

Project Manual

GENERAL BUILDING JOB ORDER CONTRACT

Contract #'s 20-J-06, Class B
20-J-07
20-J-08

The County of Fresno Department of Public Works and Planning

2220 Tulare St., 6th Floor
Fresno, California 93721

B i d D o c u m e n t s

Pre-bid Conference: Friday, April 16, 2021, 10:00 a.m.

Bid Date: Thursday, April 29, 2021, 1400 hours and 00 seconds

Budget / Account – Various Funding Orgs



Development Services & Capital Projects Division

Department of Public Works & Planning

Contract: 20-J-06
20-J-07
20-J-08

Cover Sheet
00 00 10-1

The County of Fresno
Department of Public Works and Planning

JOB ORDER CONTRACT

Contract #20-J-06, Class B
Contract #20-J-07, Class B
Contract #20-J-08, Class B

Adopted by the Fresno County Board of Supervisors, _____, 2021

Steve Brandau, Chairman	2 th District
Brian Pacheco, Vice Chairman	1 st District
Sal Quintero	3 rd District
Buddy Mendes	4 th District
Nathan Magsig	5 th District

Jean M. Rousseau, County Administrative Officer

Steven E White

Steven E White (Apr 16, 2021 11:29 PDT)

Steven White, Director
Department of Public Works and Planning



04.19.2021

Date Signed

Capital Projects: _____
Noel Roger Davidson, #C27818
License Renewal 10/31/21

Fresno County Department of Public Works and Planning – Capital Projects
2220 Tulare Street, 8th Floor
Fresno, CA 93721-2104

Consultant: **The Gordian Group**
30 Patewood Dr., Suite 350
Greenville, SC 29615

Contract No.: #20-J-06
20-J-07
20-J-08

Signature Page
00 01 07-1

JOB ORDER CONTRACTS

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The County of Fresno
Department of Public Works & Planning
2220 Tulare St., 6th FL
Fresno, CA 93721

JOB ORDER CONTRACT

Contract #20-J-06, Class B
20-J-07
20-J-08

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***Sections 00 21 13 through 00 45 19 included in Bid Book**

Refer to the JOB ORDER CONTRACT CONSTRUCTION TASK CATALOG® and JOB ORDER CONTRACT TECHNICAL SPECIFICATIONS, DIVISION 01 – DIVISION 41 provided in electronic format.

END OF SECTION

1 INSTRUCTIONS TO BIDDERS

2
3 1.01 EXPLANATION TO BIDDERS

4
5 An explanation desired by bidders regarding the meaning or interpretation of the bid
6 documents must be requested in writing no later than 7 days prior to the bid opening.
7 Oral explanations given before the award of the contract will not be binding. Any
8 interpretation made will be in the form of an addendum to the bid documents, said
9 addendum will only be issued by the County’s Director of Public Works and Planning
10 (“Director”). A copy of the addendum will be furnished to each registered holder of a
11 set of the bid documents and its receipt shall be acknowledged on the Bid Proposal.
12 Each addendum will also be posted on the Public Works and Planning website at
13 <http://www.co.fresno.ca.us/planholders>.

14
15
16 1.02 EXAMINATION OF CONSTRUCTION TASK CATALOG®, TECHNICAL
17 SPECIFICATIONS AND CONTRACTING REQUIREMENTS

18
19 The bidder is required to examine carefully the Construction Task Catalog®, Technical
20 Specifications, Contracting Requirements, and contract forms for submitting a
21 proposal. It is mutually agreed that the submission of a proposal shall be considered
22 prima facie evidence that the bidder has made such examination and is satisfied with
23 the requirements of the Construction Task Catalog®, Technical Specifications and the
24 Contracting Requirements, Division 00.

25
26
27 1.03 PROPOSAL GUARANTEE

28
29 The bidder shall furnish bid security, also referred to herein as a proposal guarantee,
30 consisting of a bid bond, cash, certified check, or cashier's check for \$25,000.00
31 (“Proposal Guarantee”).

32
33 In case security is in the form of a certified check or cashier's check, the County
34 (referred to hereinafter as “Owner”) may make such disposition of same as will
35 accomplish the purpose of which submitted. Checks deposited by unsuccessful
36 bidders will be returned as soon as practicable after the bid opening.

37
38
39
40 1.04 PREPARATION OF PROPOSALS

41
42 The County intends to award a contract to each of the three (3) lowest responsive and
43 responsible bidders. One bid proposal is required by each bidder wishing to bid for
44 one of the contracts.

1 The bidder shall prepare a proposal on the blank proposal form furnished by the
2 County (Owner). The bidder shall specify Adjustment Factors in both words and
3 figures for all six (6) types of Adjustment Factors.

4
5 Alternate or conditional bids will not be accepted.

6
7 The bidder's proposal shall be executed by the individual, by one or more partners of
8 the partnership, or by one or more of the officers of the corporation submitting it. If
9 the proposal is made by an individual, a name and post office address must be shown.
10 If made by a partnership, the name of each member of the partnership must be shown.
11 If made by a corporation, the proposal must show the name of the state under which
12 the corporation was chartered and the name of the president, vice president, secretary
13 and treasurer.

14
15 The required proposal guarantee must accompany the proposal.

16 17 18 1.05 SUBCONTRACTORS

19
20 No subcontractors shall be listed with the bid. Each individual Work Order Proposal
21 under the Contract shall include the subcontractor listing.

22 23 24 1.06 SUBMISSION OF PROPOSAL

25 26 A. Electronic Bid Submittal

27
28 The bidder has the option to submit the bid for this Contract
29 electronically. The bidder must either attach an electronic bid bond or
30 provide an original bid bond (or other form of bid security authorized by
31 Public Contract Code Section 20129(a)), prior to the bid opening.

32
33 Bidders submitting online may use one of the accepted electronic
34 sureties (SurePath or Surety 2000) to submit their bid bond; or may
35 submit cash, cashier's check, certified check, or a bidder bond to
36 Design Services at 2220 Tulare St., Seventh Floor, Fresno, CA 93721.
37 Those submitting bid bonds directly to Design Services must submit
38 their bid bond:

- 39
40 1. Under sealed cover
41 2. Marked as a bid-bond
42 3. Identifying the contract number and the bid opening date on the
43 cover

44
45 Note: While it is strongly encouraged that you comply with the above
46 bidding requirements if at all possible, it is acknowledged that this bid

1 opening is occurring during the COVID-19 State of Emergency in
2 Fresno County, the ongoing impact of which continues to be disruptive.
3 Note: Due to the pandemic, the Design Services desk may be closed
4 to the public. Bidders are encouraged to **e-mail**
5 DesignServices@fresnocountyca.gov with the tracking number or
6 **call (559) 600-9908, so that arrangements may be made to receive**
7 **your paper bid bond.**
8

9 Note: If, as a result of the emergency, you are unable to provide the
10 original bid security or electronic bid bond prior to the bid opening (and
11 if your bid is otherwise appropriately responsive to bid requirements),
12 then staff will request that the Board of Supervisors consider exercising
13 its discretion to waive the bidding irregularity (regarding the time of
14 delivery of the bid security) **IF** you: **(1)** attach a scanned copy of the
15 original bid security to the Bid; and **(2)** provide for hand-delivery of the
16 original bid security to the County within 24 hours of the bid opening. **If**
17 **necessary, please e-mail DesignServices@fresnocountyca.gov or**
18 **call (559) 600-9908, so that arrangements may be made to hand**
19 **deliver your bid bond.**
20

21 **B. Bid Submittal by Personal Delivery or by Mail**
22

23 The bidder has the option to submit the bid by personal delivery or by
24 mail. All words and figures shall be written on the Proposal form in ink.
25 In the case of a discrepancy between the prices written in words and
26 those written in figures, the written words shall govern. The bidder's
27 proposal shall be signed in ink by the individual executing the bid on
28 behalf of the bidder.
29

30 The required proposal guarantee must accompany the proposal.
31

32 Because of the above-referenced COVID-19 State of Emergency,
33 bidders submitting their bids by personal delivery may not have access
34 to the County Plaza Building; and in such case, the bidder will need to
35 either e-mail DesignServices@fresnocountyca.gov or call (559) 600-
36 9908 at least 24 hours advance, so that arrangements may be made to
37 allow County staff to accept hand-delivery of your bid prior to the bid
38 deadline.
39

40 Each proposal shall be submitted in a sealed envelope labeled to
41 clearly indicate the contract and contents.
42

43 When sent by mail, a sealed proposal must be addressed to the
44 Fresno County Department of Public Works and Planning, Office of the
45 Design Engineer, Seventh Floor, Fresno County Plaza Building, 2220
46 Tulare Street, Fresno, CA 93721. All proposals shall be filed prior to
47 the time and at the place specified in the NOTICE TO BIDDERS.

1 Proposals received after the time for opening of the proposals will be
2 returned to the bidder unopened.

3
4 C. Bid Security

5
6 Submit one of the following forms of bidder's security equal to

7
8 **\$25,000.00**

9
10 Type of Bid Security:

11
12 Cash - Not recommended; cash is deposited in a clearing
13 account and is returned to bidders by County warrant. This
14 process may take several weeks.

15
16 Cashier's or Certified Checks - Will be held until the bid is no
17 longer under consideration. If submitted by a potential awardee,
18 they will be returned when the contract bonds are submitted and
19 approved.

20
21 Bid Bonds - Must be signed by the bidder and by the attorney-
22 in-fact for the bonding company. Signature of attorney-in-fact
23 should be notarized, and the bond should be accompanied by
24 bonding company's affidavit authorizing attorney-in-fact to
25 execute bonds. An unsigned bid bond will be cause for
26 rejection. Electronic Bid bonds may be submitted with bid
27 submitted through Bid Express.

28
29
30 1.07 IRREGULAR PROPOSALS

31
32 Proposals shall be considered irregular and may be rejected for the following reasons:

- 33
34 A. The proposal forms furnished by the Owner are not used or are altered.
35
36 B. There are unauthorized additions, conditional or alternate proposals or
37 irregularities of any kind which tend to make the proposal incomplete or
38 indefinite.
39
40 C. The bidder adds any provision reserving the right to accept or reject an award,
41 or to enter into a contract pursuant to an award.
42
43 D. The bid fails to contain the specified six (6) Adjustment Factors.

44
45
46 1.08 DISQUALIFICATION OF BIDDERS

1 Any one or more of the following causes may be considered as sufficient for
2 disqualification of a bidder and rejection of that bidder's proposal:

- 3
- 4 A. More than one proposal for the same work from an individual, partnership or
5 corporation.
- 6
- 7 B. Evidence of collusion among bidders. Participants in such collusion will receive
8 no recognition as bidders for any future work of the Owner until such participant
9 shall have been reinstated as a qualified bidder.
- 10
- 11 C. Lack of competency and adequate machinery, plant or other equipment, as
12 may be revealed by financial statement if required.
- 13
- 14 D. Unsatisfactory performance record as shown by past work for the Owner,
15 judged from the standpoint of workmanship and progress.
- 16
- 17 E. Prior commitments or obligations which in the judgment of the Owner might
18 hinder or prevent the prompt completion of the work.
- 19
- 20 F. Failure to pay, or satisfactorily settle, all bills due for labor or materials on former
21 contracts in force at the time of letting the bid.
- 22
- 23 G. Failure to comply with any qualification regulation of the Owner.
- 24
- 25 H. Failure to furnish full amount of Proposal Guarantee with bid or failure to sign
26 bid bond.
- 27

28

29 1.09 WITHDRAWAL OR REVISION OF PROPOSALS

30
31 A bidder may, without prejudice, withdraw a proposal after it has been deposited,
32 provided the request for such withdrawal is received in writing before the time set for
33 opening proposals. The bidder may then submit a revised proposal provided it is
34 received prior to the time set for opening proposals.

35

36

37 1.10 PUBLIC OPENING OF PROPOSALS

38
39 Proposals will be opened and read publicly at the time and place indicated in the
40 Notice to Contractors.

41

42

43 1.11 BID PROTEST PROCEDURE / RELIEF OF BIDDER

44

45 A. BID PROTEST PROCEDURE

46

1 Any bid protest must be submitted in writing and delivered by the
2 Bidder by either of the following means: (1) via e-mail to
3 DesignServices@fresnocountyca.gov; or (2) via certified mail, return
4 receipt requested to the following address: Design Division,
5 Department of Public Works and Planning, 2220 Tulare Street, Sixth
6 Floor, Fresno, CA 93721.

7
8 The bid protest must be received no later than 5:00 p.m. of the seventh
9 (7th) calendar day following the deadline for submittal of the specific
10 bid document(s) placed at issue by the protest. Any Bidder filing a
11 protest is encouraged to submit the bid protest via e-mail, because the
12 deadline is based on the Department's receipt of the bid protest. A bid
13 protest accordingly may be rejected as untimely if it is not received by
14 the deadline, regardless of the date on which it was postmarked. The
15 Bidder's compliance with the following additional procedures also is
16 mandatory:

17
18 The initial protest document shall contain a complete statement of the
19 grounds for the protest, including a detailed statement of the factual
20 basis and any supporting legal authority.

21
22 The protest shall identify and address the specific portion of the
23 document(s) forming the basis for the protest.

24
25 The protest shall include the name, address and telephone number of
26 the person representing the protesting party.

27
28 The Department will provide a copy of the initial protest document and
29 any attached documentation to all other Bidders or proposers who
30 appear to have a reasonable prospect of receiving an award
31 depending upon the outcome of the protest.

32
33 The Board of Supervisors will issue a decision on the protest. If the
34 Board of Supervisors determines that a protest is frivolous, the party
35 originating the protest may be determined to be irresponsible and that
36 party may be determined to be ineligible for future contract awards.

37
38 The procedure and time limits set forth herein are mandatory and are
39 the Bidder's sole and exclusive remedy in the event of a bid protest.
40 Failure by the Bidder to comply with these procedures shall constitute
41 a waiver of any right to further pursue the bid protest, including the
42 subsequent filing of a Government Code Claim or legal proceedings.

43 44 B. RELIEF OF BIDDER

45
46 A bidder who claims a mistake in his bid must follow the procedures in
47 Public Contract Code Section 5100 et seq in seeking relief of their bid.

1
2
3 1.12 AWARD OF CONTRACT
4

5 The award of the contracts, if one or all are awarded, will be to the lowest responsible
6 bidders whose proposals comply with all the prescribed requirements. A successful
7 bidder will be awarded only one (1) contract from this Bid Solicitation. The awards if
8 made, will be within 54 calendar days after the opening of proposals. If the Owner
9 finds that it will be unable to award the contract within 54 calendar days after the
10 opening of proposals, the Director may request any or all bidders to extend all terms
11 of their proposal(s) to a specified date. Additional such extensions may possibly be
12 requested. If a bidder does not elect to extend the terms of his or her proposal beyond
13 the 54 calendar days following opening of proposals, or does not respond within 10
14 days to a request for an extension, that bidder's proposal will be deemed as having
15 expired 54 calendar days following opening of the proposals, and that bidder's
16 proposal will not be considered for award of the contract.
17

18 Successful bidders will be notified in writing, by letter mailed to the address shown on
19 the proposal, that his/her bid has been accepted and that he or she has been awarded
20 the contract.
21

22 The right is reserved to reject any or all proposals, to waive technicalities, to advertise
23 for new proposals, or to proceed to do this work otherwise, if in the judgment of the
24 awarding authorities the best interests of the Owner will be promoted thereby.
25
26

27 1.13 CANCELLATION OF AWARD
28

29 The awarding authority reserves the right to cancel the award of any contract at any
30 time before the execution of said contract by all parties without any liability against the
31 Owner.
32
33

34 1.14 CONTRACT BONDS
35

36 The bidder to whom the award is made shall, within ten days, enter into a written
37 contract with the Owner. The bidder shall forfeit the proposal guarantee in case he or
38 she does not follow through with the contract within ten days after the contract is
39 awarded.
40

41 The successful bidder shall furnish a faithful performance bond in the amount of 100
42 percent of the Maximum Contract Value and a payment bond in the amount of 100
43 percent of the Maximum Contract Value and a one year Warranty Bond in the amount
44 of 10 percent (10%) of the Maximum Contract Value. Said bonds shall be submitted
45 in triplicate.
46

1 The payment bond shall contain provisions such that if the Contractor or his/her
2 subcontractors shall fail to pay (a) amounts due under the Unemployment Insurance
3 Code with respect to work performed under the contract, or (b) any amounts required
4 to be deducted, withheld and paid over to the Employment Development Department
5 and to the Franchise Tax Board from the wages of the employees of the Contractor
6 and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code
7 with respect to such work and labor, then the surety will pay these amounts. In case
8 suit is brought upon the payment bond, the surety will pay a reasonable attorney's fee
9 to be fixed by the court.

10
11 The contract form is attached hereto for the Contractor's information only. Execution
12 of the contract by bidders will not be required until after the bid award is made. Liability
13 and Workers Compensation Insurance requirements shall be as set forth in the
14 Agreement.

15 16 17 1.15 BUILDERS RISK INSURANCE

18
19 The Contractor shall not be required to obtain Builder's Risk insurance for the overall
20 contract. Builder's Risk insurance may be required on an individual Work Order. This
21 requirement will be identified in the Detailed Scope of Work and the cost will be
22 handled with a reimbursable line item in the Work Order Price Proposal.

23 24 25 1.16 POST-BID / PRE-AWARD INFORMATION AND REQUIREMENTS

26
27 The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC)
28 System for their JOC program. The Gordian JOC System includes Gordian's
29 proprietary eGordian® and Gordian Cloud JOC Applications and Construction Task
30 Catalog®, which shall be used by the Contractor to prepare and submit Job Order
31 Proposals, subcontractor lists, and other requirements specified by the Owner. The
32 Contractor shall be required to execute Gordian's **JOC System License and Fee**
33 **Agreement**, and pay a 1% JOC System License Fee to obtain access to the
34 Gordian JOC Solution.

35
36
37 END OF SECTION
38
39

1 **BIDDERS' CHECKLIST (CAPITAL IMPROVEMENT CONTRACTS)**

2
3 Because of numerous technical irregularities resulting in rejected proposals for
4 projects, the following checklist is offered for the bidders' information and use in
5 preparing a hardcopy proposal (The Bid Express Solicitation will automatically
6 check an electronic bid for completeness and highlight blank fields). This checklist
7 is not to be considered as part of the contract documents. Bidders are cautioned
8 that deleting or not submitting a form supplied in the bid documents (even if the
9 form does not require signature) may result in an irregular bid.

10
11 **SCHEDULE OF ADJUSTMENT FACTORS (Section 00 42 13)**

12
13 Bidder name on each sheet. Adjustment Factor for each type listed. Make no
14 additions such as "plus tax", "plus freight", or conditions such as "less 2% if paid
15 by 15th". Use ink or typewriter. Acknowledge addenda.

16
17 **SUBCONTRACTOR LIST**

18
19 Not Applicable for Job Order Contract bids. Subcontractor Listings shall be
20 required as part of a Work Order Proposal for each individual Work Order.

21
22 **BID SECURITY FORM - Read the Notices and Notes (Section 00 43 13)**

23
24 Indicate type of bid security provided.
25 Provide contract license information.

26
27 **State business name and if business is a:**

28 Corporation - list officers

29 Partnership - list partners

30 Joint Venture - list members

31 If Joint Venture members are corporations or partnerships, list their
32 officers or partners.

33 Individual - list Owner's name and firm name style

34
35 **Signature of Bidder –BID MUST BE SIGNED!**

36 Corporation - by an officer

37 Partnership - by a partner

38 Joint Venture - by a member

39 Individual - by the Owner

40 If signature is by a Branch Manager, Estimator, Agent, etc., the bid must be
41 accompanied by a power of attorney authorizing the individual to sign bids,
42 otherwise the bid may be rejected.

43
44 **Business Address - Firm's Street Address**

1 Mailing Address - P.O. Box or Street Address

2
3 **BID SECURITY (PROPOSAL GUARANTEE)**

4
5 Bidders security is in the amount of \$25,000.00

6
7 Bid bonds must be signed by the bidder and attorney-in-fact for the bonding
8 company and include bonding company's affidavit of authorization.

9
10 **NON COLLUSION DECLARATION (Section 00 45 19)**

11
12 Must be completed, signed, and returned with bid.

13
14
15 **OTHER**

16
17 If the bid forms have been removed from the Specifications booklet, staple the
18 pages together.

19 Make sure the bid envelope is sealed and shows the contract name, bid package
20 and contract number.

21
22 If the bid is mailed, allow sufficient time for postal delivery prior to the bid closing
23 time. Bids received after the scheduled time will be returned unopened. Be sure
24 the statement "**DO NOT OPEN UNTIL TIME OF BID OPENING**", is on the
25 envelope.

26
27
28 END OF SECTION
29
30
31
32

1 P R O P O S A L T O T H E B O A R D O F S U P E R V I S O R S
2
3 C O U N T Y O F F R E S N O
4
5

6 Contract: **Job Order Contract – ‘B’ License**

7
8 Contract No.: **#20-J-06**
9 **20-J-07**
10 **20-J-08**

11
12 Various Funding Orgs.
13
14

15 If this proposal shall be accepted and the undersigned shall fail to contract, as aforesaid,
16 and to give the two bonds in the sums to be determined as aforesaid, with surety
17 satisfactory to the Awarding Authority, within ten (10) days after the award of the
18 contract, the Awarding Authority, at its option, may determine that the bidder has
19 abandoned the contract, and thereupon this proposal and the acceptance thereof shall
20 be null and void, and the forfeiture of such security accompanying this proposal shall
21 operate and the same shall be the property of the Owner.
22

23 The undersigned, as bidder, declares that all addenda issued with respect to this bid
24 have been received and incorporated into this Proposal. The bidder’s signature on this
25 Proposal also constitutes acknowledgement of all addenda.
26

27 The undersigned, as bidder, declares that the only persons, or parties interested in this
28 proposal as principals are those named herein; that this proposal is made without
29 collusion with any other person, firm or corporation; that he has carefully examined the
30 Construction Task Catalog®, Technical Specifications and Contracting Requirements
31 and he proposes and agrees if this proposal is accepted, that he will contract with the
32 County of Fresno to provide all necessary machinery, tools, apparatus and other means
33 of construction, and to do all the work and furnish all the materials specified in the
34 contract in the manner and time therein prescribed, and according to the requirements
35 of the Owner as therein set forth.
36

37 The Contractor shall perform all Work required called for in the Detailed Scope of Work
38 of each individual Work Order issued under this Contract using the Construction Task
39 Catalog® and Technical Specifications incorporated herein. Contractor shall perform any
40 or all functions called for in the Contract Documents as specified in individual Work
41 Orders against this Contract for the Unit Prices specified in the Construction Task
42 Catalog® (CTC) and Non Pre-priced work multiplied by the following Adjustment Factors.
43

44 The Bidder shall set forth Adjustment Factors in the respective space provided below.
45 **See example below.** Failure to submit Adjustment Factors for all categories will result
46 in the Proposal being deemed non-responsive.
47

48 **The Other Than Normal Working Hours Adjustment Factors SHALL be EQUAL to**
49 **or GREATER THAN the corresponding Normal Working Hours Adjustment**
50 **Factors.**
51

52 The Contractor shall perform the Tasks required by each individual Job Order
53 using the following Adjustment Factors. When submitting Work Order Price

Contract No. #20-J-06
20-J-07
20-J-08

Proposal
00 42 13-1

JOB ORDER CONTRACTS

1 Proposals related to specific Work Orders, the Contractor shall utilize one or
2 more of the Adjustment Factors applicable to the Work being performed
3 provided on the Schedule of Adjustment Factors below, as applicable.
4
5

6 **Example**

7
8
9
10 One Point Two One Zero Two

11 (Written in words)

12

1	.	2	1	0	2
---	---	---	---	---	---

13 (Specify to four (4) decimal places)

1 **BIDDER:** _____

2
3 **Schedule of Adjustment Factors**

4
5 In case of a discrepancy between words and figures the words shall prevail. Use clearly
6 legible words and figures

- 7
8
9 1. **County/State-funded Projects – Normal Working Hours** (7:00am to 5:00pm
10 Monday through Friday)

11 _____
12

13 (Written in words)

14 .

15 (Specify to four (4) decimal places)

- 16 2. **County/State-funded Projects – Other Than Normal Working Hours** (5:00pm to
17 7:00am Monday through Friday, and all day
18 Saturday, Sunday, and Holidays)

19 _____
20

21 (Written in words)

22 .

23 (Specify to four (4) decimal places)

- 24 3. **Federally-funded Projects – Normal Working Hours** (7:00am to 5:00pm Monday
25 through Friday)

26 _____
27

28 (Written in words)

29 .

30 (Specify to four (4) decimal places)

- 31 4. **Federally-funded Projects – Other Than Normal Working Hours** (5:00pm to
32 7:00am Monday through Friday, and all day
33 Saturday, Sunday, and Holidays)

34 _____
35

36 (Written in words)

37 .

38 (Specify to four (4) decimal places)

- 39 5. **County/State-funded Projects in Secure Facilities – Normal Working Hours**
40 (7:00am to 5:00pm Monday through Friday)

41 _____
42

43 (Written in words)

44 .

45 (Specify to four (4) decimal places)

- 46 6. **County/State-funded Projects in Secure Facilities – Other Than Normal**
47 **Working Hours** (5:00pm to 7:00am Monday through Friday, and all day
48 Saturday, Sunday, and Holidays)

49 _____
50

51 (Written in words)

.

(Specify to four (4) decimal places)

1
2
3

BIDDER: _____

Acknowledgement of Addendum:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

4
5
6
7
8

Award Criteria Figure

9 Transfer the number on Line 13 from the Award Criteria Figure Calculation below
10 to the space provided below constituting the Bidder's Award Criteria Figure.

11 Transfer the number and write the words.

12
13
14
15 _____

(Written in clearly legible words)

16 .

(Specify to four (4) decimal places in legible figures)

17
18
19
20

1 **Award Criteria Figure Calculation**

2
3 The weighted multipliers in lines 2, 4, 6, 8, 10, and 12 below are for the purpose of
4 calculating an Award Criteria Figure only. No assurances are made by the Owner
5 that Work will be ordered under the Contract in a distribution consistent with the
6 weighted percentages. The Award Criteria Figure is only used for the purpose of
7 determining the lowest Bidder.

8
9 **The Owner Reserves The Right To Revise All Arithmetic Errors In the**
10 **Calculation of the Award Criteria Figure For Correctness.**

11
12 Instructions To Bidder: Specify lines 1 through 13 to four (4) decimal places. Use
13 conventional rounding methodology (i.e., if the number in the 5th decimal place is
14 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th
15 decimal place is 5-9, the number in the 4th decimal is rounded upward).
16

Line 1.	County/State-funded Projects – Normal Working Hours	1.	
Line 2.	Multiply Line 1 by 50%		2.
Line 3.	County/State-funded Projects – Other Than Normal Working Hours	3.	
Line 4.	Multiply Line 3 by 15%		4.
Line 5.	Federally-funded Projects – Normal Working Hours	5.	
Line 6.	Multiply Line 5 by 5%		6.
Line 7.	Federally-funded Projects – Other Than Normal Working Hours	7.	
Line 8.	Multiply Line 7 by 5%		8.
Line 9.	County/State-funded Projects in Secure Facilities – Normal Working Hours	9.	
Line 10.	Multiply Line 9 by 15%		10.
Line 11.	County/State-funded Projects in Secure Facilities – Other Than Normal Working Hours	11.	
Line 12.	Multiply Line 11 by 10%		12.
Line 13.	Add Lines 2, 4, 6, 8, 10 and 12. This is the Award Criteria Figure:		

17
18 **END OF PROPOSAL FORM**

19 **END OF SECTION**

BID SECURITY FORM

CONTRACT: JOB ORDER CONTRACTS

CONTRACT: #20-J-06, 20-J-07, 20-J-08, Class B

Accompanying this proposal is security (check one only) in amount equal to \$25,000.00:

Bid Bond (); Certified Check (); Cashier's Check (); Cash (\$_____)

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, state first and last name in full.

FIRM NAME _____

Licensed in accordance with an act providing for the registration of Contractors,

Class _____ License No. _____ Expires _____

Department of Industrial Relations Registration No: _____

Signature of Bidder

Dated

NOTE: If bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the co-partnership; and if bidder is an individual, his signature shall be placed above. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a Power of Attorney must be on file with the Owner prior to opening bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and unauthorized.

BUSINESS ADDRESS: _____
Zip Code

MAILING ADDRESS: _____
Zip Code

BUSINESS PHONE: (_____) _____ **FAX NUMBER:** (_____) _____

EMAIL: _____

END OF SECTION

1 **CONTRACT:** JOB ORDER CONTRACTS

2
3 **CONTRACT:** 20-J-06, 20-J-07, 20-J-08, Class B

4
5 To the Board of Supervisors, County of Fresno:

6
7
8 **NONCOLLUSION DECLARATION**

9
10 **TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID***

11
12 The undersigned declares:

13
14 I am the _____ of
15 (Owner, Partner, Corporate Officer (list title), Co-Venturer)

16
17 _____, the party
18 making the foregoing bid.

19
20 The bid is not made in the interest of, or on behalf of, any undisclosed person,
21 partnership, company, association, organization, or corporation. The bid is
22 genuine and not collusive or sham. The bidder has not directly or indirectly induced
23 or solicited any other bidder to put in a false or sham bid. The bidder has not
24 directly or indirectly colluded, conspired, connived, or agreed with any bidder or
25 anyone else to put in a sham bid, or refrain from bidding. The bidder has not in any
26 manner, directly or indirectly, sought by agreement, communication, or conference
27 with anyone to fix the bid price of the bidder or any other bidder, or to fix any
28 overhead, profit, or cost element of the bid price, or of that of any other bidder. All
29 statements contained in the bid are true. The bidder has not, directly or indirectly,
30 submitted his or her bid price or any breakdown thereof, or the contents thereof,
31 or divulged information or data relative thereto, to any corporation, partnership,
32 company, association, organization, bid depository, or to any member or agent
33 thereof, and has not paid, and will not pay, any person or entity for that purpose.

34
35 Any person executing this declaration on behalf of a bidder that is a corporation,
36 partnership, joint venture, limited liability company, limited liability partnership, or
37 any other entity, hereby represents that he or she has full power to execute, and
38 does execute, this declaration on behalf of the bidder.

39
40 I declare under penalty of perjury under the laws of the State of California that the
41 foregoing is true and correct and that this declaration is executed on _____,
42 2021,

43
44 at _____.”
45 [city] [state]

46
47 (Signature)

48
49 (See Title 23 United States Code Section 112; Calif Public Contract Code Section
50 7106)

1 *NOTE: Completing, signing, and returning the Non-Collusion Declaration is a
2 required part of the Proposal. Bidders are cautioned that making a false
3 certification may subject the certifier to criminal prosecution.
4
5

END OF SECTION

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A G R E E M E N T

THIS AGREEMENT made at Fresno, in Fresno County, California, by and between _____, hereinafter "Contractor", and the County of Fresno, hereinafter "Owner".

WHEREAS: This Agreement, together with other Contract Documents (as defined hereinbelow), shall establish an indefinite quantity Job Order Contract pursuant to which Contractor shall perform an ongoing series of individual projects at different locations throughout the County of Fresno. The construction work and services performed by Contractor under this Agreement shall be carried out pursuant to individual Work Orders. All capitalized terms not defined in this Agreement shall have the meanings set forth in the General Conditions referenced hereinbelow and incorporated herein by reference.

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

ARTICLE I. The Contractor agrees to furnish all labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims of mechanics, materialmen, subcontractors, artisans, machinists, teamsters, and laborers required for **Job Order Contract No. 20-J-06, also referred to herein as the "Contract"**.

20-J-07

20-J-08

All goods and services provided shall be in strict compliance with the Construction Task Catalog®, Technical Specifications and Contracting Requirements therefore prepared by the Director of the Fresno County Department of Public Works and Planning and his authorized representatives, hereinafter "Project Manager", and other contract documents relating thereto.

ARTICLE II. The Contractor and the Owner agree that the Advertisement (Notice to Bidders), the Wage Scale, the Proposal hereto attached, the Instructions to Bidders, the General Conditions of the contract, the Technical Specifications, the Construction Task Catalog® and the Addenda and Bulletins thereto, the Contract Bonds and Certificates of Liability and Workers Compensation Insurance, and the Work Orders, together with this Agreement, form the Contract Documents, and they are as fully a part of the contract as if hereto attached or herein repeated. But no part of said specifications that is in conflict with any portion of this Agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which the said work is to be executed, shall be considered as any part of this Agreement, but shall be utterly null and void, and anything that is expressly stated, delineated or shown in or upon the specifications or Detailed Scope of Work shall govern and be followed, notwithstanding anything to the contrary in any other source of information or authority to which reference may be made.

ARTICLE III. The Contractor agrees that the work under the contract shall be completed as determined by the Owner as set forth in the individual Work Orders. Time of performance shall be deemed as of the essence hereof and it is agreed that actual damages to the Owner from any delay in completion beyond the date provided for herein,

1 or any extension thereof until the work is completed or accepted, shall be all provable
2 damages plus liquidated damages as identified in the individual Work Orders ranging
3 from **Two Hundred Fifty and 00/100 DOLLARS (\$250.00) to Five Thousand and**
4 **00/100 DOLLARS (\$5000.00)** per day; that said liquidated damage was arrived at by a
5 studied estimate of loss to the Owner in the event of a delay considering the following
6 damage items which are extremely difficult or impossible to determine: Additional
7 construction expense resulting from delay of completion including, but not limited to,
8 engineering, inspection, rental and utilities; provided, however, the Owner may
9 conditionally accept the work and occupy and use the same if there has been such a
10 degree of completion as shall in its opinion render the same safe, fit and convenient for
11 the use for which it is intended and in such cases the Contractor and Surety shall not be
12 charged for liquidated damages for any period subsequent to such conditional
13 acceptance and occupation by the Owner but Owner may assess actual damages
14 caused by failure of total completion during such period. The time during which the
15 Contractor is delayed in said work by the acts or neglects of the Owner or its employees
16 or those under it by contract or otherwise, or by the acts of God which the Contractor
17 could not have reasonably foreseen and provided for, or by storms and inclement
18 weather which delays the work, or by any strikes, boycotts, or like obstructive action by
19 employee or labor organizations, or by any general lockouts or other defensive action
20 by employers, whether general, or by organizations of employers, shall be added to the
21 time for completion as aforesaid.
22
23

24 **ARTICLE IV. COMPENSATION:** The Owner agrees to make payments on account
25 thereof as provided in the General Conditions.
26

27 The Contract is an indefinite-quantity contract for construction work and services. The
28 Minimum Contract Value of Work Orders that the Contractor is guaranteed the
29 opportunity to perform under this Contract is \$25,000. The Maximum Contract Value is
30 \$5,185,091.94. At the discretion of the Owner and if deemed to be in the public interest,
31 the Maximum Contract Value of this Contract may be increased to the limit allowable by
32 Public Contract Code during the Term of the Agreement.
33

34 The Contractor shall perform all work required, necessary, proper for or incidental to
35 completing the Detailed Scope of Work called for in each individual Work Order issued
36 pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog®
37 and the following Adjustment Factors:
38

- 39 1. County / State-funded Projects – Normal Working Hours (7:00am to 5:00pm Monday
40 through Friday)
41
42
- 43 2. County / State-funded Projects – Other Than Normal Working Hours (5:00pm to
44 7:00am Monday through Friday, and all day Saturday, Sunday, and Holidays)
45
46
- 47 3. Federally-funded Projects – Normal Working Hours (7:00am to 5:00pm Monday
48 through Friday)
49
50
- 51 4. Federally-funded Projects – Other Than Normal Working Hours (5:00pm to 7:00am
52 Monday through Friday, and all day Saturday, Sunday, and Holidays)
53

1
2 5. County / State-funded Projects in Secure Facilities – Normal Working Hours (7:00am
3 to 5:00pm Monday through Friday)
4

5
6 6. County / State-funded Projects in Secure Facilities – Other Than Normal Working
7 Hours (5:00pm to 7:00am Monday through Friday, and all day Saturday, Sunday,
8 and Holidays)
9

10
11 **ARTICLE V. TERM:** The Term of the Job Order Contract shall be for one (1) year, or
12 when issued Work Orders totaling the Maximum Contract Value have been completed,
13 whichever occurs first. All Work Orders shall be issued, but not necessarily completed
14 within one calendar year after the commencement date of this Agreement.
15

16 All Work Orders for which a Notice to Proceed is issued by the County Contract Manager
17 during the term of this Contract shall be valid and in effect notwithstanding that the
18 Detailed Scope of Work may be performed, payments may be made, and the guarantee
19 period may continue, after the Contract Term has expired. All terms and conditions of
20 the Contract apply to each Work Order. No notices to proceed will be issued after 5:00,
21 P.M. on the final day of the Contract Term.
22

23
24 **ARTICLE VI.** The Contractor and the Owner agree that changes in this Agreement shall
25 become effective only when written in the form of an amendment approved and signed
26 by the Owner and the Contractor.
27

28 The Contractor and the Owner agree that the Owner shall have the right to request any
29 alterations, deviations, reductions or additions to the Detailed Scope of Work of the
30 individual Work Orders or specifications or any of them, and the amount of the cost
31 thereof shall be handled by issuance of a Supplemental Work Order.
32

33 This contract shall be deemed completed when the work of all individual Work Orders is
34 finished in accordance with all Contract Documents as amended by such changes. No
35 such change or modification shall release or exonerate any surety upon any guaranty or
36 bond given in connection with this contract.
37

38
39 **ARTICLE VII.** In the event of a dispute between the Owner or Project Manager and the
40 Contractor as to an interpretation of any of the specifications or as to the quality of
41 sufficiency of material or workmanship, the decision of the Project Manager shall for the
42 time being prevail and the Contractor, without delaying the job, shall proceed as directed
43 by the Project Manager without prejudice to a final determination by negotiation,
44 arbitration by mutual consent or litigation and should the Contractor be finally determined
45 to be either wholly or partially correct, the Owner shall reimburse him for any added costs
46 he may have incurred by reason of work done or material supplied beyond the terms of
47 the contract as a result of complying with the Project Manager's directions as aforesaid.
48 In the event the Contractor shall neglect to prosecute the work properly or fail to perform
49 any provisions of this contract, the Owner, after three days' written notice to the
50 Contractor, may, without prejudice to any other remedy it may have, make good such
51 deficiencies and may deduct the cost thereof from the payment then or thereafter due to
52 the Contractor, subject to final settlement between the parties as in this paragraph
53 hereinabove provided.

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ARTICLE VIII. TERMINATION: If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should persistently violate any of the provisions of the contract, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper material, or if he should fail to make prompt payment to subcontractors or for material or labor or persistently disregard laws, ordinances or the instructions of the Project Manager, then the Owner may, upon the certificate of the Project Manager, when sufficient cause exists to justify such action, serve written notice upon the Contractor and his surety of its intention to terminate the contract, such notice to contain the reasons for such intention to terminate the contract, and unless within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for correction thereof be made, the contract shall, upon the expiration of said five days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to the Contractor as may be on the site or the work and necessary therefore. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and damage incurred through the Contractor's default, shall be certified by the Project Manager.

ARTICLE IX. The Contractor and his subcontractors shall comply with Sections 1770 – 1780 of the California Labor Code and the provisions of Sections 2.52 and 2.55 of the General Conditions concerning the payment of wages to all workers and mechanics, and the employment and payment of apprentices by the Contractor or any subcontractor for all work performed under this Agreement.

ARTICLE X. The Contractor and his subcontractors shall comply with Sections 1810 to 1815 of the California Labor Code and the provisions of Section 2.51 of the General Conditions, concerning hours of work and payment of overtime compensation for all work performed under this Agreement.

1 **ARTICLE XI. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor
2 agrees to and shall indemnify, save, hold harmless and at County's request, defend
3 County and its officers, agents and employees, and the Project Manager and their
4 respective officers, agents and employees, from any and all costs and expenses,
5 attorney fees and court costs, damages, liabilities, claims and losses occurring or
6 resulting to County, or the Project Manager in connection with the performance, or failure
7 to perform, by Contractor, its officers, agents or employees under this Agreement, and
8 from any and all costs and expenses, attorney fees and court costs, damages, liabilities,
9 claims and losses occurring or resulting to any person, firm or corporation who may be
10 injured or damaged by the performance, or failure to perform, of Contractor, its officers,
11 agents or employees under this Agreement. In addition, Contractor agrees to indemnify
12 County for Federal, State of California and/or local audit exceptions resulting from non-
13 compliance herein on the part of Contractor.
14

15 In any and all claims against the County, the Project Manager, or any of their respective
16 officers, agents or employees, initiated by any employee of the Contractor, any
17 Subcontractor, anyone directly or indirectly employed by any of them or anyone for
18 whose acts any of them may be liable, the indemnification obligation set forth in the
19 immediately preceding paragraph shall not be limited in any way by any limitation on the
20 amount or type of damages, compensation or benefits payable by or for the Contractor
21 or any Subcontractor under workmen's compensation acts, disability benefit acts or other
22 employee benefit acts.
23
24

25 **ARTICLE XII. INSURANCE:** Without limiting the Owner's right to obtain indemnification
26 from Contractor or any third parties, Contractor, at its sole expense, in accordance with
27 the provisions of Section 2.40 of the General Conditions, shall maintain in full force and
28 effect the following insurance policies throughout the term of this Agreement, excepting
29 only those policies for which a longer term is specified:
30
31

32 A. Commercial General Liability Insurance, with scope and amount of coverage
33 as specified in Section 2.40 E.2 of the General Conditions.
34

35 B. Automobile Liability Insurance, with scope and amount of coverage as specified in
36 Section 2.40 E.2 of the General Conditions.
37

38 C. Professional Liability Insurance, with scope and amount of coverage as specified in
39 Section 2.40 E.3 of the General Conditions.
40

41 D. Worker's Compensation Insurance, with scope and amount of coverage as
42 specified in Section 2.40 E. 4 of the General Conditions.
43

44 The Certificate of Insurance shall be issued in triplicate, to the COUNTY OF FRESNO,
45 and all other participating agencies, whether or not said agencies are named herein,
46 who contribute to the cost of the work or have jurisdiction over areas in which the work
47 is to be performed and all officers and employees of said agencies while acting within
48 the course and scope of their duties and responsibilities.
49
50

51 **ARTICLE XIII. MISCELLANEOUS PROVISIONS:**
52

1 1. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time
2 during business hours, and as often as the OWNER may deem necessary, make
3 available to the OWNER for examination all of its records and data with respect to the
4 matters covered by this Agreement. The CONTRACTOR shall, upon request by the
5 OWNER, permit the OWNER to audit and inspect all of such records and data necessary
6 to ensure CONTRACTOR'S compliance with the terms of this Agreement.
7 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be
8 subject to the examination and audit of the Auditor General for a period of three (3) years
9 after final payment under contract (Government Code Section 8546.7).

10
11 2. INDEPENDENT CONTRACTOR.
12

13 In performance of the work, duties, and obligations assumed by CONTRACTOR
14 under this Agreement, it is mutually understood and agreed that CONTRACTOR,
15 including any and all of CONTRACTOR officers, agents, and employees will at all times
16 be acting and performing as an independent contractor, and shall act in an independent
17 capacity and not as an officer, agent, servant, employee, joint venture, partner, or
18 associate of the OWNER. CONTRACTOR and OWNER shall comply with all applicable
19 provisions of law and the rules and regulations, if any, of governmental authorities having
20 jurisdiction over matters of the subject thereof. Because of its status as an independent
21 contractor, CONTRACTOR shall have absolutely no right to employment rights and
22 benefits available to OWNER's employees. CONTRACTOR shall be solely liable and
23 responsible for providing to, or on behalf of, its employees all legally-required employee
24 benefits. In addition, CONTRACTOR shall be solely responsible and save OWNER
25 harmless from all matters related to payment of CONTRACTOR's employees, including
26 compliance with social security, withholding, and all other regulations governing such
27 matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may
28 be providing services to others unrelated to the OWNER or to this Agreement.
29

30 3. DISCLOSURE OF SELF-DEALING TRANSACTIONS
31

32 This provision is only applicable if the CONTRACTOR is operating as a
33 corporation (a for-profit or non-profit corporation) or if during the term of the agreement,
34 the CONTRACTOR changes its status to operate as a corporation.
35

36 Members of the CONTRACTOR's Board of Directors shall disclose any self-
37 dealing transactions that they are a party to while CONTRACTOR is providing goods or
38 performing services under this agreement. A self-dealing transaction shall mean a
39 transaction to which the CONTRACTOR is a party and in which one or more of its
40 directors has a material financial interest. Members of the Board of Directors shall
41 disclose any self-dealing transactions that they are a party to by completing and signing
42 a Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and
43 incorporated herein by reference, and submitting it to the OWNER prior to commencing
44 with the self-dealing transaction or immediately thereafter.
45

46
47 **ARTICLE XIV.** The Contractor represents that he has secured the payment of Workers
48 Compensation in compliance with the provisions of the Labor Code of the State of
49 California and Paragraphs B.3, C.3 and E.4 of Section 2.40 of the General Conditions,

1 and that he will continue so to comply with such statutory and contractual provisions for
2 the duration and entirety of the performance of the work contemplated herein.

3
4 This Contract, **20-J-**____, was awarded by the Board of Supervisors on
5 _____. It has been reviewed by the Department of Public Works and
6 Planning and is in proper order for signature of the Chairman of the Board of
7 Supervisors.

8
9
10 IN WITNESS WHEREOF, they have executed this Agreement this _____
11 day of _____, 2021

12
13
14
15
16
17 _____
18 (CONTRACTOR)

_____ COUNTY OF FRESNO
_____ (OWNER)

19
20 _____
21 (Taxpayer Federal I.D. No.)

22
23 By _____
24 _____
25 Title _____

By _____
Steve Brandau, Chairman
of the Board of Supervisors of the
County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of
California

26
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34 FOR ACCOUNTING USE ONLY
35 VARIOUS ORGS.
36 0001/8830/10000/7295
37 0001/43601150/10000/7295
38 0001/8852/10000/7295

By _____
Deputy

39
40
END OF SECTION

CONTRACT: JOB ORDER CONTRACT

CONTRACT NO: #20-J-06, 20-J-07, 20-J-08, Class B

(This guaranty shall be executed by the successful bidder in accordance with Section 2.32 of the General Conditions. The bidder may execute the guaranty on this page at the time of a task order is executed.)

SAMPLE GUARANTY FORM

To the Owner: County of Fresno

The undersigned guarantees the construction and installation of the following work included in this project:

ALL WORK

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with each individual Work Order Detailed Scope of Work and specifications, due to any of the above causes, all within twelve (12) months after the date on which the Work Order under this contract is accepted by the Owner, the undersigned agrees to reimburse the Owner, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the Owner, to replace any such material and to repair said work completely without cost to the Owner so that said work will function successfully as originally contemplated.

The Owner shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the undersigned. In the event the Owner elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the Owner. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the Owner shall be entitled to all costs and expenses reasonably incurred by reason of said failure or refusal.

(Company)

By: _____

(Title)

Date: _____

END OF SECTION

1 GENERAL CONDITIONS

2
3 2.01 IDENTIFICATION OF CONTRACT

- 4
5 A. The Agreement shall be signed by the Contractor and the Owner.
6
7 B. The Contract Documents are defined in ARTICLE II of the Agreement.
8
9 C. The Contract Documents form the Contract for Construction ("Contract"). This Contract
10 represents the entire and integrated agreement between the parties hereto and
11 supersedes all prior negotiations, representations or agreements, either written or oral.
12 The Contract may be amended or modified only by a Modification as defined above.
13 The Contract Documents shall not be construed to create any contractual relationship
14 of any kind between the Architect or Engineer of record and the Contractor, but the
15 Architect or Engineer of record shall be entitled to performance of the obligations of the
16 Contractor intended for their benefit and to enforcement thereof. Nothing contained in
17 the Contract Documents shall create any contractual relationship between the Owner
18 and any Subcontractor or Sub-subcontractor.

19
20 2.02 EXECUTION, CORRELATION, AND INTENT OF CONTRACT DOCUMENTS

- 21
22 A. The Contract Documents are complementary, and anything called for by one shall be
23 supplied as if called for by all, providing it comes clearly within the scope of the Contract.
24
25 B. In the event of conflicting provisions within the Job Order Contract, the following order
26 of precedence with item "1" representing the highest precedence, for resolution of the
27 conflict shall apply:
28
29 1. Agreement
30 2. Addenda (later takes precedence over earlier)
31 3. Work Orders (including Detailed Scopes of Work and Requests for Proposals)
32 4. Project Manual
33 5. The Construction Task Catalog®
34 6. Technical Specifications
35
36 C. The intent of the Contract Documents is to include all items necessary for the proper
37 execution and completion of the Work. Words and abbreviations that have well-known
38 technical or trade meanings are used in the Contract Documents in accordance with
39 such recognized meanings.
40
41 D. Execution of the Contract by the Contractor is a representation that the Contractor has
42 become familiar with the local conditions under which the Work is to be performed and
43 has correlated personal observations with the requirements of the Contract Documents.
44
45 E. All work and material shall be the best of the respective kinds specified or indicated.
46 Should any workmanship or materials be required that are not directly or indirectly
47 called for in the Contract Documents, but which nevertheless are necessary for proper
48 fulfillment of the obvious intent thereof, said workmanship or materials shall be the
49 same for similar parts that are detailed, indicated or specified, and the Contractor shall

1 understand the same to be implied and provide for it in his/her tender as if it were
2 particularly described or delineated.

3
4 2.03 OWNERSHIP AND USE OF DOCUMENTS

5
6 All Contract Documents and copies thereof furnished shall remain the property of the Owner.
7 With the exception of one (1) contract set for each party to the Contract, such documents are
8 to be returned by Contractor or suitably accounted for to the Owner on request at the
9 completion of the Work. Submission or distribution to meet official regulatory requirements or
10 for other purposes in connection with the Project is not to be construed as publication in
11 derogation of the Architect's common law copyright or other reserved rights. The Owner's use
12 of the documents will not increase the Architect's design liability beyond the Project and the
13 site for which the design was originally intended.

14
15 2.04 DEFINITIONS

16
17 The following words, or variations thereof, as used in these documents have meanings as
18 defined:

19
20 **Adjustment Factor** – A competitively bid adjustment to be applied to the unit prices listed in
21 the Construction Task Catalog®.

22
23 **Architect of record** – The Owner and his/her authorized representative, as defined in Section
24 2.04C, or a duly California licensed Architect.

25
26 **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation
27 section of the Bid Form, which is used for the purposes of determining the lowest Bid.

28
29 **Construction Task Catalog®**- A comprehensive listing of construction related tasks together
30 with a specific unit of measure and a published Unit Price.

31
32 **Contractor** - When used in the General Conditions refers to person(s) or entity (partnership or
33 corporation) so named in Agreement and when used in the body of the Specifications, refers
34 to the Contractor for that specific work, whether it be the General Contractor, Subcontractor,
35 or other Contractor. The term Contractor means the Contractor or the Contractor's authorized
36 representative.

37
38 **Days**- All days shall be measured in calendar days unless specifically noted otherwise in these
39 documents or referenced codes.

40
41 **Detailed Scope of Work** – A document setting forth the work the Contractor is obligated to
42 complete for a particular Work Order.

43
44 **Job Order Completion Time** - The time within which the Contractor must complete the
45 Detailed Scope of Work.

46
47 **Job Order Price Proposal**: A price proposal prepared by the Contractor that includes the Pre-
48 priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required
49 to complete the Detailed Scope of Work.

1 **Job Order Price:** The value of the approved Job Order Price Proposal and the lump sum
2 amount the Contractor will be paid for completing a Job Order.
3

4 **Job Order Proposal:** A set of documents including at least: (a) Job Order Price Proposal; (b)
5 required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen;
6 (d) Construction schedule; and (e) other requested documents.
7

8 **Job Order:** A written order issued by the Owner, such as a Purchase Order, requiring the
9 Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for
10 the Job Order Price. A project may consist of one or more Job Orders. 1.8.
11

12 **Joint Scope Meeting** – A site meeting attended by the Owner and Contractor to discuss the
13 work before the Detailed Scope of Work is finalized.
14

15 **Maximum Contract Value** - The maximum value of Work Orders that the Contractor may
16 receive under this Contract.
17

18 **Minimum Contract Value** – The minimum value of Work Orders that the Contractor is
19 guaranteed the opportunity to perform under this Contract.
20

21 **Non Pre-priced Task** – An item of work required by the Detailed Scope of Work but not
22 included in the Construction Task Catalog®.
23

24 **Normal Working Hours** – Includes the hours from 7:00 a.m. to 5:00 p.m. Monday through
25 Friday, except for Owner holidays.
26

27 **Notice to Proceed** - A written notice issued by the Owner directing the Contractor to proceed
28 with construction activities to complete the Work Order.
29

30 **Other than Normal Working Hours** – Includes the hours of 5:00 p.m. to 7:00 a.m. Monday
31 through Friday and all day Saturday, Sunday, and Owner Holidays.
32

33 **Owner** - The County of Fresno, State of California, as represented by the Fresno County Board
34 of Supervisors and so named in the Agreement. The term Owner means the Owner or the
35 Owner's authorized representative (also known as the Project Manager) for this project.
36

37 **Pre-priced Task** – An item of work included in the Construction Task Catalog® for which a
38 Unit Price is given.
39

40 **Price Proposal** – A price proposal prepared by the Contractor that includes the Pre-priced
41 Tasks, Non Pre-priced Tasks, appropriate quantities and appropriate Adjustment Factors
42 required to complete the Detailed Scope of Work.
43

44 **The Project** – The collective improvements to be constructed by the Contractor pursuant to a
45 Work Order, or a series of related Work Orders.
46

47 **Proposal Package** – A set of documents including at least: (1) a Price Proposal; (2) a proposed
48 construction schedule; (3) a list of proposed subcontractors; (4) sketches, drawings, or layouts;
49 and (5) technical data or information on proposed materials or equipment.
50

1 **Request for Proposal** – A written request to the Contractor to prepare a Proposal for the
2 Detailed Scope of Work referenced therein.

3
4 **Subcontractor** – Person, persons, entity, co-partnership or corporation having direct contract
5 with Contractor to perform any of the Work at the site. The term Subcontractor means a
6 Subcontractor or a Subcontractor’s authorized representative. The term Subcontractor does
7 not include any separate contractor or any separate contractor’s subcontractors.
8

9 **Sub-subcontractor** – Person, persons, entity, co-partnership or corporation having a direct or
10 indirect contract with a Subcontractor to perform any of the Work at the site (i.e. a second-tier,
11 third-tier or lower-tier Subcontractor). The term Sub-subcontractor means a Sub-subcontractor
12 or an authorized representative thereof.
13

14 **Supplemental Work Order** - A Work Order issued to add or delete Work from an existing,
15 related Work Order.
16

17 **Technical Specifications** – Contains the written requirements for materials, equipment,
18 systems, standards and workmanship for the Work, and performance of related services.
19

20 **Unit Price** - The price published in the Construction Task Catalog® for a specific construction
21 or construction related work task. Unit Prices for new Pre-priced Tasks can be established
22 during the course of the Contract and added to the Construction Task Catalog®. Each Unit
23 Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-
24 priced Task.
25

26 **The Work** - The Work comprises the completed construction required of the Contractor by the
27 Contract Documents, and includes all labor, materials, equipment and services necessary to
28 produce such construction, and all materials, other permits and equipment incorporated or to
29 be incorporated in such construction.
30

31 **Work Order Completion Time** – The time within which the Contractor must complete the
32 Detailed Scope of Work.
33

34 **Work Order Price** – The amount a Contractor will be paid for completing a Work Order.
35

36 **Year**- One year shall be measured in terms of 365 calendar days.
37

38 2.05 SPECIFICATIONS AND DRAWINGS
39

40 A. Precedence – Anything mentioned in the Specifications and not shown on the
41 Drawings, or shown on the drawings and not mentioned in the specifications, shall be
42 of like effect as if shown or mentioned in both. Subject to Section 2.02, in cases of
43 discrepancy concerning dimension, quantity and location, the Drawings shall take
44 precedence over the Specifications. Explanatory notes on the Drawings shall take
45 precedence over conflicting drawn indications. Large scale details shall take
46 precedence over smaller scale details and figured dimensions shall take precedence
47 over scaled measurement. Where figures are not shown, scale measurements shall
48 be followed but shall in all cases be verified by measuring actual conditions of Work
49 already in place. In cases of discrepancy concerning quality and application of

1 materials and non-technical requirements over materials, the specifications shall take
2 precedence over Drawings.

3
4 B. Division of Specifications - For convenience of reference and to facilitate the letting of
5 independent contracts, this specification may be separated into certain sections; such
6 separation shall not operate to oblige the Owner, Architect or Professional Consultant
7 to establish the limits of any contract between the Contractor and Sub-Contractor each
8 of whom shall depend upon his/her own contract stipulations. The General Conditions
9 apply with equal force to all work, including extra work.

10
11 C. Governing Factors - Dimensions figured on drawings shall be followed in every case in
12 preference to scale of drawings.

13
14 D. Discrepancies - Should the Contractor, at any time, discover a discrepancy in a drawing
15 or specification, or any variation between dimensions on drawings and measurements
16 at site, or any lacking of dimensions or other information, he/she shall report at once to
17 the Project Manager requesting clarification and shall not proceed with the work
18 affected thereby until such clarification has been made. If the Contractor proceeds with
19 work affected by such discrepancies, without having received such clarification, he/she
20 does so at his/her own risk. Any adjustments involving such circumstances made by
21 the Contractor, prior to approval by the Project Manager, shall be at the Contractor's
22 risk and the settlement of any complications or disputes arising therefrom shall be at
23 the Contractor's sole expense and Contractor shall indemnify, hold harmless and
24 defend Owner, Owner's representatives, and Project Manager from any liability or loss
25 with respect to said adjustments.

26
27 E. Scope of Drawings – When drawings are included in the Detailed Scope of Work, the
28 drawings shall be held to determine the general character of the Work as well as its
29 details. Parts not detailed shall be constructed in accordance with best standard
30 practice for work of this class, so as to afford the requisite strength and logically
31 complete the parts they compose. Where it is obvious that a drawing illustrates only a
32 part of a given work or of a number of items, the remainder shall be deemed repetitious
33 and so construed. The Contractor shall be responsible for all errors made in using any
34 drawings which have been superseded.

35
36 F. Shop Drawings, Product Data and Samples –

37
38 1. Shop Drawings are drawings, diagrams, schedules and other data specially
39 prepared for the Work by the Contractor or any Subcontractor, manufacturer,
40 supplier or distributor to illustrate some portion of the Work. Product Data are
41 illustrations, standard schedules, performance charts, instructions, brochures,
42 diagrams and other information furnished by the Contractor to illustrate a
43 material, product or system for some portion of the Work. Samples are physical
44 examples that illustrate materials, equipment or workmanship, and establish
45 standards by which the work will be judged.

46
47 2. The Contractor shall prepare, review, approve and submit to the Project
48 Manager, with reasonable promptness and in such sequence as to cause no
49 delay in the Work or in the work of the Owner or any separate contractor, all

- 1 Shop Drawings, Product Data and Samples required by the Contract
2 Documents.
3
4 3. By preparing, approving and submitting Shop Drawings, Product Data and
5 Samples, the Contractor represents that the Contractor has determined and
6 verified all materials, field measurements and field construction criteria related
7 thereto, or will do so with reasonable promptness, and has checked and
8 coordinated the information contained within such submittals with the
9 requirements of the Work, the Project, the Work Order and the Contract
10 Documents.
11
12 4. The Contractor shall not be relieved of responsibility for any deviation from the
13 requirements of the Contract Documents by the Architect's review of Shop
14 Drawings, Product Data or Samples, unless the Contractor has specifically
15 informed the Project Manager in writing of such deviation at the time of
16 submission and the Architect has reviewed the specific deviation. The
17 Contractor shall not be relieved from responsibility for errors or omissions in the
18 Shop Drawings, Product Data or Samples by the Architect's review of them.
19
20 5. When professional certification of performance criteria of materials, systems or
21 equipment is required by the Contract Documents, the Architect shall be entitled
22 to rely upon the accuracy and completeness of such calculations and
23 certifications. The cost of such certifications shall be borne by the Contractor.
24 Owner may elect to have an independent certification performed at its own
25 expense. The Owner shall have final approving authority for performance-based
26 items.
27
28 6. The Contractor shall direct specific attention, in writing or on resubmitted Shop
29 drawings, Product Data, or Samples, to revisions other than those requested by
30 the Architect on previous submittals.
31
32 7. No portion of the Work requiring submission of a Shop Drawing, Product Data
33 or Sample shall be commenced until the submittal has been reviewed by the
34 Architect. All such portions of the Work shall be in accordance with reviewed
35 submittals.
36
37 8. Submission of Shop Drawings and Samples to the Project Manager is required
38 for only those items specifically mentioned in the Specification Sections. If
39 Contractor submits Shop Drawings for items other than the above, the Project
40 Manager will not be obligated to distribute or review them. Contractor shall be
41 responsible for the procuring of Shop Drawings for his/her own use as he/she
42 may require for the progress of the Work.
43
44 9. The term "Shop Drawings" as used herein also includes but is not limited to
45 fabrication, erection, layout and setting drawings, manufacturer's standard
46 drawings, descriptive literature, catalogs, brochures, performance and test data,
47 wiring and control diagrams, all other drawings and descriptive data pertaining
48 to materials, equipment, piping, duct and conduit systems, and methods of
49 construction as may be required to show that the materials, equipment or
50 systems and the positions and layout of each conform to the Contract

1 requirements. As used herein the term "manufactured" applies to standard units
2 usually mass-produced, and the term "fabricated" means items specifically
3 assembled or made out of selected materials to meet individual design
4 requirements. Shop Drawings shall establish the actual detail of all
5 manufactured or fabricated items; indicate proper relation to adjoining work;
6 amplify design details of mechanical and electrical equipment in proper relation
7 to physical spaces in the structure; and incorporate minor changes of design or
8 construction to suit actual conditions.
9

10 10. Drawings: Following Contractor's review and approval, Contractor shall submit
11 to the Project Manager for approval four (4) minimum to six (6) maximum prints
12 and/or pdf submission of the same information via email. (Required delivery
13 methods and quantities of submittals will be determined at the time of the Pre-
14 Construction Meeting). The Project Manager will check the submittal to see if it
15 is complete. If complete, the Project Manager will forward the drawings to the
16 Owner and the Architect. The Architect and Owner will check the drawings and
17 note Architect and Owner comments and affix a stamp to the drawings indicating
18 the status of acceptance, and will return same to the Project Manager, each
19 retaining prints for his/her records. The Architect or his/her consultants, as
20 applicable, will review the Shop Drawings; mark the prints with required
21 revisions; stamp the prints and indicate "No Exceptions Taken", "Make
22 Corrections Noted", "Revise and Resubmit", "Submit Specified Item", or
23 "Rejected", and return the prints. The Project Manager will return the prints to
24 the Contractor. The Contractor shall then print and distribute the appropriate
25 number of copies to his/her job personnel as required. If a drawing is stamped
26 "Rejected" or "Revise and Resubmit", the Contractor shall correct and resubmit
27 as outlined above. When stamped "Make Corrections Noted", or similar
28 instructions, the Contractor shall correct and resubmit for record only, three (3)
29 prints of each drawing. Also see Technical Specifications, Division I, General
30 Requirements.
31

32 11. Samples: Following Contractor's review and approval, Contractor shall submit
33 to the Architect, five (5) minimum samples of all materials in quantities and sizes
34 as specified herein as requested by the Architect. Submittals shall be given to
35 the Architect at a time determined by the Contractor, which allows for any
36 necessary resubmittal and which will not cause any delay in the Work. Samples
37 will be forwarded to the Architect. If a sample is stamped "Rejected" or "Revise
38 and Resubmit", one sample so noted will be returned to the Contractor. The
39 Contractor shall correct and resubmit as outlined above. If a sample is stamped
40 "Make Corrections Noted", one sample so noted will be returned. Corrected
41 samples shall be resubmitted for approval as per the original submittal. Also see
42 Technical Specifications and General Requirements.
43

44 12. Brochures: Following Contractor's review and approval, Contractor shall submit
45 to the Architect, five (5) copies of all manufacturer's catalogs or brochures as
46 required. Brochures will be forwarded to the Architect for review. If a brochure
47 is stamped "No Exception Taken", two (2) copies will be returned to the
48 Contractor. If stamped "Rejected", one marked copy and two (2) unmarked
49 copies will be returned. Corrected copies shall be resubmitted for approval as
50 per the original submittal. Also see General Requirements.

1
2 13. Manufacturer's Instructions: Where any item or work is required by
3 Specifications to be furnished, installed or performed in accordance with a
4 specified product manufacturer's instructions, Contractor shall procure and
5 distribute the necessary copies of such instructions to all concerned parties.
6

7 G. Materials - All materials, unless otherwise specified, shall be new and of good quality,
8 proof of which shall be furnished by the Contractor; in case of doubt as to kind or quality
9 required, samples shall be submitted to the Architect through the Project Manager who
10 will specify the kind and use of the material appropriate to the location and the function
11 of the item in question. Contractor shall furnish such item accordingly. Before final
12 payment, all material rejected by the Architect or Project Manager shall be promptly
13 removed from the premises by the Contractor, whether or not completely installed, and
14 promptly and properly replaced with correct materials, including any other work
15 adjoining if disturbed, in accordance with the contract and without expense to the
16 Owner; the Contractor also shall pay for work of other Contractors as is affected by
17 such removals and replacements.
18

19 2.06 THE ARCHITECT
20

- 21 A. The Owner may delegate all or a portion of its rights and responsibilities to a licensed
22 Architect as deemed necessary per Work Order.
23
24 B. The Architect advises the Project Manager in all aspects of the construction phase of
25 the Project. The Architect's functions include advice and assistance to the Project
26 Manager in the correct interpretation and application of the Contract Documents. The
27 Architect is not authorized independently to issue Addenda, Clarifications, Field
28 Orders, Work Authorizations, or Supplemental Work Orders, or in any other way to
29 bind the Owner in discussions with the Contractor.
30
31 C. The Contractor shall deliver all correspondence relating to the proper execution of the
32 Work to the Project Manager. The Project Manager reserves the right to consult with
33 the Architect and Owner prior to responding to the Contractor's correspondence.
34
35 D. When discussions between the Contractor and the Project Manager occur either on the
36 site or elsewhere, but the Architect is not present, the Project Manager reserves the
37 right to consult with the Architect and Owner prior to issuing his/her final decision or
38 instruction.
39
40 E. The Architect shall review or take other appropriate action upon the Contractor's
41 submittals such as Shop Drawings, Product Data and Samples, but only for
42 conformance with the design concept of the Work and the information given in the
43 Contract Documents. Such action shall generally be taken within ten (10) working
44 days, however under certain circumstances such as very complex submittals or if large
45 number of submittals are submitted at one (1) time it may take longer. In this case the
46 Contractor will be notified and given the opportunity to advise the Architect of priorities.
47 The Architect's review of a specific item shall not indicate review of an assembly of
48 which the item is a component.
49

50 2.07 THE PROJECT MANAGER

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- A. The Project Manager is the authorized representative of the Owner in all aspects of administering the construction contract on behalf of the Owner. All communications from and to the Contractor will be channeled through the Project Manager. However, the Project Manager does not have the authority to bind the Owner in matters affecting adjustments to the time or cost of the project as defined in the Agreement for Construction.
 - B. The Project Manager will be the Owner's representative during the construction and warranty periods, and until final payment to all contractors is due. The Project Manager will advise and consult with the Owner. All instructions to the Contractor shall be forwarded through the Project Manager. The Project Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument.
 - C. The Project Manager will be on site during construction to monitor the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of on-site observations and communication with the Contractor, the Project Manager will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.
 - D. The Project Manager shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the Project Manager may perform its functions under the Contract Documents.
 - E. Based on the Project Manager's observations, and an evaluation of the Contractor's Application for Payment, the Project Manager will determine the amount owing to the Contractor and will issue to the Owner Certificates for Payment incorporating such amount.
 - F. The Project Manager will be the initial interpreter of the requirements of the Contract Documents and the initial judge of the performance hereunder by the Contractor. The Owner will have final authority of all such matters.
 - G. The Project Manager will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits. Either party to the Contract may make written request to the Project Manager for such interpretations.
 - H. Claims, disputes and other matters in question between the Contractor and the Project Manager relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred to the Owner (or his/her designee).
 - I. All interpretations and decisions of the Project Manager will be in writing or in graphic form, and shall be both consistent with the intent of the Contract Documents and reasonably inferable therefrom.
 - J. The Project Manager will have the authority to reject, or recommend to the Owner the rejection, of any work that does not conform to the Contract Documents. Whenever, in

1 the Project Manager's opinion, it is considered necessary or advisable for the
2 implementation of the intent of the Contract Documents, the Project Manager will have
3 authority to require special inspection or testing of the Work whether or not such work
4 be then fabricated, installed or completed.

- 5
6 K. The Project Manager will receive from the Contractor and review all Shop Drawings,
7 Product Data and Samples, and forward same to Architect and Owner for review.
8
9 L. Following consultation with the Owner, the Project Manager will take appropriate action
10 on changes, and will have authority to order minor changes in the Work as provided
11 herein.
12
13 M. The Project Manager will conduct inspections to determine the date of Completion, and
14 will receive and forward to the Owner for the Owner's review written warranties and
15 related documents required by the Contract Documents and assembled by the
16 Contractor. The Project Manager will issue a final Project Certificate for Payment upon
17 compliance with the requirements for completion and final payment. The Project
18 Manager will monitor the warranty for a period of one (1) year from and after the date
19 of acceptance of the Work, unless otherwise specified as a longer term.
20
21 N. The duties, responsibilities and limitations of authority of the Project Manager as the
22 Owner's representatives during construction as set forth in the Contract Documents,
23 will not be modified or extended without written consent of the Owner, the Contractor
24 and the Project Manager, which consent shall not be unreasonably withheld. Failure of
25 the Contractor to respond within ten (10) business days to a written request shall
26 constitute consent by the Contractor.
27
28 O. In case of the termination of the employment of the Project Manager, the Owner may
29 appoint a successor Project Manager, whose status and duties under the Contract
30 Documents shall be the same as those of the former Project Manager.
31

32 2.08 OWNER

- 33
34 A. Information and Services Required of the Owner
35
36 1. Unless otherwise provided in the Contract Documents, the Owner shall secure
37 and pay for necessary approvals, easements, assessments and charges
38 required for the construction, use or occupancy of permanent structures or for
39 permanent changes in existing facilities.
40
41 2. Information or services under the Owner's control shall be furnished by the
42 Owner with reasonable promptness to avoid delay in the orderly progress of the
43 Work.
44
45 3. The Owner shall forward all instructions to the Contractor through the Project
46 Manager.
47
48 B. Owner's Right to Stop the Work
49

1 If the Contractor fails to correct defective work as required by Section 2.42 herein or
2 persistently fails to carry out the Work in accordance with the Contract Documents, the
3 Owner, by a written order signed personally or by an agent specifically so empowered
4 by the Owner in writing, may order the Contractor to stop the Work, or any portion
5 thereof, until the cause for such order has been eliminated; however, this right of the
6 Owner to stop the Work shall not give rise to any duty on the part of the Owner to
7 exercise this right for the benefit of any contractor or any other person or entity, except
8 to the extent required by Section 2.12.C.
9

10 C. Owner's Right to Carry Out the Work
11

12 If the Contractor defaults or neglects to carry out the Work in accordance with the
13 Contract Documents, and fails after written notice from the Owner to correct such
14 default or neglect with diligence and promptness, the Owner may, after an additional
15 written notice and without prejudice to any other remedy the Owner may have, make
16 good such deficiencies. In such case an appropriate Supplemental Work Order shall
17 be issued deducting from the payments then or thereafter due the Contractor the cost
18 of correcting such deficiencies, including compensation for the additional services of
19 the Architect or other professionals made necessary by such default, neglect or failure.
20 Such action by the Owner and the amount charged to the Contractor are both subject
21 to the prior approval of the Architect. If the payments then or thereafter due the
22 Contractor are not sufficient to cover such amount, the Contractor shall pay the
23 difference to the Owner, or Owner may require payment by the surety on the
24 performance or warranty bonds as appropriate. Such action shall, in no way, affect the
25 status of either party under contract, nor be held as a basis of any claim by the
26 Contractor for damages or extension of time.
27

28 D. Award of Individual Work Orders
29

30 The Owner may award an individual Work Order to any selected Contractor. Selection
31 of the Contractor and award of the Work Order will be in compliance with established
32 Owner procedures and based on one or more of the following criteria:

- 33 1. Rotational selection among all Contractors, unless otherwise determined by the
34 Owner.
35
- 36 2. Evaluation of past and current performance on Work Orders of a similar nature
37 and type of work, project size, construction management challenges, schedule
38 performance, design management requirements, etc.
39
- 40 3. Balancing of work load (Work Order dollar volume and construction backlog)
41 among Contractors.
42
- 43 4. Management of Work Order dollar volume within bonding limitations of the
44 Contractor.
45
- 46 5. Price, as it relates to the Owner's independent cost estimate.
47
- 48 6. Contractor's responsiveness to the Owner on Work Orders.
49
- 50 7. Other appropriate criteria as deemed in the best interest of the Owner.

1
2 2.09 CONTRACTOR RESPONSIBILITIES
3

4 A. Procedure for Developing a Work Order
5

6 As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint
7 Scope Meeting and issue a Notice of Joint Scope Meeting. The Contractor shall attend
8 the Joint Scope Meeting and discuss, at a minimum:
9

- 10 1. the general scope of the work;
11
12 2. alternatives for performing the work and value engineering;
13
14 3. access to the site and protocol for admission;
15
16 4. hours of operation;
17
18 5. staging area;
19
20 6. requirements for catalog cuts, technical data, samples and shop drawings;
21
22 7. requirements for professional services, sketches, drawings, and specifications;
23
24 8. construction duration;
25
26 9. liquidated damages;
27
28 10. the presence of hazardous materials;
29
30 11. date on which Proposal is due.
31

32 Upon completion of the joint scoping process, the Owner will prepare a draft Detailed
33 Scope of Work referencing any sketches, drawings, photographs, and specifications
34 required to document accurately the work to be accomplished. The Contractor shall
35 review the Detailed Scope of Work and request any required changes or modifications.
36 When an acceptable Detailed Scope of Work has been prepared, the Owner will issue
37 a Request for Proposal that will require the Contractor to prepare a Work Order
38 Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the
39 Owner, will be the basis on which the Contractor will develop its Work Order Package
40 and the Owner will evaluate the same. The Contractor does not have the right to refuse
41 to perform any task or any work in connection with a particular Project.
42

43 The Owner may, at this option, include quantities in the Detailed Scope of Work if it
44 helps to define the Detailed Scope of Work, if the actual quantities required are not
45 known or cannot be determined at the time the Detailed Scope of Work is prepared, if
46 the Contractor and the Owner cannot agree on the quantities required, or for any other
47 reason as determined by the Owner. In all such cases, the Owner shall issue a
48 Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of
49 Work to the actual quantities.
50

1 B. Preparation of the Price Proposal

2
3 The Contractor will prepare Price Proposals in accordance with the following:

- 4
5 1. Pre-priced Tasks: A Pre-priced Task is a task described and for which a Unit
6 Price is set forth in the Construction Task Catalog®. For Pre-priced Tasks the
7 Contractor shall identify the task and quantities required from the Construction
8 Task Catalog®.
9
10 2. Non Pre-priced Tasks: Units of work not included in the Construction Task
11 Catalog®, but within the general scope and intent of this Contract, may be
12 negotiated into this Contract as needs arise. Such work requirements shall be
13 incorporated into and made a part of this Contract for the Work Order to which
14 they pertain, and may be incorporated into the Construction Task Catalog® if
15 determined appropriate by the County at the negotiated price. Non Pre-Priced
16 Tasks shall be separately identified and submitted in the Proposal.
17
18 a. The Contractor shall break down any Non Pre-price item if the labor,
19 material or equipment required to accomplish the Non Pre-priced task
20 can be used out of the Construction Task Catalog® at a pre-price rate
21 times the Bidder's appropriate Adjustment Factor. Whether a Work
22 requirement is Pre-priced or Non Pre-priced is a final determination by
23 the County, binding and conclusive on the Contractor.
24
25 b. Information submitted in support of Non Pre-priced work shall include,
26 but not be limited to, the following: Complete specifications and
27 technical data, including work unit content, work unit costs data,
28 schedule requirements; quality control and inspection requirements.
29 Pricing data submitted in support of Non Pre-Priced Tasks shall include
30 a cost or price analysis report, establishing the basis for selecting the
31 approach proposed to accomplish the requirements. Unless otherwise
32 directed by the County, cost data shall be submitted demonstrating that
33 the Contractor solicited and received three bids. The Contractor shall
34 provide an installed unit price (or demolition price if appropriate), which
35 shall include all costs required to accomplish the Non Pre-priced Task.
36
37 c. The final price submitted for Non Pre-priced Tasks shall be according to
38 the following formula:

39 **Contractor Performed Duties**

40 A = The number of hours for each labor classification and hourly rates

41 B = Equipment costs (other than small tools)

42 C = Three independent quotes for all materials

43
44 **Total Cost for self-performed work = (A+B+C) x Normal Hours**
45 **Adjustment Factor (Only if A & B cannot be priced out of the**
46 **Construction Task Catalog®)**

47 **For Work performed by Subcontractors:**

1 If the Work is to be subcontracted, the Contractor must submit three
2 independent bids from Subcontractors. If three quotes or bids cannot
3 be obtained, the Contractor will provide the reason in writing for the
4 County's approval as to why three quotes cannot be submitted.

5 D = Subcontractor Costs (supported by three quotes)

6 **Total Costs of Non Pre-Priced Task = D x Normal Hours Adjustment**
7 **Factor**

8 d. After a Non Pre-priced Task has been approved by the Owner, the Unit
9 Price for such task will be established, and fixed as a permanent Non
10 Pre-priced Task which will no longer require price justification.

11
12 e. The Owner's determination as to whether an item is a Pre-priced Task
13 or a Non Pre-priced Task shall be final, binding and conclusive as to the
14 Contractor.

15
16 3. Whenever, because of trade jurisdiction rules or small quantities, the cost of a
17 minor task in the Price Proposal is less than the cost of the actual labor and
18 material to perform such task, the Owner may permit the Contractor to be paid
19 for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and
20 material component pricing to cover the actual costs incurred. Provided,
21 however, that there is no other work for that trade on the Project or other work
22 for that trade cannot be scheduled at the same time and the final charge does
23 not exceed \$1,000.

24
25 4. Contractor shall make the necessary arrangements for and obtain all filings and
26 permits required for the Work, including the preparation of all drawings,
27 sketches, calculations and other documents and information that may be
28 required therefor. If the Contractor is required to pay an application fee for filing
29 a project, a fee to obtain a building permit, or any other permit fee to the City,
30 State or some other governmental or regulatory agency, then the amount of
31 such fee paid by the Contractor for which a receipt is obtained shall be treated
32 as a Reimbursable Task to be paid without mark-up. The cost of expediting
33 services or equipment use fees are not reimbursable.

34
35 5. Design requirements will be determined by the scope of work defined in each
36 Work Order. If the level of Architect/Engineer services for a Work Order requires
37 stamped plans and specifications for the development of the Detailed Scope of
38 Work, the Owner shall be responsible to prepare them. As needed, the
39 contractor may assist with the development of the scope through one or more
40 joint scope meetings and subsequent review of the prepared documents. All
41 shop drawings, submittals and similar documents required in connection with a
42 particular Work Order are considered to be incidental to the Contract and
43 included in the Contractor's Adjustment Factors.

44
45 6. The Contractor's Price Proposal shall include, at a minimum:
46 a. Price Proposal;
47 b. Back Up for Non Pre-priced Tasks;
48 c. Any other documentation requested by the Owner.
49

- 1 7. The Contractor's Price Proposal shall be submitted by the date indicated on the
2 Request for Proposal. All incomplete Price Proposals shall be rejected. The time
3 allowed for preparation of the Contractor's Price Proposal will depend on the
4 complexity and urgency of the Work Order but should average between seven
5 (7) and fourteen (14) days. On complex Work Orders, such as Work Orders
6 requiring incidental engineering/architectural drawings and approvals and
7 permits, allowance will be made to provide adequate time for preparation and
8 submittal of the necessary documents.
9
- 10 8. By submitting a Price Proposal to the Owner, the Contractor agrees to
11 accomplish the Detailed Scope of Work in accordance with the Request for
12 Proposal at the price submitted. It is the Contractor's responsibility to include
13 the necessary tasks and quantities in the Price Proposal and apply the
14 appropriate Adjustment Factor(s) prior to delivering it to the Owner.
15
- 16 9. If the Contractor requires clarifications or additional information regarding the
17 scope of work in order to prepare the Price Proposal, the request must be
18 submitted so that the submittal of the Price Proposal is not delayed.
19

20 C. Review of the Price Proposal

- 21
- 22 1. If the Owner finds the Contractor's Price Proposal unacceptable, the Owner may
23 request the Contractor to re-submit its Price Proposal or cancel the Work Order.
24 After the Owner has reviewed the Price Proposal and an agreement has been
25 reached between the Owner and the Contractor as to the nature of the revisions,
26 if any, the Contractor is not allowed to make any changes to the revised Price
27 Proposal other than the agreed upon changes. Unless otherwise specified by
28 the Owner, if the Contractor is required to resubmit the Price Proposal, the
29 revised Price Proposal is due no later than 48 hours after the changes have
30 been agreed upon.
31
- 32 2. The Contractor may choose the means and methods of construction; subject
33 however, to the Owner's right to reject any means and methods proposed by
34 the Contractor that:
- 35 a) Will constitute or create a hazard to the work, or to persons or property;
36 or
37 b) Will not produce finished Work in accordance with the terms of the
38 Contract; or
39 c) Unnecessarily increases the price of the Work Order when alternative
40 means and methods are available; or
41 d) Deviates from the Detailed Scope of Work.
- 42 3. Once the Price Proposal is accepted by the Owner (by issuance of a Notice to
43 Proceed through the Gordian System), the Work Order becomes a firm fixed,
44 lump sum contract. Unless specifically stated in the Detailed Scope of Work, no
45 adjustment in the proposed Pre-priced Tasks and Non Pre-priced Tasks or
46 quantities is allowed. Inspection of the Contractor's Work shall be against the
47 Detailed Scope of Work including any Technical Specifications and Drawings,
48 not against the Price Proposal.
49

50 D. Preparation of the Proposal Package:

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1. Time for Submittal: Upon acceptance of the Contractor's Price Proposal, the Contractor will be required to submit the Proposal Package within five (5) working days of said acceptance, unless otherwise specified by the Owner. If the Contractor fails to meet the deadline for submittal of the Proposal Package, the Owner may declare the Contractor in default and initiate termination of the Work Order.
2. The Proposal Package shall include:
 - a. Price Proposal as agreed to
 - b. Final back-up for any Non Pre-priced Tasks (if applicable)
 - c. Subcontractor List, including:
 - i. The name, license number and the location of the place of business of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the general contractor's total proposal amount, and
 - ii. The portion of the work which will be done by each subcontractor.
 - iii. The attention of bidders is directed to the provisions of Public Contract Code Section 4100 et seq which set forth the consequences and possible penalties which may result from a failure to comply strictly with the foregoing requirements for listing of subcontractors.
 - d. Final drawings, calculations, specifications (if applicable)
 - e. Final catalog cuts, (if applicable)
 - f. Special insurance, (if applicable)
 - g. For Special equipment and installations, a copy of the warranty document (if applicable)
 - h. Any other documentation required for the Work Order as indicated on the RFP (if applicable)
3. By submitting a Proposal Package to the Owner, the Contractor is agreeing to accomplish the Work outlined in the Request For Proposal and the Detailed Scope of Work for that particular Work Order.

E. Review of the Proposal Package and Issuance of the Work Order:

1. The Owner will evaluate the entire Proposal Package.
2. The Owner reserves the right to reject a Contractor's Proposal Package based on inadequate documentation, unacceptable subcontractors, or other inconsistencies on the Contractor's part.
3. The Owner reserves the right to reject a Price Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Work Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Work Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Work Order Proposal with the Owner.

- 1 4. Each Work Order provided to the Contractor shall reference the Detailed Scope
2 of Work and set forth the Work Order Price and the Work Order Completion
3 Time. All clauses of this Contract shall be applicable to each Work Order. The
4 Work Order, signed by the Owner and delivered to the Contractor constitutes
5 the Owner's acceptance of the Contractor's Proposal Package. A signed copy
6 of the Work Order will be provided to the Contractor.
- 7 5. In the event that immediate emergency response is necessary, the Contractor
8 shall be required to follow alternative procedures as established by the Owner.
9 The Contractor shall begin work as directed notwithstanding the absence of a
10 fully developed Request for Proposal, Detailed Scope of Work, or Work Order.
11 The Contractor shall be compensated in accordance with the Construction Task
12 Catalog® and Non Pre-priced Tasks as if the work had been ordered under the
13 standard procedures.

14
15 F. Review of Contract Documents and Field Conditions

- 16
17 1. The Contractor shall carefully study and compare the Contract Documents and
18 shall at once report to the Project Manager any discrepancy or inconsistency
19 that may be discovered. The Contractor shall not be liable to the Owner or the
20 Project Manager for any damage resulting from any such inconsistencies or
21 discrepancies in the Contract Documents unless the Contractor recognized
22 such inconsistencies or discrepancies and knowingly failed to report it to the
23 Project Manager, or the Contractor was responsible for the preparation of the
24 Contract Documents. The Contractor shall perform no portion of the Work at
25 any time unless authorized by the Contract Documents or, where required,
26 approved Shop Drawings, Product Data or Samples for such portion of the
27 Work.
- 28 2. Neither the Owner nor the Project Manager or Architect assume any
29 responsibility for an understanding or representation made by any of their
30 agents or representation prior to the execution of the Agreement unless (1) such
31 understanding or representations are expressly stated in the Agreement, and
32 (2) the Agreement expressly provides that responsibility therefore is assumed
33 by the Owner.
- 34 3. Failure by the Contractor to acquaint himself/herself with all available
35 information will not relieve him/her from responsibility for estimating properly the
36 difficulty or cost of successfully performing the Work.
- 37 4. The Contractor shall take field measurements and verify field conditions and
38 shall carefully compare such field measurements and conditions and other
39 information known to the Contractor with the Contract Documents before
40 commencing activities. Any inconsistencies or discrepancies discovered by the
41 Contractor shall be reported to the Project Manager at once.
- 42 5. Before submitting any Request for Information (RFI), or other contractor initiated
43 request for information, the Contractor shall determine that the information
44 requested is not clearly provided in the Contract Documents. RFI's shall be
45 submitted to the Project Manager only from the Contractor, or Owner, and not
46 from any subcontractor, supplier or other vendor, and shall be on a form
47 approved by the Project Manager. The Contractor shall provide a revised and
48 updated RFI Priority Schedule on a weekly basis. The RFI Priority Schedule
49 shall rank RFI's in order of priority and include a brief statement of reason for
50 priority. Owner initiated RFI's will not be listed on the Contractor's RFI Priority

1 Schedule. The Owner will provide the Architect or Engineer a separate list of
2 Owner initiated RFI's upon request of the Architect or Engineer. The Architect
3 or Engineer will endeavor to respect the order of priorities as requested by the
4 Contractor or Owner for the overall benefit of the Project. The RFI process is
5 for information and clarification only and may not be utilized to obtain approval
6 for changes in Work Order Price or time. Also see Division 01 - General
7 Requirements.
8

9 G. Supervision Procedures

- 10
11 1. The Contractor shall efficiently supervise and direct the Work, using therein the
12 Contractor's best skill and diligence for which he/she is remunerated in the Work
13 Order Price. He/She shall carefully inspect the site and study and compare the
14 Contract Documents, as ignorance of any phase of any of the features or
15 conditions affecting the Contract will not excuse him/her from carrying out its
16 provisions to its full intent.
17 2. The Contractor shall employ a competent superintendent and necessary
18 assistants who shall be in attendance at the project site during the progress of
19 the Work. The superintendent shall represent the Contractor and all
20 communications given to the superintendent shall be as binding as if given to
21 the Contractor. Important communications shall be confirmed in writing. Other
22 communications shall be so confirmed upon written request in each case. The
23 Superintendent who begins the project shall remain on the project until the
24 project is completed, as long as the Contractor employs that person. The
25 Superintendent shall not be replaced without the approval of the Owner.
26 3. The Contractor shall be responsible to the Owner for the acts and omissions of
27 his/her employees, subcontractors and their agents and employees, and other
28 persons performing any of the Work under a contract with the Contractor.
29 4. The Contractor shall at all times enforce strict discipline and good order among
30 his/her employees and shall not employ on the Work any unfit person or anyone
31 not skilled in the task assigned to him/her.
32 5. The Contractor shall not be relieved from his/her obligations to perform the
33 Work in accordance with the Contract Documents either by the activities or
34 duties of the Owner or the Architect or Engineer in his/her administration of the
35 Contract, or by inspections, tests or approvals required or performed by
36 persons other than the Contractor.
37 6. Contractor shall alert and inform their employees that State law requires that
38 the identities of inmates/wards/patients/clients be kept confidential. Revealing
39 the identities of inmates/wards/patients/clients is punishable by law.
40

41 H. Construction Procedures

- 42
43 1. For any work that takes place within secured facilities: All access to the
44 construction site shall be coordinated with the appropriate Fresno County
45 department as identified in the Detailed Scope of Work. Security background
46 checks will be required for any employee that performs work within the secure
47 perimeter of a facility. Security background forms can be obtained from the
48 Project Manager. After the acceptance of the Contractor's Work Order
49 Proposal but prior to the Notice to Proceed and the commencement of work,
50 the forms for all required persons shall be submitted to the appropriate

- 1 department for review. Vendor badges and/or other forms of identification will
2 then been issued which must be worn at all times while within the secured
3 areas of the site. The costs for the required background checks will be borne
4 by the County.
- 5 2. Means and Methods - The Contractor shall be solely responsible for and control
6 of construction means, methods, techniques, sequences, coordination and
7 procedures for all the Work of this contract. Additionally, he/she shall be
8 responsible for safety precautions and programs in connection with the Work.
- 9 3. The Contractor shall coordinate all work with the Project Manager to minimize
10 any interruptions to the normal operation of any affected facilities; particularly
11 interruptions to air conditioning, electrical services, alarm systems,
12 communications and computer systems. The Contractor shall be responsible
13 for all costs incurred by the Owner on a system as a result of work by the
14 Contractor or damage caused by the Contractor's operations, including costs
15 associated with false fire alarms caused by Contractor's operations.
- 16 4. Laws of County and State - The Contractor must comply with all laws, rules,
17 regulations, provisions and ordinances of the County in which the Work is being
18 done, and all State laws pertaining to the Work.
- 19 5. Safeguards - The Contractor shall provide, in conformity with all local codes and
20 ordinances and as may be required, such temporary walls, fences, guard-rails,
21 barricades, lights, danger signs, enclosures, etc., and shall maintain such
22 safeguards until all work is completed.
- 23 6. Housekeeping - Contractor shall keep the premises free of excess accumulated
24 debris. Clean up as required and as directed by the Project Manager. At
25 completion of work all debris shall be removed from the site. Refer to General
26 Requirements for additional requirements.
- 27 7. Labor and Materials - Unless otherwise provided in the Contract Documents,
28 the Contractor shall provide and pay for all labor, materials, equipment, tools,
29 construction equipment and machinery, water, heat, utilities, transportation, and
30 other facilities and services necessary for the proper execution and completion
31 of the Work, whether temporary or permanent and whether or not incorporated
32 or to be incorporated in the Work.
- 33 8. The Contractor shall deliver to the Project Manager, prior to final acceptance of
34 the Work as a whole, signed certificates from suppliers of materials and
35 manufactured items stating that such items conform to the Contract Documents.
- 36 9. The Contractor, immediately upon Notice to Proceed of each individual Work
37 Order (or where shop drawings, samples, etc., are required, immediately upon
38 receipt of review thereof) shall place orders for all materials, work fabrication,
39 and/or equipment to be employed by him/her in that portion of the Work
40 contracted for. The Contractor shall keep all materials, work fabrications and/or
41 equipment specified and shall advise the Project Manager promptly, in writing,
42 of all orders placed and of such materials, work fabrications and/or equipment
43 which may not be available in a timely manner for the purposes of the Contract.
- 44 10. Any worker whose work is unsatisfactory to the Owner or the Architect or
45 Engineer, or are considered by the Owner or Architect or Engineer to be
46 careless, incompetent, unskilled or otherwise unfit shall be dismissed from work
47 under the Contract upon written request to the Contractor from the Owner or the
48 Architect or Engineer.
- 49 11. Temporary Facilities – Contractor may connect to existing water and electricity
50 available on the site provided it is suitable to the Contractor's requirements.

1 Water and electricity used will be paid by the Owner. Contractor shall bear all
2 expenses for carrying the water or electricity to the appropriate locations and to
3 connect or tap into existing lines. Toilet facilities may be available on a site to
4 the workmen engaged in the performance of this contract. It shall be the
5 responsibility of the Contractor to confirm with the Owner the availability of toilet
6 facilities on the site. The use of such facilities may be revoked in the event of
7 excess janitorial requirements.

8 12. Contractor shall not perform any fire hazardous operation adjacent to
9 combustible materials. Any fire hazardous operation shall have proper fire
10 extinguisher close by and the adjacent area shall be policed before stopping
11 work for the day. Contractor shall provide not less than one OSHA/NFPA Class
12 6-ABC fire extinguisher for each 9,000 square feet of project area or fraction
13 thereof.

14 13. Contractor shall erect temporary dust separation partitions and floor mats as
15 necessary to confine dust and debris within area of work. Contractor shall post
16 signs, erect and maintain barriers and warning devices for the protection of the
17 general public and Owner personnel. The Contractor shall provide adequate
18 protection for all parts of the present building and its contents and occupants
19 wherever work under this contract is to be performed. The Contractor shall
20 observe that the health and welfare of occupants of the existing building may be
21 affected by noises and fumes produced by the construction. Insofar as is
22 possible, loud and unnecessary noise is to be avoided and noise producing work
23 should be performed as far away from occupied areas as is consistent with the
24 efficient conduct of the work.

25 14. Trenching and Excavation - In accordance with Section 7104 of the California
26 Public Contract Code, the following provisions shall apply to any contract
27 involving digging of trenches or other excavations that extend deeper than four
28 feet below the surface:

29 a. The contractor shall promptly, and before the following conditions are
30 disturbed, notify the Owner, in writing, of any:

31 i. Material that the contractor believes may be material that is
32 hazardous waste, as defined in Section 25117 of the Health and
33 Safety Code that is required to be removed to a Class I, Class II,
34 or Class III disposal site in accordance with provisions of existing
35 law.

36 ii. Subsurface or latent physical conditions at the site differing from
37 those indicated.

38 iii. Unknown physical conditions at the site of any unusual nature,
39 different materially from those ordinarily encountered and
40 generally recognized as inherent in work of the character
41 provided for in the contract.

42 b. The Owner shall promptly investigate the conditions, and if it finds that
43 the conditions do materially so differ, or do involve hazardous waste, and
44 cause a decrease or increase in the contractor's cost of, or the time
45 required for, performance of any part of the work, shall issue a
46 Supplemental Work Order in accordance with the provisions of Section
47 2.09 of the General Conditions.

48 c. In the event that a dispute arises between the Owner and the contractor
49 whether the conditions materially differ, or involve hazardous waste, or
50 cause a decrease or increase in the contractor's cost of, or time required

1 for, performance of any part of the work, the contractor shall not be
2 excused from any scheduled completion date provided for by the
3 contract, but shall proceed with all work to be performed under the
4 contract. The contractor shall retain any and all rights provided either by
5 contract or by law which pertain to the resolution of disputes and protests
6 between the contracting parties.
7

8 2.10 SUBCONTRACTORS
9

- 10 A. Agreements - Agreements between the Contractor, Subcontractors, and
11 Subcontractors of lower tier shall be subject to the approval of the Owner, but in no
12 case does such approval relieve the Contractor of any conditions imposed by the
13 Contract Documents. The Contractor shall only use subcontractors included in his/her
14 Work Order Proposal unless first approved by the Owner pursuant to statute. The
15 Contractor shall not use any subcontractor who is ineligible to perform work on a Public
16 Works Project pursuant to section 1777.1 or 1777.7 of the Labor Code. Notwithstanding
17 any other provision of the Contract Documents, subcontractors may be added, deleted
18 or substituted only in accordance with the provisions of Public Contract Code Section
19 4100 et seq.
20
- 21 B. Relation with Subcontractor – By an appropriate agreement, written where legally
22 required for enforceability, the Contractor shall bind every Subcontractor and require
23 therein that every Subcontractor agrees to be bound by the terms of the Contract
24 Documents to carry out their provisions insofar as applicable to their work; and the
25 Contractor further agrees to pay to each Subcontractor promptly upon issuance of
26 Certificate of Payment, his/her or their due portion. Said agreement shall preserve and
27 protect the rights of the Owner and the Architect under the Contract Documents with
28 respect to the work to be performed by the Subcontractor so that the subcontracting
29 thereof will not prejudice such rights, and shall allow to the Subcontractor, unless
30 specifically provided otherwise in the Contractor-Subcontractor Agreement, the benefit
31 of all rights, remedies and redress against the Contractor that the Contractor, under the
32 Contract Documents, has against the Owner. Where appropriate, the Contractor shall
33 require each Subcontractor to enter into similar agreements with their Sub-
34 subcontractors. The Contractor shall make available to each proposed Subcontractor,
35 prior to the execution of the Subcontract, copies of the Contract Documents to which
36 the Subcontractor will be bound by this Paragraph and identify to the Subcontractor any
37 terms and conditions of the proposed Subcontract which may be at variance with the
38 Contract Documents. Each Subcontractor shall similarly make copies of Contract
39 Documents available to their Sub-subcontractors. Nothing contained herein shall be
40 deemed to create an agency relationship between the Owner and any Subcontractor
41 or material supplier.
42
- 43 C. Owner's Relation - Neither the acceptance of the name of Subcontractor nor the
44 suggestion of such name nor any other act of the Owner or Architect nor anything
45 contained in any Contract Document is to be construed as creating any contractual
46 relation between the Owner (or Owner's authorized representatives) and any
47 Subcontractor of any tier nor as creating any contractual relation between the Architect
48 and any Subcontractor of any tier.
49

- 1 D. All Subcontractors employed by the Contractor shall be appropriately licensed in
2 conformity with the laws of the State of California.
3
- 4 E. Jurisdictional disputes between Subcontractors or between Contractor and
5 Subcontractor shall not be mediated or decided by the Owner or the Architect. The
6 Contractor shall be responsible for the resolution of all such disputes based upon
7 his/her contractual relationship with his/her Subcontractors.
8

9 2.11 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE
10 CONTRACTS
11

- 12 A. The Owner reserves the right to perform work related to the Project with the Owner's
13 own forces, and to award separate contracts in connection with other portions of the
14 Project or other work on the site under these or similar Conditions of the Contract. If
15 the Contractor claims that the Owner's action results in delay, damage or additional
16 cost attributable thereto, the Contractor shall make such claim as provided elsewhere
17 in the Contract Documents.
18
- 19 B. When separate contracts are awarded for different portions of the Project or other work
20 on the site, the term Contractor in the Contract Documents in each case shall mean the
21 Contractor who executes each separate Owner-Contractor Agreement.
22
- 23 C. The Owner shall provide for coordination of the activities of the Owner's own forces and
24 of each separate contractor with the Work of the Contractor, who shall cooperate with
25 them. The Contractor shall participate with other separate contractors and the Owner
26 in reviewing their construction schedules when directed to do so. The Contractor shall
27 make any revisions to the construction schedule deemed necessary after a joint review
28 and mutual agreement. The construction schedules shall then constitute the schedules
29 to be used by the Contractor, separate contractors and the Owner until subsequently
30 revised.
31
- 32 D. Unless otherwise provided in the Contract Documents, when the Owner performs
33 construction or operations related to the Project with the Owner's own forces, the Owner
34 shall be deemed to be subject to the same obligations and to have the same rights
35 which apply to the Contractor under the Conditions of the Contract.
36

37 2.12 MUTUAL RESPONSIBILITY
38

- 39 A. The Contractor shall afford the Owner and separate contractors reasonable opportunity
40 for introduction and storage of their materials and equipment and performance of their
41 activities and shall connect and coordinate the Contractor's construction and operations
42 with theirs as required by the Contract Documents.
43
- 44 B. When any part of the Contractor's Work depends upon proper execution or results of
45 the work of the Owner or any separate contractor, the Contractor shall, prior to
46 proceeding with the Work, promptly report to the Project Manager any apparent
47 discrepancies or defects in such other work that render it unsuitable for such proper
48 execution and results. Failure of the Contractor so to report shall constitute an
49 acceptance of the Owner's or separate contractor's work as fit and proper to receive

1 the Work, except as to defects which may subsequently become apparent in such work
2 by others.

- 3
4 C. If, following the reporting of any discrepancy or defect as required herein above, the
5 Contractor suffers damage due to disruption or delay caused by the separate
6 contractor, without fault by the Owner, the Contractor's remedy shall be limited to
7 seeking recovery from the separate contractor.
8
9 D. Any costs caused by defective or ill-timed work shall be borne by the Contractor
10 responsible therefor.
11
12 E. Should the Contractor cause damage to the work or property of the Owner, or to other
13 work or property on the site, the Contractor shall promptly remedy such damage as
14 provided herein.
15
16 F. Should the Contractor wrongfully delay or cause damage to the work or property of any
17 separate contractor, the Contractor shall, upon due notice, promptly attempt to settle
18 with such other contractor by agreement, or otherwise to resolve the dispute. If such
19 separate contractor sues the Owner on account of any delay or damage alleged to have
20 been caused by the Contractor, the Owner shall notify the Contractor who shall defend
21 such proceedings, and if any judgment or award against the Owner (or Owner's
22 authorized representatives) arises therefrom, the Contractor shall pay or satisfy such
23 judgment or award in full and shall reimburse the Owner for all costs which the Owner
24 has incurred in connection with such matter.
25

26 2.13 OWNER'S RIGHT TO CLEAN UP

27
28 If a dispute arises between the Contractor and separate contractors as to their responsibility
29 for cleaning up as required in the Contract Documents, the Owner may clean up and the
30 contractor responsible shall pay Owner such portions of the cost as the Project Manager shall
31 determine to be just.
32

33 2.14 GOVERNING LAW

34
35 The Contract shall be governed by the law of the State of California.
36

37 2.15 INSPECTION

- 38
39 A. All material and workmanship (if not otherwise designated by the Contract Documents)
40 shall be subject to inspection, examination, and test by the Owner and Project Manager
41 at any and all times during manufacture and/or construction and at any and all places
42 where such manufacture and/or construction are carried on. The Owner and Project
43 Manager shall have the right to reject defective material and workmanship or require its
44 correction.
45
46 B. The Contractor shall furnish promptly without additional charge, all reasonable facilities,
47 labor, and materials necessary for the safe and convenient inspection and tests that
48 may be required by the Owner and Project Manager.
49

- 1 C. Where the Contract Documents, instructions by the Owner, laws, ordinances, or any
2 public authority having jurisdiction requires work to be inspected, tested or approved
3 before work proceeds, such work shall not proceed, nor shall it be concealed prior to
4 inspection.
5
6 D. The Contractor shall give the Project Manager at least two (2) business days advance
7 notice of the readiness for any Contract compliance inspection by the Inspector. The
8 Contractor shall give notice as required by all other inspecting and testing agencies of
9 jurisdiction for Code and regular compliance inspection. In all cases, the Contractor
10 shall schedule inspections so as not to delay the Work.
11
12 E. If the Project Manager determines that any work requires additional special inspection
13 beyond that identified in the specifications, the Project Manager will, upon written
14 authorization from the Owner, instruct the Contractor to order such special inspection,
15 testing or approval, and the Contractor shall give notice as provided above. If such
16 special inspection or testing reveals a failure of the Work to comply with the
17 requirements of the Contract Documents, the Contractor shall bear all costs thereof,
18 including compensation for the Project Manager's additional services, testing or
19 inspections made necessary by such failure; otherwise the Owner shall bear such
20 costs, and an appropriate Supplemental Work Order shall be issued.
21
22 F. Should it be considered necessary or advisable by the Project Manager at any time
23 either before acceptance of the entire Work or after acceptance and within the guaranty
24 period to make an examination of work already completed, by removing or tearing out
25 same, the Contractor shall on request promptly furnish all necessary facilities, labor,
26 and material. If such work is found to be defective in any material respect, due to the
27 fault of the Contractor or his/her Subcontractors, he/she shall defray all the expenses
28 of such examination and of satisfactory reconstruction. If, however, such work is found
29 to meet the requirements of the contract, any compensation deemed appropriate shall
30 be handled by issuance of a Supplemental Task Order to the Contractor and he/she
31 shall, in addition, if completion of the work has been delayed thereby, be granted a
32 suitable extension of Work Order Time on account of the additional work involved.
33
34 G. Required certificates of inspection, testing or approval shall be secured by the
35 Contractor and the Contractor shall promptly deliver them to the Project Manager for
36 review and evaluation of compliance with the appropriate specifications and standards.
37
38 H. When the work is completed the Contractor shall notify the Project Manager in writing
39 that the work will be ready for final inspection and test on a definite date which shall be
40 stated in such notice.
41

42 2.16 TAXES, PERMITS, FEES, AND INDEMNIFICATION FOR PATENT INFRINGEMENT CLAIM
43

- 44 A. The Contractor shall pay for and include all Federal, State and local taxes direct or
45 indirect for the work or portions thereof provided by the Contractor which are legally
46 enacted at the time the Notice to Proceed is issued, whether or not yet enacted, and
47 secure and pay all fees and charges for permits and licenses, unless otherwise
48 specified.
49

- 1 B. Royalty and license fees incidental to the use of any patented material, device or
2 process shall be paid by the Contractor and in the event of a claim of alleged
3 infringement of patent copyright, or Trade Secret rights, the Contractor shall indemnify,
4 save the Owner (and Owner's authorized representatives) free and harmless, and
5 defend, at the Contractor's own expense, any and all suits that may be brought in such
6 connection.
7
- 8 C. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay
9 for the building permit, permanent utility connection fees, and right-of-way
10 encroachment permit. The Contractor shall secure and pay for temporary construction
11 utilities, and all other permits and governmental fees, licenses and inspections
12 necessary for the proper execution and completion of the Work.
13
- 14 D. The Contractor shall give all notices and comply with all laws, ordinances, rules,
15 regulations and lawful orders of any public authority bearing on the performance of the
16 Work.
17
- 18 E. It is not the responsibility of the Contractor to make certain that the Contract Documents
19 are in accordance with applicable laws, statutes, building codes and regulations. If the
20 Contractor observes that any of the Contract Documents are at variance therewith in
21 any respect, the Contractor shall promptly notify the Project Manager in writing, and
22 any necessary changes shall be accomplished by appropriate Modification.
23
- 24 F. If the Contractor performs any work knowing it to be contrary to any laws, ordinances,
25 rules and regulations, without notice to the Project Manager, the Contractor shall
26 assume full responsibility therefore and shall bear all costs attributable thereto.
27
- 28 G. Any reference in the Contract Documents to codes, standard specifications or
29 manufacturer's instructions shall mean the latest printed edition of each in effect at the
30 Contract date.
31

32 2.17 CONTRACTOR'S CONSTRUCTION SCHEDULE 33

- 34 A. Within seven (7) calendar days after receipt of Notice to Proceed for each individual
35 Work Order, the Contractor shall submit a Construction Schedule in CPM (Critical Path
36 Method) form to the Project Manager for approval. The Construction Schedule shall be
37 sufficiently detailed to accurately depict all the work required by the Contract. CPM
38 Construction Schedule shall reflect shop drawings; submittals due and return dates,
39 fabrication and delivery times, cost loading, crew mix, and equipment loading data. The
40 Contractor shall thereafter adhere to the Construction Schedule, as updated monthly,
41 or as necessary in accordance with the Contract Documents including any scope
42 changes, or changes in the work approved by the Owner during the course of
43 construction. "Slack" or "float" time on the CPM Construction Schedule is neither for the
44 sole benefit of the Owner or Contractor.
45
- 46
- 47 B. Within fourteen (14) calendar days after the pre-construction conference, the
48 Contractor shall provide a Submittal and Procurement Schedule indicating time periods
49 for review of Shop Drawings, Data, Samples, and procurement of material and
50 equipment required for the Work. Contractor shall allow time for submittal review in

1 accordance with the General Requirements Section – Construction Progress
2 Documentation. All items that require review by the Project Manager and/or are not
3 readily available from stock and requiring more than thirty-five (35) days lead-time shall
4 be included in the Submittal and Procurement Schedule. Items listed in the Submittal
5 and Procurement Schedule shall also be identified as activities on the CPM
6 Construction Schedule. Contractor shall identify items requiring coordination with work
7 of separate contractors. The working day to calendar date correlation shall be based
8 upon the Contractor’s proposed work week with adequate allowance for legal holidays,
9 days lost due to abnormal weather, and any special requirements of the Project.

- 10 C. The Construction Schedule shall be prepared and maintained by the Contractor.
- 11
- 12
- 13 D. The Owner, Project Manager, Contractor and other Contractor(s) shall jointly review the
14 progress of the work weekly. Should this review, in the opinion of the Project Manager,
15 indicate that the work is behind the schedule established by currently reviewed
16 Construction Schedule, the Contractor shall either (1) provide a plan to the Project
17 Manager indicating the steps the Contractor intends to take in order to recover the time
18 behind schedule and conform to the reviewed Construction Schedule; or (2) submit a
19 revised Construction Schedule for completion of the work, remaining within the Work
20 Order Completion Time, to the Project Manager for review by the next weekly meeting.
21 If the Contractor’s recovery or revised schedule requires work to occur during Other
22 Than Normal Working Hours, the Contractor will be responsible for any resulting costs
23 incurred by the Owner, including but not limited to, the costs for construction
24 management, contract administration, inspection, testing and staffing.
- 25
- 26 E. The Contractor shall deliver copies of his/her daily job logs to the Project Manager and
27 Owner on a weekly basis or as otherwise agreed to by Owner. At a minimum, the
28 Contractor’s daily job log should include the sub-contractors working onsite, number of
29 workers and their trade classification, description of work, visitors, temperature and
30 weather conditions, accidents, delays, and any other important information pertaining
31 to the project that day. The Contractor will schedule and coordinate the Work of all sub-
32 contractors on the Project. The Contractor will keep the Sub-contractors informed of
33 the Construction Schedule to enable the Contractor to plan and perform the Work
34 properly.
- 35

36 2.18 RECORDS, DOCUMENTS AND SAMPLES AT THE SITE

- 37
- 38 A. The Contractor shall maintain all records of required Review Agencies, County or State
39 inspections and shall promptly notify the Project Manager of the results of any
40 inspection. Copies of all such records shall be provided to the Owner.
- 41
- 42 B. The Contractor shall secure and maintain required certificates of inspection, testing or
43 approval and shall promptly deliver them to the Project Manager.
- 44
- 45 C. The Contractor shall maintain at the Project site, on a daily basis, one (1) record copy
46 of all Drawings, Specifications, Addenda, Work Orders and other Modifications, in good
47 order and marked currently to record all changes made during construction, and
48 reviewed Shop Drawings, Product Data and Samples. These shall be available to the
49 Project Manager and the Owner and reviewed weekly, and shall be delivered to the
50 Project Manager for forwarding to the Owner upon completion of the Project. The

1 Contractor shall advise the Project Manager on a current basis of all changes in the
2 Work made during construction. Payment may be withheld from Contractor for failure
3 to maintain current Record Documents.
4

5 2.19 USE OF SITE
6

- 7 A. The Contractor shall confine operations at the site to areas permitted by law,
8 ordinances, permits and the Contract Documents, and shall not unreasonably
9 encumber the site with any materials or equipment.
10
11 B. The Contractor shall coordinate all of the Contractor's operations with, and secure
12 approval from, the Project Manager before using any portion of the site. Also see
13 Technical Specifications, Division I, General Requirements.
14

15
16 2.20 CUTTING AND PATCHING OF WORK
17

- 18 A. The Contractor shall be responsible for all cutting, fitting or patching that may be
19 required to complete the Work or to make its several parts fit together properly.
20
21 B. The Contractor shall not damage or endanger any portion of the Work or the work of
22 the Owner or any separate contractors by cutting, patching or otherwise altering any
23 work, or by excavation. The Contractor shall not cut or otherwise alter the work of the
24 Owner or any separate contractor except with the written consent of the Owner and of
25 such separate contractor. The Contractor shall not unreasonably withhold from the
26 Owner or any separate contractor consent to cutting or otherwise altering the Work.
27
28 C. The Contractor in all cases shall exercise extreme care in any cutting operations, and
29 perform such operations under adequate supervision by competent mechanics skilled
30 in the applicable trade. Openings shall be neatly cut and shall be kept as small as
31 possible to avoid unnecessary damage. Careless and/or avoidable cutting damage,
32 etc., will not be tolerated, and the Contractor will be held responsible for such avoidable
33 or willful damage.
34
35 D. All replacing, patching and repairing of all materials and surfaces cut or damaged in the
36 execution of the Work shall be performed by experienced mechanics of the several
37 trades involved. All work of such nature shall be done with the applicable materials, in
38 such a manner that all surfaces so replaced, repaired, or patched, will, upon completion
39 of the Work, match the surrounding similar surfaces.
40

41 2.21 CLEANING UP
42

- 43 A. The Contractor shall at all times keep the premises free from accumulation of waste
44 materials or rubbish caused by the Contractor's operations. At the completion of the
45 Work, the Contractor shall remove all the Contractor's waste materials and rubbish from
46 and about the Project as well as all the Contractor's tools, construction equipment,
47 machinery and surplus materials.
48
49 B. If the Contractor fails to clean up at the completion of the Work, the Owner may do so
50 and the cost thereof shall be paid by the Contractor.

1
2 2.22 INDEMNIFICATION
3

4 A. To the fullest extent permitted by law, Contractor agrees to and shall indemnify, save,
5 hold harmless and at Owner's request, defend Owner and its officers, agents and
6 employees, and the Architect and Consultants and their respective officers, agents and
7 employees, from any and all costs and expenses, attorney fees and court costs,
8 damages, liabilities, claims and losses occurring or resulting to Owner, the Architect or
9 Consultants in connection with the performance, or failure to perform, by Contractor, its
10 officers, agents or employees under this Agreement, and from any and all costs and
11 expenses, attorney fees and court costs, damages, liabilities, claims and losses
12 occurring or resulting to any person, firm or corporation who may be injured or damaged
13 by the performance, or failure to perform, of Contractor, its officers, agents or
14 employees under this Agreement. In addition, Contractor agrees to indemnify Owner
15 for Federal, State of California and/or local audit exceptions resulting from non-
16 compliance herein on the part of Contractor.
17

18 B. In any and all claims against the Owner, the Architect or Consultants, or any of their
19 respective officers, agents or employees, initiated by any employee of the Contractor,
20 any Subcontractor, anyone directly or indirectly employed by any of them or anyone for
21 whose acts any of them may be liable, the indemnification obligation set forth in the
22 immediately preceding paragraph shall not be limited in any way by any limitation on
23 the amount or type of damages, compensation or benefits payable by or for the
24 Contractor or any Subcontractor under workmen's compensation acts, disability benefit
25 acts or other employee benefit acts.
26

27 1. Independent Contractor: In performance of the work, duties and obligations
28 assumed by Contractor under this Agreement, it is mutually understood and
29 agreed that Contractor, including any and all of the Contractor's officers, agents,
30 and employees will at all times be acting and performing as an independent
31 contractor, and shall act in an independent capacity and not as an officer, agent,
32 servant, employee, joint venturer, partner, or associate of the Owner.
33 Furthermore, Owner shall have no right to control or supervise or direct the
34 manner or method by which Contractor shall perform its work and function.
35 However, Owner shall retain the right to administer this Agreement so as to verify
36 that Contractor is performing its obligations in accordance with the terms and
37 conditions thereof.
38 Contractor and Owner shall comply with all applicable provisions of law and
39 the rules and regulations, if any, of governmental authorities having jurisdiction
40 over matters the subject thereof.
41 Because of its status as an independent contractor, Contractor shall have
42 absolutely no right to employment rights and benefits available to Owner
43 employees. Contractor shall be solely liable and responsible for providing to,
44 or on behalf of, its employees all legally-required employee benefits. In
45 addition, Contractor shall be solely responsible and save Owner harmless
46 from all matters relating to payment of Contractor's employees, including
47 compliance with Social Security withholding and all other regulations
48 governing such matters. It is acknowledged that during the term of this
49 Agreement, Contractor may be providing services to others unrelated to the
50 Owner or to this Agreement

1
2 2.23 FAIR EMPLOYMENT PRACTICES CLAUSE
3

4 Nondiscrimination: In connection with the performance of Work under the contract, the
5 Contractor agrees (as prescribed in Chapter 6 of Division 3 of Title II of the Government Code
6 of the State of California, commencing at Section 12900 and by Labor Code Section 1735)
7 not to discriminate against any employee or applicant for employment because of race,
8 religious creed, color, national origin, ancestry, physical disability, mental disability, medical
9 condition, marital status or sex. The aforesaid provisions shall include, but not be limited to,
10 the following: employment, upgrading, demotion or transfer, recruitment or recruitment
11 advertising, layoff or termination, rates of pay or other forms of compensation, and selection
12 for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous
13 places, available for employees and applicants for employment, Notices to be provided by the
14 County, setting forth the provisions of this discrimination clause. The Contractor further
15 agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts
16 for standard commercial supplies of raw materials.
17

18 2.24 PAYMENT
19

20 A. The Owner shall make one payment for all Work Orders that have a Work Order
21 Completion Time of 45 days or less, or a Work Order Price of \$25,000 or less. For all
22 other Work Orders, the Owner may make partial, monthly payments based on a
23 percentage of the work completed.
24

25 B. SCHEDULE OF VALUES
26

27 Before the first Application for Payment, the Contractor shall submit to the Project
28 Manager a Schedule of Values allocated to the various portions of the Work, prepared
29 in such form and supported by such data to substantiate its accuracy as the Project
30 Manager may require. This schedule, unless objected to by the Project Manager, shall
31 be used only as a basis for the Contractor's Applications for Payment.
32

33 C. APPLICATIONS FOR PAYMENT
34

35 The Owner will make progress payments to the Contractor upon completion of portions
36 of the Work, as covered by the Contract Documents, in accordance with established
37 Owner procedures. Before submitting an Application for Payment (Final or Partial) the
38 Contractor shall reach an agreement with the Project Manager (in consultation with the
39 Architect) concerning the percentage complete of the Detailed Scope of Work and the
40 dollar value for which the Application for Payment may be submitted.
41

42 1. On or about the twentieth (20th) of the month in which the work was performed,
43 the Contractor shall submit to the Project Manager an itemized Application for
44 Payment, notarized if required, supported by such data substantiating the
45 Contractor's right to payment as the Owner or the Project Manager may require,
46 including appropriate updates to the Construction Schedule, and reflecting
47 retainage, if any, as provided elsewhere in the Contract Documents. Payment
48 is expressly conditioned upon submission by the Contractor of conditional and
49 unconditional waivers and release of lien rights upon progress payment as the
50 Owner or the Architect may require. Waiver and Release forms must be

- 1 submitted on forms approved by the Owner. Copies of said forms shall comply
2 with Civil Code Section 8132 through 8138, inclusive.
- 3 2. Unless otherwise provided in the Contract Documents, payments may be made
4 on account of materials or equipment not incorporated in the Work but delivered
5 and suitably stored at the site and, if approved in advance by the Owner,
6 payments may similarly be made for materials or equipment suitably stored at
7 some other location agreed upon in writing. Payments for materials or
8 equipment stored on or off the site shall be conditioned upon submission by the
9 Contractor of bills of sale or such other procedures satisfactory to the Owner to
10 establish the Owner's title to such materials or equipment or otherwise protect
11 the Owner's interest, including applicable insurance and transportation to the
12 site for those materials and equipment stored off the site.
- 13 3. The Contractor warrants that title to all work, materials and equipment
14 covered by an Application for Payment will pass to the Owner either by
15 incorporation in the construction or upon receipt of payment by the Contractor,
16 whichever occurs first, free and clear of all liens, stop notices, claims, security
17 interest or encumbrances, hereinafter referred to as "liens"; and that no work,
18 materials or equipment covered by an Application for Payment will have been
19 acquired by the Contractor, or by any other person performing work at the site
20 or furnishing materials and equipment for the Project, subject to an agreement
21 under which an interest therein or an encumbrance thereon is retained by the
22 seller or otherwise imposed by the Contractor or such other person.
- 23 4. On or about the twentieth (20th) day of the month following the month in which
24 the work was performed, the Owner shall pay to the Contractor ninety-five
25 percent (95%) of the value of said work in place, as checked and approved by
26 the Project Manager. The balance of five percent (5%) of the estimate shall be
27 retained by the Owner until the time of final acceptance of said work. In lieu of
28 the five percent (5%) retainage, the Contractor may substitute securities as
29 provided herein below.
- 30 a. If the Owner does not pay the Contractor within thirty (30) days after
31 receipt of an undisputed and properly submitted payment request for a
32 progress payment, excluding that portion of the final payment
33 designated by the contract as retention earnings, then the Owner shall
34 pay interest to the Contractor as provided by Public Contract Code
35 Section 20104.50. Said interest penalty is the sole recourse of
36 Contractor and Contractor shall have no right to stop the Work until
37 payment of the amount owing has been received, nor shall the Work
38 Order Completion Time be extended, nor shall the Work Order Price be
39 increased in any way, including by reason of any costs incurred by
40 Contractor, except to the extent of said interest payment.
- 41 b. Pursuant to Public Contract Code Section 7107, in the event of a dispute
42 between the Owner and Contractor, the Owner may withhold from the
43 final payment an amount not to exceed one hundred and fifty percent
44 (150%) of the disputed amount. Except as so provided, the Owner shall
45 release the retention withheld within sixty (60) days after the date of
46 Work Order completion of the work of improvement, as "completion" is
47 defined in Public Contract Code Section 7107. In the event that retention
48 payments are not made within the time periods required by Public
49 Contract Code Section 7107, the Owner may be subject to the interest
50 provisions of Public Contract Code Section 7107.

1 such time as the escrow created under this contract is terminated. The Contractor may direct
2 the investment of the payments into securities. All terms and conditions of this agreement and
3 the rights and responsibilities of the parties shall be equally applicable and binding when the
4 Owner pays the Escrow Agent directly.

5 5. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent
6 in administering the Escrow Account and all expenses of the Owner. The Owner, Contractor
7 and Escrow Agent shall determine these expenses and payment terms.
8

9 6. The interest earned on the securities or the money market accounts held in escrow and all
10 interest earned on that interest shall be for the sole account of Contractor and shall be subject
11 to withdrawal by Contractor at any time and from time to time without notice to the Owner.

12 7. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account
13 only by written notice to Escrow Agent accompanied by written authorization from Owner to
14 the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn
15 by Contractor.

16 8. The Owner shall have the right to draw upon the securities or any amount paid directly to
17 Escrow Agent in the event of default by the Contractor. Upon seven (7) days written notice to
18 the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert
19 the securities to cash and shall distribute the cash, including any amounts paid directly to
20 Escrow Agent, as instructed by the Owner. Escrow Agent shall not be concerned with the
21 validity of any notice of default given by Owner pursuant to this paragraph, and shall promptly
22 comply with Owner's instructions to pay over said escrowed assets. Escrow Agent further
23 agrees not to interplead the escrowed assets in response to conflicting demands and hereby
24 waives any present or future right of interpleader.

25 9. Upon receipt of written notification from the Owner certifying that the Contract is final and
26 complete, and that the Contractor has complied with all requirements and procedures
27 applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest
28 on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed
29 immediately upon disbursement of all moneys and securities on deposit and payment of fees
30 and charges.

31 10. Escrow Agent shall rely on the written notifications from the Owner and Contractor pursuant to
32 Sections (6), (7), (8) and (9) of this Agreement and the Owner and Contractor shall hold Escrow
33 Agent harmless from Escrow Agent's release and disbursement of the securities and interest
34 as set forth above.

35 11. Securities eligible for investment under this Agreement, as provided by Public Contract Code
36 Section 22300, shall be those listed in Section 16430 of the Government Code, bank or savings
37 and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of
38 credit, or any other security mutually agreed to by the Contractor and Owner.

39 12. The venue of any litigation concerning the rights and obligations of the parties to this agreement
40 shall be the County of Fresno and the parties hereto waive the removal provisions of Code of
41 Civil Procedure Section 394.

42 13. The names of the persons who are authorized to give written notice or to receive written notice
43 on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and
44 exemplars of their respective signatures are as follows:
45

46 **On behalf of Owner:**

On behalf of Contractor:

47
48 Title – **Business Manager**

Title

49
50 Name – **Lemuel Asprec**

Name

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Signature _____

Signature _____

Address- **2220 Tulare, 6th Floor
Fresno, CA 93721**

Address

On behalf of Escrow Agent:

Title
Name
Signature
Address

At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner:

Contractor:

Title – **Steven White, Director
Department of Public Works and Planning**

Title
Name

Signature _____

Signature _____

Address- **2220 Tulare, 6th Floor
Fresno, CA 93721**

Address

Escrow Agent:

Title
Name
Signature
Address

(End Escrow Agreement)

- 6. Itemized Breakdown: The Contractor shall submit a financial breakdown of the work, itemized by crafts or sections as designated by the Owner. The Contractor's payment shall be based upon the monthly percentage of completion of these items.
- 7. Lien Waivers: The Owner may require the Contractor to submit, along with the progress payment request, notarized lien waivers from each Subcontractor, materials or equipment supplier. Lien waivers shall comply with Civil Code Section 8132, et seq., and the aggregate sum thereof shall reflect all progress payments previously made.

1 D. CERTIFICATES FOR PAYMENT

- 2
- 3 1. The Project Manager shall, within seven (7) days after the receipt of the Project
- 4 Application for Payment, review the Project Application for Payment and either
- 5 issue a Project Certificate for Payment to the Owner for such amounts as the
- 6 Project Manager determines are properly due, or notify the Contractor in writing
- 7 of the reasons for withholding a Certificate provided in Part F of this Section
- 8 2.24.
- 9 2. The issuance of a Project Certificate for Payment will constitute a representation
- 10 by the Project Manager to the Owner that, based on the Project Manager's
- 11 observations at the site as provided herein and the data comprising the Project
- 12 Application for Payment, the Work has progressed to the point indicated and
- 13 that, to the best of the Project Manager's knowledge, information and belief, the
- 14 quality and timeliness of the Work is in accordance with the Contract Documents
- 15 (subject to an evaluation of the Work for conformance with the Contract
- 16 Documents upon Completion of the Work, to the results of any subsequent tests
- 17 required by or performed under the Contract Documents, to minor deviations
- 18 from the Contract Documents correctable prior to completion, and to any
- 19 specific qualifications stated in the Certificate); and that based upon all currently
- 20 available information, the Contractor is entitled to payment in the amount
- 21 certified. However, by issuing a Project Certificate for Payment, the Project
- 22 Manager shall not thereby be deemed to represent that the Project Manager
- 23 has made exhaustive or continuous on-site inspections to check the quality or
- 24 quantity of the Work, has reviewed the construction means, methods,
- 25 techniques, sequences or procedures, or has made any examination to
- 26 ascertain how or for what purpose the Contractor has used the monies
- 27 previously paid on account of the Work Order Price.
- 28

29 E. PROGRESS PAYMENTS

- 30
- 31 1. After the Project Manager has issued a Project Certificate for Payment, the
- 32 Owner shall make payment in the manner and within the time provided in the
- 33 Contract Documents.
- 34 2. The Contractor shall promptly pay each Subcontractor upon receipt of payment
- 35 from the Owner, out of the amount paid to the Contractor on account of such
- 36 Subcontractor's Work, the amount to which Subcontractor is entitled, reflecting
- 37 the percentage actually retained, if any, from payments to the Contract on
- 38 account of such Subcontractor's Work. The Contractor shall, by an appropriate
- 39 agreement with each Subcontractor, require each Subcontractor to make
- 40 payments to their Sub-subcontractors in similar manner.
- 41 3. The Project Manager may on request of any Subcontractor, at the Project
- 42 Manager's discretion, furnish to that Subcontractor, if practicable, information
- 43 regarding the percentages of completion or the amounts applied for by the
- 44 Contractor and the action taken thereon by the Project Manager on account of
- 45 Work done by such Subcontractor.
- 46 4. Neither the Owner nor the Project Manager shall have any obligation to pay or
- 47 to see to the payment of any monies to any Subcontractor or Material Suppliers
- 48 except as may otherwise be required by law.
- 49 5. Neither certification of a progress payment, delivery of a progress payment, nor
- 50 partial or entire use or occupancy of the Project by the Owner, shall constitute

1 an acceptance of any Work not performed in accordance with the Contract
2 Documents.

3
4 F. PAYMENTS WITHHELD

- 5
6 1. The Project Manager may decline to certify payment and may withhold the
7 Certificate in whole or in part to the extent necessary to reasonably protect the
8 Owner, if, in the Project Manager's opinion, the Project Manager is unable to
9 make representations to the Owner as provided herein above for Certificates for
10 Payment. If the Project Manager is unable to make representations to the
11 Owner and certify payment in the amount of the Project Application, the Project
12 Manager will notify the Contractor as provided herein. If the Contractor and the
13 Project Manager cannot agree on a revised amount, the Project Manager will
14 promptly issue a Project Certificate for Payment for the amount for which the
15 Project Manager is able to make such representations to the Owner. The
16 Project Manager may also decline to certify payment or, because of
17 subsequently discovered evidence or subsequent observations, the Project
18 Manager may nullify the whole or any part of any Project Certificate for Payment
19 previously issued to such extent as may be necessary, in the Project Manager's
20 opinion, to protect the Owner from loss because of:
- 21 a. Defective Work not remedied;
 - 22 b. Third party claims filed or reasonable evidence indicating probable filing
23 of such claims, including claims by separate contractors;
 - 24 c. Failure of the Contractor to make payments properly to Subcontractors,
25 or for labor, materials or equipment;
 - 26 d. Architect's determination, based upon reasonable evidence, that the
27 Work cannot be completed for the unpaid balance of the Contract Sum;
 - 28 e. Damage to the Owner or another contractor;
 - 29 f. Architect's determination, based upon reasonable evidence, that the
30 Work will not be accomplished in compliance with the Work Order
31 Completion Time;
 - 32 g. Persistent failure to carry out the Work in accordance with the Contract
33 Documents;
 - 34 h. Failure of the Contractor to submit Construction Schedules or Submittal
35 and Procurement Schedules as required;
 - 36 i. Failure of the Contractor to maintain record drawings on a current basis;
 - 37 j. Failure of the Contractor to submit notarized lien waivers from each
38 Subcontractor, materials or equipment supplier;
 - 39 k. Failure of the Contractor to submit certified payroll reports;
 - 40 l. Stop notice served upon the Owner.
- 41 2. A retention in the amount of one-thousand dollars (\$1,000) will be withheld from
42 the Contractor's monthly progress payment for each and every required
43 document not submitted in a timely manner by the Contractor or its
44 subcontractors up to a maximum of ten-thousand dollars (\$10,000). For
45 purposes of this Paragraph, the term "required document" includes, but is not
46 limited to, certified payrolls, labor compliance documents, Disadvantaged
47 Business Enterprise documents, and any other information or documents
48 required to be submitted by the Contractor or any of its subcontractors under
49 the terms of this Agreement or pursuant to applicable federal, state or local laws
50 or regulations. The retention provided for in this Paragraph shall be in addition

- 1 to any other deduction or retention allowed under this Agreement, and shall be
2 in addition to any other remedy or consequence provided by law for untimely
3 submission of any required document. Such retention shall remain in effect only
4 until such time as the required documents have been submitted by the
5 Contractor or its subcontractor(s) and have been determined by the Owner to
6 be both complete and acceptable as to form.
- 7 3. When the grounds as noted above are removed, payment shall be made for
8 amounts withheld on the basis thereof.

9
10 G. COMPLETION AND FINAL PAYMENT

- 11
12 1. Following the Contractor's completion of the Work of each individual Work
13 Order, the Contractor shall forward to the Project Manager a written notice that
14 the Work is ready for final inspection and acceptance, and shall also forward to
15 the Project Manager a final Application for Payment. Upon receipt, the Project
16 Manager will promptly make such inspection. When the Project Manager finds
17 the Work acceptable under the Contract documents and the Contract fully
18 performed, the Project Manager will issue a Project Certificate for Payment
19 which will certify the final payment due the Contractor. This certification will
20 constitute a representation that, to the best of the Project Manager's knowledge,
21 information and belief, and on the basis of observations and inspections, the
22 Work has been completed in accordance with the Terms and Conditions of the
23 Contract Documents and that the entire balance found to be due the Contractor,
24 and noted in said Certificate, is due and payable. The Project Manager's
25 certification of said Project Certificate for Payment will constitute a further
26 representation that the conditions precedent to the Contractor's being entitled
27 to final payment as set forth herein below have been fulfilled.
- 28
29 2. Neither the final payment on each individual Work Order nor the remaining
30 retainage shall become due until the Contractor submits to the Project Manager
31 (1) an affidavit that all payrolls, bills for materials and equipment, and other
32 indebtedness connected with the Work for which the Owner or the Owner's
33 property might in any way be responsible, have been paid or otherwise satisfied,
34 (2) consent of surety, if any, to final payment, and (3) other data establishing
35 payment or satisfaction of all such obligations, such as receipts, releases and
36 waivers of liens arising out of the Contract, to the extent and in such form as
37 may be designated by the Owner. If any Subcontractor refuses to furnish a
38 release or waiver required by the Owner, the Contractor may furnish a bond
39 satisfactory to the Owner to indemnify the Owner against any such lien. The
40 bond cannot be from the original surety insurer for the project or any affiliate of
41 the original surety. If any such lien remains unsatisfied after all payments are
42 made, the Contractor shall refund to the Owner all monies that the latter may be
43 compelled to pay in discharging such lien.
- 44
45 3. All provisions of this Agreement, including without limitation those establishing
46 obligations and procedures, shall remain in full force and effect notwithstanding
47 the making or acceptance of final payment, and the making of final payment
48 shall not constitute a waiver of any claims by the Owner.
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4. Upon completion and acceptance of all work whatsoever required on each individual Work Order, and upon the release of all claims against the Owner as specified, the Owner shall file a written Notice of Completion with the County Recorder as to the entire amount of work performed for each individual Project.
 5. Final payment will be released within sixty (60) days after the date of acceptance of the Work as reflected in the Notice of Completion filed with the County Recorder's Office; provided, that Owner may withhold from the final payment, in the event of a dispute between Owner and Contractor, retentions in and amount not exceeding 150 percent of the disputed amount. At the Contractor's option, the Owner may release retention upon receipt of an unconditional lien release for the full value of the Work Order and any of its Supplemental Work Orders.
 6. All manufacturers' warranties required by the Contract Documents shall commence on the date of the Notice of Completion for the Work. It shall be the Contractor's responsibility, through appropriate contractual arrangements with all subcontractors, materialmen and suppliers, to ensure compliance with this requirement.
 7. The acceptance by the Contractor of the final payment, after the date of Notice of Completion of the Project, shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor, under the Contract Documents or otherwise, for all things done or furnished in connection with this Work, excepting only the Contractor's claims for interest upon final payment, if such final payment be improperly delayed. No payments, however, final or otherwise, shall operate to release the Contractor or his/her sureties from any obligations under the Contract Documents, including but not limited to the Performance and Payment Bonds.

30 2.25 CHANGES TO THE WORK

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- A. The Owner, without invalidating the Contract or a Work Order, may order changes in the Work within the general scope of the Contract consisting of additions, deletion or other revisions. All such changes in the Work shall be authorized by a Supplemental Work Order, and shall be performed under the applicable conditions of the Contract Documents.
 - B. SUPPLEMENTAL Work ORDER: A Work Order issued to add or delete Work from an existing, related Work Order. Only an executed Supplemental Work Order will effectuate change in either the Work Order Price and/or the Work Order Time.
 - C. All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a disputed claim arises. No claim will be considered after the work in question has been done unless a Supplemental Work Order has been issued or a timely written notice of claim has been made by Contractor.
 - D. Supplemental Work Orders are developed by the same method as a Work Order as provided under Section 2.09.A, Procedures for Developing a Work Order.

1
2 E. The value of tasks deleted from the Detailed Scope of Work shall be calculated
3 according to the standard procedures for calculating all Pre-priced Tasks and Non Pre-
4 priced Tasks. The result is that a credit for Tasks that have been deleted from the
5 Detailed Scope of Work will be given at 100% of the value at which they were included
6 in the original Price Proposal.
7

8 2.26 NOT USED
9

10 2.27 SITE CONDITIONS
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12 A. Where investigations have been conducted by the Owner of existing conditions on a
13 site, including subsurface conditions, such investigations are made for the purpose of
14 design only and for the information of bidders. The results of such investigations
15 represent only the statement by the Owner as to the circumstance and character of
16 materials actually encountered by the Owner during the investigations. The Owner
17 makes no guarantee or warranty, express or implied, that the conditions indicated are
18 representative of conditions existing throughout the site of a Project or any part of it, or
19 that unanticipated conditions might not occur.
20

21 B. All excavation work shall be performed on an "unclassified basis"; that is, such work
22 shall include the removal of all material encountered including earth or rock formations,
23 regardless of the type or hardness thereof, or groundwater conditions in the excavation,
24 the cost of such excavations being included in the Work Order Price. Unclassified
25 excavation Work includes drilling or blasting operations.
26

27 C. If site conditions are discovered that materially differ from previous information that the
28 Contractor has received, and that could not have been discovered by the Contractor
29 through prudent and reasonable investigation prior to developing the Work Order Price
30 Proposal for the work, the Contractor shall be compensated for additional costs incurred
31 in working with the unknown site conditions, but only to the extent that such previously
32 unknown and undiscoverable site conditions cause the Contractor to incur costs in
33 addition to the Work Order price for that portion of the work. The Contractor must be
34 able to demonstrate clearly the original Work Order price for that portion of the work
35 (plus any Supplemental Work Orders applicable to that portion of the work) and the
36 additional costs incurred as a direct result of the unknown site conditions. Only
37 additional costs over and above the amount of the Work Order price for that portion of
38 the work will be compensated upon a recommendation of approval by the Project
39 Manager.
40

41 2.28 REQUEST FOR EQUITABLE ADJUSTMENT
42

43 A. If the Contractor considers a Request for Equitable Adjustment is justified for any
44 increase in the Work Order Time, the Contractor shall promptly, upon first observance
45 of the condition giving rise to the request, provide the Project Manager and Owner
46 written notice of such condition and circumstance. This notice shall be given by the
47 Contractor before proceeding to execute the Work, except in emergency endangering
48 life or property, in which case the Contractor shall proceed in accordance with the
49 Emergency provisions of these General Conditions. No such request shall be valid

1 unless so made. A Supplemental Work Order shall be required to authorize any change
2 in the Work Order Time resulting from such request for equitable adjustment.
3

- 4 B. If the Contractor requests that additional cost or time is involved because of, but not
5 limited to, (1) any written interpretation pursuant to Section 2.07.G, (2) any order by the
6 Owner to stop the Work pursuant to Section 2.08 where the Contractor was not at fault,
7 or any such order by the Project Manager as the Owner's agent, (3) any written order
8 for a minor change in the Work issued pursuant to Section 2.29, the Contractor shall
9 make such request for equitable adjustment as provided in Section 2.28.A.

10
11 2.29 MINOR CHANGES IN THE WORK
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13 The Project Manager will have authority to order minor changes in the Work not involving an
14 adjustment in the Work Order Price or extension of the Work Order Time and not inconsistent
15 with the intent of the Contract Documents. Such changes shall be enacted by written order
16 issued through the Project Manager, and shall be binding on the Owner and the Contractor.
17 The Contractor shall carry out such written orders promptly.
18

19 2.30 SUCCESSORS AND ASSIGNS
20

21 The Owner and the Contractor, respectively, bind themselves, their partners, successors,
22 assigns and legal representatives to the other party hereto and to the partners, successors,
23 assigns and legal representatives of such other party with respect to all covenants, agreements
24 and obligations contained in the Contract Documents. Neither party to the Contract shall
25 assign the Contract or sublet it as a whole without the written consent of the other.
26

27 2.31 ASSIGNMENT OF MONEYS
28

29 The Contractor shall not assign moneys due or to become due him/her under the contract
30 without the written consent of the Auditor-Controller of Fresno County. Any assignment of
31 moneys shall be subject to all proper set-offs in favor of the County of Fresno and to all
32 deductions provided for in the contract and particularly all money withheld, whether assigned
33 or not, shall be subject to being used by the County of Fresno for the completion of the work in
34 the event that the Contractor should be in default therein.
35

36 2.32 GUARANTEE OF WORK
37

- 38 A. The Contractor warrants to the Owner that all materials and equipment and the work
39 as a whole furnished under this Contract will be new unless otherwise specified, and
40 that all Work will be of good quality, free from faults and defects and in conformance
41 with the Contract Documents, for one (1) year from the date of Notice of Completion of
42 each Project, unless a longer period is otherwise specified. All manufacturer's
43 warranties required by the Contract Documents shall commence on the date of the filing
44 of the Notice of Completion for the Work (which date necessarily will follow the
45 performance under separate contracts. It shall be the Contractor's responsibility,
46 through appropriate contractual arrangements with all subcontractors, material
47 manufacturers and suppliers, to ensure compliance with this requirement. All Work not
48 conforming to these requirements, including substitutions not properly reviewed and
49 authorized, may be considered defective. If required by the Project Manager, the

1 Contractor shall furnish satisfactory evidence as to the kind and quality of materials and
2 equipment.
3

- 4 B. If repairs or changes are required in connection with guaranteed work within any
5 guaranteed period, which, in the opinion of the Project Manager is rendered necessary
6 as the result of the use of materials, equipment or workmanship which are inferior,
7 defective, or not in accordance with the Contract Documents, the Contractor shall,
8 promptly upon receipt of notice from the Owner, and without expense to the Owner (1)
9 place in satisfactory condition in every particular all of such guaranteed work, correct
10 all defects therein, and (2) make good all damage to the building or site, or equipment
11 or contents thereof, which, in the opinion of the Project Manager, is the result of the
12 use of materials, equipment or workmanship which are inferior, defective, or not in
13 accordance with the Contract Documents; and (3) make good any work or materials, or
14 the equipment and contents of said building or site disturbed in fulfilling any such
15 guarantee.
16
17 C. If the Contractor disturbs any work guaranteed under another contract in fulfilling the
18 requirements of the contract or of any guarantee, embraced in or required thereby,
19 he/she shall restore such disturbed work to a condition satisfactory to the Project
20 Manager and guarantee such restored work to the same extent as it was guaranteed
21 under such other contract.
22
23 D. The Owner may have the defects corrected if the Contractor, after notice, fails to
24 proceed promptly to comply with the terms of the guarantee and the Contractor and
25 his/her surety shall be liable for all costs and expenses incurred in connection therewith.
26
27 E. All special guarantees applicable to definite parts of the work that may be stipulated in
28 the Contract Documents shall be subject to the terms of this Article 2.32 during the first
29 (1st) year (365 Calendar Days) of the life of such special guarantee.
30

31 2.33 RESPONSIBILITY FOR DAMAGE
32

- 33 A. Neither the Owner, the Architect, nor any officer or employee of the County, or officer
34 or employee thereof, within the limits of which the work is being performed, shall be
35 answerable or accountable in any manner, for any loss or damage that may happen to
36 the work or any part thereof; or for any of the materials or other things used or employed
37 in performing the work; or for injury to any person or persons, either workmen or the
38 public, for damage to property from any cause which might have been prevented by the
39 Contractor, or his/her workmen, or anyone employed by him/her, against all of which
40 injuries or damages to persons and property the Contractor having control over such
41 work must properly guard.
42
43 B. The Contractor shall be responsible for any liability imposed by law for any damage to
44 any person or property resulting from defects or obstructions or from any cause
45 whatsoever during the progress of the work or at any time before the issuance of the
46 Notice of Completion.
47
48 C. The Contractor shall indemnify and hold harmless the Owner, the Project Manager, the
49 Architect, and all of their respective officers and employees, from all claims, lawsuits or
50 actions of every kind and nature whatsoever, brought for, or on account of any injuries

1 or damages received or sustained by any person or persons, resulting from any act or
2 admission by the Contractor or his/her servants or agents, in the construction of the
3 work or by or in consequence of any negligence in guarding the same, in improper
4 materials used in its construction, or by or on account of any act or omission of the
5 Contractor or his/her agents in the performance of Contractor's obligations under the
6 Contract Documents. In addition to any remedy authorized by law, so much of the
7 money due the Contractor under and by virtue of the contract as shall be considered
8 necessary by the Owner may be retained by the Owner until disposition has been made
9 of such claims, lawsuits or actions for damages as aforesaid.

10
11 2.34 WRITTEN NOTICE

12
13 Subject to any additional requirements that may be applicable to claims under the
14 immediately following Article 2.35 RESOLUTION OF CONTRACT CLAIMS AND DISPUTES,
15 formal service, when required, of written notice shall be deemed to have been duly served if
16 delivered in person, to the individual or member of the firm or entity or to an officer of the
17 corporation for whom it was intended, or if sent by registered or certified mail to the listed
18 address of that entity for the attention of such individual.

19
20 2.35 RESOLUTION OF CONTRACT CLAIMS AND DISPUTES

- 21
22 A. A Claim is a demand or assertion sent by registered mail or certified mail with return
23 receipt requested by one (1) of the parties seeking, as a matter of right, adjustment or
24 interpretation of Contract terms, payment of money, extension of time, or a request for
25 equitable adjustment or Supplemental Work Order which cannot be resolved per
26 provisions of Section 2.25 - CHANGES TO THE WORK. Any Claim shall be reduced
27 to writing and filed with the Project Manager, within ten (10) calendar days after the
28 Contractor has notice of the condition giving rise to the Claim, and final action per
29 Section 2.25 - CHANGES TO THE WORK procedures has taken place or has been
30 declared as such in writing, by either party. Such ten (10)-day notice of an asserted
31 claim is in addition to the requirement for prompt notice required per Section 2.25 -
32 CHANGES TO THE WORK.
- 33
34 B. The Contractor shall not claim or recover any overhead cost administrative or
35 otherwise, particularly 'Home Office' expenses, 'Extended site overhead', or any other
36 overhead cost on the basis of any 'Home Office' damages formula, 'Eichleay' formula,
37 'Total Cost' recovery formula or any other such formula.
- 38
39 C. REQUIREMENTS FOR FILING A CLAIM. Claims shall be submitted to the Project
40 Manager. Claims must be filed within the time specified above, but in no event shall any
41 claim be considered by the Project Manager that is filed later than the date of final
42 payment of the Project. The claim shall be in writing and shall be a sum certain if
43 known. If unknown, Contractor shall specify the basis for establishing the sum certain.
44 Claim shall include a statement of the reasons for the asserted entitlement, and include
45 the documents necessary to substantiate the claim. Such documents may include but
46 are not limited to payroll records, purchase orders, quotations, invoices, estimates,
47 subcontracts, daily logs, supplier contracts, subcontract billings, bid takeoffs,
48 equipment rental invoices, ledgers, journals, daily reports, job diaries, and any
49 documentation related to the requirements of Section 2.25 - CHANGES TO THE
50 WORK. In the case of a continuing delay, only one (1) claim is necessary. If adverse
51 weather conditions are the basis for a claim for additional time, such claim shall be

1 documented by data substantiating that weather conditions were abnormal for the
2 period of time and could not have been reasonably anticipated, and that weather
3 conditions had an adverse effect on the critical activities on the construction schedule.
4 The Contractor shall certify, at the time of submission of a claim, as follows:

5
6 "I, _____, being the _____
7 _____ (MUST BE AN OFFICER) of
8 _____ (GENERAL CONTRACTOR), declare
9 under penalty of perjury under the laws of the State of California, and do
10 personally certify and attest that: I have thoroughly reviewed the attached claim
11 for additional compensation and/or extension of time, and know its contents,
12 and said claim is made in good faith; The supporting data is truthful and
13 accurate; That the amount requested accurately reflects the contract adjustment
14 for which the Contractor believes the Owner is liable; and, further, that I am
15 familiar with California Penal Code Section 72 and California Government Code
16 Section 12560, et seq, pertaining to false claims, and further know and
17 understand that submission or certification of a false claim may lead to fines,
18 imprisonment and/or other severe legal consequences.
19

20 By: _____
21 (Contractor's signature) (Date)
22

23 D. Nothing in this Article is intended to extend the time limit or supersede notice
24 requirements otherwise provided by this contract or by applicable law for the filing of
25 claims. Any formal claim shall be processed in accordance with the provisions of Public
26 Contract Code Section 9204 and Section 20104 et. seq., each of which establishes a
27 process for resolution of claims, the provisions of which are consistent with and
28 effectively summarized by the following
29

30 1. The Owner (or his/her designee), shall review the facts pertinent to the claim,
31 obtain additional information deemed necessary for a decision (if any), review
32 recommendations of the Project Manager, coordinate with the contract
33 administrator (if any) and secure assistance from legal and other advisors, and
34 render a written decision on the claim within forty-five (45) days of receipt of the
35 claim. If additional information or documentation is thereafter required, it shall
36 be requested and provided pursuant to this subdivision, upon mutual agreement
37 of the Owner (or his/her designee) and claimant. The Owner's (or his/her
38 designee's) written response to the claim, as supplemented by any additional
39 information and/or documentation provided by claimant, shall be submitted to
40 the claimant within fifteen (15) days after receipt of the further information and/or
41 documentation or within a period of time no greater than that taken by the
42 claimant in producing the additional information, whichever is greater.
43

44 a. For claims of over fifty thousand dollars (\$50,000) and less than or
45 equal to three hundred seventy-five thousand dollars (\$375,000),
46 the Owner (or his/her designee), shall respond in writing to all
47 written claims within 60 days of receipt of the claim, or may
48 request, in writing, within 30 days of receipt of the claim, any
49 additional documentation supporting the claim or relating to

1 defenses to the claim the Owner (or his/her designees) may have
2 against the claimant.
3

- 4 2. If the claimant disputes the written response of Owner (or his/her designee), or
5 Owner fails to respond within the time prescribed, the claimant may so notify the
6 Owner (or his/her designee), in writing, either within fifteen (15) days of receipt
7 of the Owner (or his/her designee's) response or within fifteen (15) days of the
8 Owner (or his/her designee's) failure to respond within the time prescribed,
9 respectively, and demand an informal conference to meet and confer for
10 settlement of the issues in dispute. Upon a demand, the Owner (or his/her
11 designee) shall schedule a meet and confer conference within thirty (30) days
12 for settlement of the dispute.
- 13 3. Within ten (10) business days following conclusion of the meet and confer
14 conference, any unpaid portion of the claim remaining in dispute shall be
15 submitted to nonbinding mediation, as that term is defined by Public Contract
16 Code Section 9204(d)((2)(C).
- 17 4. If following the conclusion of the meet and confer conference and mediation
18 process, the claim or any portion thereof remains in dispute, the claimant may
19 file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter
20 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the
21 Government Code. For purposes of those provisions, the running of the period
22 of time within which a claim must be filed shall be tolled from the time the
23 claimant submits his/her written claim pursuant to subdivision (a) until the time
24 the claim is denied, including any period of time utilized by the meet and confer
25 conference and mediation process as described in the immediately preceding
26 Paragraphs 2 and 3 of this Section D.
27
- 28 5. In the event of any perceived conflict between the summary of the procedure
29 set forth in this Article and the actual provisions of the Public Contract Code
30 Section 9204 and Section 20104, et seq. (a true and correct copy of which is
31 attached as Appendix A hereto and incorporated by this reference as though
32 fully set forth herein), the statutory provisions shall control; and in the event of
33 any perceived conflict between the provisions of Section 9204 and Section
34 20104, et seq., the provisions of Section 9204 shall control.
35

36 E. Procedures for Civil Actions to Resolve Disputed Claims: Non-binding Mediation:
37 Within sixty (60) days, but no earlier than thirty (30) days, following the filing of a
38 responsive pleading, the court shall submit the matter to non-binding mediation unless
39 waived by mutual stipulation by both parties. The mediation process shall provide for
40 the selection within fifteen (15) days by both parties of a disinterested third person as
41 mediation, shall be commenced within thirty (30) days of the submittal, and shall be
42 concluded within fifteen (15) days from the commencement of the mediation unless a
43 time requirement is extended upon a good cause shown to the court. If the parties fail
44 to select a mediator within the 15-day period, any party may petition the court to appoint
45 the mediator.
46

47 Judicial Arbitration: If the matter remains in dispute, the case shall be submitted to
48 judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title
49 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of the code.
50 The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter

1 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding
2 brought under this subsection consistent with the rules pertaining to judicial arbitration.
3 Arbitrators shall be experienced in construction law.
4

5 Appeals: As provided by statute (specifically Public Contract Code section
6 20104.4(b)(3) and Code of Civil Procedure section 1141.21), any party appealing an
7 arbitration award who does not obtain a more favorable judgment shall, in addition to
8 payment of costs and fees, also pay the attorneys' fees on appeal of the other party.
9

10 F. CLAIMS AND DISPUTES EXEMPT FROM FILING REQUIREMENTS. The
11 requirements and procedures imposed by this Article do not apply to:
12

- 13 1. Any claims by the Owner; or
- 14 2. Any claim for or respecting personal injury or death or reimbursement or other
15 compensation arising out of or resulting from liability for personal injury or death;
16 or
- 17 3. Any claim or dispute relating to stop payment requests or stop notices; or
- 18 4. Any claim or dispute related to the approval, refusal to approve, or substitution
19 of Subcontractors, regardless of tier, and suppliers.
20

21 G. PAYMENT OF UNDISPUTED PORTION OF CLAIM. Owner shall pay claimant such portion
22 of a claim that is undisputed except as otherwise provided in the contract.
23

24 H. CONTINUE WORK DURING DISPUTE. In the event of any disputed claim or other
25 dispute between the Owner and the Contractor, the Contractor will not stop work but
26 will prosecute the work diligently to completion in his/her manner directed by the Owner,
27 and the dispute shall be resolved by a court of law after completion of the Work.
28 However, Contractor must submit all disputes in accordance with the provisions of this
29 Section 2.35.
30

31 I. SUIT IN FRESNO COUNTY ONLY. Any litigation arising out of this Contract shall be
32 brought in Fresno County and Contractor hereby waives the removal provisions of
33 California Code of Civil Procedure Section 394.
34
35

36 2.36 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND AND
37 WARRANTY BOND
38

39 A. The Contractor shall furnish Performance Bond and a Payment Bond in the amount of
40 two million dollars (\$2,000,000) each as security for the payment of all persons
41 performing and furnishing materials in connection with this Contract. If the aggregate
42 outstanding Job Orders issued under the contract exceeds two million dollars
43 (\$2,000,000), increases in the Payment and Performance Bonds in increments of five
44 hundred thousand dollars (\$500,000) will be required such that the amount of the
45 Payment and Performance Bonds are not less than one hundred percent (100%) of the
46 outstanding aggregate Job Orders issued. Bonds shall remain in force for the duration
47 and until completion of any outstanding Job Order. At no time may the sum of
48 outstanding Job Orders exceed the amount of the Payment and Performance Bonds.
49 The Contractor shall furnish One Year Warranty Bond in the amount of ten percent
50 (10%) of the Final Contract Sum, which is the cumulative amount that will have been

1 paid to Contractor for all of the Work performed under the Contract once the Project
2 has been completed and the Work has been accepted by the County.
3

4 B. All bonds required, whether Bid bonds, Performance, Payment, Warranty or other
5 bonds, shall be issued by an admitted surety insurer authorized by the California
6 Insurance Commissioner to transact surety insurance in the state. The same admitted
7 surety insurer must issue the Bid Bond, Performance Bond, Payment Bond, and
8 Warranty Bond. The payment, performance and warranty bonds required by these
9 specifications will neither be accepted nor approved by the Owner unless the bonds are
10 underwritten by an admitted surety and the requirements of California Code of Civil
11 Procedure section 995.630 are met. The bonds must include a physical mailing
12 address, phone number, FAX number, and contract person for the admitted surety
13 insurer. The Owner further reserves the right to satisfy itself as to the acceptability of
14 the surety and the form of bond. Upon request of the Owner, the bidder must submit
15 the following documents:
16

- 17 1. The original, or a certified copy, of the unrevoked appointment, power of
18 attorney, bylaws, or other instrument authorizing the person who executed the
19 bond to do so.
20
- 21 2. A certified copy of the certificate of authority of the insurer issued by the
22 California Insurance Commissioner.
23
- 24 3. A certificate from the county clerk that the certificate of authority has not been
25 surrendered, revoked, canceled, annulled, or suspended, or in the event that it
26 has, that renewed authority has been granted.
27
- 28 4. A financial statement of the assets and liabilities of the insurer to the end of the
29 quarter calendar year prior to thirty (30) days next preceding the date of the
30 execution of the bond, in the form of an officers' certificate as defined in
31 Corporations Code section 173.
32

33 2.37 RIGHTS AND REMEDIES 34

- 35 A. The duties and obligations imposed by the Contract Documents and the rights and
36 remedies available hereunder shall be in addition to, and not a limitation of, any duties,
37 obligations, rights and remedies otherwise imposed or available by law.
38
- 39 B. No action or failure to act by the Owner, or by the Project Manager or Architect,
40 regarding any deficiency, breach or default in performance by the Contractor under the
41 Contract Documents, shall be deemed or construed to constitute acquiescence of the
42 Owner in connection therewith or with regard to any subsequent deficiency, breach or
43 default in performance by the Contractor; nor shall any such prior act of failure to act
44 by or on behalf of Owner be deemed or construed as a waiver of any rights in favor of
45 Owner regarding any such deficiency, breach or default in performance by the
46 Contractor, regardless of the similarity to the prior incident or circumstance when no
47 action was taken regarding any alleged deficiency, breach or default in performance by
48 the Contractor.
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50 2.38 TIME, DELAYS AND LIQUIDATED DAMAGES

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A. DEFINITIONS

1. Unless otherwise provided, the Work Order Completion Time is the period of time allotted in the Contract Documents for completion of the Work of an individual work Order, including authorized adjustments thereto.
2. The Date of Commencement of the Work is the date established in the Notice to Proceed.
3. The Date of Completion of the Work is the date of which the work is certified as complete by the Project Manager as specified in the Notice of Completion.
4. The term "day" as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

B. PROGRESS AND COMPLETION

1. Time is of the essence regarding all time limits stated in the Work Order Notice to Proceed. By executing the Work Order, the Contractor confirms that the Work Order Completion Time is a reasonable period for performing the Work of the individual Work Order.
2. The Contractor shall begin the Work on the Date of Commencement. The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required herein to be furnished by the Contractor. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.
3. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Completion of the Work within the Work Order Completion Time.

C. DELAYS AND EXTENSIONS OF TIME

1. Delays in prosecution of parts or classes of the Work that are not demonstrated to prevent or delay completion of an entire Project or specific milestones within the Work Order Completion Time are not "unavoidable delays" for purposes of this section.
2. In all cases, the time authorized for extension of the Work Order Completion Time shall be no greater than the number of days directly attributable to the event or circumstances which causes unavoidable delay in the completion of a Project. Contractor shall be entitled, in the case of unavoidable delays, to an extension in the Work Order Completion Time, but not to any increase to the Work Order Price. "Unavoidable delay" for this purpose shall be defined as follows:
 - a. Unavailable Materials. That materials or articles called for in the Contract Documents are not obtainable within the time required for timely completion; provided that such materials or articles were listed by the Contractor in the schedule required by Section 2.17 - CONTRACTOR'S CONSTRUCTION SCHEDULE; that the Contractor demonstrates that the unavailability of the materials is in fact the cause

1 for the delay, and could not have been avoided by an appropriate
2 adjustment in the Construction Schedule; and that the unavailability of
3 such materials is due to circumstances beyond the Contractor's control.
4 If good cause for delay is demonstrated pursuant to this subsection, the
5 Owner, at its sole discretion, may grant a time extension.

6 b. Force Majeure. That delays in construction have resulted from
7 circumstances beyond the control of the Contractor and which the
8 Contractor could not have provided against by the exercise of
9 reasonable care, prudence, foresight, and diligence. Unavoidable
10 delays within the meaning of this subparagraph shall be those caused
11 by acts of God, war, insurrection, civil disorder, fire, floods, epidemic, or
12 strikes.

13 c. Unseasonable Weather. An extension of Work Order Completion Time
14 may be granted due to weather which is unsuitable for the Work currently
15 in progress, upon the determination of the Owner that the weather
16 conditions in fact caused the delay in completion of a Project and that
17 such weather conditions were not, and could not in the exercise of
18 reasonable diligence, have been foreseen by the Contractor.
19 Seasonable weather that, in the exercise of reasonable foresight and
20 diligence, should be expected in the area at the time of year in question
21 is not cause for an extension of time.

22 d. Time Extensions Due to Supplemental Work Orders or Work
23 Authorizations. A time extension may be granted due to additional work
24 that results in a delay in a Project caused by the approval by the Owner
25 of a Supplemental Work Order or Work Authorization. The Contractor
26 shall be entitled to a Work Order Completion Time extension
27 Supplemental Work Order only when the extra Work is demonstrated by
28 the Contractor to have caused a delay in a Project.

29 e. Owner Caused Delays. In the event that a Project is delayed by acts of
30 the Owner not authorized by the Contract Documents which the
31 Contractor demonstrates will or have caused an unavoidable delay, the
32 Contractor shall be entitled to a Work Order Completion Time
33 Supplemental Work Order to offset the extra time incurred by the
34 Contractor. The Contractor will not be entitled to adjustments in the
35 Work Order Price. Extra time shall be limited to that which is directly
36 identified as critical by the delay.

37 4. The Contractor specifically agrees that a time extension as provided herein is
38 its sole remedy for Owner-caused delays, and agrees to make no claim or
39 demand for additional damages, nor claim an acceleration of the time for
40 performance.

41 5. The Contractor shall not be entitled to any Work Order Completion Time
42 extension nor Work Order Price adjustment for alleged Owner delays if the
43 Owner has acted within the time limits specified by the Contract Documents.
44

45 D. NOTICE OF DELAYS

46
47 1. Contractor shall notify the Project Manager promptly whenever the Contractor
48 foresees any event or circumstance that may delay the prosecution of the Work
49 and in Contractor's opinion may provide grounds for an extension, and shall in
50 any event notify the Project Manager immediately upon the occurrence of any

1 such delay. The Contractor shall take immediate steps to prevent, if possible,
2 the occurrence or continuance of the delay. If this cannot be done, the Project
3 Manager shall determine how long the delay shall continue and to what extent
4 the prosecution and completion of the Work are being delayed thereby. Such
5 notification shall specify with detail the cause asserted by the Contractor to
6 constitute grounds for an extension. Failure of the Contractor to submit such a
7 notice within ten (10) days after the initial occurrence of the event-giving rise to
8 the delay shall constitute a waiver by the Contractor of any request for a time
9 extension, and no extension shall be granted as a consequence of such delay.
10 2. If the Contractor believes that the delay in prosecution in the Work will result in
11 an unavoidable delay in completion of the entire Project, the Contractor shall
12 submit evidence to support that belief, together with its request for a time
13 extension. Such evidence shall include a demonstration that the delayed portion
14 of the Work will affect the Critical Path Scheduling of the entire Project. The
15 Contractor shall also submit a proposed revised Construction Schedule, which
16 accounts for the delay in completion of the entire Project caused by the delay in
17 prosecution of part of the Project, and includes a revised Critical Path
18 demonstrating how the Project will be completed within the proposed revised
19 Work Order Completion Time.
20

21 E. INVESTIGATION; PROCEDURE.
22

- 23 1. Upon receipt of a request for Time extension, the Project Manager shall conduct
24 an investigation of the facts asserted by the Contractor to constitute grounds for
25 an extension. The results of this investigation shall be reported by the Project
26 Manager to the Contractor and shall indicate whether he/she will recommend
27 for or against such extension to the Owner. The performance of this
28 investigation by the Project Manager shall not be construed as direction or
29 recommendation to the Contractor regarding scheduling of the work.
30 Scheduling this work is the sole responsibility of the Contractor.
- 31 2. The Project Manager may, in his/her sole discretion, defer this recommendation
32 to allow the accumulation of time extensions due to Work Authorizations into a
33 periodic or final Supplemental Work Order request.
- 34 3. Upon receiving the Project Manager's recommendation to the Owner regarding
35 the Contractor's request for a time extension, the Contractor may either
36 withdraw its application for extension or request that it be scheduled for action
37 by the Owner. If the Owner disallows the request, there shall be no allowance
38 made for the time during which the request was pending, and the Contractor
39 shall remain obligated to complete the Work in the time specified.
- 40 4. If the Owner approves the time extension Supplemental Work Order, the new
41 Construction Schedule submitted by the Contractor and approved by the Owner
42 shall be deemed to amend the original Construction Schedule approved by the
43 Owner; thereafter, the amended Construction Schedule shall have the same
44 force and effect as the originally approved Progress Schedule.
- 45 5. The revised Construction Schedule must be submitted within seven (7) calendar
46 days of the date in which the Owner approves the change.
- 47 6. The Contractor agrees that the Owner's determination as to the existence of
48 grounds for an extension and, the duration of any such extension, shall be final
49 and binding upon both Owner and Contractor.
50

1 F. DISCRETIONARY TIME EXTENSION FOR BEST INTEREST OF OWNER

- 2
- 3 1. The Owner reserves the right to extend the Work Order Completion Time for
- 4 completion of the Work if the Director of Public Works and Planning or designee
- 5 determines that such extension is in the best interest of the Owner.
- 6 2. In the event that such discretionary extension is made at the request of the
- 7 Contractor, the Owner shall have the right to charge to the Contractor all or any
- 8 part, as the Board may deem proper, of the actual cost to the Owner for
- 9 engineering, inspection, supervision, contract administration, incidental and
- 10 other overhead expenses that accrue during period of such extension, and to
- 11 deduct all or any portion of such amounts from the final payment for the Work
- 12 Order.
- 13 3. In the event such extension is ordered over the objection of the Contractor, the
- 14 Contractor shall be entitled to a Supplemental Work Order adjusting the price
- 15 paid to reflect the actual costs incurred by the Contractor as a direct and
- 16 proximate result of the delay, upon his/her written application therefor,
- 17 accompanied by such verification of costs as the Project Manager requires.
- 18 Only additional direct costs incurred at the site will be reimbursable by
- 19 Supplemental Work Order.
- 20

21 G. LIQUIDATED DAMAGES

- 22
- 23 1. If the Work is not completed by Contractor in the time specified in the Work
- 24 Order or within any period of extension authorized pursuant to this Article, the
- 25 Contractor acknowledges and admits that the Owner will suffer damage, and
- 26 that it is impracticable and infeasible to fix the amount of actual damages.
- 27 Therefore, it is agreed by and between the Contractor and the Owner that the
- 28 Contractor shall pay to the Owner as fixed and liquidated damages, and not as
- 29 a penalty, the sum specified in Section 005213, Agreement, Article III for each
- 30 calendar day of delay until the Work is completed and accepted, and that both
- 31 the Contractor and the Contractor's surety shall be liable for the total amount
- 32 thereof, and that the Owner may deduct said sums from any monies due or that
- 33 may become due to the Contractor.
- 34 2. This liquidated damages provision shall apply to all delays of any nature
- 35 whatsoever, save and except only unavoidable delays approved by the Owner
- 36 pursuant to the provisions of Article 2.38.C.2 hereinabove, or discretionary time
- 37 extensions approved by the Board of Supervisors pursuant to the provisions of
- 38 Article 2.38.F hereinabove.
- 39

40 H. EXTENSION OF TIME NOT A WAIVER.

- 41
- 42 1. Any extension of a Work Order Completion Time granted pursuant to this Article
- 43 shall not constitute a waiver by the Owner, nor a release of the Contractor, from
- 44 his/her obligations to perform a Work Order within the allotted Work Order
- 45 Completion Time.
- 46 2. Granting of a time extension due to one (1) circumstance on one (1) request
- 47 therefore shall not constitute a granting by the Owner of an extension of time for
- 48 any other circumstance or the same circumstance occurring at some other time,
- 49 and shall not be interpreted as a precedent for any other request for extension.

1
2 2.39 PROTECTION OF PERSONS AND PROPERTY
3

4 A. SAFETY PRECAUTIONS AND PROGRAMS
5

6 The Contractor shall be responsible for initiating, maintaining and supervising all safety
7 precautions and programs in connection with the Work.
8

9 B. SAFETY OF PERSONS AND PROPERTY
10

11 The Contractor shall take all reasonable precautions for the safety of, and shall provide
12 all reasonable protection to prevent damage, injury or loss to:
13

- 14 1. All employees on the Work and all other persons who may be affected thereby;
- 15 2. All the work and all materials and equipment to be incorporated therein, whether
16 in storage or off the site, and that is under the care, custody or control of the
17 Contractor or any of the Contractor's Subcontractors or Sub-subcontractors;
- 18 3. Other property at the site or adjacent thereto, including trees, shrubs, lawns,
19 walks, pavements, roadways, structures and utilities not designated for removal,
20 relocation or replacement in the course of construction; and
- 21 4. The work of the Owner or other separate contractors.
22

23 C. The Contractor shall give all notices and comply with all applicable laws, ordinances,
24 rules, regulations and lawful orders of any public authority bearing on the safety of
25 persons or property or their protection from damage, injury or loss.
26

27 D. The Contractor shall erect and maintain, as required by existing conditions and the
28 progress of the Work, all reasonable safeguards for safety and protection, including
29 posting danger signs and other warnings against hazards, promulgating safety
30 regulations and notifying owners and users of adjacent facilities.
31

32 E. When the use or storage of explosives or other hazardous materials or equipment is
33 necessary for the execution of the Work, the Contractor shall exercise the utmost care
34 and shall carry on such activities under the supervision of properly qualified personnel.
35

36 F. The Contractor shall promptly remedy all damage or loss to any property referred to
37 above caused in whole or in part by the Contractor, any Subcontractor, any Sub-
38 subcontractor, anyone directly or indirectly employed by any of them, or any one for
39 whose acts any of them may be liable, and for which the Contractor is responsible under
40 the above noted clauses, except damage or loss attributable solely to the acts or
41 omissions of the Owner, the Project Manager, or anyone directly or indirectly employed
42 by any of them, or by anyone for whose acts any of them may be liable, and not
43 attributable in any degree to the fault or negligence of the Contractor. The foregoing
44 obligations of the Contractor are in addition to the Contractor's obligations under the
45 Indemnification provisions provided herein.
46

47 G. The Contractor shall designate a responsible member of the Contractor's organization
48 at the site whose duty shall be the prevention of accidents. This person shall be the
49 Contractor's superintendent unless otherwise designated by the Contractor in writing to
50 the Owner and the Project Manager.

1
2 H. The Contractor shall not load or permit any part of the Work to be loaded
3 in a manner that could endanger its safety or pose a risk to anyone working at the
4 Project site.

5
6 I. EMERGENCIES

7 In any emergency affecting the safety of persons or property the Contractor shall act,
8 at the Contractor's discretion, to prevent threatened damage, injury or loss. Any
9 additional compensation or extension of time claimed by the Contractor on account of
10 emergency work shall be determined as provided in the provisions herein for Changes
11 in the Work.

12
13 2.40 INSURANCE

14
15 A. CONTRACTOR'S INSURANCE

- 16
17 1. Bidders' attention is directed to the insurance requirements below. It is highly
18 recommended that Bidders confer with their respective insurance carriers or
19 brokers to determine in advance of bid submission the availability of the
20 insurance certificates and endorsements required below. A bidder who is
21 awarded a contract and thereafter fails to comply strictly with the insurance
22 requirements, will be deemed to be in default of its obligations.
23 2. Contractor shall procure, and maintain for the duration of the Contract, and for
24 3 years thereafter, insurance against claims for injuries to persons or damage
25 to property which may arise from or in connection with the performance of the
26 work hereunder by the Contractor, his/her agents, representatives, employees
27 or Subcontractors. The cost of such insurance shall be included in the
28 Contractor's bid.
29 3. No later than ten (10) calendar days following the Award of the Contract, and
30 prior to execution of the Agreement for Construction by the Owner, the
31 Contractor shall submit certificates of insurance, signed by an authorized agent
32 of the insurer, attesting to insurance coverage of the Contractor as required by
33 this Article.

34
35 B. MINIMUM SCOPE OF INSURANCE.

36
37 Coverage shall be at least as broad as:

- 38
39 1. Insurance Services Office Commercial General Liability coverage ("occurrence"
40 form CG0001).
41 2. Insurance Services Office Business Auto Coverage form number CA 0001 0187
42 covering Automobile Liability, code 1 "any auto".
43 3. Workers' Compensation insurance as required by the Labor Code of the State
44 of California and Employers Liability insurance.

45
46 C. MINIMUM LIMITS OF INSURANCE.

47
48 Contractor shall maintain limits no less than:
49

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12
1. **General Liability:** One million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be three times the required occurrence limit.
 2. **Automobile Liability:** One million dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
 3. **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of one million dollars (\$1,000,000.00) per accident.

13 D. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

14
15 Any deductibles or self-insured retentions must be declared to and approved by the
16 Owner. If approved at the option of the Owner, either: the insurer shall reduce or
17 eliminate such deductibles or self-insured retentions as respects the Owner, its officers,
18 officials, employees and volunteers; or the Contractor shall procure a bond
19 guaranteeing payment of losses and related investigations, claim administration and
20 defense expense.
21

22 E. OTHER INSURANCE PROVISIONS.

23
24 The policies are to contain, or be endorsed to contain, the following provisions:

- 25
26 1. Fire Insurance / Builders Risk Insurance.
- 27
28 a. At the Owner's option, the Contractor shall secure "All Risk" type
29 Builder's Risk Insurance for the Work to be performed pursuant to this
30 Agreement for an individual Work Order. The policy shall cover not less
31 than losses due to fire, explosion, vehicle damage, theft, flood,
32 earthquake and civil commotion with no coinsurance penalty provision.
33
 - 34 b. The Contractor shall obtain and keep in force insurance against loss or
35 damage by fire and the customary extended perils including windstorm,
36 hail, explosion, aircraft, vehicle, smoke, riot, and civil commotion,
37 vandalism, sprinkler leakage (including earthquake) as covered under
38 the standard forms of California Standard Fire Insurance Policy for
39 school projects or Factory Insurance Association and/or Factory Mutual
40 Insurance Company for projects other than schools. The policy shall
41 cover the entire structure on which the work of this contract is to be done,
42 up to the full insurable value thereof, including items of labor and
43 materials connected therewith on the site, materials in place or to be
44 used as part of the permanent construction including materials stored
45 and partially paid for by the Owner as provided in Division 01 – General
46 Requirements, surplus materials, shanties, protective fences, bridges,
47 or temporary structures, miscellaneous materials and supplies incident
48 to the work, and such scaffolding, staging, towers, forms and equipment
49 as are not owned or rented by the Contractor, the cost of which is
50 included in the cost of the work. EXCLUDED: This insurance does not

1 cover any tools owned by mechanics, any tools, equipment, scaffolding,
2 staging, towers, and forms owned or rented by the Contractor, the capital
3 value of which is not included in the cost of the Work, or any structures
4 erected for the Contractor's administration of the Project. The loss, if
5 any, is to be adjustable with and payable to the Owner as trustee for the
6 insured as their interests may appear, except in such cases as may
7 require payment of all or a proportion of said insurance to be made to a
8 mortgagee or trustee as its interest may appear.
9

10 c. The Owner shall be named as insured jointly with the Contractor and
11 other proper parties, all as their respective interests may appear. All
12 subcontractors shall be insured to the extent of their portion of the work
13 under the Contractor. The Owner, Contractor and all subcontractors
14 waive all rights, each against the others, for damages caused by fire or
15 other perils covered provided under the terms of this article, except such
16 rights as they may have to the proceeds of the insurance held by the
17 party obtaining and maintaining the insurance policy in force who acts
18 as trustee of said policy. Certificates of such insurance shall be filed with
19 the Owner. If the Contractor fails to effect or maintain insurance as
20 above and so notifies the Owner, the Owner may insure his own interest
21 and charge the cost thereof to the Contractor.
22

23 d. In the event of a partial or total destruction by the perils insured against,
24 of any or all of the work and/or materials herein provided for, at any time
25 prior to the final completion of the Contract and the final acceptance by
26 the Owner of the Work or materials to be performed or supplied
27 thereunder, the Contractor shall promptly reconstruct, repair, replace, or
28 restore all work or materials so destroyed or injured at his sole cost and
29 expense. Nothing herein provided for shall in any way excuse the
30 Contractor or his surety from the obligation of furnishing all the required
31 materials and completing the work in full compliance with the terms of
32 the Contract.
33

34 2. Commercial General Liability and Automobile Liability Coverages.
35

36 a. The Contractor shall secure Commercial General Liability Insurance with
37 limits of not less than One Million Dollars (\$1,000,000.00) per
38 occurrence and an annual aggregate of Three Million Dollars
39 (\$3,000,000.00). This policy shall be issued on a per occurrence basis.
40 The Owner may require specific coverage including completed
41 operations, product liability, contractual liability, XCU, fire legal liability
42 or any other liability insurance deemed necessary because of the nature
43 of the contract. The Owner, its officers, officials, employees, agents,
44 including Consulting Engineers while performing contract administration
45 services, and volunteers are to be covered as insured as respects all of
46 the following: liability arising out of activities performed by or on behalf
47 of the Contractor, including the insured's general supervision of the
48 Contractor; products and completed operations of the Contractor;
49 premises owned, occupied or used by the Contractor; or automobiles
50 owned, leased, hired or borrowed by or on behalf of the Contractor. The

1 coverage shall contain no special limitations on the scope of protection
2 afforded to the Owner, its officers, officials, employees or volunteers.

3
4 b. The Contractor's insurance coverage shall be primary insurance as
5 respects the owner, its officers, officials, employees, agents, Consulting
6 Engineers, and volunteers. Any insurance or self-insurance maintained
7 by the Owner, its officers, officials, Employees, agents, Consulting
8 Engineers, or volunteers shall be in excess of the Contractor's insurance
9 and shall not contribute with it.

10
11 c. Any failure to comply with reporting provisions of the policies shall not
12 affect Coverage provided to the Owner, its officers, officials, employees,
13 agents, Engineers, Consulting Engineers, or volunteers.

14
15 d. The Contractor's insurance shall apply separately to each insured
16 against whom claim is made or suit is brought, except with respect to the
17 limits of the insurer's liability.

18
19 e. Such Commercial General Liability insurance shall name the County of
20 Fresno, its officers, agents, and employees, individually and collectively,
21 as additional insured, but only insofar as the operations under this
22 Agreement are concerned. Such coverage for additional insured shall
23 apply as primary insurance and any other insurance, or self-insurance,
24 maintained by Owner, its officers, agents and employees shall be excess
25 only and not contributing with insurance provided under Contractor's
26 policies herein. This insurance shall not be cancelled or changed
27 without a minimum of thirty (30) days advance written notice given to
28 Owner. Contractor shall obtain endorsements to the Commercial
29 General Liability insurance policy naming Owner as an additional
30 insured and providing for a thirty (30) day prior written notice of
31 cancellation or change in terms or coverage

32
33 f. Comprehensive Automobile Liability Insurance with limits of not less
34 than One Million Dollars (\$1,000,000) per accident for bodily injury and
35 property damage. Coverage should include owned and non-owned
36 vehicles used in connection with this Agreement and all applicable
37 endorsements.

38
39 3. Professional Liability Coverage.

40
41 If Contractor employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
42 M.F.C.C.) in providing services, the Contractor shall secure Professional
43 Liability Insurance with limits of not less than one million dollars (\$1,000,000.00)
44 per occurrence, and three million dollars (\$3,000,000.00) annual aggregate,
45 with a provision for three (3) year tail coverage.

46
47 4. Worker's Compensation and Employers Liability Coverage.

48
49 The Contractor shall obtain a policy of Worker's Compensation insurance in
50 accordance with applicable provisions of the California Labor Code. The insurer

1 shall agree to waive all rights of subrogation against the Owner, its officers,
2 officials, employees and volunteers for losses arising from work performed by
3 the Contractor for the Owner. Contractor shall supply the Owner with certificates
4 of insurance in triplicate, evidencing that Workers Compensation Insurance is
5 in effect and providing that the Owner will receive 30 days' notice of cancellation.
6 If Contractor self-insures Workers Compensation, Certificate of Consent to Self-
7 Insure shall be provided to the Owner.
8

9 5. All Coverages.

10
11 Prior to the commencement of performing its obligations under this Agreement,
12 Contractor shall provide certificates of insurance and upon request from Owner,
13 formal endorsements for the foregoing policies, as required herein, to the
14 Owner, listing the name and address of the official who will administer this
15 contract, and stating that such insurance coverage have been obtained and are
16 in full force; that the County of Fresno, its officers, agents and employees will
17 not be responsible for any premiums on the policies; that such Commercial
18 General Liability insurance names the County of Fresno, its officers, agents and
19 employees, individually and collectively, as additional insured, but only insofar
20 as the operations under this Agreement are concerned; that such coverage for
21 additional insured shall apply as primary insurance and any other insurance, or
22 self-insurance, maintained by Owner, its officers, agents and employees, shall
23 be excess only and not contributing with insurance provided under Contractor's
24 policies herein; and each insurance policy required by this Section 2.40 shall be
25 endorsed to state that coverage shall not be suspended, voided, canceled by
26 either party, reduced in coverage or in limits except after thirty (30) days' prior
27 written notice has been given to the Owner.
28

29 F. ACCEPTABILITY OF INSURERS

30 Contractor shall obtain the policies and coverages specified herein from an admitted
31 insurer in good standing with and authorized to transact business in this state by the
32 California Department of Insurance, and having a **Best's rating of no less than A FSC**
33 **VIII.**
34

35 G. VERIFICATION OF COVERAGE

36 Contractor shall furnish the Owner with certificates of effecting coverage required by
37 this clause. The certificates for each insurance policy are to be signed by a person
38 authorized by that insurer to bind coverage on its behalf. All certificates are to be
39 received and approved by the owner before work commences. The Owner reserves
40 the right to require complete, certified copies of all required insurance policies, at any
41 time. In the event Contractor fails to keep in effect at all times insurance coverage as
42 herein provided, the Owner may, in addition to other remedies it may have, suspend or
43 terminate this Agreement upon the occurrence of such event. The Certificate of
44 Insurance shall be issued in triplicate, and provided to the Owner within ten (10) days
45 of award, and also shall be provided to all other participating agencies who contribute
46 to the cost of the work or have jurisdiction over areas in which the work is to be
47 performed and all officers and employees of said agencies while acting within the
48 course and scope of their duties and responsibilities.
49
50

1
2 H. SUBCONTRACTORS
3

4 Contractor shall include all Subcontractors as insured under its policies or shall furnish
5 separate certificates and endorsements for each Subcontractor. All coverages for
6 Subcontractors shall be subject to all of the requirements stated herein.
7

8 2.41 UNCOVERING WORK
9

10 A. This Section shall apply to any Work installed and covered up by the Contractor that
11 is required by the Building Code or other statutory or regulatory requirement to
12 undergo inspection or special inspection and/or testing approval by an appropriate
13 official representing the Owner or other public authority having jurisdiction to conduct
14 such inspection and/or testing or by any requirements specifically expressed in the
15 Contract Documents. Work covered up by the Contractor, Contractor's
16 Subcontractor's or Suppliers prior to inspection/special inspection and/or testing
17 approval shall be uncovered and repaired or replaced after inspection approval at the
18 sole expense of the Contractor. This shall apply to all labor and material needed to
19 complete both physical and cosmetic repairs, and any additional inspection costs
20 associated with restoring the Work.
21

22 B. This Section also shall apply to any Work installed and covered up by the Contractor,
23 Contractor's Subcontractor's or Suppliers that is determined by the Owner or its Project
24 Manager, during construction or within the Warranty period, to be defective, broken or
25 inoperative. Work covered up by the Contractor, Contractor's Subcontractor's or
26 Suppliers that is found to be defective, broken or inoperative shall be uncovered and
27 repaired or replaced at the sole expense of the Contractor. This shall apply to all labor
28 and material needed to complete both physical and cosmetic repairs, and any additional
29 inspection costs associated with restoring the Work.
30

31 2.42 CORRECTION OF WORK
32

33 A. The Contractor shall promptly correct all Work rejected by the Project Manager as
34 defective or as failing to conform to the Contract Documents, whether or not fabricated,
35 installed or completed. The Contractor shall submit a plan of action, within twenty-four
36 (24) hours of notification of the rejected work by the Project Manager, for correcting the
37 rejected work. The Contractor shall bear all costs of correcting such rejected Work,
38 including compensation for the Engineer's and Architect's additional services made
39 necessary thereby.
40

41 B. If, within one (1) year after the date of acceptance of the Work as specified in the Notice
42 of Completion, or designated portion thereof, or within one (1) year after acceptance by
43 the Owner of designated equipment, or within such longer period of time as may be
44 prescribed by the terms of any applicable special warranty required by the Contract
45 Documents, any of the Work is found by Owner to be defective or not in accordance
46 with the Contract Documents, the Contractor shall correct it promptly after receipt of a
47 written notice from the Owner to do so, unless the Owner has previously given the
48 Contractor a written acceptance of such condition. This obligation shall survive both
49 final payment for the Work or designated portion thereof and termination of the
50 Contract. The Owner shall give such notice promptly after discovery of the condition.

- 1
2 C. The Contractor shall, at his/her sole expense, remove from the site all portions of the
3 Work that are defective or nonconforming and which have not been corrected under
4 Articles 2.32, 2.42.A, and 2.42.B, unless the Owner waives removal.
5
6 D. If the Contractor fails to submit a plan of action, within twenty-four (24) hours of
7 notification of the rejected work by the Project Manager, for correcting the rejected work,
8 or fails to correct defective or nonconforming Work as provided herein in Articles 2.32,
9 2.42.A, and 2.42.B, the Owner may correct it in accordance with Article 2.08.C.
10
11 E. If the Contractor does not take action under the plan to initiate such correction of such
12 defective or nonconforming Work within ten (10) days of written notice from the Project
13 Manager, the Owner may remove it and may store the materials or equipment at the
14 expense of the Contractor. If the Contractor does not pay the cost of such removal and
15 storage within ten (10) days thereafter, the Owner may, upon ten (10) additional days'
16 written notice, sell such Work at auction or at private sale and shall account for the
17 proceeds thereof, after deducting all the costs that should have been borne by the
18 Contractor, including compensation for the Project Manager, Architect, or other
19 Professional's additional services made necessary thereby. If such proceeds of sale
20 do not cover all costs that the Contractor should have borne, the difference shall be
21 charged to the Contractor and an appropriate Supplemental Work Order shall be
22 issued. If the payments then or thereafter due the Contractor are not sufficient to cover
23 such amount, the Contractor shall pay the difference to the Owner.
24
25 F. The Contractor shall bear the cost of making good all work of the Owner or separate
26 contractors destroyed or damaged by such correction or removal.
27
28 G. Nothing contained in this Section 2.42 shall be construed to establish a period of
29 limitation with respect to any other obligation which the Contractor might have under
30 the Contract Documents, including Section 2.32 hereof. The establishment of the time
31 periods noted in this Section 2.42, or such longer period of time as may be prescribed
32 by law or by the terms of any warranty required by the Contract Documents, relates
33 only to the specific obligation of the Contractor to correct the defective or nonconforming
34 Work, and has no relationship to the time within which the Contractor's obligation to
35 comply with the Contract Documents may be sought to be enforced, nor to the time
36 within which proceedings may be commenced to establish the Contractor's liability with
37 respect to the Contractor's obligations other than specifically to correct the defective or
38 nonconforming Work.
39

40 2.43 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

41
42 If the Owner prefers to accept defective or nonconforming Work, the Owner may do so instead
43 of requiring its removal and correction, in which case a Supplemental Work Order will be issued
44 to reflect a reduction in the Work Order Price where appropriate and equitable. Such
45 adjustment shall be effected whether or not final payment has been made. Project Manager
46 shall determine the amount of reduction in the Work Order Price.
47

48 2.44 TERMINATION BY THE OWNER
49

- 1 A. If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit
2 of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or
3 stop notices are served upon the Owner, or if the Contractor persistently or repeatedly
4 refuses or fails, except in cases for which extension of time is provided, to supply
5 enough properly skilled workers or proper materials, or fails to make prompt payment
6 to Subcontractors or for materials or labor, or persistently disregards applicable laws,
7 ordinances, rules, regulations or orders of any public authority having jurisdiction, or
8 otherwise is guilty of a substantial violation of a provision of the Contract Documents,
9 and fails after written notice to commence and continue correction of such default,
10 neglect or violation with diligence and promptness, the Owner upon certification by the
11 Project Manager that sufficient cause exists to justify such action, may, after an
12 additional written notice and without prejudice to any other remedy the Owner may
13 have, terminate the Contract and take possession of all materials, equipment, tools,
14 construction equipment and machinery thereon owned by the Contractor and may finish
15 the Work by whatever methods the Owner may deem expedient. In such case the
16 Contractor shall not be entitled to receive any further payment until the Work is finished.
17
- 18 B. If the unpaid balance of the Work Order Price exceeds the costs of finishing the Work,
19 including compensation for the Project Manager's and Architect's additional services
20 made necessary thereby, Contractor will only be paid for his/her actual unpaid costs
21 from such excess. If such costs exceed the unpaid balance, the contractor shall pay
22 the difference to the Owner. The amount to be paid to the Contractor or to the Owner,
23 as the case may be, shall be certified by the Project Manager, upon application, in the
24 manner provided in Section 2.24 and this obligation for payment shall survive the
25 termination of the Contract.
26

27 2.45 SUBSTITUTION OF MATERIALS

- 28
- 29 A. When a specific manufacturer, trade name or material is specified, or indicated, it is to
30 establish a standard of quality and shall not be construed as limiting competition. The
31 intent of the Contract Documents is to specify high-grade standard material and
32 equipment, and it is not the intent of these Contract Documents to exclude or omit the
33 products of any responsible manufacturer, if such products are equally acceptable in
34 terms of quality, finish, performance, durability, and serviceability, in the judgment of
35 the Owner and the Architect, to those specified herein. Wherever an article, or any
36 class of materials, is specified by the trade name or by the name of any particular
37 patentee, manufacturer or dealer, it shall be taken as intending to mean and specify the
38 article of material described or any other equal thereto in quality, finish, performance,
39 durability, and serviceability, in the judgment of the Owner and the Architect, for the
40 purpose for which it is or they are intended.
41
- 42 B. If the Contractor desires to use material or equipment other than that specified, he/she
43 shall submit a request for approval of such substitution, in writing, to the Project
44 Manager by no later than 10 days prior to bid opening. Substitution requests will not
45 be considered if received after the time stipulated.
46
- 47 C. The Owner does not guarantee that alternative articles, components, materials or
48 equipment other than the item specified by trade name or other specific identification,
49 will fit within the design parameters of the project without alteration of the project design
50 by the Contractor.

- 1
2 D. The Owner has the right to reject any proposed alternative material which requires
3 alteration of the project design which impacts the safety of the public or the user of a
4 completed facility. If the proposed alternative material requires alteration of the design
5 of the Project or any aspect thereof and said alterations are acceptable to the Owner,
6 the Contractor shall be responsible for performing said alterations at no additional cost
7 to the Owner.
8
9 E. Submittals for approval of substitute materials shall contain sufficient detailed
10 information, descriptive brochures, drawings, samples or other data as is necessary to
11 provide a detailed side-by-side comparison to the specified materials. It is the sole
12 responsibility of the Contractor to submit complete descriptive and technical information
13 so the Project Manager can make proper appraisal. Lack of either proper or sufficient
14 information shall constitute cause for rejection. Reference to product data will not be
15 acceptable.
16
17 F. It is the Contractor's responsibility to confirm and correlate all quantities and dimensions
18 and coordinate with all trades whose work may be affected by the requested
19 substitution.
20

21 2.46 REFERENCE TO STANDARDS
22

- 23 A. Reference to known standards shall mean and intend the latest edition or amendment
24 published prior to date of these Specifications, unless specifically indicated otherwise,
25 and to such portions of it that relate and apply directly to the material or installation
26 called for on the Project.
27
28 B. Where material is specified solely by reference to standard specifications, the
29 Contractor shall, if requested by the Project Manager, submit to the Project Manager
30 for his/her approval, data on all such material proposed to be incorporated into the Work
31 of the Contractor, listing the name and address of the vendor, the manufacturer or
32 producer, and the trade or brand names of such materials.
33

34 2.47 SPECIFICATIONS
35

- 36 A. The Specifications are organized into Divisions, Sections, and Trade headings based
37 on the Construction Specifications Institute's Master format and the Master format
38 numbering system. This organization shall not control the Contractor in dividing the
39 Work among Subcontractors or in establishing the extent of the Work to be performed
40 by any trade. The Contractor shall be responsible for examining all Sections of the
41 Specifications for inter-related items of the Work, and for furnishing each item identified
42 or specified.
43
44 B. No responsibility will be assumed by the Owner, Architect or the Project Manager for
45 omissions or duplications by the Contractor in the completion of the Contract due to any
46 alleged discrepancy in the arrangement of the material in these Specifications, nor shall
47 any such segregation of work and materials operate to make the Project Manager an
48 arbiter in defining the limits to the agreements between the Contractor and his/her
49 Subcontractors or suppliers.
50

- 1 C. The misplacement, addition or omission of any letter, word or punctuation mark shall in
2 no way damage the true spirit, intent or meaning of these Specifications.
3
4 D. The words "shown", "indicated", "noted", "scheduled" or words of that effect shall be
5 understood to mean that reference is made to Drawings accompanying these
6 Specifications.
7
8 E. Where reference herein is made to colors or finishes "as selected", the reference is to
9 the Architect with concurrence by the Owner.
10

11 2.48 APPROVED APPLICATORS
12

- 13 A. Where specific instructions in these Specifications require that a particular product
14 and/or materials be installed and/or applied by an "approved applicator" of the
15 manufacturer, it shall be the Contractor's responsibility to insure that any
16 Subcontractors used for such work be approved applicators.
17
18 B. Contractor accordingly shall bear any and all costs, and shall reimburse Owner for any
19 such costs incurred by Owner, resulting from Contractor's failure to insure the use of
20 an "approved applicator".
21

22 2.49 DELIVERY AND STORAGE OF MATERIALS
23

- 24 A. Deliver all manufactured materials in the original packages, containers or bundles (with
25 the seals intact), bearing the name or identification mark of all manufacturers.
26
27 B. Deliver fabrications in as large assemblies as practicable and where specified to be
28 shop-primed or shop-finished; they shall be packaged or crated as required to preserve
29 such priming or finish intact and free from abrasion.
30
31 C. Store all materials in such manner as necessary to properly protect same from damage,
32 as materials or equipment damaged by handling, weather, dirt or from any other cause
33 will not be acceptable.
34
35 D. Store materials so as to cause no obstructions (i.e. stored off all sidewalks and other
36 walkways, roadways, and underground services). The Contractor shall be responsible
37 for protecting from damage all material and equipment furnished under the Contract.
38

39 2.50 QUALITY OF WORK
40

- 41 A. Where not more specifically described in any of the various Sections of these
42 Specifications, the quality of work shall conform to all of the methods and operations of
43 best standards and accepted practices of the trade or trades involved, and shall include
44 all items of fabrication, construction, or installation regularly furnished or required for
45 completion of the work (including any finish), and for successful operation as intended
46 of the project and the component thereof corresponding to that work.
47
48 B. All Work shall be executed by mechanics skilled in their respective lines of work.
49

- 1 C. When completed, all parts shall have been durably and substantially built and shall
2 present a neat, finished appearance.
3

4 2.51 HOURS OF WORK
5

- 6 A. Eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder,
7 and it is expressly stipulated that no worker employed at any time by the Contractor, or
8 by a Subcontractor under this Contract, upon the Work, shall be required or permitted
9 to work thereon more than eight (8) hours in any one (1) calendar day and forty (40)
10 hours in any one (1) calendar week, except as provided in Sections 1810-1815
11 inclusive, of the Labor Code of the State of California, all the provisions of which are
12 deemed to be incorporated herein as if set forth in full; and it is further expressly
13 stipulated that for each and every violation of said last named stipulation, said
14 Contractor shall forfeit, as a penalty to the Owner, fifty dollars (\$50.00) for each worker
15 employed by the Contractor in the execution of this Contract, for each calendar day
16 during which said worker is required or permitted to labor more than eight (8) hours in
17 any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation
18 of any of said provisions of the Labor Code.
19

- 20 B. Notwithstanding the above stipulations, pursuant to Section 1815 of the Labor Code,
21 work performed by employees of contractors in excess of eight (8) hours per day and
22 forty (40) hours during any one (1) week shall be permitted on the Project upon
23 compensation for all hours worked in excess of eight (8) hours per day at not less than
24 one and a half (1 1/2) times the basic rate of pay.
25

26 2.52 WAGE RATES
27

- 28 A. All projects under this Contract shall be subject to compliance monitoring and
29 enforcement by the Department of Industrial Relations (DIR), including the obligation to
30 submit certified payroll records directly to the DIR Compliance Monitoring Unit (CMU)
31 at least monthly using the CMU's eCPR system. Detailed information may be obtained
32 on the State of California's Department of Industrial Relations website,
33 www.dir.ca.gov/dlse/cmu/CMU.
34

35 The Contractor shall also submit certified payroll records of the Contractor,
36 Subcontractors and all Sub-subcontractors of any tier to the Project Manager at least
37 monthly.
38

- 39 B. Contractor shall, and shall cause each of its Subcontractors (as defined in Labor Code
40 section 1722.1) to provide written proof that they are currently registered with the
41 California Department of Industrial Relations at the time of bid submittal, and have paid
42 the applicable annual fee and are thereby qualified to submit a bid and to perform public
43 work pursuant to Labor Code section 1725.5, prior to award of this Contract or any
44 subcontract hereunder. No bid shall be accepted, nor shall this Contract or any
45 subcontract hereunder, be entered into without such proof.
46

- 47 C. Pursuant to Section 1770-1780 of the Labor Code of the State of California, the Director
48 of the Department of Industrial Relations has determined the general prevailing rates
49 of wages and rates for legal holidays and overtime in the locality in which this work is
50 to be performed, which under Labor Code Section 1773.1 are deemed to include

1 employer payments for health and welfare, pension, vacation, travel time and
2 subsistence pay, and apprenticeship or other authorized training programs, for each
3 craft or type of worker or mechanic needed to perform this contract. Said wage rates
4 are available only at the Fresno County Department of Public Works and Planning,
5 Design Division, and will be made available to any interested person upon request.
6 Minimum wage rates for this Project, as predetermined by the Secretary of Labor, are
7 set forth in the Special Provisions. If there is a difference between the minimum wage
8 rates predetermined by the Secretary of Labor and the Prevailing Wage Rates
9 predetermined by the Director of the Department of Industrial Relations of the State of
10 California for similar classifications of labor, the contractor and his subcontractors shall
11 pay not less than the higher wage rate.
12

13 D. It shall be mandatory upon the Contractor to whom the Contract is awarded, and upon
14 any Subcontractor under him/her to pay not less than the said specified rates to all
15 laborers, workers, and mechanics employed by them in the execution of the Contract,
16 and to pay all laborers, workers and mechanics not less often than once weekly. The
17 Contractor to whom the Contract is awarded shall post a copy of the determination of
18 prevailing wages at the job site. The Contractor shall require all Subcontractors to
19 comply with Sections 1770-1780 of the Labor Code of the State of California and shall
20 insert into every subcontract the requirements contained therein.
21

22 E. The Contractor shall comply with Labor Code Section 1775. In accordance with said
23 Section 1775, it is hereby further agreed that the Contractor shall forfeit to the Owner,
24 as a penalty, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed for
25 each calendar day or portion thereof, who is paid less than the said stipulated rates for
26 any work done under the Contract, by him/her or by any Subcontractor under him/her.
27 The difference between said stipulated rates and the amount paid to each worker for
28 each calendar day or portion thereof for which each worker was paid less than said
29 stipulated rate shall be paid to each worker by the Contractor. The Contractor, and
30 each Subcontractor, shall keep or cause to be kept an accurate record showing the
31 name, address, social security number, work classification, straight time and overtime
32 hours worked each day and week, and the actual per diem wages paid to each
33 journeyman, apprentice, worker or other employee employed by him/her or her in
34 connection with the public work. The records shall be open at all reasonable hours to
35 the inspection of the Owner, to its officers and agents, and to the Division of Labor Law
36 Enforcement of the State Department of Industrial Relations, its deputies and agents,
37 or as otherwise provided by applicable law (including but not limited to Labor Code
38 1776).
39

40 F. In case it becomes necessary for the Contractor or any Subcontractor to employ on the
41 Work under this Contract any person in a trade or occupation (except executive,
42 supervisory, administrative, clerical or other non-manual workers as such) for which no
43 minimum wage rate is specified, the Contractor shall immediately notify the Owner who
44 shall promptly thereafter determine the prevailing rate for such additional trade or
45 occupation from the time of the initial employment of the person affected and during the
46 continuance of such employment.
47

48 2.53 APPLICATION OF HIGHEST STANDARDS AND REQUIREMENTS
49

1 Whenever two (2) or more standards or requirements appear in these General Conditions or
2 in any other part of the Contract Documents that form the Contract, the highest standard or
3 requirement shall be applied and followed in the performance under this Contract.
4

5 2.54 NONDISCRIMINATION IN EMPLOYMENT
6

7 Contractor shall comply with all Federal and State Laws prohibiting discrimination in
8 employment, including the following:
9

- 10 A. California Fair Labor Code Section 1735, which prohibits discrimination in employment
11 on any basis listed in subdivision (a) of Section 12940 of the Government Code, as
12 those bases are defined in Sections 12926 and 12926.1 of the Government Code,
13 except as otherwise provided in Section 12940 of the Government Code, and applies
14 to all employers, employment agencies and labor organizations.
15
16 B. Title VII of the Federal 1964 Civil Rights Act (42 U.S.C. Section 2000e - 2000e - 17)
17 which prohibits employment discrimination on the basis of race, color, sex, religion, or
18 national origin, and applies to all employers that employ at least fifteen (15) workers
19 during each working day in each of twenty (20) or more calendar weeks in the current
20 or preceding year.
21
22 C. In addition to these two (2) laws of general application listed in the immediately
23 preceding paragraphs A and B, there are other Federal and State laws that prohibit
24 employment discrimination in particular cases.
25
26 D. The Owner is an Affirmative Action Employer and expects all of its contractors and
27 suppliers to familiarize themselves with, and comply with, all applicable laws relating to
28 employment discrimination.
29
30 E. To the extent required by law, the Contractor shall meet all requirements of law relating
31 to the participation of minority, women, and disabled veteran business enterprise
32 contracting goals, and shall comply with Public Contract Code 10115 et seq. and all
33 applicable regulations. Contractor further agrees that, when required, Contractor shall
34 ensure compliance by all Subcontractors and shall complete all forms required by all
35 agencies exercising jurisdiction over the project.
36

37 2.55 APPRENTICES
38

- 39 A. Pursuant to Sections 1770-1780 of the Labor Code of the State of California, the
40 Director of the Department of Industrial Relations has determined the general prevailing
41 rate of wages in the locality for each craft or type of worker needed to execute the work.
42 Said wage rates pursuant to Section 1773.2 of the Labor Code are on file with the Clerk
43 to the Fresno County Board of Supervisors, and will be made available to any interested
44 person on request. A copy of this wage scale may also be obtained at the following
45 Web Site: www.dir.ca.gov/dlsr.
46
47 B. Pursuant to Section 1775 of the Labor Code of the State of California, nothing in this
48 Article shall prevent the employment of properly registered apprentices upon public
49 works. Every such apprentice shall be paid the standard wage paid to apprentices
50 under the regulations of the craft or trade at which he/she is employed, and shall be
employed only at the work of the craft or trade to which he/she is registered.

- 1
2 C. Only apprentices, as defined in Section 3077, who are in training under apprenticeship
3 standards and written apprentice agreements under Chapter 4 (commencing at Section
4 3070), Division 3, of the Labor Code, are eligible to be employed on public works. The
5 employment and training of each apprentice shall be in accordance with the provisions
6 of the apprenticeship standards and apprentice agreements under which he/she is
7 training.
8
9 D. Fresno County is committed to increasing the availability of employment and training
10 opportunities, with particular attention to the plight of those who are most economically
11 disadvantaged. In an effort to advance that purpose, the County will require that the
12 Contractor and each subcontractor employed on this Project shall use their best efforts
13 to ensure that thirty-three percent (33%) of apprentice hours, as determined by
14 California Labor Code Section 1777.5 for each contractor and subcontractor of any tier
15 on this Project, are performed by qualified participants in state approved apprenticeship
16 programs who also are current or former "Welfare-to-Work" participants in the
17 CalWORKs program. Provided, that nothing contained in this Paragraph D shall be
18 interpreted to relieve or in any way diminish the obligation of the Contractor and each
19 subcontractor to comply fully with all applicable apprenticeship laws in accordance with
20 the California Labor Code and the California Code of Regulations; and accordingly such
21 requirements as are contractually imposed by this Paragraph D shall be in addition to
22 such legally mandated requirements, and applicable only to the extent fully consistent
23 therewith.
24
25 E. Incentives whereby the Contractor or Subcontractor receives partial reimbursement for
26 the wages paid to apprentices who qualify may be available. The incentive program is
27 administered by the County of Fresno, Department of Social Services. For questions
28 regarding the incentive program, contact the Department of Social Services at (559)
29 230-4008.
30

31 2.56 PROVISIONS REQUIRED BY LAW DEEMED INSERTED
32

33 Every provision of law and clause required by law to be inserted in this contract shall be
34 deemed to be inserted, and this contract shall be read and enforced as though it were included,
35 and if through mistake or otherwise any provision is not inserted or is not correctly inserted,
36 upon application of either party the contract shall be amended to make the insertion or
37 correction.
38

39 2.57 DRUG FREE WORKPLACE CERTIFICATION
40

- 41 A. The Contractor shall comply with Government Code Section 8355 in matters relating to
42 providing a drug-free workplace.
43
44 B. The Contractor shall publish a statement notifying employees that unlawful
45 manufacture, distribution, dispensation, possession, or use of controlled substance is
46 prohibited and specifying actions to be taken against employees for violations, as
47 required by Government Code Section 8355(a).
48
49 C. The Contractor shall establish a Drug-Free Awareness Program as required by
50 Government Code 8355(a)(2), to inform employees about all of the following:

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1. The dangers of drug abuse in the workplace,
 2. The Contractor's policy for maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation and employee assistance programs,
 4. Penalties that may be imposed upon employees for drug abuse violations.

D. Provide as required by Government Code 8355(c), that everyone who provides work under the Agreement.

1. Will receive a copy of the company's drug-free policy statement, and
2. Will agree to abide by the terms of the Contractor's statement as a condition of employment on the contract.

2.58 BUILDING PERMIT AND OTHER PERMITS

The Building permit shall be obtained and paid for by the Owner. All other required permits are the responsibility of the Contractor to obtain. Fees for all other required permits shall be reimbursed to the Contractor at actual cost when the County is presented with a valid receipt.

2.59 CODES AND REGULATIONS

All work, materials and equipment shall be in full compliance with the California Building Code; California Plumbing Code; California Electrical Code; California Mechanical Code; California Fire Code; California Energy Code; as those codes may be amended from time to time; Cal/OSHA Safety Regulations; all Federal, State and Local laws, ordinances, regulations and Fresno County Charter provisions in effect and applicable in the performance of the work.

2.60 JOB ORDER CONTRACTING SOFTWARE AND LICENSE

A. Job Order Contracting Software:

The County of Fresno (County) selected The Gordian Group's (Gordian) Job Order Contracting (JOC) system for the execution of the JOC program. The Gordian JOC system includes Gordian's proprietary eGordian® and Gordian Cloud JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified in the general conditions and as may be requested by the County. The Contractor shall be required to execute Gordian's JOC System License and User Agreement, and shall pay a 1% JOC System License Fee on all work awarded to the JOC contractor by the County for access to the Gordian JOC System.

END OF SECTION