R. 52.204–25, subpart (a).

27. **Termination**

a**.** Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid to the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for

in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient), in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such cases, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term, or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated, nor the Contractor charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes, and

2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of the delay. If, in the judgment of the (Recipient),

the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties but subject to appeal under the Disputes clauses.

If, after the termination of the Contractor's right to proceed, it is determined that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise) and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is due to the Contractor's failure to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for the convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient) or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid to the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient), and the parties shall negotiate the termination settlement to be paid to the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs and a fee if the contract provided for payment of a fee in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, or flood, events that are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

28. **Conformance with ITS National Architecture.**
The Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. **Trafficking in Persons.**
The contractor agrees that it and its employees that participate in the Recipient's Award may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect; Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

30. **Federal Tax Liability and Recent Felony Convictions.** By submitting a bid or proposal, the Contractor/Consultant certifies that it (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (2) has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months. The Contractor/Consultant must flow this requirement down to subcontractors and vendors at all lower tiers.

31. **Notice to Third Party Participants.**
Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement, including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

32. **Notification to FTA and U.S. Inspector General of Fraud, Waste, or Abuse and other Legal Matters.**
A. The Contractor/Consultant agrees to promptly notify the FTA Chief Counsel and the FTA Regional Counsel for Region IX if it has knowledge of (i) any current or prospective legal matter that may affect the Federal Government, including but not

limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, or (ii) any matters that may affect the Federal Government, including but not limited to, the Federal Government's interests in the Federal Award supporting this Agreement, this Agreement and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Contractor/Consultant further agrees to promptly notify the FTA Chief Counsel, the FTA Regional Counsel for FTA Region IX, and the U.S. DOT Office of Inspector General if it has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA, including but not limited to knowledge that a person has or may have (i) submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or (ii) committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance.

The Contractor/Consultant further agrees to promptly notify Agency of any matter described above that relates to this Agreement or any other federally assisted agreement between the Contractor/Consultant and Agency.

"Knowledge," as used in this section, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the Contractor's/Consultant's possession.

"Promptly," as used in this section, means to refer information without delay and without change.

B. The Contractor/Consultant agrees to include the above clause in all subcontracts entered into for the performance of this Agreement. It is further agreed that the above clause shall not be modified, except to identify the subcontractor/subconsultant who will be subject to its provisions.

33. **Federal Standards.**

As a recipient of Federal funds through the Agency, the Contractor agrees to comply with FTA Circular 4220.1G, "Third Party Contracting Requirements," including any revision or replacement thereof, and applicable Federal regulations or requirements, including FTA third-party contracting regulations when promulgated. The FTA Best Practices Procurement Lessons Learned Manual provides additional procurement guidance. Nevertheless, successful Proposers should be aware that the FTA Best Practices Procurement Lessons Learned Manual is focused on procurement processes and may omit certain Federal requirements applicable to the work to be performed.

34. **Assignability.**

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other. The Contractor shall pass this requirement on to participants at all lower tiers without regard to the value of any sub-agreement.

35. **Severability.**

The Contractor agrees that if any provision of these Federal Requirements is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

36. **Drug-Free Workplace.**

Drug-Free Workplace. The Contractor agrees to: (1) Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; (2) Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and (3) Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

37. **Bonding Requirements.**

Each bidder must provide a bid guarantee in an amount determined by the Agency. The guarantee must consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid, as assurance that the bidder will execute the required contractual documents within the specified time upon acceptance of the bid.

A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

38. **6002 of the Solid Waste Disposal Act.**

Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA-designated item exceeds $10,000.

39. **Veterans Preference.** To the extent practicable, the Contractor/Consultant agrees that it and its subcontractors:

Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the requisite skills and abilities to perform the construction work required under a third party contract in connection with a capital project supported with funds appropriated or made available for 49 U.S.C. chapter 53, and

Will not be required to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

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- END OF ATTACHMENT C -

EXHIBIT 2 PROJECT FORMS

Proposal Forms

Form 1 – Performance Bond

Form 2 – Payment Bond

Form 3 – Notice to Proceed

Form 4 – Change Order

Form 5 – Or Equal Substitution

Form 6 – Statutory Forms of Waive and Release Upon Payment

Form 7 – DAS Form 140

Form 8 – DAS Form 142

Form 9 – DLSE Form PW26

Form 10 – Escrow Agreement for Securities in Lieu of Retention

Form 11 – Solid Waste Disposal and Diversion

Form 12 – Claims for Additional Cost and/or Time

EXHIBIT 2 – FORM 1
PERFORMANCE BOND

Bond No.: _____

Premium Amount: $_____

Bond's Effective Date: _____

RECITALS:

1. Yuba Sutter Transit Authority ("Agency") has awarded to

_____

(Name, address, and telephone of Design-Builder)

_____

("Principal"),

a design-build contract (the "Contract") for the design and construction of the Work described as follows: RFP No. **25-02: Next Generation Transit Facility**.

2. The Principal is required under the terms of the Contract—and all contract documents referenced in it ("Contract Documents")—to furnish a bond guaranteeing the Principal's prompt, full, and faithful performance of the Work and its obligations under the Contract; and to furnish a separate bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work.
3. The Contract and Contract Documents, including all their amendments and supplements, are incorporated into this Bond and made a part of it by this reference.

OBLIGATION:

THEREFORE, for value received, we, the undersigned Principal and

_____

(Name, business address, e-mail and telephone of Surety)

_____

("Surety"),

a duly admitted surety insurer under California's laws agrees as follows:

By this Bond, We jointly and severally obligate and bind ourselves and our respective heirs, executors, administrators, successors, and assigns to pay the Agency the penal sum of _____

_____Dollars ($_____) ("the Bonded Sum"), this amount comprising not less than the Contract Sum, in lawful money of the United States of America.

The California Licensed Resident Agent for Surety is:

_____

(Name, business address, e-mail, and telephone)

_____. Registered Agent's California Department of Insurance License No._____.

THE CONDITION OF THIS BOND'S OBLIGATION IS THAT if Principal promptly and faithfully performs the undertakings, terms, covenants, conditions, and agreements in the Contract and Contract Documents (including all their amendments and supplements made as therein provided), all within the time and in the manner that those documents specify, and in all respects according to their true intent and meaning, and shall defend, indemnify, save and hold harmless

the Agency, then this obligation becomes null and void. Otherwise, this Bond remains in full force and effect, and the following terms and conditions apply to this Bond:

1. This Bond specifically guarantees the Principal's performance of each obligation and all obligations under the Contract and Contract Documents, as they may be amended and supplemented— including, but not limited to, the Principal's liability for liquidated damages, Warranties, Guarantees, Correction, and Maintenance obligations as specified in theContract and Contract Documents.
2. This Bond shall cover the cost to complete the design services, including, but not limited to, the cost of replacing the team of Design Consultants, but shall not cover any damages of the type specified to be covered by the Principal's errors and omissions insurance coverage for the design elements of the Work or by any professional liability insurance maintained by the team of Design Consultants.
3. This Bond shall cover the cost to complete the construction Work.
4. For those obligations of the Principal that survive the Final Completion of the Work described in the Contract and Contract Documents, the guarantees in this Bond also survive the Final Completion of the Work.
5. When Agency declares that Principal is in default under the Contract, or Contract Documents, or both, Surety shall promptly: (a) remedy the default; (b) complete the Project according to the Contract Documents' terms and conditions then in effect; or (c) using a procurement methodology approved by Agency, select a Design-Builder or contractors—acceptable to Agency—to complete all of the Work, and arrange for a contract between the contractor(s) and Agency. Surety shall make available, as the Work progresses, sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract and Contract Documents— including other costs and damages for which Surety is liable under this Bond—except that Surety's total obligation, as described here, will not exceed the Bonded Sum.
6. An alteration, modification, change, addition, deletion, omission, agreement, or supplement to the Contract, Contract Documents, or the nature of the Work performed under the Contract or Contract Documents—including, without limitation, an extension of time for performance—does not, in any way, affect Surety's obligations under this Bond. Surety waives any notice of alteration, modification, change, addition, deletion, omission, agreement, supplement, or extension of time.
7. Surety's obligations under this Bond are separate, independent from, and not contingent upon any other surety's guaranteeing Principal's faithful performance of the Work.
8. The Surety agrees that payments made to contractors and suppliers to satisfy claims on the separate payment bond do not reduce the Surety's legal obligations under this Performance Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the Work to satisfy this Performance Bond will not be considered payment bond claims.
9. No right of action accrues on this Bond to any entity other than Agency or its successors and assigns.
10. If an action at law or in equity is necessary to enforce or interpret this Bond's terms, Surety must pay—in addition to the Bonded Sum—Agency's reasonable attorneys' fees and litigation costs, in an amount the court fixes. Principal and Surety agree that this Bond is a separate obligation of the Principal and its Surety, and that any attorneys' fee provision contained in this Bond does not apply to the Contract. If any litigation occurs between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation.
11. Surety shall mail Agency written notice at least 30 days before: (a) the effective date on which the Surety will cancel, terminate, or withdraw from this Bond; or (b) this Bond becomes void or unenforceable for any reason.

On the date set forth below, Principal and Surety duly executed this Bond, with the name of each party appearing below and signed by its representative(s) under the authority of its governing body.

Date: _____

PRINCIPAL:	**SURETY:**
_____	_____
(Company Name)	**(Company Name)**
_____	_____
(Signature)	**(Signature)**
By: _____	**By:** _____
(Name)	**(Name)**

Its:_____ **Its:**_____

(Title) **(Title)**

Address for Serving Notices or Other Documents: **Address for Serving Notices or Other Documents:**

_____ _____

_____ _____

- THIS BOND MUST BE EXECUTED IN TRIPLICATE.
- EVIDENCE MUST BE ATTACHED OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT.
- THE ATTORNEY-IN-FACT'S SIGNATURE MUST BE NOTARIZED.

APPROVED AS TO SURETY AND AMOUNT OF BONDED SUM:

By_____
CEO/General Manager

APPROVED AS TO FORM:

By_____
Attorney

BOND ACKNOWLEDGMENT FOR

SURETY'S ATTORNEY-IN-FACT

A notary public or other officer completing this certificate verifies only the identity ofthe individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF_____)

On this_____day of_____, 20____,

before me,_____(name), a Notary Public for said County, personally appeared_____(name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument as the attorney in fact of_____, and acknowledged to me that he/she subscribed the name of_____thereto as principal, and his/he own name as attorney in fact.

_____Notary Public

SEAL

EXHIBIT 2 – FORM 2
PAYMENT BOND

Bond No.: _____

Premium Amount: $_____

Bond's Effective Date: _____

PAYMENT BOND
(LABOR AND MATERIALS)
RECITALS:

1. Yuba Sutter Transit Authority ("Agency") has awarded to

_____

(Name, address, and telephone of Design-Builder)

_____

("Principal"),

a design-build Contract (the "Contract") for the design and construction of the Work described as follows:

RFP No. **25-02: Next Generation Transit Facility**.

2. Principal is required under California *Civil Code* sections 9550 and 9554 the terms of the Contract— and all contract documents referenced in it ("Contract Documents") — to furnish a bond guaranteeing Principal's paying claims, demands, liens, or suits for any work, labor, services, materials, or equipment furnished or used in the Work; and to furnish a separate bond guaranteeing Principal's prompt, full and faithful performance of the Work and its obligations under the Contract.

3. The Contract and Contract Documents, including all their amendments and supplements, are incorporated into this Bond and made a part of it by this reference.

OBLIGATION:

THEREFORE, for value received, We, Principal and

_____

(Name, address, and telephone of Surety)

_____

("Surety"),

a duly admitted surety insurer under California's laws agrees as follows:

By this Bond, We jointly and severally obligate and bind ourselves and our respective heirs, executors, administrators, successors, and assigns to pay Agency the penal sum of

_____

_____Dollars ($_____) ("the Bonded Sum"), this amount comprising not less than the Contract Sum/Guaranteed Maximum Price, in lawful money of the United States of America.

The California Licensed Resident Agent for Surety is:

(Name, address, and telephone)

_____ Registered Agent's California Department of Insurance License No._____.

THE CONDITION OF THIS BOND'S OBLIGATION IS THAT if the Principal or a subcontractor fails to pay (a) any person named in California Civil Code Section 9100, or any successor legislation; (b) any amount due under California's Unemployment Insurance Code, or any successor legislation, for work or labor performed under the Contract or Contract Documents; or (c) any amount under Unemployment Insurance Code Section 13020, or any successor legislation, that Principal or a subcontractor must deduct, withhold, and pay over to the Employment Development Department from the wages of its employees, for work or labor performed under the Contract or Contract Documents, then Surety shall pay for the same in an amount not-to-exceed the Bonded Sum. Otherwise, this obligation becomes null and void. While this Bond remains in full force and effect, the following terms and conditions apply to this Bond:

1. This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, or any successor legislation, giving those persons or their assigns a right of action in any suit brought upon this Bond, unless California Civil Code Section 9566, or any successor legislation, applies.
2. An alteration, modification, change, addition, deletion, omission, agreement, or supplement to the Contract, Contract Documents, or the nature of the Work performed under the Contract or Contract Documents— including, without limitation, an extension of time for performance— does not, in any way, affect Surety's obligations under this Bond. Surety waives any notice of alteration, modification, change, addition, deletion, omission, agreement, supplement, or extension of time.
3. Surety's obligations under this Bond are separate, independent from, and not contingent upon any other surety's paying claims, demands, liens, or suits for any work, labor, services, materials, or equipment furnished or used in the Work.
4. This Bonds shall cover all payment obligations for the design-build Work, including, but not limited to, warranty payment obligations unless a separate warranty bond is provided by the Principal, but shall not cover any paymentobligations covered by the Principal's errors and omissions insurance coverage for the design elements of the Workor by any professional liability insurance maintained by the team of Design Consultants.
5. If an action at law or in equity is necessary to enforce or interpret this Bond's terms, Surety must pay—in addition to the Bonded Sum—the Agency's reasonable attorneys' fees and litigation costs in an amount the court fixes. Principal and Surety agree that this Bond is a separate obligation of the Principal and its Surety and that any attorneys' fee provision contained in this Bond does not apply to the Contract. If any litigation occurs between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation.
6. Surety shall mail Agency written notice at least 30 days before (a) the effective date on which the Surety will cancel, terminate, or withdraw from this Bond or (b) this Bond becomes void or unenforceable for any reason.

On the date set forth below, Principal and Surety duly executed this Bond, with the name of each party appearing below and signed by its representative(s) under the authority of its governing body.

Date: _____

PRINCIPAL:	SURETY:
_____	_____
(Company Name)	(Company Name)
_____	_____
(Signature)	(Signature)
By:_____	By:_____
(Name)	(Name)
Its:_____	Its:_____
(Title)	(Title)

Address for Serving Notices or Other Documents: Address for Serving Notices or Other Documents:

- THIS BOND MUST BE EXECUTED IN TRIPLICATE.
- EVIDENCE MUST BE ATTACHED OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT.
- THE ATTORNEY-IN-FACT'S SIGNATURE MUST BE NOTARIZED.

APPROVED AS TO SURETY AND AMOUNT OF BONDED SUM:

By_____
CEO/General Manager

APPROVED AS TO FORM:

By_____
Attorney

BOND ACKNOWLEDGMENT FOR

SURETY'S ATTORNEY-IN-FACT

A notary public or other officer completing this certificate verifies only the identity ofthe individual who signed the document to which this certificate is attached, and notthe truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF_____)

On this_____day of_____, 20____,

before me,_____(name), a Notary Public for said County, personally appeared_____(name), whoproved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument as the attorney in fact of_____, and acknowledged to me that he/she subscribed the name of

thereto as principal, and his/he own name as attorney in fact.

_____

Notary Public

SEAL

EXHIBIT 2 – FORM 3
NOTICE TO PROCEED

Issuance Date:

_____, 20___

_____

_____

Subject Project: **Next Generation Transit Facility**

Contract No. (Insert Contract Number)

Upon receipt of this letter, you are hereby authorized to proceed with the Work for the Subject Project.

You shall begin the Work on:_____, 20__("Date of Commencement"). You shall complete the Work within_____calendar days from the Date of Commencement in accordance with the provisions of Article **3** of the Design-Build Agreement.

Please note that you will not be allowed to start any construction activity (1) without the prior approval of the required submittals and (2) before the Date of Commencement.

Please reference the Agency contract number on all correspondence and on all monthly payment requests.

Please complete the information below and return this document to:

Yuba Sutter Transit Authority
2100 B Street
Marysville, CA 95901
ATTN: Matt Mauk

Sincerely,

_____
Matt Mauk, Executive Director

Design-Builder: Please complete the information below.

Design-Builder received this Notice to Proceed on:_____, 20___

_____, 20_____

_____
Design-Builder's Signature Date Signed

_____
Design-Builder's Name

_____
Design-Builder's Address City State Zip Code

EXHIBIT 2 – FORM 4
CHANGE ORDER

Yuba Sutter Transit Authority

NAME OF CONTRACT: _____

CONTRACT NO.: _____ CHANGE ORDER NO. _____

Date of Contract: _____ Date of Change Order: _____

Description of Change in Contract Terms:

SUMMARY EFFECT OF CHANGE ORDER NO. ____

The change resulted in the following adjustment in Contract Price and Contract Time:

Original Not-to-Exceed Contract Price _____

Total changes in Contract Price from prior Change Orders _____

Increase (decrease) resulting from this Change Order _____

Total Change in Contract Price _____

Current Contract price, including this Change Order _____

Net Change in Contract Time for Completion from prior Change Orders: _____

Net increase/decrease in Contract Time resulting from this Change Order: _____

Current Contract Time for completion during this Change Order: _____

AGENCY:

Change Order No.___

approved.

Date Executed: _____

Yuba-Sutter Transit Authority

By: _____

Matthew Mauk, Executive Director

CONTRACTOR:

Change Order No. ___

approved.

Date Executed: _____

By: _____

EXHIBIT 2 – FORM 5
OR EQUAL SUBSTITUTION/VALUE ENGINEERING REQUEST

Project:_____ Location:_____

To: Yuba Sutter Transit Authority, Executive Director

From: _____

1. Section, Paragraph, and Page Number of Specification or Drawing to which this request applies:

   _____

2. Item specified for which substitution is requested:

   Name or Brand: _____

   Manufacturer: _____

   Catalog No.: _____

3. The proposed substitution is:

   Name or Brand: _____

   Manufacturer: _____

   Catalog No.: _____

4. The Authority will consider no substitution request without a completed Substitution Request Form and substantiating data. Design-Builder shall attach hereto complete technical data, including technical information, complete manufacturer's catalogs, brochures and drawings, certified laboratory test reports and samples as applicable for the proposed substitution, installation and operating instructions, manufacturing warranties, and other descriptive material. The Authority will consider no other substitution request submitted after the Notice to Proceed except as provided in the General Conditions or as otherwise requested in writing by the Authority.

5. Reasons for substitution request:

   _____

   _____

   _____

6. Detailed comparison of significant qualities and properties (size, weight, durability, performance and similar characteristics) including the visual effect where applicable, for the proposed substitution in comparison with original requirements includes (list detailed comparison with supporting data, use separate sheets if required):

   _____

7. Installation changes and changes to Drawings and Specifications required by the proposedsubstitution are (list all required changes, use separate sheets if required):

8. Does this substitution affect the dimensions shown on the Drawings?
Yes_____ No If yes, clearly indicate changes on each Drawing by Sheet No.:

9. List the effects of the proposed substitution on other parts of the Work or on separate contracts, including required changes in Drawings, dimensions, engineering, and detailed costs, and effects on other trades.

10. What effect does substitution have on applicable code requirements?

11. Identify differences between the proposed substitution and the specified item.

12. Attach a copy of the manufacturer's warranty, manufacturer's guarantees, and if warranties of proposed and specified items:

Same _____

Different _____

(Explain on attachment.)

The Manufacturer shall provide a letter stating the fitness for the intended use and performance equivalence of the specified item.

13. List the name and address of three similar projects (not necessarily installed by Design-Builder) on which the proposed product was used and the date of installation:

(i) Name of Project: _____

Address: _____

Date of Installation: _____

(ii) Name of Project: _____

Address: _____

Date of Installation: _____

(iii) Name of Project: _____

Address: _____

Date of Installation: _____

14. Use of the substitution will cause the Contract Time to be:

Same _____

Different _____ (Explain on attachment.)

15. Use of the substitution will affect the critical path of the Construction Schedule as follows (identify any proposed adjustment to the Contract Time):

_____

_____

_____

16. Reduction in the Contract Sum of $_____will result from the use of the substituted item.

17. The estimated cost of any engineering, design, or agency fees required for work of all trades directly or indirectly affected by the substitution is $____.

18. The date by which the Authority must accept this Request in order for the time and cost estimates in Paragraphs 14 and 16 to remain valid is:

_____.

19. Design-Builder Affidavit. The undersigned, having thoroughly investigated the proposed

substitution, represents, certifies, and declares, under penalty of perjury under the laws of the State of California, that:

(1) Design-Builder has personally investigated the proposed substitution and determined that it is equal or superior in all respects to the material, product, thing, or service specified except as specifically noted:

_____;

(2) Design-Builder will provide the same warranty and correction responsibility for the proposed substitution that the Design-Builder would have provided for that specified;

(3) The cost data presented is complete and includes all related costs under this Contract except any redesign costs and agency fees;

(4) The Design-Builder will pay redesign, engineering, detailing, special inspection costs, and agency fees caused by the use of this substitution;

(5) The Design-Builder will coordinate the installation of the accepted substitution, making suchchanges as may be required for the Work to be complete in all respects.

(6) Design-Builder waives all claims for additional costs relating to the substitution, which may subsequently become apparent; and

(7) The Design-Builder assumes all responsibility for direct or indirect costs and/or time impacts resulting from the substitution's use.

Executed this_____day of_____20___, at_____, California.

_____

Signature

_____

Type or print Name

Submitted by:

_____

(Firm)

_____

(Address)

For use by Agency:

___Accepted_____as noted

___Not Accepted____Rejected as late

_____

(By)

EXHIBIT 2 – FORM 6
STATUTORY FORMS OF WAIVER AND RELEASE UPON PAYMENT

[Forms on following pages]

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

[California Civil Code § 8132]

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

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

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

Maker of Check: _____

Amount of Check: $_____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): _____

(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

[California Civil Code § 8134]

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

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____ Owner: _____

Through Date: _____

Unconditional Waiver and Release

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

$ _____

Exceptions

This document does not affect any of the following:

(1) Retentions.

(2) Extras for which the claimant has not received payment.

(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract,and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

[California Civil Code §8136]

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

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____ Owner: _____

Conditional Waiver and Release

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

Maker of Check: _____ Amount of Check: $_____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: $_____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

[California Civil Code §8138]

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

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____ Owner: _____

Unconditional Waiver and Release

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

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: $_____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

EXHIBIT 6 – FORM 7 DAS FORM 140

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. **If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: http://www.dir.ca.gov/databases/das/pwaddrstart.asp for information about programs in your area and trade.** You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One of The Boxes Below

1. ☐ We are already approved to train apprentices by the _____ Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. ☐ We will comply with the standards of _____ Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. ☐ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ *Date* _____

Typed Name _____

Title _____

State of California - Department of Industrial Relations DIVISION OF APPRENTICESHIP STANDARDS

Department of Industrial Relations
STATE OF CALIFORNIA

REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: http://www.dir.ca.gov/databases/das/pwaddrstart.asp **for information about programs in your area and trade**. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyworkers work, you must request and employ apprentices in no less than 8 hour increments.**

List one occupation/craft per form

Date:

Contractor Requesting Dispatch:

To Applicable Apprenticeship Committee:

Name: _____

Address: _____

_____

Tel. No. _____ **Fax No.** _____

Email Address _____

Name: _____

Address: _____

_____

License No. _____

PWC Registration Number: _____

Tel. No. _____ **Fax No.** _____

Email Address

Project Information: PWC Project Number _____ **Contract Number** _____

Total Contract Amount. _____ **Sub-Contract Amount** _____

Name of the Project: _____

Address: _____

Dispatch Request Information:

Number of Apprentice(s) Needed: _____ **Craft or Trade:** _____

Date Apprentice(s) to Report: _____ **(72 hrs. notice required) T i m e to Report:** _____

Name of Person to Report to: _____

Address to Report to: _____

_____

You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. ***Proof of submission may be required.*** *Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit* https://www.dir.ca.gov/das/PublicWorksForms.htm

DAS 142 (6/24)

EXHIBIT 2 – FORM 9
DLSE FORM PW26

Statement of Employer Payments

Date:		In Reply, Refer to Case No:	
Prime:			
Subcontractor:			
PROJECT NAME:			
PROJECT CONTRACT NO.:		County/location:	

HEALTH AND WELFARE

NAME OF PLAN _____ Address, City and Zip _____

ADMINISTRATOR _____ Address, City and Zip _____

CLASSIFICATION(S) USED | CONTRIBUTION PER CLASSIFICATION PER HOUR

CONTRIBUTIONS: WEEKLY____ MONTHLY____ QUARTERLY____ ANNUALLY____

PENSION

NAME OF PLAN _____ Address, City and Zip _____

ADMINISTRATOR _____ Address, City and Zip _____

CLASSIFICATION(S) USED | CONTRIBUTION PER CLASSIFICATION PER HOUR

CONTRIBUTIONS: WEEKLY____ MONTHLY____ QUARTERLY____ ANNUALLY____

VACATION/HOLIDAY

NAME OF PLAN _____ Address, City and Zip _____

ADMINISTRATOR _____ Address, City and Zip _____

CLASSIFICATION(S) USED | CONTRIBUTION PER CLASSIFICATION PER HOUR

CONTRIBUTIONS: WEEKLY____ MONTHLY____ QUARTERLY____ ANNUALLY____

TRAINING

NAME OF PLAN _____ Address, City and Zip _____

ADMINISTRATOR _____ Address, City and Zip _____

CLASSIFICATION(S) USED | CONTRIBUTION PER CLASSIFICATION PER HOUR

CONTRIBUTIONS: WEEKLY____ MONTHLY____ QUARTERLY____ ANNUALLY____

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION

PW 26

EXHIBIT 2 – FORM 10
ESCROW AGREEMENT FOR SECURITIES IN LIEU OF RETENTION

[Form on following page]

ESCROW NO.: _____

ACCOUNT NO.: __

A SPECIFICATION NO.: _____

ESCROW AGREEMENT FOR
SECURITY DEPOSITS
IN LIEU OF RETENTION

THIS ESCROW AGREEMENT ("Escrow Agreement"), made as of____, 20_____, is between Yuba Sutter Transit Authority, a Joint Powers Authority ("Owner"), whose address is 2100 B Street, Marysville, CA 95901; ***and***

_____("Contractor"), whose address is_____; ***and***

_____, a state or federally chartered bank in the State of California ("Escrow Agent"), whose address is_____.

For consideration set forth in this Escrow Agreement, Owner, Contractor, and Escrow Agent agree as follows:

1. Defined Terms.

A. "Account" means Escrow Agent's Account No._____, held by Escrow Agent at the following location:_____.

B. "Eligible Securities" means only those securities described in **Paragraph 7** below, and which are:

(2) Deemed to be mutually agreed to by Owner and Contractor by signing this Escrow Agreement.

C. "Estimated Sale Value" means, with respect to any Eligible Security as of any date, the market value assigned to such security as of such date be a qualified valuation service which is regularly employed for such purpose by Escrow Agent (and which has been approved by Owner).

2. Substitution of Eligible Securities.

A. Under California Public Contract Code Section 22300, Contractor has the option to deposit Eligible Securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner according to the Contract Documents ("Contract"), dated _____ ___, 20_____, entered into between Owner and Contractor for the Project titled,_____ _____,

Specification No._____, in the amount of $_____.

B. Alternatively, on written request of Contractor, Owner shall make payment of the retention earnings directly with Escrow Agent. When Contractor deposits the Eligible Securities as a substitute for retention, Escrow Agent shall notify Owner within ten (10) calendar days after the deposit. At all times, Contractor shall have on deposit Eligible Securities the market value of which is at least equal to the cash amount then required to be withheld as retention under the terms of the Contract. Securities (deposited by Contractor) must be held in the name of the "Yuba Sutter Transit Authority (Specification No.)", and Contractor must be designated as the beneficial owner.

3. Determination of Market Value of Account.

A. Escrow Agent shall review the market value of Eligible Securities deposited in escrow under this Escrow Agreement as often as conditions of the securities market warrant, but in no case less than once per month. Escrow Agent shall promptly notify Owner and Contractor of the market value of the deposited securities if such market value is less than the total amount of retention required to be withheld under the terms of the Contract. In addition, Escrow Agent shall, within five (5) calendar days after Owner's request, provide a statement to Owner of the current market value of all Eligible Securities deposited under this Escrow Agreement as of a date not earlier than five (5) calendar days prior to the request.

B. Contractor shall promptly deposit additional Eligible Securities so that the current market value of the total of all deposited securities is at least equal to the total required amount of retention.

C. The provisions of this **Paragraph 3** do not apply to securities consisting of monetary deposits as allowed by **Paragraph 7** held by a bank as Escrow Agent, if the bank provides monthly statements reflecting the status of the monetary deposits held by the bank to Owner and Contractor.

4. No Other Obligations; No Liens. Contractor shall not use any or all of the Eligible Securities deposited in lieu of retention under this Escrow Agreement for any other obligations, including deposits in lieu of retention for other contracts. Whenever Contractor tenders Eligible Securities to be deposited in lieu of retention, an authorized representative of Contractor shall declare under penalty of perjury that the Eligible Securities are lien free and will remain lien free during their retention by Escrow Agent. The declaration must be in the following form:

> "The undersigned, on behalf of [NAME OF CONTRACTOR] ,whose address is [STREET ADDRESS, CITY, STATE, ZIP CODE] , represents, covenants, and warrants that the securities tendered herewith are lien free and will remain lien free during their retention by Escrow Agent.
>
> I, [NAME] , hereby declare that I am the [TITLE] of [NAME OF CONTRACTOR] , that I am duly authorized to make this representation, and that I declare under perjury under the laws of the State of California that the foregoing is true and correct."

Signature Date

5. Payment of Progress Payments and Retention.

A. Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provision, provided that Escrow Agent holds Eligible Securities in the form and amount specified in this Escrow Agreement.

B. Alternatively, if, at the request of Contractor, Owner makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold such retention for the benefit of Contractor until such time as the escrow created under this Escrow Agreement is terminated. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties are equally applicable and binding when Owner pays retention earnings to Escrow Agent directly.

6. Statements from Escrow Agent.

A. Prior to Contractor's submission of each Application for Payment, Escrow Agent shall issue a current statement of:
   (1) The value of the Eligible Securities currently being deposited in lieu of retention; and
   (2) The current value of all Eligible Securities being held in escrow under this Escrow Agreement.

B. The statement must be no more than five (5) calendar days old at the time of submission, must be notarized or have a guarantee of signature, and must be submitted to Contractor with a copy to Owner under separate cover. Contractor shall attach the original statement to each Application for Payment.

C. The provisions of this **Paragraph 6** do not apply to Eligible Securities consisting of monetary deposits as allowed by **Paragraph 7** held by a bank as Escrow Agent, if the bank provides monthly statements reflecting the status of the monetary deposits held by the bank to Owner and Contractor.

7. Eligible Securities. In accordance with California Public Contract Code Section 22300 and California Government Code Section 16430, Owner will allow Contractor to deposit the following securities in lieu of retention and direct the investment of the retention deposits into any of the following investments which, if at the time of payment, are lawful investments under the laws of the State of California:

A. Time deposits (including certificates of deposit) in banks or in savings and loans, if the deposits are:
   (1) Fully insured by the Federal Deposit Insurance Corporation; or
   (2) Secured at all times by collateral security— described in clause (c) or (d) of this **Paragraph 7**— which continuously has a market value at or above 110% of the retention amount.

B. Demand deposits (including interest-bearing demand deposit accounts), if the deposits are:
   (1) Fully insured by the Federal Deposit Insurance Corporation; or
   (2) Secured at all times by collateral security— described in clause (c) or (d) of this **Paragraph 7**— which continuously has a market value at or above 110% of the retention amount.

C. Direct obligations of the United States of America (including treasury bills, notes, bonds, or obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or any Federal Reserve Bank).

D. Indirect obligations of the United States of America (including obligations, debentures, notes, or other evidence of indebtedness issued or guaranteed by any of the following banks, agencies, or institutions:
   (1) Banks for Cooperatives;

(2) Federal Intermediate Credit Banks;
(3) Federal Home Loan Bank System;
(4) Export-Import Bank of the United States;
(5) Federal Financing Bank;
(6) Federal Land Banks;
(7) Federal Farm Credits;
(8) Government National Mortgage Association;
(9) Farmer's Home Administration;
(10) Federal Home Loan Mortgage Corporation; or
(11) Federal Housing Administration.

E. Bonds of the State of California or those for which the faith and credit of the State of California are pledged for the payment of principal and interest.
F. Standby letters of credit.
G. Interest-bearing bankers' acceptances.
H. Commercial paper, if it is issued by a corporation that:
   (1) Is organized and operating within the United States of America;
   (2) Has total assets in excess of Five Hundred Million Dollars;
   (3) Has a long-term senior debt rating of "A" or better by two nationally recognized rating services; and
   (4) Has a commercial paper rating of at least "A1/P1" or better by two nationally recognized rating services.

8. **Payment of Fees.** Contractor is responsible for paying all fees, costs, and expenses incurred by Escrow Agent in administering the Account and all expenses of Owner. These expenses and payment terms must be determined by Owner, Contractor and Escrow Agent. Escrow Agent shall bill to Contractor all fees, costs, and expenses of this Escrow Agreement and any transactions carried out under this Escrow Agreement. If any fees, costs, or expenses remain unpaid in excess of thirty (30) calendar days from the date due, Escrow Agent may withhold the unpaid amount from any income distributable to Contractor, but Escrow Agent shall not withhold the unpaid amount from any income distributable to Owner.

9. **Withdrawal of Interest by Contractor.** The interest earned on the securities or the monetary deposits held in escrow and all interest earned on the interest is for the sole account of Contractor and must be held in escrow. On one or more occasions Contractor may withdraw interest without notice to Owner.

10. **Withdrawal of Securities or Principal by Contractor.** Contractor may withdraw all or any part of the securities or cash principal in the Account only by written notice to Escrow Agent accompanied by written authorization from Owner to Escrow Agent stating that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor. Under California Civil Code Section 9358, Owner is not obligated to consent to any withdrawal to the extent of stop payment notice claims which cannot be satisfied from other funds then due and payable to Contractor.

11. **Withdrawal of Securities or Cash Principal by Owner.** Owner shall have the right to draw upon the principal in the Account, regardless of its form, whether the Account is comprised of securities, or cash, or both, in the event of default by Contractor. Upon seven (7) calendar days' written notice from Owner to Escrow Agent, with a copy to Contractor, stating Contractor's default and stating the amount to be drawn, Escrow Agent shall immediately convert any securities in the Account to cash and shall distribute the cash/principal as instructed by Owner. Escrow Agent shall

have no duty to determine whether a default has occurred and may rely solely upon the written notice of the default from Owner.

12. **Stop Payment Notices.** If Owner receives one or more stop payment notice claims relating to the Project identified in **Paragraph 2** above, Owner shall have the right, in accordance with California Civil Code Section 9358, to refuse to release to Contractor all or any part of the principal in the Account in an amount equal to 125% of the stop payment notice claim(s) until such stop payment notice claim(s) is/are released.

13. **Termination of Escrow by Owner.** Upon receipt of written notification from Owner certifying that the Contract is final and completed and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor the amount, if any, by which the value of all securities and interest on deposit (less escrow fees and charges of the escrow Account) exceeds 125% of the amount of all stop payment notice claims on file and exceeds 150% of the estimated value of other disputed amounts. Escrow Agent shall pay the remaining amount to Owner or as directed by Owner. Escrow Agent shall close the escrow immediately upon disbursement of all monies and securities on deposit and payment of fees and charges.

14. **Reliance by Escrow Agent.** Escrow Agent shall rely upon the written notifications from Owner and Contractor under this Escrow Agreement, and Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release, conversion, and disbursement of the securities and interest as set forth in this Escrow Agreement.

15. **Termination by Escrow Agent.** Escrow Agent may terminate this Escrow Agreement upon thirty (30) calendar days' written notice to all parties to this Escrow Agreement. Upon receipt of such notice, Owner and Contractor shall appoint a successor Escrow Agent in writing and deliver written notice of the appointment to Escrow Agent. Thereupon, Escrow Agent shall deliver all assets in its custody to such successor Escrow Agent and all responsibility of Escrow Agent under this Escrow Agreement shall terminate, except that if Contractor and Owner fail to appoint a successor Escrow Agent on or before the end of the 30 day notice period, then Escrow Agent is authorized and instructed to return all assets, documents, and other items in its custody to Owner and this Escrow Agreement will be terminated without further instruction.

16. **Duties of Escrow Agent.** The duties and responsibilities of Escrow Agent is limited to those expressly set forth in this Escrow Agreement, except that with Escrow Agent's written consent, the duties and responsibilities in this Escrow Agreement may be amended at any time or times by an instrument in writing signed by all parties.

17. **Notices.**

A. The names of the persons authorized to give written notice or to receive written notice on behalf of Owner and on behalf of Contractor in connection with this Escrow Agreement, and exemplars of their respective signatures, are set forth below.

<u>On behalf of Owner</u>:

Title: Executive Director

Name: Matthew Mauk

Signature:_____

Address: Yuba Sutter Transit Authority

Attn:_____,

Project Manager

2100 B Street

Marysville, CA 95901

<u>On behalf of Contractor</u>:

Title:_____

Name: _____

Signature:_____

Address: _____

_____

_____

_____

On behalf of Escrow Agent:

Title:_____

Name: _____

Signature:_____

Address: _____

_____

_____

_____

B. Any notice given under this Escrow Agreement must be given personally; by certified or registered mail, postage prepaid, return receipt requested; by confirmed fax; or by reliable overnight courier to the address of the respective parties set forth above.

C. Any notice served personally is deemed delivered upon receipt; served by facsimile transmission is deemed delivered on the date of receipt, as shown on the received facsimile; and served by certified or registered mail or by reliable overnight courier is deemed delivered on the date of receipt, as shown on the addressee's registry or certification of receipt or on the date receipt is refused, as shown on the records or manifest of the U.S. Postal Service or the courier.

D. At any time, a party to this Escrow Agreement may designate any other address, or another authorized person, or both, for purposes of this **Paragraph 17** by giving notice to the other parties, together with an exemplar of the replacement person's signature, in accordance with the above. The notice may be given either by the authorized person named above or by any successor to the office of the person named above.

18. **<u>Delivery</u>.** At the time the Account is opened, Owner and Contractor shall deliver to Escrow Agenta fully executed counterpart of this Escrow Agreement.

The parties have executed this Escrow Agreement by their proper officers on the date set forth above.

On behalf of Owner:	**On behalf of Contractor:**
Title: Executive Director	Title:_____
Name: Matthew Mauk	Name:_____
Signature: _____	Signature: _____

EXHIBIT 2 – FORM 11

SOLID WASTE DISPOSAL AND DIVERSION

The Design-Builder shall submit to the Authority's Project Manager the following summary of solid waste generated by the Work, disposed of in Class III landfills, or diverted from disposal through recycling. Report the disposal of inert fill separately. This form must be accompanied by legible copies of weight tickets, receipts, or invoices that specifically identify the project generating the material. Said documents must be from recyclers and/or disposal site operators that are acceptable to the Authority's Project Manager. Further, the documents must be submitted to the Authority's Project Manager with each application for progress payment. Failure to submit the form and its supporting documentation will render the application for progress payment incomplete, resulting in delayed progress payments.

SUMMARY OF SOLID WASTE DISPOSAL AND DIVERSION

Project Title: Next Generation Transit Facility RFP No. 25-02

Type of Material	(a) Disposed in Class III Landfills	(b) Diverted from Class III Landfills by Recycling	(c) [Leave This Column Blank]	(d) Disposed in Inert Fills
	Tons/CY	Tons/CY	Tons/CY	Tons/CY
Asphalt				
Concrete				
Metal				
Other Segregated Materials (Describe):				
Miscellaneous Construction Waste				
Total				

Signature of Contractor's Authorized Official: _____

Name of Contractor's Authorized Official: _____

Title of Contractor's Authorized Official: _____

Date: _____

EXHIBIT 2 – FORM 12
CLAIMS FOR ADDITIONAL COST AND/OR TIME

Claim Number: _____

Claim Date: _____

Certification

"I hereby certify under penalty of perjury that I am a managing officer of (Design-Builder's name) and that I have reviewed the Claim presented herewith on Design-Builder's behalf and/or on behalf of (Design Consultant's or Subcontractor's name) and that, to the best of my knowledge after conducting a diligent inquiry into the facts of the Claim, the following statements are true and correct:

The facts alleged in or that form the basis for the Claim are, to the best of my knowledge, following diligent inquiry, true and accurate; and,

(a) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(b) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Design-Builder and by any Design Consultant or Subcontractor, of any tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages suffered by Design-Builder and/or such Design Consultant or Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(c) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Design-Builder and the Design Consultant or Subcontractor of any tier, that is asserting all or any portion of the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Design-Builder and/or such Design Consultant or Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and

(d) I have not received payment from Agency for, nor has Design-Builder previously released Agency from, any portion of the Claim."

Signature of Contractor's Authorized Official: _____

Name of Contractor's Authorized Official: _____

Title of Contractor's Authorized Official: _____

Date: _____

DIVISION 5 – PROJECT MANUAL (TECHNICAL SPECIFICATIONS)

The Design-Builder shall complete the design and construction of the Next Generation Transit Facility in conformance with the Project Manual entitled “Yuba-Sutter Transit Authority Next Generation Transit Facility Project Manual” dated April 2026.

The Project Manual is located here: https://www.yubasuttertransit.com/current-requests-for-proposals

DIVISION 6 – PREVAILING WAGE RATES

The Proposer and all Subcontractors and Design Consultants, as applicable, shall utilize the relevant prevailing wage rate determinations in effect on the date Authority first issued the Request for Proposals in preparing the Proposal Prices and all component price quotations, provided, however, that when Davis-Bacon wage rates apply, such rates are subject to increase by written notice, issued by Addendum not less than 10 calendar days before the Proposal Due Date. Pursuant to California Labor Code Section 1770 et seq., the Director of the Department of Industrial Relations of the State of California and the United States Secretary of Labor have determined the general prevailing wage rates in the locality in which the Work is to be performed. Said rate schedules are available on the internet at http://dir.ca.gov/DLSR/PWD/ and https://sam.gov/wage-determinations.

Where both Federal and California prevailing wage requirements apply to the same work, the Proposer and its Subcontractors and Design Consultants, as applicable, shall comply with all applicable requirements and pay the highest applicable prevailing wage rate for the relevant work classification. The Proposer is solely responsible for determining the applicable prevailing wage requirements and ensuring its own compliance and that of its Subcontractors and Design Consultants throughout performance of the Contract. The wage rate for any classification not listed but which may be required to execute the Work shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. To comply with California Labor Code Section 1773.2, the Design-Builder shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall also comply with the requirements of California Labor Code Section 1773 et seq.

The current Federal Prevailing Wage Schedule is provided here:
https://www.yubasuttertransit.com/current-requests-for-proposals