

DOCUMENT 00 0101

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**Design-Build  
PROJECT MANUAL**

**for**

**New Carport Solar Photovoltaic (PV) System**

**Kern Health Systems**

2900 Buck Owens Blvd  
Bakersfield, CA 93308

**Proposal Date: Monday, November 1, 2021**

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**DOCUMENT 00 0110**

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**NOTICE INVITING PROPOSALS**

**ARTICLE 1 INVITATION TO PROPOSE**

- 1.01 Notice Inviting Proposals:** Owner will receive sealed Proposals, made to the Attention Kern Health Systems, by mail or in-person attention Purchasing Department, located at 2900 Buck Owens Boulevard, Bakersfield, California, 93308, until **2:00 PM PST on Monday, November 1, 2021** for the following public work:

**KERN HEALTH SYSTEMS**

**NEW CARPORT SOLAR PHOTOVOLTAIC (PV) SYSTEM**

**2900 Buck Owens Blvd, Bakersfield, CA 93308**

- 1.02 Project Description:** The Owner is inviting design-build proposals from pre-qualified Proposers for the design and construction of its New Carport Solar Photovoltaic (PV) System Project. The selected Bidder shall provide an all-inclusive, minimum 674.5 kW<sub>DC</sub> (540 kW<sub>AC</sub>) production carport solar PV system and a 120 kW<sub>AC</sub>/248 kWh production Battery Energy Storage System (BESS) with a discharge duration of two hours that shall be net-metered with the existing PG&E (utility) electrical service. The project includes all necessary site development due diligence, permitting, utility interconnection, under-canopy lighting, web-based monitoring, operations and maintenance program, performance guarantee, related safety systems, rebates, incentives, and be aesthetically similar to the existing carport solar PV system. The design and installation of this PV system shall take into consideration the site's available solar resources, shading impacts of nearby (present or future) buildings or trees, structural and load constraints, available land space, parking lot lighting, utility interconnection requirements, applicable ordinances, codes, and regulations, contract budget constraints, and other relevant factors. The installation of carport sections will have to be conducted in phases and can be coordinated with the Facilities Superintendent since the parking lot has to continue to be used by employees throughout the construction. Contractor shall perform all appropriate assessments of the existing project site and building(s) to understand local conditions and their implications in terms of system design, construction, and operation. Owner is procuring this Project pursuant to California Government Code §§ 4217.10 - 4217.18.
- 1.03** Work time is estimated as 300 Days from the date when Contract Time commences to run. The Engineer's Opinion of Probable Costs is approximately \$ 2 Million.
- 1.04 Procurement of Proposing Documents:** Proposing Documents contain the full description of the Work. Proposers may examine a complete hard-copy set of the Proposal Documents at 2900 Bakersfield, California 93308. For on-line viewing and Project details, go to <https://kernfamilyhealthcare.com> under "About Us" then "Request for Proposal."
- Proposers may obtain Proposing Documents by downloading them from the company's website, <https://kernfamilyhealthcare.com> on or after **Friday, October 1, 2021**.
- 1.05 Instructions:** Proposers shall refer to Document 00 1119 (Request for Proposal) for required documents and items to be submitted as set forth in Paragraph 1.01 above.
- 1.06 Mandatory Pre-Proposal Site Visit and Meeting:** Owner will conduct a Mandatory Pre-Proposal Virtual Meeting at 1:00 PM on Thursday, October 14, 2021 at **KHS**. The Mandatory Pre-Proposal Virtual Meeting will last approximately **two** hours.
- 1.07 Proposal Preparation Cost:** Proposers are solely responsible for the cost of preparing their Proposals.

- 1.08 Reservation of Rights:** Owner specifically reserves the right, in its sole discretion, to reject any or all Proposals, to re-proposal, or to waive inconsequential defects in Proposing not involving time, price or quality of the work. Owner may reject any and all Proposals and waive any minor irregularities in the Proposals.

## **ARTICLE 2 LEGAL REQUIREMENTS**

- 2.01 Required Contractor's License(s):** California "A" and "B" contractor's licenses are required to proposal this contract. Joint ventures must secure a joint venture license prior to award of this Contract. Specialty work may require a specialty contractor's license "C-11, C-46, and C-51" held by Proposer or a listed subcontractor.

### **2.02 Required Contractor and Subcontractor Registration**

- A. Owner shall accept Proposals only from Proposers that (along with all Subcontractors listed in Document 00 4336, Subcontractor List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
- B. Subject to Labor Code Sections 1771.1(c) and (d), any Proposal not complying with paragraph 2.02A above shall be returned and not considered; provided that if Proposer is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Proposal provided that Proposer and all listed Subcontractors are registered at the time of Contract award.

### **2.03 Proposal Alternates:**

- A. Proposal alternates are identified as follows:
  - 1. **Alternate 1:** Proposers shall provide as Alternate 1 pricing for the design, procurement and installation of separate conduits for 4 level 3 EV charging stations from the carports to the electrical room in their proposals. The location of the EV charging stations shall be selected by Contractor and approved by Owner.
  - 2. **Alternate 2:** Proposers shall provide as Alternate 2 annual pricing for operations and maintenance services ("O&M") in their proposals. Should Owner elect to proceed with Alternate 2 on or before the decision point date, Owner's election shall include an annual escalation factor of 3% in the annual pricing of O&M services. O&M should include daily online monitoring, twice a year scheduled general checkup including racking, modules, AC, DC and DAS systems, twice a year module washing, and two free 48 hours dispatch to site upon request. Coordination with equipment manufacturer after the installation is also responsibility of the O&M provider. Proposers are allowed to introduce their affiliated O&M providers for this proposal process. Owner's Decision Point Date to decide whether or not to exercise Proposer's Alternate 2 shall be the Project's Substantial Completion date.
- B. The determination of the proposal price shall be based upon the base contract proposal only.

### **2.04 Non-Substitutable Materials, Products, Things, or Services**

- A. Non-substitutable items are identified as follows:
  - 1. Non-substitutable item 1: Tier 1 rated Modules
- B. Owner has made a finding that the material(s), product(s), thing(s), or service(s) identified above by specific brand or trade name are required for use in the Project and may not be substituted for "or equal" items, for the following purpose(s):
  - 1. In order to match other products in use on a particular Owner project either completed or in the course of completion.

- 2.05 Substitution of Securities:** Owner will permit the successful Proposer to substitute securities for any retention monies withheld to ensure performance of the contract, as set forth in Document

00 6290 Escrow Agreement For Security Deposits In Lieu Of Retention and incorporated herein in full by this reference, in accordance with Public Contract Code Section 22300.

**Prevailing Wage Laws:** The successful Proposer must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at on file at the Owner's Facilities Department and may be obtained from the California Department of Industrial Relations website: <https://www.dir.ca.gov/public-works/prevailing-wage.html>.

**2.06** and are deemed included in the Proposing Documents. Upon request, Owner will make available copies to any interested party. Also, the successful Proposer shall post the applicable prevailing wage rates at the Site.

**2.07 Prevailing Wage Monitoring:** This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Title \_\_\_\_\_]

[Kern Health Systems]

**END OF DOCUMENT**

**DOCUMENT 00 0116**

**ELECTRONIC DATA TRANSFER AGREEMENT**

This electronic data transfer agreement (“**EDTA**”) is dated **TBD** and is between [**Design-Build Entity**] located at [**Contractor's Address**] (“**Recipient**”) and Kern Health Systems, located at 2900 Buck Owens Boulevard, Bakersfield, C 93308 and is effective from the earlier of date of this EDTA or the date of first exchange of Electronic Data (as defined below) between [\_\_\_\_\_] and Recipient.

The parties agree as follows:

**1.0 ELECTRONIC DATA**

- 1.1 “**Electronic Data**” refers to all drawings, specifications, calculations, models, designs and other information stored in editable digital form and includes, without limitation, computer-aided design and building information modeling.

**2.0 PURPOSE**

- 2.1 All Electronic Data transferred from [\_\_\_\_\_] to Recipient is intended for use solely in connection with the planning, design, construction, maintenance and/or use of the following “**Project**.”

- **Kern Health Systems, New Carport Solar Photovoltaic (PV) System Project**

**3.0 RIGHTS**

- 3.1 Recipient acknowledges that the Electronic Data is provided for Recipient's convenience and may be used solely for the purpose stated above. No other right (including copyright) is conveyed by transfer of the Electronic Data. [\_\_\_\_\_] retains all common law and statutory rights (including copyrights) in the Electronic Data to the extent such rights are retainable by [\_\_\_\_\_].

**4.0 CONDITION OF ELECTRONIC DATA**

- 4.1 All Electronic Data is furnished in the format in which it is commonly stored and used by [\_\_\_\_\_]. Recipient understands that the transmission and/or conversion of Electronic Data from the system and format used by [\_\_\_\_\_] to an alternative system or format may result in the introduction of inconsistencies, anomalies and errors. Because of the possibility that Electronic Data may be easily altered, whether inadvertently or otherwise, [\_\_\_\_\_] reserves the right to retain the originals of all Electronic Data in electronic form and/or hard copy. Recipient acknowledges the hard copy and/or electronic originals of Electronic Data retained by [\_\_\_\_\_] govern in the event of any inconsistency between information delivered to Recipient and such originals retained by [\_\_\_\_\_]. [\_\_\_\_\_] has no obligation to inform Recipient about changes in the Electronic Data or to correct, update, enhance or maintain the Electronic Data for Recipient. RECIPIENT ACCEPTS THE ELECTRONIC DATA “AS-IS,” WITHOUT ANY EXPRESS OR IMPLIED WARRANTY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THE ELECTRONIC DATA IS COMPLETE, TECHNICALLY ACCURATE, FREE OF DEFECTS, AND/OR FIT FOR USE AS INTENDED BY RECIPIENT. Recipient warrants that it is not relying on any contrary representation from [\_\_\_\_\_].

**5.0 RELEASE**

- 5.1 Recipient acknowledges that any alteration or modification of the Electronic Data may result in adverse consequences that [\_\_\_\_\_] can neither predict nor control. Recipient waives and forever discharges [\_\_\_\_\_] (including its officers, directors, employees and related entities) from every kind of claim, demand and cause of action to recover every kind of damage, cost, expense, fee and other loss resulting from: (i) the transfer of Electronic Data by any means; (ii) the use, modification or misuse of the Electronic Data by or through Recipient (including, without limitation, creating derivative works based on the Electronic Data); (iii) the decline of accuracy or readability of the Electronic Data; (iv) the incompatibility of the Electronic Data with Recipient's software and/or hardware; and/or (vii) any error, discrepancy, inaccuracy, variation or other defect in the Electronic Data.

## 6.0 CONFIDENTIAL INFORMATION

- 6.1 The Electronic Data together with all information, discussions and communications related to the Electronic Data, the Project and this EDTA are confidential ("**Confidential Information**"). Recipient has a duty to maintain in strict confidence all Confidential Information and to not discuss, disclose or divulge Confidential Information to any third parties without written authorization from [\_\_\_\_\_] or Client. In the event disclosure of Confidential Information is required by law, Recipient shall provide [\_\_\_\_\_] with prior written notice of such event. Such notice shall be received in sufficient time to enable [\_\_\_\_\_] to seek a protective order or other protective arrangement permitted by law.

## 7.0 MISCELLANEOUS

- 7.1 Mutually Binding. The parties, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this EDTA and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this EDTA. Neither party may assign this EDTA without the written consent of the other.
- 7.2 Severability. If any provision or part of a provision of this EDTA is determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law or court order, such determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of this EDTA, which remain in full force and effect as if the unenforceable provision or part were deleted.
- 7.3 No Waiver. The failure of either party to insist, in any one or more instances, on the performance of any obligation or right under this EDTA does not constitute a waiver or relinquishment of such obligation or right with respect to future performance.
- 7.4 Notices and Representatives. Notices are sufficient if in writing and delivered by hand, email or by regular mail to the authorized representative of the other party; notices sent by regular mail will also be transmitted by facsimile or email at the time of mailing. Unless otherwise designated in writing, the signatories to this EDTA are the Parties' authorized representative for all purposes.
- 7.5 Counterparts. This EDTA may be executed simultaneously in two or more counterparts, each of which is deemed an original.

This Agreement is accepted for:

[\_\_\_\_\_]:

**RECIPIENT:**

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name and Title)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Telephone)  
\_\_\_\_\_  
(Facsimile)  
\_\_\_\_\_  
(Email)

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Printed Name and Title)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Telephone)  
\_\_\_\_\_  
(Facsimile)  
\_\_\_\_\_  
(Email)



DOCUMENT 00 1119

**REQUEST FOR PROPOSALS  
(Best Value)**

Kern Health Systems (**Owner or KHS**), will receive competitive sealed Proposals from Design-Build Entities as described herein (**Proposers**), for the following public works project:

**Summary**

This RFP contains a list of requirements for the development, installation, and servicing of a new carport solar PV system that KHS intends to purchase outright capable of producing 100% of KHS' current and reasonably expected future electricity consumption. KHS is soliciting responses from qualified Bidders to address the stated requirements of this RFP. Owner is procuring this Project pursuant to California Government Code §§ 4217.10 - 4217.18.

**Background Information**

KHS is a public agency formed under Section 14087.38 of the California Welfare and Institutions Code. KHS began full operations on September 1, 1996. KHS serves over 300,000 Medi-Cal participants by providing high-quality health care coverage to families throughout Kern County. Medi-Cal is a jointly funded, Federal-State health insurance program for certain low-income people. KHS operates out of its newly constructed office building located on a five-acre plot at 2900 Buck Owens Blvd, Bakersfield, CA 93308 (corner of Buck Owens Blvd and Sillect Ave.)

KHS is committed to being a good corporate citizen with the goal of producing 100% of its electricity consumption through clean, renewable solar electricity. KHS' office building was built with a 151.2kW-DC carport solar PV system capable of producing approximately 11% of electricity consumption and is seeking proposals to help get to producing 100% of electricity consumption. The proposals should include designing, permitting, installing, testing, commissioning, operation and maintenance, production guarantee of at least 95% of the kWh stated in the Bidders proposal, complete system and PV panels warranties, rebates/utilities incentives, etc. for a carport solar PV system capable of producing 674.5 kW-DC. Bidders should design the system they believe achieves the best balance of production (i.e., kWh production over 25 years) and cost-effectiveness (i.e., cost per unit output over 25 years as well as the expected value of the avoided utility purchases and available solar incentive payments made possible by the solar PV production).

- 1. RFP PROCESS SCHEDULE.** The RFP Process will be implemented in accordance with the following schedule.

<b>Date</b>	<b>Activity</b>
10/01/21	Issue RFP
10/14/21	Mandatory Pre-Proposal Conference
11/01/21	Proposals Due
11/02-11/05/21	Evaluate Proposals
11/8-11/10	Proposer Interviews/Presentations
11/17/21	Best and Final Proposal Due
12/03/21	Notice of Intent to Award
12/20/21	Owner Award of Design-Build Contract
12/21/21	Notice of Award
1/10/2022	Notice to Proceed

## 2. RECEIPT OF PROPOSALS.

- (a) Owner will receive sealed Proposals at 2900 Buck Owens Blvd, Bakersfield, CA 93308, on November 1<sup>st</sup> 2021. Proposals shall be due before **2:00 PM PST**, as determined by time and date stamp clock in the **Reception Area of Kern Health Systems' building**.
- (b) All Proposal envelopes will be time-stamped to reflect their submittal time. Owner will reject all Proposals received after the specified time, and will return such Proposals unopened to the Proposers.
- (c) If a Proposer is delivering its Proposal via U.S. Postal Service, additional time will need to be allotted, as delays could result in the rejection of a Proposal.
- (d) If a Proposer is delivering its Proposal via hand delivery, additional time will need to be allotted to account for building security procedures.
- (e) Proposers are notified that this Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.

## 3. CONTACT INFORMATION.

Owner  
Kern Health Systems  
2900 Buck Owens Boulevard  
Bakersfield, CA 93308  
Attn: Purchasing Department  
Tel: 661-664-5541  
Fax: 661-664-4381  
E-mail: rfp@khs-net.com

Owner's Representative  
Name: Anthony Roberts  
Address: 2900 Buck Owens Boulevard  
Address: Bakersfield, CA 93308  
Attn: Facilities Department  
Tel: 661 617-2562

- 4. **PROCUREMENT OF PROPOSAL DOCUMENTS.** Proposers may examine Proposal Documents at Owner's main office, address above. Copies can be obtained upon payment of a non-refundable fee of \$0.25 per black and white page. Owner will accept only checks payable to "**Kern Health Systems**;" no cash will be accepted. Proposal Documents need not be returned to Owner.
- 5. **DETERMINATION OF BEST VALUE.** If the Design-Build Contract is to be awarded, Owner will award the Design-Build Contract to the responsive Proposer whose proposal is determined in writing to provide the Best Value to the Owner. Owner shall provide its written decision and award within 90 calendar days of Proposal opening. Owner's written decision shall support the award of the Design-Build Contract by stating in detail the basis of the award. Owner will deliver Document 00 5100 (Notice of Award) as provided herein. If awarded, the qualifying Proposer with the most points will be awarded the Design-Build Contract as provided in this Document 00 1119 (Request for Proposals). In light of the Best Value selection criteria (see, e.g., Paragraphs 22 - 24, below), the Design-Build Contract may not necessarily be awarded to the lowest responsible Proposer.
- 6. **SCOPE AND NEEDS OF THE PROJECT.**

- (a) The Owner is inviting design-build proposals from pre-qualified Proposers for the design and construction of its New Carport Solar Photovoltaic (PV) System Project. The selected Bidder shall provide an all-inclusive, minimum 674.5 kW<sub>DC</sub> (540 kW<sub>AC</sub>) production carport solar PV system and a 120 kW<sub>AC</sub>/248 kWh production Battery Energy Storage System (BESS) with a discharge duration of two hours that shall be net-metered with the existing PG&E (utility) electrical service. The project includes all necessary site development due diligence, permitting, utility interconnection, under-canopy lighting, web-based monitoring, operations and maintenance program, performance guarantee, related safety systems, rebates, incentives, and be aesthetically similar to the existing carport solar PV system. The design and installation of this PV system shall take into consideration the site's available solar resources, shading impacts of nearby (present or future) buildings or trees, structural and load constraints, available land space, parking lot lighting, utility interconnection requirements, applicable ordinances, codes, and regulations, contract budget constraints, and other relevant factors. The installation of carport sections will have to be conducted in phases and

can be coordinated with the Facilities Superintendent since the parking lot has to continue to be used by employees throughout the construction. Contractor shall perform all appropriate assessments of the existing project site and building(s) to understand local conditions and their implications in terms of system design, construction, and operation. The Project is located at 2900 Buck Owens Blvd in Bakersfield, California.

- (b) Proposal shall include Alternates for (1) Conduit for EV Charging Stations; (2) O&M for PV and Battery System, as further described in the Notice Inviting Proposals (Documents (00 1113).
  - (c) Sections 01100 (Summary) and 01101 (Summary – Design Services), and Section 00 5255 (Bridging Documents, Appendix 1: Project Definition Report) set forth more completely the Scope of Work.
- 7. REQUIRED SECURITY.** Proposers must submit with their Proposals cash, a certified check or cashier's check from a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do surety business in the State of California, of not less than ten percent of the Proposer's Total Proposal Price, payable to "**Kern Health Systems.**" Owner will provide the required form of corporate surety bond, Document 00 4313 (Bond Accompanying Proposal). Owner will reject as non-responsive any Proposal submitted without the necessary Proposal security. Owner may elect to retain only the Proposal securities and Proposal bonds of the three apparent lowest responsive Proposers until the later of **90** Days after Proposal opening and execution of the Design-Build Contract and deposit of all necessary bonds and other items, at which time Owner shall return Proposal securities and Proposal bonds to the second and third (if applicable) lowest Proposer.
- 8. REQUIRED NON-COLLUSION AFFIDAVIT.** Proposers must submit with their Proposals Document 00 4519 (Non-Collusion Affidavit). Owner may reject as non-responsive any Proposal submitted without the Non-collusion Affidavit. No Proposer may make or file or be interested in more than one Proposal for the same supplies, services or both.
- 9. REQUIRED DESIGN-BUILD ENTITY CERTIFICATIONS.** Proposers must submit with their Proposals Document 00 4546 (Proposer Certifications). Owner will reject as non-responsive any Proposal submitted without the Proposer Certifications.
- 10. REQUIRED TECHNICAL DESIGN AND CONSTRUCTION EXPERTISE PROPOSAL.** Each Proposer shall submit a Technical Design and Construction Expertise Proposal, including a description of its technical expertise, construction expertise, experience on comparable projects, team qualifications, and qualifications of key subcontractors; and such other relevant information Proposer wishes to include to assist Owner in making its Best Value determination.
- 11. REQUIRED LIFE-CYCLE COST ANALYSIS.** Each Proposer shall submit a Life-Cycle cost Analysis with their Proposal. The analysis shall include the annual operations and maintenance costs and the replacement cost of systems/components whose service lives are less than 20 years. The analysis will take into account the following annual price increases and present value discounts: **[5.5%]** discount rate; **[15-20]** year life-cycle period; **[3%]** energy costs escalation rate; **[3%]** personnel/staff cost escalation rate; and **2%** maintenance cost escalation rate.
- 12. REQUIRED LIST OF REFERENCES.** Each Proposer shall submit a List of References briefly describing three (3) similar projects the Proposer has completed within the last five (5) years, including the total project cost and the contact information for the Client for which the work was performed.
- 13. REQUIRED DESCRIPTION OF COMMISSIONING, START-UP AND TECHNICAL SUPPORT SERVICES.** Each Proposer shall describe the commissioning, start-up, and technical support services the Proposer will include in its Scope of Work. Commissioning of the systems shall include the preparation of an Operations and Maintenance Manual and at least 8 hours of training time for Owner staff.
- 14. FEE PROPOSAL.** The Fee Proposal will be one of the criteria used in the determination of the Best Value Proposal. The Fee Proposal presented in the Proposal Form Section 00 4113 must include all costs to perform the Work specified in this Request for Proposal Document 00 0119 and in the Bridging Documents (Document 00 5255) including all direct and indirect costs for the design, equipment

procurement and construction services required to complete and start-up the Project in a timely manner and deliver it to the Owner complete and ready for service.

- 15. MANDATORY PRE-PROPOSAL CONFERENCE.** A mandatory virtual Pre-Proposal Conference will be conducted by KHA on October 14th, 2021 at 1:00 PM. Proposers are encouraged to transmit written questions to [RFP@khs-net.com](mailto:RFP@khs-net.com) in advance of the Conference. Owner will transmit to all Proposers any Addenda as Owner in its discretion considers necessary in response to questions submitted before or arising at the Pre-Proposal Conference. Proposers shall not rely upon oral statements; nor shall oral statements be binding or legally effective.
- 16. EXISTING CONDITIONS AND RELATED DATA.** Prior to submission of Proposal, Proposer must conduct a careful examination of Proposal Documents and understand the nature, extent, and location of Work to be performed. Refer to Document 00 7253 (General Conditions) on required pre-proposal investigations. Proposers may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work), as well as applicable environmental assessment information (if any) regarding the Project, by giving Owner reasonable advanced notice. Owner will make copies available for a fee. A Proposer must give Proposers days advanced notice if copies are desired. Refer to Document 00 3100 (Available Project Information) (if used) and Document 00 3132 (Geotechnical Data and Existing Conditions).
- 17. ADDENDA.** Proposers must direct to Owner all questions about the meaning or intent of Proposal Documents. Proposers must submit their questions in writing. Owner will issue by formal written Addenda interpretations or clarifications it considers necessary in response to such questions. If Owner deems advisable, Owner may also issue Addenda to modify the Proposal Documents. Owner may not respond to questions received less than seven days before the date for opening Proposals. Only questions answered by formal written Addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda shall be acknowledged in Proposal Form by number and shall be part of the Design-Build Contract Documents. Proposers may obtain a complete listing of Addenda from Owner.
- 18. SUBSTITUTIONS.** Proposers must base their Proposals on products and systems specified in the Design-Build Contract Documents or listed by name in Addenda. Owner will consider substitution requests only for "or equal items." Proposers wanting to use "or equal" item(s) may submit Document 00 6325 (Substitution Request Form) no later than 2:00 PM PST Monday, 10/18/2021. As a limitation on Proposer's privilege to request substitution of "or equal" items, Owner has found that certain items are designated as Owner standards and certain items are designated to match existing items in use on a particular public improvement either completed or in the course of completion or are available from one source. As to such items, Owner will not permit substitution. Such items are: Modules that are not Tier 1 rated.
- 19. WAGE RATES.** Proposers are required to comply with all applicable prevailing wage requirements and/or regulations. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Design-Build Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Owner's Facilities Department; may be obtained from the California Department of Industrial Relations website: <https://www.dir.ca.gov/public-works/prevailing-wage.html>; and are deemed included in the Proposing Documents.
- 20. PROPOSAL SUBMISSION.** Each Proposer shall submit its Proposal in one or more sealed envelopes, boxes or other containers, referred to herein as a "Package", containing the items listed in this Paragraph 21. The Packages shall be hand delivered to Owner at the address indicated in Paragraph 3, above.

PROPOSAL FOR Kern Health Systems' New Carport Solar Photovoltaic (PV) System  
Project, Package \_\_\_\_ of \_\_\_\_

- (a) Proposer's Packages must contain the following, fully completed (and where applicable, executed) documents:

- (i) Document 00 4113 (Proposal Form). The Proposal Form must be completed as indicated therein. Proposers must provide information for all items, including alternates (if any) and, Attachment A (Designer Hourly Rates), and any other required attachments.
- (ii) Proposal Security. Proposers must submit with their Proposals cash, a certified check or cashier's check from a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do surety business in the State of California, of not less than 10% of the Total Proposal Price, payable to "Kern Health Systems." Corporate surety bonds must be in form of Document 00 4313 (Bond Accompanying Proposal). Owner will reject as non-responsive any Proposal submitted without the necessary Proposal security. Owner may retain all Proposal securities and Proposal bonds until the later of **90** days after Proposal opening or execution of the Design-Build Contract and deposit of all necessary bonds and other items, at which time Owner shall return the Proposal securities and Proposal bonds of any non-defaulting Proposer.
- (iii) Document 00 4314 (Design-Build Entity Registration Form), signed and completed (and including any appendices) as indicated therein.
- (iv) Document 00 4336 (Subcontractors List), identifying all Subcontractors who will participate in the Design-Build Contract and who are known to be performing portions of the Work on Proposal day (**Designated Subcontractors**).
- (v) Document 00 4546 (Proposer Certifications), signed and completed as indicated therein, including (if applicable) Additional Prequalification Information and any appendices.
- (vi) Document 00 4519 (Non-Collusion Declaration), subscribed and sworn before a notary public. No Proposer may make or file or be interested in more than one Proposal for the same supplies, services or both.
- (vii) Letter from Surety. A letter from a surety duly licensed to do business in the State of California, having a financial rating from A. M. Best Company of A- or better, confirming that surety has agreed to provide Design-Build Entity with performance and payment bonds in accordance with the requirements set forth in the Design-Build Contract Documents 00 6113.13 (Construction Performance Bond) and 00 6113.16 (Construction Labor and Material Payment Bond), with minimum penal sums in the amounts set forth therein.
- (viii) Letter from Insurer. A letter from an insurance underwriter, having a financial rating identified in Document 00 7316 (Supplementary General Conditions – Insurance and Indemnification), confirming that the insurer will provide the coverages and amounts required for Design-Build Entity specified in the Design-Build Contract Documents.
- (ix) Technical Design and Construction Expertise Proposal, including all elements described or referenced in Paragraph 12, above.
- (x) Life-Cycle Cost Analysis for 20 years, including all elements described or referenced in Paragraph 11, above.
- (xi) References, including all elements identified or described in Paragraph 14, above.
- (xii) Commissioning, Start-Up and Technical Support Services, including all elements identified or described in Paragraph 12, above.
- (b) If any Proposer objects to or wishes to protest any Design-Build Entity selection procedure, process or requirement, or any other any aspect of the Design-Build Entity selection process, in order to be effective, the Proposer must submit documentation with its Proposal in accordance with Document 00 4546 (Proposer Certifications) Paragraph 11.
- (c) Proposers shall submit their Proposals and all deliverables in a manner that is structured to permit easy and definitive evaluation of each Factor identified in Paragraphs 22 -24, below.
- (d) Proposals shall be deemed to include any written responses of a Proposer to any questions or requests for information of Owner made as part of the Proposal evaluation process after submission of the Proposal.

## 21. PROPOSAL RECEIPT AND EVALUATION.

- (a) Owner shall time stamp Proposals on receipt. Packages will **not** be opened publicly, but may become public as described in Paragraph 32, below.

- (b) Owner will open the Packages, and perform a preliminary review to identify any patently defective Proposals. Owner action on defective Proposals may include refusal to evaluate such Proposals and elimination of Proposers submitting such Proposals from the evaluation process. Owner reserves all rights to take any action consistent with the requirements of this Document 00 1119 (Request for Proposals), including, without limitation, requesting additional information after receipt and opening of Proposals and waiving any inconsequential defects.
- (c) All Packages from Proposers who remain after the preliminary review shall be evaluated by one or more Owner **Review Panels**. The Review Panel(s) will review the Packages and award points as provided in this Document 00 1119.
- (d) Owner may reject any and all Proposals and waive any informalities or minor irregularities in the Proposals. Owner also reserves the right, in its discretion, to reject any or all Proposals and to issue a further request for proposals for the Project. Owner reserves the right to reject any or all nonconforming, non-responsive, unbalanced or conditional Proposals, request other proposals and to reject the Proposal of any Proposer if Owner believes that it would not be in the best interest of Project to make an award to that Proposer, whether because the Proposal is not responsive or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive informalities, inconsequential deviations or minor irregularities not involving price, time or changes in the Work, to the fullest extent permitted by law. For purposes of this paragraph, an "unbalanced Proposal" is one having nominal prices for some work items and enhanced prices for other work items.
- (e) The Owner may, at its sole discretion, decide to interview one or more of the responsible Proposers. The Proposer will be notified of the Owner's intention to interview as soon as possible after the proposals are received and at least ten (10) days prior to the interview date. The Proposer will be allowed to give a brief presentation of their Proposal and the answer questions and enter discussions with the interview panel. The intention will be to clarify ambiguities that may have arisen during the RFP process. The Proposer may be requested to prepare and submit a Best and Final Offer for their Preliminary Services and revise their cost estimate of the of the overall Project.
- (f) In evaluating Proposals, Owner will consider the information provided in the Proposer's Proposal, the Proposer's Statement of Qualifications (to the extent applicable), the Proposer's compliance with the prescribed requirements, and such other data as may be requested in this Document 00 1119 (Request for Proposals), the Proposer's interview/presentation (if applicable) or any other items provided prior to the Notice of Award.
- (g) Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the Proposer's responsibility, qualifications and financial ability, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Design-Build Contract Documents and Proposer's proposed price to Owner's satisfaction within the prescribed time. Owner shall have the right to communicate directly with Proposer's Surety regarding Proposer's bonds.
- (h) Owner will resolve discrepancies between (i) the multiplication of units of Work and unit prices in favor of the unit prices; (ii) the indicated sum of any column of figures and the correct sum thereof in favor of the correct sum; and (iii) written words and figures, or words and numerals, in favor of the words.
- (i) Owner will determine whether a Proposer is responsible in its sole discretion.

## 22. MINIMUM QUALIFICATIONS.

- (a) Each contractor and subcontractor participating with the Design-Build Entity and / or performing work for the Project must hold a valid California Contractor's License, in accordance with California Business and Professions Code, Sections 7000, et seq., and shall be registered with the California Department of Industrial Relations, in accordance with California Labor Code Section 1725.5. Subject to Labor Code Sections 1771.1(c) and (d), any Proposal not complying with these requirements shall be returned and not considered; provided that if Proposer is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Design-Build

Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Proposal provided that Proposer and all listed Subcontractors are registered at the time of Design-Build Contract award.

### 23. EVALUATION FACTORS

- (a) Owner will evaluate each Proposal satisfying all minimum requirements identified in paragraph 2, above, based upon the following factors, with the maximum number of points allocated to each factor as indicated in the table below. If Owner is to award the Design-Build Contract, it will be awarded to the qualifying Proposer whose Proposal receives the most points.

FACTORS		Maximum Points
1.	Estimated Overall Project Price	40
2.	Preliminary Services Fee	10
3.	Technical Design and Construction Expertise	10
4.	Life-Cycle Costs over 20 Years	10
5.	Commissioning, Start-Up and Technical Support Services	10
6.	References	10
7.	Quality of Proposal / Presentation and Questions	10
Total Maximum		100

- (a) The evaluation Factors are as follows:

**Factor 1 – Estimated Overall Project Price.** The Proposer whose Estimated Overall Project Price in Document 00 4113 (Proposal Form) and as described in Paragraph 16 (above) is the lowest, when compared with all other Proposers, will receive the maximum number of points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 2 – Preliminary Services Fee.** The Proposer whose Preliminary Services Fee in Document 00 4113 (Proposal Form) is the lowest, when compared with all other Proposers, will receive the maximum number of points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 3 - Technical Design and Construction Expertise.** The Proposer whose team described in its Technical Design and Construction Expertise Proposal (as described in Paragraph 12, above) is determined by Owner to be the most qualified, when compared with the other Proposers, will receive the maximum points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 4 - Life Cycle Costs Over 20 Years.** The Proposer whose Life-Cycle Cost Analysis of their proposed system, as determined pursuant to Paragraph 13, above, shows that the Project, if designed and constructed by Proposer, would likely have the least expensive life-cycle costs over 20 years, when compared with the other Proposers, will receive the maximum points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 5 - Commissioning, Start-Up and Technical Assistance Services.** The Proposer whose Commissioning, Start-Up and Technical Assistance Services offerings (as described in Paragraph 15, above) is determined by Owner to be the most comprehensive when compared with the other Proposers, will receive the maximum points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 6 - References.** The Proposer whose References (as described in Paragraph 12, above) are determined by Owner to be the most supportive, when compared with the other Proposers, will receive the maximum points indicated for this factor. Each other Proposer will receive fewer points, as determined by Owner.

**Factor 7 - Quality of Proposal / Presentation and Questions.** The Proposer whose Proposal is determined by Owner to be the most thorough, comprehensive, and likely to achieve the highest quality project, when compared with the Proposals by other

Proposers, will receive the maximum number of points for this factor. All other Proposers will receive fewer points, as determined by Owner.

- (b) **Tie Breaker.** In the event of a tie in the number of points awarded to Proposers, the Proposal with the highest number of points for factor [1] when compared to the Projects of all other tied Proposers, shall be considered to provide the best value to the Owner.

**24. NOTICE OF INTENT TO AWARD; PROPOSAL PROTEST.** If Owner issues Document 00 5050 (Notice of Intent to Award), Owner will use reasonable efforts to deliver by facsimile a copy of Document 00 5050 to all Proposers who submitted Proposals no later than the Business Day after issuance, although any delay or failure to do so will not extend the Proposal protest deadline described above. Any Proposal protest must be submitted in writing to the Department of Procurement 2900 Buck Owens Blvd, Bakersfield, CA 93308, before 5:00 p.m., (as determined by **Department of Procurement**) by the seventh (7<sup>th</sup>) calendar day following posting of Document 00 5050 (Notice of Intent to Award). Document 00 5050 will be posted on the company website, [www.kernfamilyhealthcare.com](http://www.kernfamilyhealthcare.com). Owner will use reasonable efforts to deliver by facsimile or email a copy of Document 00 5050 to all Proposers who submitted Proposals no later than one (1) Business Day after issuance, although any delay or failure to do so will not extend the Proposal protest deadline described above.

- (a) The initial protest document must contain a complete statement of the basis for the protest.
- (b) The protest must refer to the specific portion of the document that forms the basis for the protest.
- (c) The protest must include the name, address and telephone number of the person representing the protesting party.
- (d) Only Proposers who Owner otherwise determines are responsive and responsible are eligible to protest a Proposal; protests from any other Proposal will not be considered. In order to determine whether a protesting Proposer is responsive and responsible, Owner may evaluate all information contained in any protesting Proposer's Proposal, and conduct the same investigation and evaluation as Owner is entitled to take regarding the Proposer initially determined to provide the best value to the Owner.
- (e) The party filing the protest must transmit a copy of the initial protest document and any attached documentation concurrently to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Proposers that appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
- (f) The procedure and time limits set forth in this Paragraph are mandatory and are the Proposer's sole and exclusive remedy in the event of Proposal protest. Proposer's failure to immediately comply with these procedures shall constitute a waiver of any right to further pursue the Proposal protest, including filing a Government Code Claim or instituting legal proceedings. A Proposer may not rely on a protest submitted by another Proposer, but must timely pursue its own protest.

**25. ANNOUNCEMENT OF AWARD.** Upon completion of Owner's evaluation of all Proposals, including without limitation all required action by the Owner, Owner shall rank at least the top three responsive Proposers based on the evaluation factors contained in this Document 00 1119, from most advantageous to least advantageous to the Owner. Owner shall publicly announce the award of the Design-Build Contract for the Project by issuing Document 00 5100 (Notice of Award), and by posting Document 00 5100 in Owner's offices and by mailing it to all parties who requested that the Owner provide such notice. The Notice of Award shall include the all of following: (i) The name of the Proposer to whom the award was made; (ii) a written decision supporting the contract award which states the basis of the award; (iii) the Owner's second and third ranked design-build entities; and (iv) any other item the Owner may elect.



## 26. POST-NOTICE OF AWARD REQUIREMENTS.

- (a) After Notice of Award, the successful Design-Build Entity must submit the documents listed in items below, no later than 5:00 p.m. on the date that is **[five]** calendar days after issuance of Notice of Award. Execution of the Design-Build Contract is dependent upon approval of these documents:
- (i) Document 00 5253 (Agreement): To be executed by the successful Design-Build Entity. Submit four copies, each bearing all required original signatures.
  - (ii) Document 00 6113.13 (Construction Performance Bond): To be executed by successful Design-Build Entity and surety, in the amount set forth in Document 00 6113.13 (Construction Performance Bond). Submit one copy, each bearing all required original signatures.
  - (iii) Document 00 6113.16 (Construction Labor and Material Payment Bond): To be executed by successful Design-Build Entity and surety, in the amount set forth in Document 00 6113.16 (Construction Payment Bond). Submit one copy, each bearing all required original signatures.
  - (iv) Document 00 6536 (Guaranty): To be executed by successful Design-Build Entity, in the form set forth in Document 00 6536 (Guaranty). Submit four copies, each bearing all required original signatures.
  - (v) Insurance forms, documents, certificates and endorsements required by Document 00 7316 (Insurance). Submit one (1) copy, each bearing all required original signatures.
  - (vi) Any other document specified in Document 00 5100 (Notice of Award).
- (b) Failure to Execute and Deliver Documents. If the Design-Build Entity to whom the Design-Build Contract is awarded fails or neglects to execute and deliver all required Design-Build Contract Documents including bonds, insurance certificates, and other documents, as required in paragraph 26(a) above, Owner may, in its sole discretion, deposit the Design-Build Entity's surety bond, cashier's check or certified check for collection, and retain the proceeds as liquidated damages for Design-Build Entity's failure to enter into the Design-Build Contract Documents. Design-Build Entity agrees that calculating the damages Owner may suffer as a result of the Design-Build Entity's failure to execute and deliver all required Design-Build Contract Documents and other required documents would be extremely difficult and impractical and that the amount of the Design-Build Entity's required Proposal security shall be the agreed and presumed amount of Owner's damages.

**27. PAYMENT BOND.** If the Project involves an expenditure in excess of \$25,000, the successful Proposer must file a payment bond with and approved by Owner prior to entering upon the performance of the Work, in accordance with Civil Code Section 9550, *et seq.*

**28. WITHDRAWAL OF PROPOSALS.** Proposers may withdraw their Proposals at any time prior to the Proposal opening time fixed in this Document 00 1119, only by written request for the withdrawal of Proposal filed with Owner. Proposer or its duly authorized representative shall execute request to withdraw Proposal.

**29. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS.** Owner will reject a Proposal from a Proposer who is ineligible to bid or work on, or be awarded, a public works project pursuant to Labor Code Section 1777.1 or 1777.7. Proposers and the Design-Build Entity who is awarded the Project Design-Build Contract shall not utilize, or allow work by, any subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Labor Code Section 1777.1 or 1777.7. (See Public Design-Build Contract Code Section 6109.) The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors on the Internet at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html).

**30. EQUAL EMPLOYMENT OPPORTUNITY.** Design-Build Entity shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

**31. OWNERSHIP OF DOCUMENTS.** All materials, including copyrights for original design work, submitted by Design-Build Entity in response to this Request for Proposals shall become the property of the Owner.

**32. PUBLIC RECORDS ACT REQUESTS.**

- (a) Per the Public Records Act, Owner will make available to the public Proposer's Proposals (to the extent opened), all correspondence and written questions submitted during the Proposal period, all Proposal submissions opened in accordance with the procedures of this Document 00 1119, and all subsequent Proposal evaluation information. Any submissions not opened will remain sealed and eventually be returned to the submitter. Except as otherwise required by law, Owner will not disclose trade secrets or proprietary financial information submitted that has been designated confidential by Proposer. Any such trade secrets or proprietary financial information that a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.
- (b) Upon a request for records regarding a Proposal, Owner will notify Proposer involved within ten Days from receipt of the request of a specific time when the records will be made available for inspection. If the Proposer timely identifies any "proprietary, trade secret, or confidential commercial or financial" information that Proposer determines is not subject to public disclosure, and requests Owner to refuse to comply with the records request, Proposer shall take all appropriate legal action and defend Owner's refusal to produce the information in all forums; otherwise, Owner will make such information available to the extent required by applicable law, without restriction.
- (c) Information disclosed in the Proposal and the attendant submissions are the property of Owner unless Proposer makes specific reference to data that is considered proprietary. Subject to the requirements in the Public Records Act, reasonable efforts will be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

**33. COSTS OF PREPARING PROPOSALS.** Proposers are solely responsible for the cost of preparing their Proposals.

**34. CONFORMED PROJECT MANUAL.** Following Award of Design-Build Contract, Owner may prepare a conformed Project Manual reflecting Addenda issued during bidding, which will, failing objection, constitute the approved Project Manual.

**35. DEFINITIONS.** Except as set forth herein, all abbreviations and definition of terms used in these Instructions are set forth in Document 00 7253 (General Conditions) and Specifications Section 01 4200 (References and Definitions).

**END OF DOCUMENT**

**DOCUMENT 00 2100**

**ACCESS, INDEMNITY AND RELEASE AGREEMENT**  
(If Invasive Testing is Allowed)

Dated \_\_\_\_\_

POTENTIAL DESIGN-BUILD ENTITY: \_\_\_\_\_

OWNER: KERN HEALTH SYSTEMS

SITE: 2900 Buck Owens Boulevard, Bakersfield, CA 93308

PROJECT: New Carport Solar Photovoltaic (PV) System Project

In consideration of the above-referenced Owner's permitting the undersigned potential Design-Build Entity (**Design-Build Entity**) to have access to, and to conduct investigations, tests and/or inspections on the Site (**access**), and effective upon such access, Design-Build Entity hereby agrees as follows:

- 1.01** To the greatest extent permitted by law including, without limitation, Civil Code Section 2782, Design-Build Entity hereby releases, and shall defend, indemnify, and hold harmless Owner, and its officers, employees, consultants, representatives, and agents, and all other parties having any other interest in the Site, against any claim or liability, including attorney's fees, arising from or relating to any Site-related access, investigation, test, inspection and/or other activity conducted by Design-Build Entity or any of Design-Build Entity's officers, employees, consultants, representatives, and/or agents, regardless of whether claim or liability is caused in part by the negligence of Owner or by any released and indemnified party.
- 1.02** Design-Build Entity hereby waives the provisions of Civil Code Section 1542, which provides as follows:
- A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
- 1.03** Design-Build Entity shall repair any damage to the Site or adjacent property resulting from activities authorized hereunder, and comply with and be subject to all other requirements and obligations described or referenced in Document 00 3132 (Geotechnical Data and Existing Conditions).
- 1.04** Attached hereto (or to be delivered separately before Design-Build Entity's visit to the Site) is a certificate for general liability insurance satisfying Contract Documents requirements.

- 1.05** Although this Access, Indemnity and Release Agreement is not a Contract Document (see Document 00 5253 [Agreement]), it shall be fully effective and binding regardless of whether Design-Build Entity submits a Proposal for the subject Project, is awarded a contract for the Project, or otherwise.

DESIGN-BUILD ENTITY: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title (If Corporation: Chairman, President or  
Vice President)

Its: \_\_\_\_\_  
Title (If Corporation: Secretary, Assistant  
Secretary, Chief Financial Officer or  
Assistant Treasurer)

**END OF DOCUMENT**

DOCUMENT 00 3100

**AVAILABLE PROJECT INFORMATION**

**ARTICLE 1 – INFORMATION PROVIDED TO PROPOSERS PRIOR TO PROPOSAL**

- 1.01** The following files were made available to all prospective Proposers prior to the submission of Proposals for the Project Work.
- 1.02** The following drawings, plans, specifications, data, reports and information have been made available solely for information purposes only and are not part of the Contract Documents.
  - A.** Project Definition Report.

**END OF DOCUMENT**

**DOCUMENT 00 3132**

**GEOTECHNICAL DATA AND EXISTING CONDITIONS**

**ARTICLE 1 REPORTS AND INFORMATION ON EXISTING CONDITIONS**

**1.01 Inspection of Reports:**

- A. Owner, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, information regarding Underground Facilities, and hazardous material surveys or information (collectively, **Existing Conditions Data**.)
- B. Proposers may inspect Geotechnical and Existing Conditions Data. These documents are listed in Section 01 1100 (Summary) and are available for review at the address identified therein. Copies may be obtained for the cost of reproduction and handling upon Proposer's payment for the costs.
- C. Existing Conditions Data is for information only and does not describe labor, materials or equipment furnished by Design-Build Entity, but rather, information regarding conditions of the work. Such Existing Conditions Data is not a Contract Document.

**ARTICLE 2 USE OF EXISTING CONDITIONS DATA**

**2.01 Above-Ground Existing Conditions:**

- A. Owner makes no warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Proposer by the performance of its own independent investigation that Proposer must perform prior to proposing and Proposer must not rely on the information supplied by Owner regarding existing conditions.
- B. Proposer represents and agrees that in submitting its Proposal, it is not relying on any information regarding above-ground existing conditions supplied by Owner.

**2.02 Underground Facilities:**

- A. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to Owner by others (e.g., the builders of such Underground Facilities or others).
- B. Owner assumes responsibility for only the general accuracy, completeness or thoroughness of information regarding Underground Facilities that are owned by Owner. This express assumption of responsibility applies only if Proposer has conducted the independent investigation required of it under Document 00 7253 (General Conditions) and discrepancies were not apparent. Proposer is solely responsible for any interpretation or conclusion drawn from this information. Owner is not responsible for information regarding Underground Facilities that are owned by others.

**2.03 Hazardous Materials Surveys:**

- A. Proposers may rely on this data and information for general accuracy regarding the locations of potentially hazardous materials subject of the Work. Owner does not warrant and makes no representation regarding the completeness or thoroughness of any data or information regarding existing conditions or hazardous materials including, without limitation, quantities, characteristics, volumes, or associated structural features. Proposer represents and agrees that in submitting a Proposal it is not relying on any such data, information or deductions.
- B. Data and information regarding the locations of hazardous materials are not part of Contract Documents.

**2.04 Geotechnical Data:**

- A. Proposer may rely upon the general accuracy of the “technical data” contained in the geotechnical reports and drawings identified above, but only insofar as it relates to subsurface conditions, provided Proposer has conducted the independent investigation required of it and discrepancies were not apparent.
- B. The term “**technical data**” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration. The term “technical data” does not include, and Proposer may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures. The term “technical data” shall not include the location of Underground Facilities.
- C. Proposer may not rely on the completeness of reports and drawings for the purposes of proposing or construction. Proposer is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information contained in supplied geotechnical data.

**2.05 Except as expressly set forth in this Document 00 3132,**

- A. Owner does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical and existing conditions data.
- B. Proposer represents and agrees that in submitting its Proposal, it is not relying on any geotechnical and existing conditions data supplied by Owner, except as specifically set forth herein.

**ARTICLE 3 INVESTIGATIONS**

**3.01 Required Investigations:**

- A. Before submitting a Proposal, each Proposer shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Proposer and safety precautions and programs incident thereto or which Proposer deems necessary to determine its Proposal for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- B. Proposers shall advise Owner in writing during the Proposal period of any questions, suppositions, inferences or deductions Proposers may have for Owner's review and response.
- C. Owner has provided time in the period prior to proposing for Proposer to perform these investigations.

**3.02 Access to Site for Investigations:**

- A. During the Pre-Proposal Site Visit(s), Owner will provide each Proposer access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Proposer deems necessary for submission of a Proposal, provided that invasive testing will be permitted only to the extent provided that each Proposer seeking access to conduct such investigations provides Document 00 2100 (Access, Indemnity and Release Agreement). Proposers must fill all holes and clean up and restore the Site to its former conditions upon completion of such explorations, investigations, tests, and studies. Such investigations may be performed only under the provisions of Document 00 2113 (Instructions to Proposers) and Document 00 7253 (General Conditions) including, without limitation, proof of insurance and obligation to indemnify against claims arising from such investigation work. Each Proposer shall supply all equipment required to perform any investigations as each Proposer deems necessary. Owner has the right to limit the number of pieces of machinery operating at any one time due to safety concerns or in order to protect or maintain the Site from potential damage or interruption to general operational activities.

**END OF DOCUMENT**



**DOCUMENT 00 4113**  
**PROPOSAL FORM**  
**TO KERN HEALTH SYSTEMS**  
**THIS PROPOSAL IS SUBMITTED BY:**

---

(Firm/Company Name)

**New Carport Solar Photovoltaic (PV) System Project** at Kern Health Systems, 2900 Buck Owens Boulevard, in Bakersfield, California.

1. The undersigned Proposer proposes and agrees, if this Proposal is accepted, to enter into an agreement with **KERN HEALTH SYSTEMS** in the form included in the Contract Documents, Document 00 5253 (Agreement), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Proposal and in accordance with all other terms and conditions of the Contract Documents. This Proposal consists of this Document 00 4113 (Proposal Form) and the following documents (add as appropriate):

Date	Description
	Project Definition Report

2. This Proposal consists of this Proposal Form Document 00 4113 and documents required as identified in Document 00 1119 (Request for Proposal), submitted herewith.
3. Proposer accepts all of the terms and conditions of the Contract Documents, Document 00 1113 (Notice Inviting Proposals), and Document 00 1119 (Request for Proposals) including, without limitation, those dealing with the disposition of Proposal Security. This Proposal will remain subject to acceptance for **90** Days after the day of Proposal opening, unless there is a protest, then **120** days after the day of Proposal opening. A Proposal may not be withdrawn before these times without forfeiting the Proposal Security, except as authorized under Public Contract Code Section 5100, et. seq.
4. In submitting this Proposal, Proposer represents that Proposer has examined all of the Contract Documents, performed all necessary Pre-Proposal investigations, attended the mandatory Pre-Proposal Virtual Meeting, if any, received the Pre-Proposal Meeting minutes (if any), and received the following Addenda:

Addendum Number	Addendum Date	Signature of Proposer

5. Proposer has given Owner prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Bridging Documents or other Proposal Documents, and/or as-built drawings, if applicable, and Proposer accepts the actual conditions and the written resolution thereof through Owner issued Addenda.
6. Proposer acknowledges (i) the evaluation criteria and process the Owner will utilize to determine the number of points that Proposer may receive on account of this Proposal; and (ii) the exact Scope of Work of Contract Documents and associated Contract Sum. Proposer acknowledges further that Proposer's ultimate Scope of Work and associated Contract Sum (if it is awarded the Contract) may be different than any amount or specific combination of Work indicated in this Proposal.
7. Based on the foregoing, Proposer proposes and agrees to fully perform the Work described in Section 01 1100 (Summary) and 00 1101 (Summary – Design Services) and Section 00 5255 (Bridging Documents) within the time stated and in strict accordance with the Contract Documents for the following sums of money listed in the following below::

**a. Fee for Preliminary Services:**

\$ \_\_\_\_\_  
\_\_\_\_\_ dollars.

**b. The not to exceed cost for the overall Project including the Preliminary Services will be. (Should the project scope change, the parties shall prepare a mutually agreeable addendum):**

\$ \_\_\_\_\_  
\_\_\_\_\_ dollars.

8. SCHEDULE OF PROPOSAL PRICES

All Proposal items, including lump sums, unit prices and alternates (if any), must be filled in completely. Proposal items are described in Section 01 1100 (Summary) and 01 1101 (Summary – Design Services). Quote in figures only, unless words are specifically requested.

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	ITEM TOTAL
1	Preliminary Services	1	Lump Sum	\$	\$
2				\$	\$
3				\$	\$
4				\$	\$
5				\$	\$
6				\$	\$
7	All Work of Contract Documents other than Work separately provided for under other Proposal items			\$	\$
Total				TOTAL PROPOSAL PRICE	\$

Total Proposal Price:

---

(Indicate Proposal Price in Words)

ALTERNATE NO.	DESCRIPTION	ALTERNATE PRICE (\$)
1	Conduit for EV Charging Stations	\$
2	Annual Operations and Maintenance Services for	\$

	<b>Photovoltaic System and Battery System</b>	
--	---	--

9. Currently known Subcontractors for work are listed on Document 00 4336 (Subcontractors List), submitted herewith.
10. Proposer has included with its Proposal the following in accordance with Document 00 5255 Bridging Documents): **insert applicable information, or "None"**
  - a. "Proposed Changes to Bridging Documents" regarding \_\_\_\_\_.
  - b. "Proposed Design-Build Entity Exclusions" regarding \_\_\_\_\_.
11. Attached as Attachment A are hourly rates for Contract Modification Work performed by Designer architects and engineers. Design-Build Entity represents that those rates do not exceed, and acknowledges and agrees that they may not exceed, the applicable personnel's regular rates for similar work and services on other California public entity projects. These rates shall remain fixed throughout the entire Project.
12. The undersigned Proposer understands that Owner reserves the right to reject this Proposal.
13. If written notice of the acceptance of this Proposal, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Proposer within the time described in Paragraph 3 of this Document 00 4113 or at any other time thereafter before it is withdrawn, the undersigned Proposer will execute and deliver the documents required by Document 00 1119 (Request for Proposals) within the times specified therein.
14. Notice of Award or request for additional information may be addressed to the undersigned Proposer at the address set forth below.
15. The undersigned Proposer herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00 1119 (Request for Proposals), in the amount of 10% of the Total Proposal Price and made payable to the **KERN HEALTH SYSTEMS**.
16. The undersigned Proposer agrees to commence Work under the Contract Documents on the date established in Document 00 7253 (General Conditions) and to complete all Work within the time specified in Document 00 5253 (Agreement).
17. The undersigned Proposer agrees that, in accordance with Document 00 7253 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00 5253 (Agreement) shall be as set forth in Document 00 5253.

18. The names of all persons interested in the foregoing Proposal as principals are:

**IMPORTANT NOTICE:** If Proposer or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-partners composing the firm; if Proposer or other interested person is an individual, give first and last names in full.

**NAME OF PROPOSER:**

\_\_\_\_\_

licensed in accordance with an act for the registration of contractors, and with license number:

\_\_\_\_\_ Expiration: \_\_\_\_\_.

_____	_____
(Place of Incorporation, if Applicable)	(Principal)
_____	_____
	(Principal)
_____	_____
	(Principal)

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

\_\_\_\_\_  
(Signature of Proposer)

**NOTE:** If Proposer is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Proposer is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Design-Build Entity's Representative(s): \_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)

Officers Authorized to Sign Contracts

---

(Name/Title)

---

(Name/Title)

---

(Name/Title)

Telephone Number(s):

---

(Area Code) (Number)

---

(Area Code) (Number)

Fax Number(s):

---

(Area Code) (Number)

---

(Area Code) (Number)

Date of Proposal:

**END OF DOCUMENT**

Attachment A

**HOURLY RATES FOR ARCHITECTS AND ENGINEERS FOR CONTRACT MODIFICATIONS**

***[Proposer to provide]***

**DOCUMENT 00 4313**

**BOND ACCOMPANYING PROPOSAL**

KNOW ALL BY THESE PRESENTS:

That the undersigned

\_\_\_\_\_  
(Name of Design-Build Entity)

as Principal and the undersigned as Surety are held and firmly bound unto Owner, **KERN HEALTH SYSTEMS, an independent public agency of the state of California**, as obligee, in the penal sum of **(Dollar Amount In Words)**

Dollars (\$\_\_\_\_\_) lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal's base Proposal, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal is submitting a Proposal for Owner's **New Carport Solar Photovoltaic (PV) System Project** at 2900 Buck Owens Boulevard, Bakersfield, A 93308.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Proposal submitted by the said Principal be accepted and the Contract be awarded to said Principal and said Principal shall within the required periods enter into the Contract so awarded and provide the required Construction Performance Bond, Construction Labor and Material Payment Bond, insurance certificates, Guaranty, and all other endorsements, forms, and documents required under Document 00 1119 (Request for Proposal), then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Month)

(Corporate Seal)

By \_\_\_\_\_  
Principal

By \_\_\_\_\_  
Surety

(Corporate Seal)

By \_\_\_\_\_  
Attorney in Fact

**END OF DOCUMENT**



**DOCUMENT 00 4314**

**DESIGN-BUILD ENTITY REGISTRATION FORM**

**INDEPENDENT CONTRACTOR REGISTRATION**

Contractor's License # \_\_\_\_\_

Date: \_\_\_\_\_ Fed Tax I.D. # \_\_\_\_\_

Full Corporate Name of Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

\_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name of Principal Contact: \_\_\_\_\_

Type of Business:                      \_\_\_\_\_ Sole Proprietor                      \_\_\_\_\_ Partnership  
   \_\_\_\_\_ Non-Profit 501(c)(3)                      \_\_\_\_\_ Corporation  
   \_\_\_\_\_ other (please explain: \_\_\_\_\_)

**INSURANCE** (Complete all items listed below that are applicable and/or are required by Document 00 7316, Supplementary Conditions – Insurance and Indemnification)

**Workers' Compensation:**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

**General Liability:**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Automobile Liability:**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**All-Risk Course of Construction:**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Professional Liability:**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Pollution Legal Liability Insurance (if applicable):**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Excess Liability Insurance (if applicable):**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Other Liability Insurance (if applicable):**

Carrier: \_\_\_\_\_

Address: \_\_\_\_\_

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**PROPOSER CERTIFIES, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IS CURRENT AND ACCURATE AND AUTHORIZES OWNER, AND ITS AGENTS AND REPRESENTATIVES TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.**

PROPOSER: \_\_\_\_\_  
(COMPANY NAME)

By: \_\_\_\_\_  
NAME TITLE

By: \_\_\_\_\_  
SIGNATURE DATE

### SAFETY AND EXPERIENCE RECORD

The following statements as to the Proposer's safety experience are submitted with the Bid, as part thereof, and the Proposer guarantees the truthfulness and accuracy of all information.

1. List Proposer's interstate Experience Modification Rate for the last three years.

[20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_

If Proposer was not eligible to obtain a formal rating from the Workers Compensation Insurance Rating Bureau for any of the years listed above, Proposer must submit written information from its workers compensation insurance company that establishes what Proposer's equivalent EMR would be.

2. Total Recordable Incident Rates (RIR)

What were Proposer's Total RIR for each of the last three years?

[20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_

Average of last three years: \_\_\_\_\_ (no rounding)

3. Total Lost Time Incident Rates (LTIR)

What were Proposer's Total LTIR for each of the last three years?

[20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_ [20\_\_] \_\_\_\_

Average of last three years: \_\_\_\_\_ (no rounding)

4. Use Proposer's last year's Cal/OSHA 201 log to fill in the following number of injuries and illnesses:

- a. Number of lost workday cases \_\_\_\_\_
- b. Number of medical treatment cases \_\_\_\_\_
- c. Number of fatalities \_\_\_\_\_

5. Employee hours worked last year \_\_\_\_\_

6. State the name of Proposer's safety engineer/manager:

Attach a resume or outline of this individual's safety and health qualifications and experience.

**I CERTIFY, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IS CURRENT AND ACCURATE AND I AUTHORIZE OWNER, AND ITS AGENTS AND REPRESENTATIVES TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.**

**PROPOSER:**

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Title

Date \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 4336**  
**SUBCONTRACTORS LIST**

<b>Name of Subcontractor and Location of Place of Business</b>	<b>Description of Work</b>	<b>Subcontractor's License No.</b>	<b>DIR Registration Number</b>

(Bidder to attach additional sheets if necessary)

**END OF DOCUMENT**

**DOCUMENT 00 4519**

**NON-COLLUSION DECLARATION**

PUBLIC CONTRACT CODE SECTION 7106

**NON-COLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH  
PROPOSAL**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_[date], at \_\_\_\_\_[city], \_\_\_\_\_[state].

PROPOSER'S SIGNATURE: \_\_\_\_\_

NAME/TITLE OF SIGNATORY: \_\_\_\_\_

LEGAL NAME OF PROPOSER: \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 4546**

**PROPOSER CERTIFICATIONS**

TO BE EXECUTED BY ALL PROPOSERS AND SUBMITTED WITH PROPOSAL

The undersigned Proposer certifies to Owner as set forth in sections 1 through 9, below.

**1. STATEMENT OF CONVICTIONS**

By my signature hereunder, I hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Proposer within the past two years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.

**2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE**

By my signature hereunder, as the Design-Build Entity, I certify that I am aware of the Labor Code Section 3700, which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

**3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS**

By my signature hereunder, as the Design-Build Entity, I certify that I am aware of Labor Code Section 1773, which requires the payment of prevailing wage on public projects. Design-Build Entity and any subcontractors under the Design-Build Entity shall comply with Labor Code Section 1776 regarding wage records, and with Labor Code Section 1777.5 regarding the employment and training of apprentices. Design-Build Entity is responsible to ensure compliance by any and all subcontractors performing work under this Contract.

**4. CERTIFICATION OF COMPLIANCE WITH PUBLIC WORKS CHAPTER OF LABOR CODE**

By my signature hereunder, as the Design-Build Entity, I certify that I am aware of Labor Code Sections 1777.1 and 1777.7 Code, and Design-Build Entity and Subcontractors are eligible to bid and work on public works projects.

**5. CERTIFICATION OF NON-DISCRIMINATION**

By my signature hereunder, as the Design-Build Entity, I certify that there will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, age or national origin; that all federal, state, and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principal of equal opportunity in employment will be demonstrated positively and aggressively.

**6. CERTIFICATION OF NON-DISQUALIFICATION**

By my signature hereunder, as the Design-Build Entity, I swear, under penalty of perjury, that the below indicated Proposer, any officer of Proposer, or any employee of Proposer who has a proprietary interest in such Proposer, has never been disqualified, removed, or otherwise prevented from bidding on, or completing a Federal, State, or local government project because of a violation of law or safety regulation, except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If a statement of "Previous Disqualifications" is attached, please explain the circumstances.



**7. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT**

By my signature hereunder, as the Design-Build Entity, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Proposal, the Contract will include funds sufficient to allow the Design-Build Entity to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that Owner will be relying on this certification if it awards the Contract to the undersigned.

**8. CERTIFICATION REGARDING DIR CONTRACTOR / SUBCONTRACTOR REGISTRATION**

By my signature hereunder, as the Design-Build Entity, I certify that Design-Build Entity, and all Subcontractors listed on Document 00 4336 (Subcontractors List) are the subject of current and active contractor registrations pursuant to Division 2, Part 7, Chapter 1, commencing with Labor Code Section 1720. Design-Build Entity's registration number is **[please complete]** \_\_\_\_\_. Subcontractors' registration numbers are as indicated in Document 00 4336.

**9. CERTIFICATIONS REGARDING SELECTION PROCESS**

**[Please check and/or complete one of the following]**

\_\_\_\_\_ The undersigned confirms it has no objections or protests to any Design-Build Entity selection procedure, process, or requirement, or any other any aspect of the Design-Build Entity selection process.

\_\_\_\_\_ Attached as Appendix \_\_, consisting of \_\_\_\_\_ pages, is a detailed description of all objections and protests the undersigned has regarding any aspect of the Design-Build Entity selection process. Proposer must attach an Appendix if this item is checked.

If Bidder is unable to certify to the statements in this certification, Bidder shall attach an explanation to this Bid.

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

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

**PROPOSER:**

\_\_\_\_\_  
(Name of Proposer)

Date: \_\_\_\_\_, [2021] By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Title)

**[Note—if Proposer is a partnership, all general partners must sign; and if a joint venture, all venturers must sign.]**

**END OF DOCUMENT**

**DOCUMENT 00 5050**

**NOTICE OF INTENT TO AWARD**

**DATE POSTED:** OCTOBER 1, 2021  
**PROJECT TITLE:** KERN HEALTH SYSTEMS NEW CARPORT SOLARPHOTOVOLTAIC (PV) SYSTEM PROJECT

**PROJECT ADDRESS:** 2900 BUCK OWENS BOULEVARD, BAKERSFIELD, CA

\_\_\_\_\_, the \_\_\_\_\_ of

Owner intends to recommend to its **Board** the Award of the above-referenced Project to

\_\_\_\_\_.  
(Name of Design-Build Entity)

OWNER: KERN HEALTH SYSTEMS

By: \_\_\_\_\_

\_\_\_\_\_  
(Print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 5100**

**NOTICE OF AWARD**

Dated \_\_\_\_\_

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTRACT NO.: \_\_\_\_\_

CONTRACT FOR: **KERN HEALTH SYSTEMS  
NEW CARPORT SOLAR PHOTOVOLTAIC (PV) SYSTEM PROJECT AT  
2900 BUCK OWENS BOULEVARD, BAKERSFIELD, CA 93308**

The Contract Sum of your contract is \_\_\_\_\_  
(Amount in Words)

Dollars (\$ \_\_\_\_\_)

1. Five copies of the proposed Contract Documents listed below accompany this Notice of Award.
2. You must comply with the following conditions precedent by **5:00 p.m.** of the **9th Day** following the date of this Notice of Award, that is, by **Thursday, December 30, 2021**.
  - a. Deliver to Owner **four** fully executed counterparts of Document 00 5253 (Agreement). Each copy of Document 00 5253 (Agreement) must bear your original signature on the signature page and your initials on each page.
  - b. Deliver to Owner one original of Document 00 6113.13 (Construction Performance Bond), executed by you and your surety.
  - c. Deliver to Owner one original of Document 00 6113.16 (Construction Labor and Material Payment Bond), executed by you and your surety.
  - d. Deliver to Owner original set of the insurance certificates with endorsements required under Document 00 7316 (Supplementary Conditions – Insurance).
  - e. Deliver to Owner four fully executed Document 00 6536 (Guaranty), bearing your original signature on the signature page and your initials on each page.
3. Failure to comply with these conditions within the time specified will entitle Owner to consider your Proposal abandoned, to annul this Notice of Award, and to declare your Proposal security forfeited.
4. Within **21 Days** after you comply with the conditions in Paragraph 2 of this Document 00 5100, Owner will return to you one fully signed counterpart of Document 00 5253 (Agreement) with **three** copies of the Project Manual (excluding Bridging Documents).
5. In accordance with Public Contract Code Section 22164(f):
  - a. The top three-ranked proposers, and the respective number of points earned by each, is as follows:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_

- iii. \_\_\_\_\_
- b. The award is made to \_\_\_\_\_, as \_\_\_\_\_'s proposal was determined to provide the best value to the Owner.
- c. **[Include any other information required by PCC §§22164(f)(5) and (6): Subsection (5) requires that upon issuance of the award, the Owner publicly announce the award, identify the successful D-B Entity, and the basis of the award; Subsection (6) provides that the statement regarding the Owner's contract award and the contract file shall provide sufficient information to satisfy an external audit.]**
6. Upon commencement of the Work, you and each of your Subcontractors shall certify and provide Owner copies of payroll records in accordance with Labor Code Section 1776.

**OWNER: KERN HEALTH SYSTEMS**

BY: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Print Name)

AUTHORIZED BY KERN HEALTH SYSTEMS

ORDER NO.: \_\_\_\_\_

APPROVED DATE: \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 5253**

**AGREEMENT**

THIS AGREEMENT, dated this **[date]** day of **[Month]**, **[20\_\_]**, by and between **[Enter Name of Design-Build Entity]** whose place of business is located at **[Address of Design-Build Entity]** (**Design-Build Entity**), and **KERN HEALTH SYSTEMS**, a political subdivision of the state of California (**Owner**), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

WHEREAS, Owner, by its Resolution No. **[Insert Number]** adopted on the **[date]** day of **[Month]**, **[Year]** awarded to Design-Build Entity the following Contract:

**New Carport Solar Photovoltaic (PV) System Project  
2900 Buck Owens Boulevard  
Bakersfield, CA 93308**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Design-Build Entity and Owner agree as follows:

**ARTICLE 1 SCOPE OF WORK OF THE CONTRACT**

**1.01 Work of the Contract**

- A. Design-Build Entity shall complete all Work specified in the Contract Documents, inclusive of complete planning, design and engineering services, construction management services, complete permitted plan sets, construction services, completion and commissioning services, and turnover of a complete, functional and legally operable Project, in accordance with the final Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).
- B. Contract includes the following Alternates: **[identify accepted Alternates, or insert N/A]**

**1.02 Price for Completion of the Work**

Owner shall pay Design-Build Entity the following Contract Sum (**Contract Sum**) for completion of Work in accordance with Contract Documents as set forth in Design-Build Entity's Proposal, attached hereto. **[AMOUNT]**

- A. The Contract Sum includes all allowances (if any).

**[ATTACHMENT]**

- B. The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, labor and professional services furnished by Design-Build Entity, its subcontractors, subconsultants, designers, architects, engineers, and vendors or otherwise arising out of Design-Build Entity's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

## ARTICLE 2 COMMENCEMENT AND COMPLETION OF WORK

### 2.01 Commencement of Work

- A. Design-Build Entity shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.
- C. Design-Build Entity shall not commence Work on the Site Owner has issued Document 00 5501 (Notice to Proceed With Construction)].

### 2.02 Completion of Work

- A. Design-Build Entity shall achieve Substantial Completion of the entire Work within [ ] Days from the Commencement Date.
- B. Design-Build Entity shall achieve Final Completion of the entire Work [ ] Days from the Commencement Date.

## ARTICLE 3 PROJECT REPRESENTATIVES

### 3.01 Owner's Project Manager

- A. Owner has designated Anthony Roberts as its Project Manager to act as Owner's Representative in all matters relating to the Contract Documents. If Project Manager is an employee of Owner, Project Manager is the beneficiary of all Design-Build Entity obligations to Owner including, without limitation, all releases and indemnities.
- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative.

### 3.02 Design-Build Entity's Project Manager and Other Key Personnel

- A. Design-Build Entity has designated [ ] as its Project Manager to act as Design-Build Entity's Representative in all matters relating to the Contract Documents.
- B. Design-Build Entity has designated the following as its Principal Designer:  
\_\_\_\_\_.
- C. Design-Build Entity has designated the following other Key Personnel for the Project:

<u>Name</u>	<u>Position</u>
_____	_____
_____	_____
_____	_____

## ARTICLE 4 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

### 4.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Design-Build Entity shall pay Owner Seven Hundred and Ninety Five dollars (\$795.00) for each Day that expires after the time specified herein for Design-Build Entity to achieve **Substantial Completion** of the entire Work, until achieved.

### 4.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.

- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7253 (General Conditions).

## **ARTICLE 5 LIQUIDATED DAMAGES FOR UNAUTHORIZED CHANGES OF KEY PERSONNEL [FOR OWNER'S CONSIDERATION]**

### **5.01 Liquidated Damage Amounts**

- A. See Document 00 7253 (General Conditions) Paragraph 11.07.D for liquidated damages provisions pertaining to Key Personnel.

## **ARTICLE 6 PERFORMANCE LIQUIDATED DAMAGES**

### **6.01 Performance Liquidated Damage Amounts**

- A. If the Project system fails to reach Minimum Performance Ratio, Contractor shall pay Performance Liquidated Damages, **[TBD Following Design Phase]**, which shall be calculated based on loss of saving over the 30 months after commissioning, considering system degradation for each 1% shortfall and may be prorated any shortfall of less than 1%.

## **ARTICLE 7 CONTRACT DOCUMENTS**

### **7.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:**

Document 00 4336	Subcontractors List and all amendments thereto, as set forth in Public Contract Code Section 22160
Document 00 5100	Notice of Award
Document 00 5253	Agreement
Document 00 5255	Bridging Documents
Document 00 5500	Notice to Proceed
Document 00 5501	Notice to Proceed with Construction
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6290	Escrow Agreement for Security Deposits
Document 00 6325	Substitution Request Form
Document 00 6530	Release of Claims
Document 00 6536	Guaranty
Document 00 7253	General Conditions
Document 00 7316	Supplementary Conditions – Insurance and Indemnification
Document 00 7380	Apprenticeship Program
Document 00 9113	Addenda
Specifications	Divisions 01 through [ ]
Bridging Documents listed in Document 00 5255.	
Finally approved Construction Documents as provided in Section 01 1101 (Summary – Design Services)	

- 7.02** There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7253 (General Conditions). Design-Build Entity's Proposal, dated [ ], and all modifications, supplements and amendments thereto, are attached hereto for reference purposes only. Unless specifically stated otherwise in this Agreement, Design-Build Entity's Proposal is not incorporated into Contract Documents.

## ARTICLE 8 MISCELLANEOUS

- 8.01** Terms and abbreviations used in this Agreement are defined in Document 00 7253 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein.
- 8.02** Design-Build Entity and Owner understand and agree that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise. Design-Build Entity and Owner further understand and agree that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.03** Pursuant to Labor Code Section 1771(a), Design-Build Entity represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Design-Build Entity covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
- 8.04** Pursuant to Public Contract Code Section 22164(c), Design-Build Entity commits to Owner that Design-Build Entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades, as required by that Section. Design-Build Entity and its subcontractors at every tier will provide Owner with evidence, on a monthly basis while the project or contract is being performed, that Design-Build Entity and its subcontractors are complying with these requirements. Alternatively, Design-Build Entity has provided evidence that it has entered into a project labor agreement that includes the requirements of Public Contract Code Section 22164(c) and that will bind the Design-Build Entity and all its subcontractors at every tier performing the project or contract.
- 8.05** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Design-Build Entity or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Design-Build Entity, without further acknowledgment by the parties.
- 8.06** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Owner's Facilities Development and Management Division, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>] and are deemed included in the Contract Documents, and shall be made available to any interested party on request. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every Design-Build Entity will be required to secure the payment of compensation to his employees. Design-Build Entity represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.07** Owner shall have the right to review all phases of Design-Build Entity's design including, without limitation, drawings, specifications, shop drawings, samples, and submittals, as specified in the Contract Documents. Such review and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the Contract Documents; but rather, such review shall be in furtherance of Owner's monitoring and accepting the design as developed and issued by the Design-Build Entity, consistent with these Contract Documents. Design-Build



Team's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

**8.08** This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Bakersfield, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Kern.

**8.09** Design-Build Entity shall have full responsibility to complete the Work of this Contract. Design-Build Entity shall carry the risk of any errors, omissions or ambiguities, regarding the scope of work of any subcontract compared to the scope of work of the Contract Documents.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

**DESIGN-BUILD ENTITY: [DESIGN-BUILD ENTITY'S NAME]**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Its: \_\_\_\_\_  
Title (If Corporation: Chairman, President  
or Vice President)

Its: \_\_\_\_\_  
Title (If Corporation: Secretary, Assistant  
Secretary, Chief Financial Officer or  
Assistant Treasurer)

**OWNER: KERN HEALTH SYSTEMS**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

Attest: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Print Name)

**[OPTIONAL IF REQUIRED BY OWNER]**

APPROVED AS TO FORM AND LEGALITY  
THIS \_\_ DAY OF \_\_\_\_\_, [20\_\_]

By: \_\_\_\_\_  
Attorney for Owner

\_\_\_\_\_  
(Print Name)

RESOLUTION NO. \_\_\_\_\_

**END OF DOCUMENT**

DOCUMENT 00 5255

**BRIDGING DOCUMENTS**

**ARTICLE 1 – GENERAL**

**1.01 Bridging Documents**

- A. Bridging Documents define Owner's Project Requirements, which may include, but need not be limited to the criteria listed in this subparagraph A. **The Project Definition Report (Appendix 1)** provides the necessary information to relay the Scope of Work required of the Design-Build Entity.
  - 1. Size, type, shape, height, configuration, and desired design character of buildings, improvements, appurtenances, systems and Sites.
  - 2. Performance, and in some cases prescriptive specifications, covering the quality of materials, equipment, building components and workmanship, public spaces, landscape design, and general architectural character of the buildings, improvements, appurtenances, equipment, and Sites.
  - 3. Preliminary plans or building layouts.
  - 4. Site requirements, parking, and infrastructure items.

**ARTICLE 2 – INTERPRETATION OF BRIDGING DOCUMENTS**

**2.01 General—Prescriptive or Performance Standards**

- A. Bridging Documents identify items using either prescriptive or performance standards. When items are subject to prescriptive standards, the Project provided by Design-Build Entity shall include the specific item as described. When items are subject to performance standards, the Project provided by Design-Build Entity shall include items that satisfy the required performance standards.

**2.02 Silence Regarding Standard**

- A. Where Bridging Documents are silent regarding whether a prescriptive or performance standard is intended, Design-Build Entity shall provide a Project that satisfies the following general standards:
  - 1. For all items of aesthetics, required systems, equipment, and user items or items subject to visual observation, Bridging Documents are intended to specify prescriptive standards, either as specifically stated in the Bridging Documents or by reference to other project design elements.
  - 2. For all items of engineering performance and code compliance (e.g., electrical runs, duct layouts, and other engineering systems specified in terms of performance or code requirements), and other items of design or construction not subject to visual observation, Bridging Documents are intended to specify performance standards.

**2.03 Relationship to Proposal – Division 00 and 01 Specifications and Bridging Documents**

- A. Bridging Documents define the Owner's Project Requirements and, unless otherwise noted, supersede anything inconsistent in Design-Build Entity's Proposal.
- B. To the extent that the Bridging Specifications contain certain terms and conditions that are also addressed in Document 00 7253 (General Conditions) and Division 01 Specifications (commencing with Section 01 1100) of these Contract Documents, then precedence shall be given to the more stringent of the two requirements that in Owner's judgment provides the Owner with the greater quality or scope of service.

## **ARTICLE 3 – COMPLETENESS OF BRIDGING DOCUMENTS**

### **3.01 Intent**

- A. Bridging Documents are intended to describe and specify the Owner's Project Requirements and the performance requirements for the completed and fully functional Project. They are not intended to fully specify building systems, equipment makes or models or associated systems or limit the Design-Build Entity's selection of the same.

### **3.02 Effect of Incompleteness or Omissions**

- A. If any Bridging Documents are determined, at any time, to be incomplete and/or to omit any required information necessary to provide fully functional and legally operable Project meeting the Owner's Project Requirements, Design-Build Entity shall request additional Project related information from Owner in accordance with Document 00 7253 (General Conditions) and Section 01 2600 (Modification Procedures).

## **ARTICLE 4 – LIST OF BRIDGING DOCUMENTS AND RELATED MATERIALS**

### **4.01 Bridging Documents Include:**

- A. The Project Definition Report. It is included as Appendix 1 to this Document 00 5255, and includes design narratives, performance specifications, architectural program items, drawings, technical specifications, site utilization requirements, and various plans, reports, data, and other obligations included or referenced therein.
- B. Without limiting the foregoing, Design-Build Entity prepared Construction Documents are not Bridging Documents.
- C. The Bridging Documents are provided solely to communicate (where applicable):
  - 1. The Owner's Project Requirements;
  - 2. Space adjacencies, room configurations & finishes;
  - 3. Architectural and engineering criteria;
  - 4. Site layout, connection points and operation;
  - 5. Overall requirements for the completed Project.
- D. Bridging Documents Compliance
  - 1. There are three levels of compliance defined for use in this Project as follows:
    - a. Full Compliance: The design shall be adhered to as closely as practicable, with only minor adjustment to optimize construction methods and means, improve schedule, and provide best value cost.
    - b. Substantial Compliance: The design intent and detail shall be provided with modification proposed to optimize construction methods and means, improve schedule, and provide best value cost.
    - c. Minimal Compliance: The design may be modified as the Design-Build Entity determines is necessary to optimize construction methods and means, improve schedule, and provide best value cost.
  - 2. The Design-Build Entity's design must comply with the Bridging Documents as follows:
    - a. Architectural design: Minimal Compliance.
    - b. Structural design: Substantial Compliance.
    - c. Heating, Ventilating, and Air Conditioning (HVAC) design: Substantial Compliance.
    - d. Plumbing design: Substantial Compliance.
    - e. Electrical design: Substantial Compliance.
    - f. Lighting design: Substantial Compliance.
    - g. Communications, Data, and Audio Visual design: Full Compliance.

- h. Civil design: Substantial Compliance.
  - i. Landscape design: None presented Minimal Compliance is required. Conform to Owner requirements.
  - j. Security system design: Substantial Compliance.
  - k. Fire Protection design: Substantial Compliance.
  - l. Fire Alarm System design: Substantial Compliance.
- E. Changes to the Bridging Documents: Any proposed adjustments, modifications, or changes in the design shown in the Bridging Documents must retain the functional, aesthetic, and technical quality of the Project as intended in the Bridging Documents.
  - 1. All proposed variations to the Project as shown in the Bridging Documents shall be clearly identified in Proposer's Proposal, on a separate page titled "Proposed Changes to Bridging Documents," which expressly identifies the applicable Bridging Document(s) and portion(s) proposed to be changed.
- F. Design-Build Entity Professional Responsibility: Design-Build Entity and each of its design professional sub-consultants and subcontractors shall have complete design responsibility and liability for the final design including, without limitation, the Construction Documents, Drawings, and Specifications necessary to meet the Bridging Documents' intent.

#### **4.02 Performance Criteria Requirements:**

- A. General
  - 1. Two Levels of Performance: There are two levels of performance requirements:
    - a. Basic code minimum performance: this is the basis of minimum facility performance resulting from compliance with code and regulatory prescriptive requirements. The completed Project shall comply with, or exceed, all local, State, and federal codes and regulations.
    - b. Facility-specific performance: this is the Project-specific performance requirements provided in the Bridging Documents. The completed Project shall meet, or exceed, all facility-specific performance requirements identified.

#### **4.03 Performance Criteria Elements:**

- A. The design and construction requirements of this RFP are comprised of several interrelated elements that describe the performance criteria. The Performance Criteria Elements are:
  - 1. Code requirements: The Project must comply with or exceed all applicable codes.
  - 2. Regulatory requirements: The Project must meet or exceed all applicable State regulations and reviews.
  - 3. Bridging Documents: The Project must meet or exceed the functional and operational aspects developed in the Bridging Documents.
  - 4. Technical Performance Specifications: The Project must meet or exceed the Performance Specifications described in the Project Definition Report.
  - 5. Facility-Specific Performance Criteria Items
    - a. Intent of the Performance language: The Performance Criteria Requirements text is written in succinct terms and may not be complete sentences. The intent is to convey the essence of the performance requirements. Each paragraph and sub-paragraph shall be read as if prefaced with language to the effect of "The Design-Build Entity shall provide . . ." or other such language that conveys to the Design-Build Entity the responsibility to design and construct a facility that complies with the intent.
    - b. Both Performance and Prescriptive: The criteria may vary from broad performance requirements to prescriptive specification depending on the subject involved. Example: the HVAC criteria might be as broad as "maintain 72 degree temperature

plus/or minus 2 degrees,” but include a specific requirement to “provide Honeywell 502 thermostat.”

- c. Interpretation: Final interpretation of the intent shall be at the Owner’s sole discretion. If the Design-Build Entity is uncertain as to the intent, it shall notify the Owner and submit a written request for an interpretation before submitting its Proposal.

6. Design-Build Entity’s Exclusions

- a. Exclusions Must Be Identified: The Design-Build Entity shall identify in its Proposal all significant changes from the Bridging Documents and/or other exclusions to the scope of work on the Project that it proposes.
  - i. Significant is defined, for the purposes of this requirement, to include all changes that would affect the functional, aesthetic, and/or operational aspects of any element of this Project.
  - ii. All such changes shall be identified with supporting rationale including professional cost-benefit analysis where appropriate.
  - iii. Submit by means of a separate page titled “Proposed Design-Build Entity Exclusions,” which expressly identifies the applicable Bridging Document(s) and portion(s) proposed to be excluded.

B. Terminology of the Performance Criteria

1. The Performance Criteria Requirements in this section of the RFP are presented in: (i) general description terms, and/or (ii) specific system or element identification terms. Both terms are intended to convey the Performance Criteria Requirements for the Project.
  - a. General Description: Where general description terms are used, the Design-Build Entity shall provide design and construction services that achieve the functional or operational performance criteria given. Example: *Roof drainage piping shall be designed to accommodate 3 inches per hour rainfall; piping shall be concealed within the building envelope.*
  - b. Specific System or element Identification: Where specific system or element identification terms are used, the Design-Build Entity shall provide design and construction services that achieve the quality of performance criteria equal to or greater than the quality that would be achieved by the system or element identified. This is “or equal” terminology, and is not meant to specify the exact system or element, but to establish the quality of performance that it would achieve. Example: *Above ground rainwater systems piping: Utilize type DWV copper tube ASTM B306 with cast-copper fittings ASME B16.23.*
2. Technical Performance Specifications
  - a. The Technical Performance Specifications are a part of the overall Performance Criteria, and utilize the Construction Specification Institute (CSI) numerical format, generally organized by design disciplines.
  - b. The Technical Performance Specifications are included within the Bridging Documents.

**4.04 Substantiation of Compliance**

A. Substantiation

1. Overview: Substantiation of Compliance involves verification that design and construction is based on best practice norms, and that equipment and systems proposed will perform as required by this RFP.
  - a. Definition: Substantiation is defined as any form of evidence that is used to predict that the design shall comply with the performance and prescriptive requirements, and to verify that the construction complies with the design.

- b. Prediction: Substantiation is only a prediction and may subsequently be invalidated by actual results.
  - c. Actual construction must comply: Regardless of whether substantiation is specified or not, the actual construction must comply with the specified requirements and shall, at the Owner's discretion, be examined, inspected, or tested to determine compliance.
  - d. The cost of any post-construction compliance testing shall be paid by the Owner if the system or element being tested is found to be in compliance, and by the Design-Build Entity if the system or element being tested is not in compliance. The Design-Build Entity shall correct, modify, and/or redesign and reconstruct all non-compliant systems and elements as necessary to achieve compliance at no cost to the Owner.
  - e. Submittals: Design-Build Entity shall provide substantiation submittals, if and as required by [Request for Qualifications] for Owner's review and approval prior to the design, use, fabrication, or construction of the item.
  - f. e. Submit substantiation for items required in the performance and prescriptive sections of the RFP.
- 2. Owner approval: The Owner accepts responsibility to review and respond to substantiation submittals in a timely manner.
    - a. Acceptance of substantiation shall not constitute approval or acceptance of deviations from the specified requirements unless those deviations are specifically identified as such on the substantiation submittal with a specific request for Owner's acceptance.
  - 3. Design Analysis: Where a design analysis or engineering calculation is required without identifying a particular method, perform analysis in accordance with accepted engineering or scientific principles to show compliance with specified requirements, and submit a report that includes analysis methods used and the designer's name and qualifications.
    - a. Where engineering design is allowed to be completed after construction commences, substantiation may be in the form of shop drawings or other data.
    - b. Use only design professionals licensed in California.
  - 4. Previous Use or Mock-up Testing: Where previous use or mock-up testing records are required, provide documentation of the previous in-place actual use and/or testing certified by an independent testing laboratory.
  - 5. Products: Where a manufactured product that is commonly purchased by brand name is required, provide the manufacturer's product literature including performance data and sample warranty.

#### **4.05 Additional Supporting Project Information:**

- A. Design-Build Entity's attention is also directed to Document 00 3100 (Available Project Information), if included, which lists documents and materials containing existing conditions information that were provided to prospective Design-Build Entities prior to Proposal submission. The documents and information referenced in Document 00 3100 (if included) are not part of the Contract Documents and are "for information purposes only."

**END OF DOCUMENT**

## APPENDIX 1 TO DOCUMENT 00 5255 (BRIDGING DOCUMENTS)

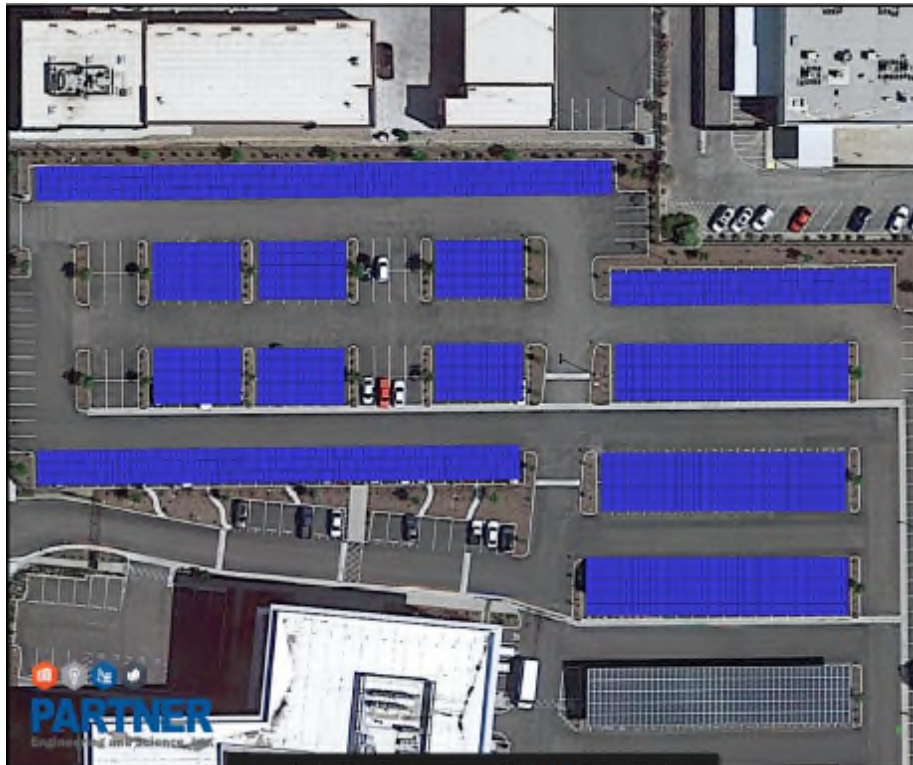
### Project Definition Report New Carport Solar Photovoltaic (PV) System Project

The selected Bidder shall provide an all-inclusive, minimum 674.5 kW<sub>DC</sub> (540 kW<sub>AC</sub>) carport solar PV system and a 120 kW<sub>AC</sub>/248 kWh production Battery Energy Storage System (BESS) with a discharge duration of two hours that shall be net-metered with the existing PG&E (utility) electrical service. The system should produce a minimum of 1,141,037 kWh of electricity annually. The project includes all necessary site development due diligence, permitting, utility interconnection including communication with the utility on behalf of KHS, under-canopy lighting, web-based monitoring, performance guarantee, related safety systems, rebates, incentives, and be aesthetically similar to the existing carport solar PV system. The design and installation of this PV system shall take into consideration the site's available solar resources, shading impacts of nearby (present or future) buildings or trees, structural and load constraints, available land space, parking lot lighting, utility interconnection requirements, applicable ordinances, codes, and regulations, contract budget constraints, and other relevant factors.

The project is required to have all or some of the following equipment: 72-cell modules, BYD BESS (or similar), and RBI Solar Canopy (or similar). The Owner reserves the right to approve substitutions.

#### 4.06 Panel Location Simulation

The system will be constructed on KHS' 5-acer site. Below is a preliminary system design layout of the new PV system created in Helioscope, an industry standard solar PV design software. The blue panels represent the new system.





#### 4.07 Existing Canopy Structure



#### 4.08 Alternates

If Proposal Alternate 1 is selected by Owner, the design, procurement and installation of separate Bridging Documents (D-B) 00 5255 - 2 New Carport Solar Photovoltaic (PV) System Project

conduits for 4 level 3 EV charging stations from the carports to the electrical room will be part of contractor's scope. The location of the EV charging stations shall be selected by contractor and approved by Owner.

If Proposal Alternate 2 is selected by Owner, contractor shall be responsible for operations and maintenance ("O&M") on an annual basis. Should Owner elect to proceed with Alternate 2 on or before the decision point date, Owner's election shall include an annual escalation factor of 3% in the annual pricing of O&M services. O&M should include daily online monitoring, twice a year scheduled general checkup including racking, modules, AC, DC and DAS systems, twice a year module washing, and two free 48 hours dispatch to site upon request. Coordination with equipment manufacturer after the installation is also responsibility of the O&M provider. Owner's Decision Point Date to decide whether or not to exercise Proposer's Alternate 2 shall be the Project's Substantial Completion date.

**DOCUMENT 00 5500**

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
(Design-Build Entity)

Address: \_\_\_\_\_

CONTRACT FOR: **New Carport Solar Photovoltaic (PV) System Project**

**AT**

**Kern Health Systems  
2900 Buck Owens Boulevard  
Bakersfield, CA 93308**

You are notified that the Contract Time under the above Contract will commence to run on January 10, 2022. On that date, you are to start performing your design obligations under the Contract Documents. In accordance with Article 2 of Document 00 5253 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are \_\_\_\_\_, **[20\_\_]** and \_\_\_\_\_, **[20\_\_]**, respectively.

This Notice to Proceed does not authorize performance of any Work at the Site. Performance of Work at the Site requires **[insert if applicable] [issuance of a Notice to Proceed With Construction and]** satisfaction of all related conditions.

**OWNER: KERN HEALTH SYSTEMS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 5501**

**NOTICE TO PROCEED WITH CONSTRUCTION**

Dated: \_\_\_\_\_, 20\_\_

To: \_\_\_\_\_  
(Design-Build Entity)

Address: \_\_\_\_\_

CONTRACT FOR: **KERN HEALTH SYSTEMS  
NEW CARPORT SOLAR PHOTOVOLTAIC (PV) SYSTEM PROJECT AT  
2900 BUCK OWENS BOULEVARD, BAKERSFIELD, CA 93308**

As of \_\_\_\_\_ [20\_\_], you are to start performing your obligations with respect to Work at the Site under the Contract Documents. In accordance with Article 2 of Document 00 5253 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are \_\_\_\_\_, [20\_\_] and \_\_\_\_\_, [20\_\_], respectively.

**Before you may start any Work at the Site, you must:**

1. Submit certified Safety Program and related information
2. Submit copies of applicable permits
3. [Other]

**OWNER: KERN HEALTH SYSTEMS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 6113.13**

**CONSTRUCTION PERFORMANCE BOND**

THIS CONSTRUCTION PERFORMANCE BOND (**Bond**) is dated **[Month, Day]**, 202\_ is in the amount of **[Insert Amount]** (**Penal Sum**), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to **[Insert name of Design-Build Entity]** (**Design-Build Entity**), **[Insert name of Surety]** (**Surety**), Kern Health Systems (**Owner**), or other party shall be considered plural where applicable.

**DESIGN-BUILD ENTITY:**

**[Insert name of Design-Build Entity]**

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

**SURETY:**

**[Insert name of Surety]**

\_\_\_\_\_  
Principal Place of Business

\_\_\_\_\_  
City/State/Zip

**CONSTRUCTION CONTRACT:**

Agreement for Kern Health System's **New Carport Solar Photovoltaic (PV) System Project**, located at 2900 Buck Owens Boulevard, in Bakersfield, California, dated **[Month, Day]**, 20\_, in the amount of **[Insert Amount]** ).

**CONTRACTOR AS PRINCIPAL**

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SURETY**

Company: (Corp. Seal)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **BOND TERMS AND CONDITIONS**

1. Design-Build Entity and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Design-Build Entity completely and properly performs all of its obligations under the Construction Contract, Surety and Design-Build Entity shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 3.1 Owner provides Surety with written notice that Owner has declared a Design-Build Entity Default under the Construction Contract pursuant to the terms of the Construction Contract; and
  - 3.2 Owner has agreed to pay the Balance of the Contract Sum:
    - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
    - 3.2.2 To a Design-Build Entity selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
  - 4.1 Arrange for Design-Build Entity, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Design-Build Entity as its agent or independent contractor or Construction entity without Owner's consent; or
  - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Owner and the contractor or Design-Build Entity selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Design-Build Entity, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Design-Build Entity Default, as agreed by Owner and Surety at the time of tender. If

Owner disputes the amount of Surety's tender under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Design-Build Entity's Construction Contract obligations. Surety's obligations include, but are not limited to:
  - 6.1 Design-Build Entity's obligations to complete the Construction Contract and correct Defective Work;
  - 6.2 Design-Build Entity's obligations to pay liquidated damages; and
  - 6.3 To the extent otherwise required of Design-Build Entity under the Construction Contract, Design-Build Entity's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Design-Build Entity Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Design-Build Entity Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.

11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Design-Build Entity regarding the Construction Contract or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner to Surety under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.
12. All notices to Surety or Design-Build Entity shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5253 (Agreement). Actual receipt of notice by Surety, Owner or Design-Build Entity, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. **Definitions**
  - 14.1 **Balance of the Contract Sum:** The total amount payable by Owner to Design-Build Entity pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.
  - 14.2 **Construction Contract:** The agreement between Owner and Design-Build Entity identified on the signature page of this Bond, including all Contract Documents and changes thereto.
  - 14.3 **Design-Build Entity Default:** Material failure of Design-Build Entity, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7253 (General Conditions).
  - 14.4 **Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Design-Build Entity progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Design-Build Entity Default and is sufficient to justify Design-Build Entity termination of the Construction Contract.

**END OF DOCUMENT**



**DOCUMENT 00 6113.16**

**CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

**1.01** THAT WHEREAS, **KERN HEALTH SYSTEMS** (**Owner**) has awarded to **(Name of Design-Build Entity)** as Principal, its Contract for its New Carport Solar Photovoltaic (PV) System Project, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the **Contract**), in the amount of \$\_\_\_\_\_, which Contract is by this reference made a part hereof, for the work of the following Contract:

New Carport Solar Photovoltaic System Project

**1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

**1.03** NOW, THEREFORE, we, the undersigned Principal and **(Name of Surety)**, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE (**\$**\_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

**1.05** This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

**1.06** Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

**1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

**1.08** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DESIGN-BUILD ENTITY AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

**END OF DOCUMENT**

**DOCUMENT 00 6290**

**ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION**

Public Contract Code Section 22300

THIS ESCROW AGREEMENT (**Escrow Agreement**) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **KERN HEALTH SYSTEMS**, (**Owner**), whose address is 2900 Buck Owens Boulevard, Bakersfield, CA 93308, **[Name of Design-Build Entity]** (**Design-Build Entity**), whose principal place of business is located at **[Design-Build Entity's Address]**, and [ ] Owner, as escrow agent **[OR]** [ ] **[Name of Bank]**, a state or federally chartered bank in the State of California, whose place of business is located at **[Address]** (**Escrow Agent**).

For the consideration hereinafter set forth, Owner, Design-Build Entity and Escrow Agent agree as follows:

1. Pursuant to Public Contract Code Section 22300, Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to Contract Number \_\_\_\_\_ entered into between Owner and Design-Build Entity for THE **New Carport Solar Photovoltaic (PV) System Project** located at Kern Health Systems, 2900 Buck Owens Boulevard, in Bakersfield, CA in the amount of \$ \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (the "**Contract**"). Alternatively, on written request of Design-Build Entity, Owner shall make payments of the retention earnings directly to Escrow Agent. When Design-Build Entity deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within ten Days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between Owner and Design-Build Entity. Securities shall be held in name of \_\_\_\_\_, and shall designate Design-Build Entity as the beneficial owner.
2. Owner shall make progress payments to Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified in Paragraph 1 of this Document 00 6290.
3. When Owner makes payment(s) of retention earned directly to Escrow Agent, Escrow Agent shall hold said payment(s) for the benefit of Design-Build Entity until the time that the escrow created under this Escrow Agreement is terminated. Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when Owner pays Escrow Agent directly.
4. Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of Owner. Such expenses and payment terms shall be determined by Owner, Design-Build Entity, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Design-Build Entity and shall be subject to withdrawal by Design-Build Entity at any time and from time to time without notice to Owner.
6. Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to Escrow Agent that Owner consents to withdrawal of amount sought to be withdrawn by Design-Build Entity.
7. Owner shall have the right to draw upon the securities in event of default by Design-Build Entity. Upon seven Days written notice to Escrow Agent from Owner of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Owner.

8. Upon receipt of written notification from Owner certifying that the Contract is final and complete, and that Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design-Build Entity all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from Owner and Design-Build Entity pursuant to Paragraphs 5 through 8, inclusive, of this Document 00 6290 and Owner and Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of Owner and on behalf of Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

**ON BEHALF OF OWNER:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

**ON BEHALF OF DESIGN-BUILD ENTITY:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

**ON BEHALF OF ESCROW AGENT:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

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

**OWNER:**

**KERN HEALTH SYSTEMS**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Escrow Agreement for Security  
Deposits in Lieu of Retention (D-B)  
OAK #4837-3163-2635 v1

**DESIGN-BUILD ENTITY**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

00 6290 - 2

New Carport Solar Photovoltaic  
(PV) System Project

ATTEST

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Secretary

**ESCROW AGENT**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**[IF REQUIRED]** REVIEWED AS TO FORM:

\_\_\_\_\_  
Counsel for Owner

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

At the time the Escrow Account is opened, Owner and Design-Build Entity shall deliver to Escrow Agent a fully executed counterpart of this Document 00 6290.

**END OF DOCUMENT**

DOCUMENT 00 6325

SUBSTITUTION REQUEST FORM

To: **KERN HEALTH SYSTEMS, Owner**

<b>PROJECT: New Carport Solar Photovoltaic (PV) System Project</b>	<b>Design-Build Entity:</b>
--	-----------------------------

Substitution Request By:	Firm:
--------------------------	-------

Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Design-Build Entity to Owner					
Design-Build Entity to Bridging Designr					
Owner / Bridging Designer to Consultant					
Bridging Designer to Owner Representative					
Owner Representative to Design-Build Entity					

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	Article	Specified Item
<b>Proposed Substitution:</b>		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

**Design-Build Entity to complete questions that follow and certifies to the accuracy of all answers:**

A.	Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:
B.	Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:
C.	What effect does the substitution have on other trades? No effect: ___ / Some effect ___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:
D.	Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:
E.	Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:
F.	What is the Cost Differential to Design-Build Entity in original specified item and proposed substitution including all mark-ups? [If substitution requested during bid period, skip this question.]

G.	Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ____; No _____. If No, please explain why substitution is equivalent to originally specified item:
H.	Design-Build Entity accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ___. If No, please state reasons and explain why substitution is equivalent to originally specified item:
I.	Design-Build Entity states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ___. If No, please explain why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: \_\_\_\_\_ Signature: \_\_\_\_\_

Firm: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Phone/ Fax: \_\_\_\_\_

Remarks: \_\_\_\_\_

**Consultant  
Response:**

- ☐ Accepted
- ☐ Not Accepted
- ☐ Accepted As Noted
- ☐ Received Too Late

**Owner Representative  
Response:**

- ☐ Accepted
- ☐ Not Accepted
- ☐ Accepted As Noted
- ☐ Received Too Late



Remarks: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

**END OF DOCUMENT**

DOCUMENT 00 6530

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**  
**[Public Contract Code Section 7100]**

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this [ date ] day of [ Month ], [20  ], by and between **KERN HEALTH SYSTEMS (Owner)**, and [ Enter Name of Design-Build Entity ] (**Design-Build Entity**), whose place of business is at [ Enter Address of Design-Build Entity ].

**RECITALS**

- A. Owner and Design-Build Entity entered into Contract (the **Contract**) for construction of Owner's **New Carport Solar Photovoltaic (PV) System Project** located at 2900 Buck Owens Boulevard, Bakersfield, California.
- B. The Work under the Contract has been completed.

**AGREEMENT**

NOW THEREFORE, it is mutually agreed between Owner and Design-Build Entity as follows:

- 1. Design-Build Entity will not be assessed liquidated damages except as detailed below:

Original Contract Sum                      \$ \_\_\_\_\_

Modified Contract Sum                     \$ \_\_\_\_\_

Payment to Date                            \$ \_\_\_\_\_

Liquidated Damages                        \$ \_\_\_\_\_

Payment Due Design-Build Entity        \$ \_\_\_\_\_

- 2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Design-Build Entity the sum of [ \_\_\_\_\_ ] Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
- 3. Design-Build Entity acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Design-Build Entity against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Design-Build Entity's continuing obligations described in Paragraph 6 of this Document 00 6530.
- 4. The following claims submitted under Document 00 7253 (General Conditions), Article 12, are disputed (**Disputed Claims**) and are specifically excluded from the operation of this Agreement and Release.

[Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Design-Build Entity hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 6530, Design-Build Entity hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Design-Build Entity, shall remain in full force and effect as specified in the Contract Documents.
7. Design-Build Entity shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Design-Build Entity's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530.
8. Design-Build Entity hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Design-Build Entity represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

**\*\*\* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \*\*\***

**OWNER: KERN HEALTH SYSTEMS**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print

Its: \_\_\_\_\_  
Title

**[DESIGN-BUILD ENTITY]**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print

Its: \_\_\_\_\_  
Title

**[DESIGN-BUILD ENTITY]**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print

Its: \_\_\_\_\_  
Title

**[IF REQUIRED]** REVIEWED AS TO FORM:

Dated: \_\_\_\_\_, [20\_\_]

By: \_\_\_\_\_  
Counsel for Owner

Name: \_\_\_\_\_  
Print

**END OF DOCUMENT**

**DOCUMENT 00 6536**

**GUARANTY**

TO: **KERN HEALTH SYSTEMS (Owner)**, for design and construction of the New Carport Solar Photovoltaic (PV) System Project, located at 2900 Buck Owens Boulevard, Bakersfield, California.

The undersigned guarantees all design and construction performed on this Project and also guarantees all material and equipment incorporated therein.

- 1.01** Design-Build Entity hereby grants to Owner for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Design-Build Entity and its Subcontractors of all tiers in connection with the Work.
- 1.02** Neither final payment nor use nor occupancy of the Work performed by the Design-Build Entity shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Design-Build Entity of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Design-Build Entity shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.
- 1.03** If within one year after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work is found to be Defective, Design-Build Entity shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Design-Build Entity shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to comply promptly with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- 1.04** Observation and inspection of the Work shall not relieve Design-Build Entity of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Design-Build Entity shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
- 1.05** This Guaranty is in addition to any other Design-Build Entity warranties contained in the Contract Documents, and not in lieu of, any and all other Design-Build Entity liability imposed under the Contract Documents or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any Design-Build Entity warranty or obligation Design-Build Entity under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to Owner.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Design-Build Entity's name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip code

**END OF DOCUMENT**

**DOCUMENT 00 7253**

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## **GENERAL CONDITIONS**

### **ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS**

#### **1.01 Interpretation Of Documents**

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Individual Contract Documents subdivide at first level into Articles, and then into paragraphs.

#### **1.02 Order Of Precedence Of Documents**

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
  - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
  - 2. Agreement Forms (Document 00 5253 and other 5000 and 6000 series Documents), and terms and conditions referenced therein;
  - 3. Supplementary General Conditions (Document 00 7301 and other 7300 series Documents), if included;
  - 4. General Conditions (Document 00 7253);
  - 5. Division 01 General Requirements, if included;
  - 6. Bridging Documents;
  - 7. Drawings
  - 8. Technical Specifications starting with Division 02 Series and continuing to Division 33 Series;
  - 9. Written numbers over figures, unless obviously incorrect;
  - 10. Figured dimensions over scaled dimensions;
  - 11. Schedules when identified as such will control over all other portions of the Drawings;
  - 12. Specific Notes will control over all other notes and all other portions of the Drawings except Schedules;
  - 13. Large-scale drawings over small-scale drawings.
  - 14. Specific details over standard or typical details.
- B. The Bridging Documents are considered complimentary in establishing design intent and Owner requirements. In case of conflict, the higher quality or quantity will govern.
- C. Any conflict between Drawings and Specifications above Division 1 will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- D. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- E. In the event the Specifications include divisions above Division 33 (e.g., Division 34 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

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

#### **2.01 All-Inclusive Design-Build Obligation**

- A. Except as may be specifically limited and/or excluded in Document 00 5255 (Bridging Documents) and Section 01 1100 (Summary), Design-Build Entity shall provide a complete, legally operable, functional and maintainable Project, in accordance with the Contract Documents, including providing, furnishing, and performing all necessary design, engineering, architectural, and construction services and providing and furnishing all necessary supplies, housing, materials, and equipment, and all necessary supervision, labor, and services required for the engineering, design, procurement, quality assurance, and inspection, construction, installation, startup, checkout, testing, site cleanup, and for the training of Owner's personnel, all in conformity with the requirements, legal requirements, criteria, performance guarantees, and

warranties set forth in the Contract Documents, for a complete, full, and legally operable Project in full conformance with Contract Documents. The signature and seal of a licensed engineer(s) or architect(s) shall be obtained as necessary for compliance with legal requirements.

- B. Design-Build Entity's professional architectural and engineering services shall include, without limitation, all architectural services and all civil, electrical, fire protection, mechanical, structural engineering, landscape, cost estimating, planning and coordination services required to complete the Project and to perform Design-Build Entity's obligations under the Contract Documents (**Services**). Design-Build Entity and its Designers and other consultants shall possess all necessary training, licenses and permits to perform the Services, and performance of the Services shall conform to the standard of practice of a professional with substantial experience and expertise in performing professional services of like nature and complexity of the Services. Design-Build Entity's licensed architectural and engineering Designers shall owe a duty of care to Owner in performing their architectural and engineering portions of the Services.
- C. No construction or alteration of any Owner facility under the Contract Documents shall commence prior to the receipt of the written acceptance of the final Drawings and Specifications from the Owner and, as required, approvals from County and City Fire Marshals (if applicable), and all authorities having jurisdiction (**AHJ**). Design-Build Entity shall design and construct complete, operational, a fully functional and legally operable project, in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems. Design-Build Entity shall have full responsibility to manage, coordinate and comply with requirements of authorities with jurisdiction including, but not limited to Owner and AHJ.
- D. Without limiting any other provision of Contract Documents, Design-Build Entity must design and construct the Project to enable conformance with operational, fire and life safety, and physical plant standards contained in Titles 15 and 24, California Code of Regulations (**CCR**).

## **2.02 Description of Design Requirements**

- A. Without limiting the generality of the foregoing paragraphs, Design-Build Entity and its Designers shall prepare preliminary designs, interim designs, complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment, all necessary utilities, natural gas and water supply for construction, and for the construction of the complete, operational, legally operable and fully functional Project and shall furnish the services of all necessary supervisors, architects, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work. The design shall include all disciplines necessary to design and engineer the Project, including but not limited to, architectural, civil, structural, mechanical, electrical, instrumentation and control work.
- B. Design-Build Entity shall coordinate the services of all architectural and engineering disciplines and other Designers involved in completing the Work, including without limitation, conducting design coordination meetings with Designers in the frequency necessary for Design-Build Entity to meet its design coordination obligations herein and all other provisions of Contract Documents.
- C. All professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel with substantial experience and expertise in work similar to the Work of this Contract.
- D. Design-Build Entity and its Designers' design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA. All drawings, specifications, structural and electrical design calculations, site data, cost estimates and any other deliverable required by State or Federal law shall comply with State and federal standards. Design-Build Entity shall comply with any other requirements of public or private authorities with jurisdiction over the Project, the Drawings and Specifications, and tie-ins to the Project. Design-Build Entity shall comply with the applicable standard of care when preparing Drawings and Specifications to

comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, including necessary tie-ins, applicable to the Project and the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, energy tie-in, and disabled access requirements, regulations and standards of City Fire Marshals (if applicable) and all other AHJ over the Project.

- E. Design-Build Entity shall attend meetings with the community, representatives of Owner, interested parties governmental entities, as necessary, and provide information and diagrams to fully describe the intended design and the Project.

## **2.03 Owner's Right to Review**

- A. Owner at all times shall have the right (but not the duty) to review Design-Build Entity's design work, whether performed by Design-Build Entity or Designers of any tier, and whether in a final or preliminary form, to determine progress and conformance to the requirements of Contract Documents.
- B. In the event Owner should ever dispute the conformance of any design work (at any stage) with the intent of the Bridging Documents, then Owner's determination shall control and Design-Build Entity and/or its Designers shall perform the disputed design services and/or work to completion in accord with the Owner's determination. Design-Build Entity shall, however, retain its rights under the procedure in this Document 00 7253 (General Conditions) Article 12 for claims and disputes, and Design-Build Entity may under that procedure, in its name, advance any claim of any Designer.

## **2.04 Description of Construction Obligations**

- A. Without limiting the generality of the foregoing paragraph, Design-Build Entity shall provide, at a minimum, the following Services and materials and equipment, provided, however, that these sections shall not be construed in any way to limit Design-Build Entity's obligations hereunder to design, engineer, furnish, construct, checkout, startup, and test a complete, operable and maintainable Project in accordance with the provisions of the Contract Documents.
- B. Design-Build Entity shall furnish the services of all personnel, including supervisors, engineers, designers and draftsmen necessary for the Work. Except as otherwise provided in Contract Documents, Design-Build Entity shall obtain, at Design-Build Entity's expense, all governmental and private approvals, licenses, and permits required to complete the Work including, but not limited to, all aspects of coordination and approvals of any type from state and/or local agencies and AHJ, for example, and not by way of limitation, Owner building officials.
- C. Design-Build Entity shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing (except that testing to be provided by the Owner), site cleanup, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project including required permanent interconnection for electricity, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- D. Design-Build Entity shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors (other than any Owner-engaged-inspector acting solely on Owner's behalf), expeditors, and other personnel necessary to procure all materials and equipment for the construction of the Project. Design-Build Entity shall provide, install, complete and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power and sanitary facilities), transportation (including road or other infrastructure and improvements on and off the Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity necessary for the proper execution and completion of the Work, including any of the utilities, as required). Design-Build Entity shall maintain all materials and equipment in accordance with manufacturer's requirements while such materials and equipment are in transit or care and custody of the Design-Build Entity. Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled

and unskilled labor, and all other personnel necessary to design and construct the complete, operational, legally operable and fully functional Project and appurtenant projects described in the Contract Documents. Without limiting the generality of the foregoing, Design-Build Entity shall provide any and all construction required for the temporary upgrading of any public or private road which is inadequate for the performance of the Work, temporarily relocate any interference in public or private roadways necessary for the transportation of equipment and materials, and repair all excessive damage to, or deterioration (other than fair wear and tear) of, any public or private road which arises out of the performance of the Work.

- E. Design-Build Entity shall provide all Project-related insurance, except as otherwise provided by Contract Documents.
- F. Design-Build Entity shall supervise and direct Work, and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, quality control and all other personnel in sufficient quantities and with sufficient skills necessary to perform the Services in accordance with the Contract Documents. At Owner's request, Design-Build Entity shall replace, at Design-Build Entity's expense, any individual if it is determined by Owner and Design-Build Entity that such individual's continued presence would jeopardize the quality or timely completion of the Work. Whenever required by applicable laws or the Contract Documents, Design-Build Entity shall employ licensed personnel as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work.
- G. Design-Build Entity shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract Documents, and Owner shall not be responsible for or exercise any control over the actions or omissions of Design-Build Entity, any supplier, or any of their employees or agents performing any of the Work or Design-Build Entity's warranty obligations. Design-Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of the Contract Documents.
- H. Design-Build Entity shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
- I. Design-Build Entity shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Projects. Design-Build Entity shall take field measurements, verify all field conditions, and carefully compare all of the foregoing and other available information with Contract Documents. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all facilities described in the final plans and specifications shall be the responsibility of the Design-Build Entity. Design-Build Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, Design-Build Entity shall accurately correct all Project documents to as-built conditions and deliver to Owner these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.
- J. Design-Build Entity shall provide appropriate installation and startup representatives from suppliers of major equipment and control systems, all necessary supervising personnel, all equipment, tools, construction and temporary material, and all labor for checkout, startup and testing. Design-Build Entity shall be responsible for checkout, startup and testing of the Project and shall carry out those activities in accordance with all applicable codes and legal requirements, startup and checkout requirements and procedures as set forth in the Contract Documents or established by any Owner-engaged Commissioning Agent.
- K. While Design-Build Entity shall provide all required safety and warning signs, and wage notices, Design-Build Entity may not DBE may not post any other signs without Owner's express written consent.
- L. Design-Build Entity shall be responsible for Site security until Final Completion, or termination of the Work. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials and equipment.

- M. Design-Build Entity shall prepare or cause to be prepared and shall furnish to Owner all drawing logs, drawings, manufacturer's drawings and data, supplier manuals and operating manuals in accordance with the Contract Documents.
- N. Design-Build Entity shall ensure that Owner and its representatives shall, at all times, have access to the Project for all purposes. In order to allow Owner and its representatives to be present, Design-Build Entity shall give Owner at least three days advance notice of any system or equipment checkout or testing. If Owner desires access to any places where work is being performed or from which materials and equipment are being obtained, Design-Build Entity shall provide or arrange reasonable access thereto and shall provide Owner reasonable advanced notice of any factory tests or other off site tests. Design-Build Entity shall maintain the Site in a safe condition to permit Owner and any person authorized in writing by Owner to inspect and review all field work during working hours, including materials and equipment, installation, calibration, startup and testing.
- O. As part of the procurement of equipment, to be determined by Owner and Design-Build Entity during Project Design, Design-Build Entity shall provide to Owner a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, Design-Build Entity shall procure such operating spare parts from Suppliers, as requested by Owner, on behalf of Owner. The cost of such operating spare parts shall be covered by Contract Modification.
- P. Design-Build Entity shall perform all services and activities necessary to comply with all applicable governmental regulations and requirements and to obtain all applicable governmental reviews and approvals for and regarding the Work.
- Q. When any equipment or portion of the Work is damaged, Design-Build Entity shall inform Owner as soon as possible and provide Owner a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.
- R. Except for special inspections performed by Owner, Design-Build Entity shall provide to Owner all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- S. Design-Build Entity's progress schedules shall be in accordance with Section 01 3200 Progress Schedules and Reports.
- T. Design-Build Entity shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site.

### ARTICLE 3 - PRE-PROPOSAL INVESTIGATIONS

#### 3.01 Pre-Proposal Investigations Required

- A. For all Projects, and prior to and as a condition of submitting a Proposal and executing Document 00 5253 (Agreement), Design-Build Entity shall make reasonable efforts to investigate fully the Work of the Contract. Design-Build Entity shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. Design-Build Entity's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, and all other information made available by Owner for pre-proposing or contracting purposes or during Design-Build Entity's pre-construction services, of existing above ground and (to the extent applicable) below ground conditions (together, **Existing Conditions Data**), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear or be referenced in the Project Manual or the in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.



- C. Design-Build Entity's investigations shall consider fully the fact that Existing Conditions Data is in many cases based on information furnished to Owner by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Design-Build Entity shall also: (i.) completely and thoroughly correlate all Existing Conditions Data, and shall provide Owner with prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and (ii.) subject to Owner's approval, conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto or which Design-Build Entity deems necessary to determine that it could perform and furnish the Work in accordance with the terms and conditions of Contract Documents.
- D. By executing Document 00 5253 (Agreement), Design-Build Entity agrees that Owner has responded to and resolved any conflict, error or ambiguity in the Existing Conditions Data and Contract Documents that Design-Build Entity has brought to Owner's attention. During performance of the Contract, Design-Build Entity will be charged with knowledge of all information that it should have learned in performing its required pre-construction services and pre-construction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design-Build Entity should have known as a part of this Work. Design-Build Entity shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

### **3.02 Limited Reliance Permitted On Owner's Existing Conditions Data**

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Owner does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Design-Build Entity must independently verify such information as part of its pre-proposal investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to Owner's attention through written question issued during the proposal period. In executing Document 00 5253 (Agreement), Design-Build Entity shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information regarding aboveground conditions and as-built conditions, and Design-Build Entity shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Design-Build Entity may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Design-Build Entity's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

### **3.03 Pre-Proposal Investigation Requirements For Excavation And Utilities Relocation Projects**

- A. As part of its pre-proposal investigations for Projects involving excavation and/or relocation of existing utilities, Design-Build Entity shall make reasonable efforts to verify information regarding Underground Facilities including, without limitation, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of Owner and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground

Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Design-Build Entity shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Design-Build Entity shall carefully consider all supplied information, request additional information Design-Build Entity may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, manholes, new asphalt, meters and junction boxes, on or adjacent to the Site). Design-Build Entity shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

## **ARTICLE 4 - COMMENCEMENT OF WORK**

### **4.01 Subcontractor Listing Law**

- A. Design-Build Entity shall comply with the Subcontractor Listing Law, Public Contract Code Sections 4101, et seq. Design-Build Entity shall not substitute any other person or firm in place of any Subcontractor or Designer listed in the Proposal except as may be allowed by law.
- B. Design-Build Entity shall award all subcontracts not listed in its Proposal in accordance with Contract Documents.
- C. Design-Build Entity shall, at a minimum, do all of the following:
  - 1. Provide public notice of availability of Work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the Owner, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
  - 2. Establish reasonable qualification criteria and standard.
  - 3. Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing.
- D. The foregoing process does not apply to construction subcontractors listed in the original Proposal.
- E. With Owner's concurrence and in compliance with all applicable legal, regulatory and professional standards and Contract Documents requirements), Design-Build Entity may release design packages for construction to properly awarded design-build subcontractors prior to completion of Construction Documents. Owner's consent shall not be unreasonably withheld, provided, however, Design-Build Entity and its Subcontractors must complete Construction Documents and details under procedures permitting Owner rights of review and acceptance of final details sufficient to assure compliance with design intent.
- F. In a contract between Design-Build Entity and a Subcontractor, and in a contract between a Subcontractor and any subcontractor or subconsultant thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in Contract Documents. If Design-Build Entity provides written notice to any Subcontractor who is not a member of Design-Build Entity, prior to or at the time the Subcontractor's bid is requested, that a bond may be required and the Subcontractor subsequently is unable or refuses to furnish a bond to Design-Build Entity, then Design-Build Entity may withhold retention proceeds in excess of the percentage specified in the Contract Documents from any payment made by Design-Build Entity to the Subcontractor.
- G. Design-Build Entity shall provide Owner with additional versions of Document 00 4336 (Subcontractors List) as follows:
  - 1. Within fourteen (14) days of award of any subcontract, a Document 00 4336 identifying all Subcontractors not included on a prior Document 00 4336; and
  - 2. Before commencing any construction Work, a complete Document 00 4336 identifying all Subcontractors, however and whenever procured.

- H. All Subcontractors bidding on subcontracts shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. Without limiting the forgoing, Design-Build Entity shall not substitute any other person or firm in place of any Subcontractor listed in the Proposal. Consistent with the Subcontractor Listing Law, Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor or designer without Owner's written approval. At Owner's request, Design-Build Entity shall provide Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.

#### **4.02 Subcontracts**

- A. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Design-Build Entity shall require the Subcontractor or Designer's written agreement (i) to be bound to the terms of Contract Documents and (ii) to assume vis-à-vis Design-Build Entity all the obligations and responsibilities that Design-Build Entity assumes toward Owner under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Design-Build Entity is subject under the Contract Documents.)
- B. Design-Build Entity shall provide for the assignment to Owner of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.
- C. Subcontracts shall provide and acknowledge Owner as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

#### **4.03 Submission Of Required Schedules**

- A. Design-Build Entity shall submit to Owner in draft for review and discussion at the Preconstruction Conference, and in final prior to the first payment application, the following schedules:
1. Schedule of Values
  2. Progress Schedule, and
  3. Schedule of Submittals.
- B. No progress payment shall be due or owing to Design-Build Entity until such schedules are submitted to and acceptable to Owner and/or Bridging Designer as meeting the requirements of the Contract Documents. In Owner's sole discretion, Owner may elect to instead withhold a portion of any progress payment for unacceptable compliance with contract requirements for such schedules.
- C. Owner's acceptance of Design-Build Entity's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefore.

#### **4.04 Commencement Date Of Contract Time**

- A. The Contract Time will commence to run on the 60th Day after the issuance of the Notice of Award or, if a Notice to Proceed is given, on the date indicated in the Notice to Proceed.
- B. Owner may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Design-Build Entity shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

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

#### **5.01 General**

- A. Bridging Documents supplied under Document 00 5255 establish the design intent and the minimum requirements for the quality and type of materials to be used in the Project. Bridging Documents and any addenda will be used to confirm that Design-Build Entity-prepared Design Development and Construction Documents are in conformance with the design intent and the minimum requirements for the quality and type of materials to be used in the Project.

- B. Design-Build Entity-prepared Construction Documents are the Drawings and Specifications for construction. Subject to all provisions of Contract Documents, Design-Build Entity shall construct the Project in accordance with those Drawings and Specifications. The warranty and other requirements in the Contract Documents (including Bridging Documents), however, shall constitute the minimum design, material, quality, workmanship and other standards required under the Contract Documents, and shall have higher precedence in case of inconsistency with the Design-Build Entity prepared Construction Documents.
- C. Where Owner has specified equipment or materials, Design-Build Entity shall provide the specified equipment or materials (regardless of any Design-Build Entity contention that proposed equipment or materials meet or exceed Owner's requirements).
- D. Design-Build Entity shall be fully responsible for all design errors, including without limitation all errors, inconsistencies and omissions in the Design-Build Entity-prepared Construction Documents, and shall report any such matter to Owner promptly following discovery. Design-Build Entity has full "turnkey" responsibility to deliver the fully functional, operational Project described in Document 00 5255 (Bridging Documents), as referenced in the Contract Documents.

#### **5.02 Intent**

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

#### **5.03 Drawing Details**

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

#### **5.04 Interpretation Of Bridging Documents**

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

#### **5.05 Checking of Drawings**

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

#### **5.06 Standards to Apply Where Specifications are Not Furnished**

- A. Wherever in the Contract Documents (including without limitation Bridging Documents), or in any orders given by Owner, it is provided that Design-Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, and Document 00 5201 (Bridging Documents) does not otherwise establish the applicable standard, the following general specifications shall apply.
- B. Design and construction shall meet the standards required to provide Owner with a first class, fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials and design, found in comparable, first class, fully functional, contemporary facilities. Reference facilities identified in Document 00 5201 (Bridging Documents) shall be used as the guide in this determination, but only when the Bridging Documents are otherwise silent.
- C. Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of this Contract and obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed specifications are set forth herein shall conform to the requirements of this subparagraph..

#### **5.07 Ownership and Use of Drawings, Specifications and Contract Documents -- Ownership of Results/Works for Hire**

- A. Any interest (including copyright interests) of Design-Build Entity or its Subcontractors or consultants, including Designers (together, **Sub-consultants**), in studies, reports, memoranda, computational sheets, Construction Documents, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, and any other original works of authorship (including electronic media) created by Design-Build Entity or its Sub-consultants in connection with the Work, shall become the property of Owner.

To the extent permitted by Title 17 of the United States Code, work product produced under the Contract Documents shall be deemed works for hire and all copyrights in such works shall be the property of Owner. In the event that it is ever determined that any works created by Design-Build Entity or its Sub-consultants under the Contract Documents are not works for hire under U.S. law, Design-Build Entity hereby assigns to Owner all copyrights to such works. With Owner's prior written approval, Design-Build Entity and its Sub-consultants may retain and use copies of such works for reference and as documentation of experience and capabilities.

- B. Design-Build Entity and its Sub-consultants shall, however, retain the copyright in their standard details, and grant Owner an unlimited license to use such details for all purposes reasonably related to the Project, including, without limited to, the operation, maintenance, repair, renovation, restoration, and expansion thereof. Should Owner desire to reuse any of the items specified above and not use the services of Design-Build Entity or applicable Sub-Designer, then the Owner agrees to assume any and all obligations for their reuse and, if applicable, process the same through all AHJ, and Owner releases Design-Build Entity and its Sub-consultants from liability associated with the reuse.
- C. Owner acknowledges that (i) any functionally required elements, such as standard space configurations, (ii) individual standard features such as windows, doors and other ordinary building components, (iii) functional elements whose design or placement is dictated by utilitarian concerns, and (iv) any other design element which any applicable law generally excludes from the scope of a copyright, are excluded from the copyright granted to Owner.

## **ARTICLE 6 - DESIGN-BUILD ENTITY'S ORGANIZATION AND EQUIPMENT**

### **6.01 Design-Build Entity's Legal Address**

- A. Address and facsimile number given in Design-Build Entity's Proposal are hereby designated as Design-Build Entity's legal address and facsimile number. Design-Build Entity may change its legal address and facsimile number by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address or facsimile number, and which Owner accepts in writing. Delivery to Design-Build Entity's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Design-Build Entity at Design-Build Entity's legal address, or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Design-Build Entity. Facsimile to Design-Build Entity's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Design-Build Entity.

### **6.02 Design-Build Entity's Superintendents Or Forepersons**

- A. Design-Build Entity shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Design-Build Entity or to authorized representative or representatives on Site.

### **6.03 Proficiency In English**

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

### **6.04 Design-Build Entity's And Subcontractors' Employees**

- A. Design-Build Entity shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Design-Build Entity that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work

representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Design-Build Entity or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of Owner.

#### **6.05 Design-Build Entity's Use Of The Site**

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

#### **6.06 Design-Build Entity's Site Office**

- A. Unless expressly provided otherwise in the Contract Documents, Design-Build Entity shall provide a site office staffed by a resident project manager or job superintendent.

### **ARTICLE 7 - OWNER'S ADMINISTRATION OF WORK**

#### **7.01 Owner's Representative(s)**

- A. Owner's Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Design-Build Entity through Owner's Representative, and Design-Build Entity shall issue all communications to Owner through Owner's Representative in a written document delivered to Owner.
- C. Should any direct communications between Design-Build Entity and Owner's consultants, architects or engineers not identified in Article 2 of Document 00 5253 (Agreement) occur during field visits or by telephone, Design-Build Entity shall immediately confirm them in a written document copied to Owner.

#### **7.02 Owner's Observation Of The Work**

- A. Work shall be performed under Owner's general observation and administration. Design-Build Entity shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Design-Build Entity of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- B. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Design-Build Entity's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Design-Build Entity's failure to comply with laws and regulations applicable to the furnishing or performance of Work (including Services). Owner will not be responsible for Design-Build Entity's failure to perform or furnish the Work in accordance with Contract Documents.

#### **7.03 Consultant's Observation Of Work**

- A. Owner may engage one or more of the following to assist in administering the Work: a Bridging Designer, Project Manager, Construction Manager, or any other independent consultant (collectively for purposes of this Article 7, **Consultant**). If so engaged, Consultant will advise and consult with Owner, but will have authority to act on behalf of Owner only to extent provided in the Contract Documents or as set forth in writing by Owner. Consultant will not be responsible for and will not have control or charge of design, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work.

Consultant will not be responsible for or have control over the acts or omissions of Design-Build Entity, Subcontractors or their agents or employees, or any other persons performing Work.

- B. Consultant may review Design-Build Entity's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- C. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Owner that it disapproves or rejects Work that Consultant believes to be Defective or will not produce a complete Project that conforms to Contract Documents, or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Consultant may also recommend to Owner special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.
- D. Consultant may conduct observations or inspections to recommend to Owner the dates that Design-Build Entity has achieved Substantial Completion and Final Completion, and will receive and forward to Owner for review written warranties and related documents required by Contract Documents.

#### **7.04 Owner's And Consultant's Exercise Of Contract Responsibilities**

- A. Owner, Consultant, and all Owner's representatives, in performing their duties and responsibilities under the Contract Documents, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Design-Build Entity, any Subcontractor, sub-Subcontractor or supplier, except those set forth expressly in the Contract Documents.

#### **7.05 Owner's Right Of Access To The Work**

- A. During performance of Work, Owner, Consultant, and all Owner's representatives may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Design-Build Entity shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Design-Build Entity shall have sole care, custody, and control of the Site and its Work areas.

#### **7.06 Owner's Right Of Separate Construction**

- A. Owner may perform with its own forces, construction or operations related to the Project, or the Site during Design-Build Entity's operations. Owner may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility Owners perform other work.
- B. Design-Build Entity shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility districts and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Design-Build Entity shall ensure that the execution of its Work properly connects and coordinates with others' work, do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, and shall cooperate with them to facilitate the progress of the Work.
- C. To the extent that any part of Design-Build Entity's Work is to interface with work performed or installed by other contractors or utility owners, Design-Build Entity shall inspect and measure the in-place work. Design-Build Entity shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Design-Build Entity's interface unless corrected.



## **ARTICLE 8 - DESIGN-BUILD ENTITY'S PROSECUTION AND PROGRESS OF THE WORK**

### **8.01 Design-Build Entity To Supervise The Work**

- A. Subject to those rights specifically reserved in the Contract Documents, Design-Build Entity shall supervise, direct, have control over, and be responsible for, Design-Build Entity's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Whenever required by applicable laws or Contract Documents, Design-Build Entity shall employ licensed personnel as necessary to perform engineering, design, architectural, and other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel that specialize in work similar to the Work of this Contract.
- C. Design-Build Entity shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without Owner's express written consent and, if applicable, payment of liquidated damages as required by Document 00 5253 (Agreement). The Superintendent shall be Design-Build Entity's representative at the Site and shall have complete authority to act on behalf of Design-Build Entity. All communications to and from the Superintendent shall be as binding as if given to or by Design-Build Entity.
- D. Design-Build Entity shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Design-Build Entity shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Design-Build Entity shall be responsible to see that the completed Work complies accurately with Contract Documents.
- E. Design-Build Entity is fully responsible for Design-Build Entity's own acts and omissions. Design-Build Entity is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Design-Build Entity.
- F. Design-Build Entity shall conduct monthly Design-Build Entity Safety Committee meetings, and weekly toolbox safety talks.

### **8.02 Design-Build Entity To Maintain Cost Data**

- A. Design-Build Entity shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Design-Build Entity of each class of materials, tools and appliances used by Design-Build Entity in Work, and the amount of each class of materials used in each subdivision of Work. Design-Build Entity shall provide Owner with monthly summaries of this information. If Design-Build Entity maintains or is capable of generating summaries or reports comparing actual Project costs with Proposal estimates or budgets, Design-Build Entity shall provide Owner with a copy of such report upon Owner's request.
- B. Design-Build Entity shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Design-Build Entity shall provide Owner with copies for each Day Design-Build Entity works on the Project, to be delivered to Owner either the same Day or the following morning before starting work at the Site. Design-Build Entity shall take pre-construction and monthly progress photographs of all areas of the Work. Design-Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. Owner shall have the right to audit and copy Design-Build Entity's books and records of any type, nature or description relating to the Project (including, without limitation, financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Design-Build Entity's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, proposal and

negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Design-Build Entity. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of Government Code Section 8546.7. This right of inspection shall not relieve Design-Build Entity of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

#### **8.03 Design-Build Entity To Supply Sufficient Workers And Materials**

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

#### **8.04 Design-Build Entity To Maintain Project Record Documents**

- A. Design-Build Entity shall maintain in a safe place at the Site one record copy of all Construction Documents, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Owner for reference. Upon completion of the Work, Design-Build Entity shall deliver to Owner, the Project Record Documents, Samples and Shop Drawings and as-built drawings.
- B. Throughout Design-Build Entity's performance of the Work of the Project, Design-Build Entity shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Design-Build Entity shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or

professional engineer). Design-Build Entity shall make all records available to Owner. At the completion of the Project, Design-Build Entity shall deliver all such records to the Owner to have a complete set of record as-built drawings.

#### **8.05 Design-Build Entity To Not Disrupt Owner Operation**

- A. Design-Build Entity shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations including, without limitation, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using Owner facilities or doing business with Owner. Design-Build Entity shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interference of construction with Owner, which Owner will reasonably cooperate with.

#### **8.06 Design-Build Entity To Provide Temporary Facilities And Controls**

- A. Unless expressly provided otherwise in the Contract Documents, Design-Build Entity shall provide all temporary utilities (including without limitation electricity, water, natural gas), lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing or completion of the Work.

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

#### **9.01 Warranty And Guaranty**

- A. General Representations and Warranties: Design-Build Entity represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Design-Build Entity warrants that all design and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices and all requirements of Contract Documents and that the design as developed will comply with the Bridging Documents and the intended use of the Project. Design-Build Entity warrants that Work including, without limitation, each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Design-Build Entity warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Bridging Documents and all descriptions set forth therein, and all other requirements of Contract Documents. Design-Build Entity shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- B. Extended Warranties: Any warranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Design-Build Entity expressly agrees to act as co-guarantor of such equipment and materials and shall supply Owner with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Paragraph are effective continuously during Design-Build Entity's Work on the Project and following cessation of labor for any reason including, without limitation, Project completion. Design-Build Entity covenants, warrants and represents to Owner that:
  - 1. To Design-Build Entity's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Design-Build Entity's construction thereof. If any lead or Asbestos-containing materials were discovered, Design-Build Entity made immediate written disclosure to Owner.

2. To Design-Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Design-Build Entity's construction thereof.
3. To Design-Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Design-Build Entity's construction thereof. If any such materials were discovered, Design-Build Entity made immediate written disclosure to Owner.
4. Design-Build Entity's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Design-Build Entity claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Design-Build Entity has not complied. If there are any such notices with which Design-Build Entity has complied, Design-Build Entity shall provide Owner with copies thereof.

## **9.02 Inspection Of Work**

- A. All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Design-Build Entity shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Design-Build Entity shall prepare Samples or test specimens at its expense and furnish them to Owner. Design-Build Entity shall submit all Samples in ample time to enable Owner to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.
- C. Design-Build Entity shall give Owner timely notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- D. If Work fails any inspection, Design-Build Entity will be responsible for Owner's reinspection costs.
- E. In the event that a scheduled inspection is canceled in less than 24 hours' notice by Design-Build Entity and the Owner incurs costs associated with the cancellation, Design-Build Entity will reimburse Owner for the actual costs of the canceled inspections. The amount will be deducted from payment owed Design-Build Entity.
- F. Upon advance notice as set forth above, Owner will endeavor to schedule required inspections, but if resources are not available, Design-Build Entity may need to reschedule the Work at no additional cost to the Owner.
- G. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Design-Build Entity shall pay all costs in connection with any follow-up or additional testing. Design-Build Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the

Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work.

- H. If Design-Build Entity covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Design-Build Entity shall uncover the Work at Owner's request. Design-Build Entity shall bear the expense of uncovering Work and replacing Work. In any case where Design-Build Entity covers Work contrary to Owner's request, Design-Build Entity shall uncover Work for Owner's observation or inspection at Owner's request. Design-Build Entity shall bear the cost of uncovering Work.
- I. Whenever required by Owner, Design-Build Entity shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Design-Build Entity. If Work is found to be satisfactory, Owner, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- J. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Design-Build Entity shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents and to immediately correct Defective Work immediately upon Design-Build Entity's knowledge.
- K. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Design-Build Entity. Design-Build Entity shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Design-Build Entity shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

#### **9.03 Correction Of Defective Work**

- A. Owner may direct Design-Build Entity to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Also, if Design-Build Entity fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Owner may direct Design-Build Entity to perform the Work in accordance with the Contract Documents, correct or replace any such Defective Work, or stop any portion of Work.
- B. Owner may correct and remedy the Defective Work or perform any other work, corrective or otherwise, if, after five Days' written notice to Design-Build Entity, Design-Build Entity fails to correct Defective Work or to remove and replace rejected Work; or provide a plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, Owner may exclude Design-Build Entity from all or part of the Site; take possession of all or part of Work and suspend Design-Build Entity's Work related thereto; take possession of all or part of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which Owner has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow Owner, its representatives, agents, employees, and other contractors and consultants' access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. Design-Build Entity shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Owner in exercising rights and remedies under this Paragraph. Design-Build Entity shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may decide the proper amount or, in its discretion may elect to leave

the Contract Sum unchanged and deduct from monies due Design-Build Entity, all such claims, costs, losses and damages caused by or resulting from exercising its rights and remedies. If Design-Build Entity disagrees with Owner's calculations, it may make a claim as provided in Article 12 of this Document 00 7253.

- D. These Owner rights and remedies are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Design-Build Entity or any other party. Owner's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.

#### **9.04 Acceptance of Defective Work**

- A. Owner may in its sole discretion elect to accept Defective Work. Design-Build Entity shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Design-Build Entity, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Design-Build Entity disagrees with Owner's calculations, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253. If Owner accepts any Defective Work after final payment, Design-Build Entity shall pay to Owner, an appropriate amount as determined by Owner.

#### **9.05 Rights Upon Inspection, Correction Or Acceptance**

- A. Design-Build Entity shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article. Where Owner exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, without limitation, the right to terminate Design-Build Entity's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Observation or inspection by Owner or its authorized agents or representatives shall not relieve Design-Build Entity of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Design-Build Entity's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

#### **9.06 Proof Of Compliance Of Contract Provisions**

- A. In order that Owner may determine whether Design-Build Entity has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Design-Build Entity shall at any time, when requested, submit to Owner properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.
- B. Before commencing any portion of Work, Design-Build Entity shall inform Owner in writing as to time and place at which Design-Build Entity wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Design-Build Entity proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Design-Build Entity.

#### **9.07 Correction Period And Project Warranty Period:**

- A. If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws, regulations or by the terms of Contract Documents or any extended warranty

or guaranty, any Work (completed or incomplete) is found to be Defective, Design-Build Entity shall promptly without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Design-Build Entity shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

- B. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- C. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this Paragraph after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

#### **9.08 No Waiver**

- A. Neither recordation of Final Acceptance nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by Owner shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Design-Build Entity of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to Owner, Owner shall have right to operate and use materials or equipment until said materials and equipment can, without damage to Owner, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.
- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Design-Build Entity's, Subcontractors', and equipment suppliers' liability to Owner for damages sustained as result of latent defects in materials or equipment caused by negligence of Design-Build Entity, its agents, suppliers, employees, or Subcontractors.

### **ARTICLE 10 - MODIFICATIONS OF CONTRACT DOCUMENTS**

#### **10.01 Owner's Right To Direct Changed Work.**

- A. Owner may, without notice to the sureties and without invalidating the Contract, make changes in the Work (**Changed Work**), including without limitation: alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Design-Build Entity shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Design-Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such Owner-furnished labor, materials, and equipment.
- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Design-Build Entity and Owner may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as Owner may direct (with Design-Build Entity retaining its rights under Article 12 herein).

## 10.02 Required Documentation For Changed Work

- A. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order or Change Directive that shall specify:
  - 1. The Work performed in connection with the change to be made;
  - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
  - 3. The extent of the adjustment in the Contract Time, if any.
- B. A Change Order or Change Directive will become effective when signed by Owner, notwithstanding that Design-Build Entity has not signed it. A Change Order will become effective without Design-Build Entity's signature, provided Owner indicates same thereon (by indicating it as a "unilateral change order").
- C. All changes in any plans and specifications approved by any authority with jurisdiction may also require addenda or change orders approved by that authority.
- D. Where Owner requests, a performance bond rider covering the changed Work must be executed and delivered to Owner before proceeding with the changed Work or shortly in time thereafter.

## 10.03 Procedures And Pricing Of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Section 01 2600 (Modification Procedures).

# ARTICLE 11 - TIME ALLOWANCES

## 11.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.
- B. Float. Float shall be treated as a Project resource. Design-Build Entity shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.
- C. Time extensions will not be granted unless substantiated by the Critical Path Method (**CPM**) Schedule, and then not until the CPM project float becomes zero. If Design-Build Entity fails to submit a TIE, as required by Section 01 2600 (Modification Procedures) and Section 01 3200 (Progress Schedules and Reports), within the required time period, then Design-Build Entity shall be deemed to have agreed that there is no time impact and that Design-Build Entity has irrevocably waived its rights to any additional Contract Time.

## 11.02 Excusable Delay And Inexcusable Delay Defined.

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
  - 1. Changes in the Work ordered by Owner (**Changes**);
  - 2. Acts or neglect by Owner, Bridging Architect, any Owner Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Design-Build Entity has performed its responsibilities under the Contract Documents (including, without limitation, pre-proposal investigations) (**Acts or Neglect**); or
  - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God (together, "force majeure events"), provided damages resulting therefrom are not the result of Design-Build Entity's failure to protect the Work as required by Contract Documents (**Force Majeure**).
- B. Inexcusable Delay. Contract Time shall not be extended for any period of time where Design-Build Entity (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Design-Build Entity's risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Design-Build Entity.



### **11.03 Notice Of Delay**

- A. Within seven Days of the beginning of any delay (excepting adverse weather delays), Design-Build Entity shall notify Owner in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Design-Build Entity requests an extension of time, Design-Build Entity shall submit a TIE, in accordance with by Section 01 2600 (Modification Procedures) and Section 01 3200 (Progress Schedules and Reports), within ten days of the notice of delay. Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed twenty-one days from the beginning of the delay event), Owner may in its sole discretion recognize a claim for delay accompanied with the proper TIE, provided Design-Build Entity also shows good faith and a manifest lack of prejudice to Owner from the late notice.

### **11.04 Compensable Time Extensions**

- A. Subject to other applicable provisions of the Contract Documents, Design-Build Entity may be entitled to adjustment in Contract Sum in addition to Contract Time for:
1. Excusable delay caused solely by Changes in the Work ordered by Owner, as provided above, and/or
  2. Excusable delay caused solely by Acts or Neglect by Owner or other person, as provided above.

### **11.05 Non-Compensable Time Extensions**

- A. Subject to other applicable provisions of the Contract Documents, Design-Build Entity may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
1. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
  2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or unexcusable, such as: acts or neglect of Design-Build Entity, Subcontractors or others for whom Design-Build Entity is responsible; other acts, omissions and conditions which would not entitle Design-Build Entity to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided above in this Article.

### **11.06 Adverse Weather**

- A. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds the parameters listed or referenced immediately below in this subparagraph and Design-Build Entity proves that adverse weather actually caused delays to work on the critical path. Design-Build Entity shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
- B. Claims for extension of time for rain delay will not be granted unless the number of days work is prevented by rain exceeds 100% of the historical average number of rain days for the period of the Contract Time, based on the records of the National Oceanic & Atmospheric Administration (**NOAA**) weather station closest to the Project Site, as measured and reported by NOAA. (For example, for California, Oregon and Washington, these figures are contained in the ">=0.10 inch" column at the applicable weather station's "General Climate Summary Table" for "Precipitation" at <http://www.wrcc.dri.edu/climate-summaries/>), pro-rated in the individual month Design-Build Entity starts and finishes Work. Delays due to adverse weather conditions will not be allowed for weather conditions that fall within these parameters.
- C. In order to qualify as an adverse weather delay with respect to the foregoing parameters, (i.) daily rainfall must exceed 0.1 inch, and/or (ii.) daily snowfall must exceed 1.0 inch or more, at the NOAA station located closest to the Project site, as measured and reported by NOAA. Notwithstanding these allowances, Design-Build Entity shall at all times employ all available

mitigation measures to enable Work to continue, Design-Build Entity shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for Owner to not grant a time extension due to adverse weather, where Design-Build Entity could have avoided or mitigated the potential delay by exercising reasonable care.

- D. Design-Build Entity shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Design-Build Entity shall notify Owner and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float available to either Owner or Design-Build Entity.
- E. Adverse weather delay for precipitation shall be recognized for the actual period of time Design-Build Entity proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Design-Build Entity's progress on the critical path, then no time extension shall be recognized; and conversely, if Design-Build Entity proves to Owner's satisfaction that precipitation exceeding the specified parameters causes delay to Design-Build Entity for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Design-Build Entity shall be entitled to a time extension equal to the actual period of such delay.
- F. During unfavorable weather, wet ground, or other unsuitable construction conditions, Design-Build Entity shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Design-Build Entity, with copy to Owner representative and the Bridging Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Design-Build Entity responsible, at no increase in Contract Sum, for corrections Owner may require. Commencement of Work constitutes acceptance of surface.

#### **11.07 Liquidated Damages**

- A. Time is of the essence. Execution of Contract Documents by Design-Build Entity shall constitute its acknowledgement that Owner will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
- B. Design-Build Entity and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Design-Build Entity and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- C. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Design-Build Entity subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.
- D. Design-Build Entity and Owner agree that the Key Personnel listed in Design-Build Entity's Statement of Qualifications and Proposal were a material factor in Owner's assessment of Design-Build Entity's experience and the adequacy of Contactor's supervisory personnel. Accordingly, Design-Build Entity and Owner agree that Design-Build Entity shall not remove, reassign or make changes to any of the Key Personnel without Owner's prior written approval. In

the event that any Key Personnel leaves the Project, is reassigned and/or is removed and replaced by Design-Build Entity before Project Final Completion, for any reason whatsoever, Design-Build Entity agrees to pay Owner liquidated damages as set forth in the Agreement (Document 00 5253), unless Design-Build Entity can demonstrate to Owner's satisfaction that the Key Personnel were reassigned and/or removed and replaced for reasons beyond Design-Build Entity's control.

## **ARTICLE 12 - CLAIMS BY DESIGN-BUILD ENTITY**

### **12.01 Obligation to File Claims for Disputed Work**

- A. Should it appear to Design-Build Entity that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Design-Build Entity may be required to perform, time extensions, payment to the Design-Build Entity during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Design-Build Entity otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, then Design-Build Entity shall first follow procedures set forth in the Contract Documents (including, without limitation, Paragraphs 11.03, 11.04, 13.03 and 13.04 of this Document 00 7253 and Section 01 2600.) If a dispute remains, then Design-Build Entity shall give written notice to Owner that expressly invokes this Article 12. Owner shall decide the issue in writing within 15 days; and Owner's written decision shall be final and conclusive. If Design-Build Entity disagrees with Owner's decision, or if Design-Build Entity contends that Owner failed to provide a decision timely, then Design-Build Entity's SOLE AND EXCLUSIVE REMEDY is to promptly file a written claim setting forth Design-Build Entity's position as required herein.

### **12.02 Form And Contents Of Claim**

- A. Design-Build Entity's written claim must identify itself as a "**Claim**" under this Article 12 and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to Owner within thirty (30) calendar days of receiving Owner's written decision, or the date Design-Build Entity contends such decision was due, and shall be priced like a change order according to Section 01 2600, and must be updated monthly as to cost and entitlement if a continuing claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a claim. Design-Build Entity shall bear all costs incurred in the preparation and submission of a claim.
- B. Regarding delay and impact costs of any nature, Design-Build Entity may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichleay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 2600 (Modification Procedures) in order to request, claim or prove compensation for delay.

### **12.03 Administration During/After Claim Submission**

- A. Notwithstanding and pending the resolution of any claim or dispute, Design-Build Entity shall diligently prosecute the disputed work to final completion in accordance with Owner's determination.
- B. Public Contract Code Section 9204 specifies required provisions on resolving contract Claims of any size, and Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract Claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls. Public Contract Code Section 9204 provides:

1. Upon receipt of a Claim the Owner shall conduct a reasonable review of the Claim and within 45 days, or if the Owner's governing body must approve the Owner's response to the Claim and the governing body has not met within the 45 days, then within three (3) days of the Agency's meeting, shall provide Design-Build Entity with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Should the Owner take no action on the Claim within 45 days of submission, it shall be deemed denied.
2. If the Design-Build Entity disputes the Owner's response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. The Owner shall schedule such a meet and confer conference within 30 days for settlement of the dispute. Within ten (10) days of the meet and confer conference the Owner shall provide Design-Build Entity with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. If the Design-Build Entity disputes the Owner's statement, it shall inform the Owner and they shall mutually agree to a mediator within 10 business days of the written statement.
3. The Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.
4. Any disputed portion of the Claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the Owner and the Design-Build Entity sharing the associated costs equally. The Owner and Design-Build Entity shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.
5. For Claims under \$375,000, unless the parties agree otherwise in writing, mediation pursuant to these provisions shall excuse the mediation obligation under Public Contracting Code section 20104.4(a).
6. The parties may mutually agree, in writing, to waive the mediation requirements of this subsection and proceed to further dispute resolution, as applicable.
7. Failure by the Owner to respond to a Claim from Design-Build Entity within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the Owner's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Design-Build Entity.
8. Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
9. If a Subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against the Owner because privity of contract does not exist, the Design-Build Entity may present to the Owner a Claim on behalf of a Subcontractor or lower tier subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Design-Build Entity present a Claim for work which was performed by the Subcontractor or by a lower tier subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the public entity shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Design-Build Entity shall notify the Subcontractor in writing as to whether the Design-Build Entity presented the Claim to the Owner and, if the original Design-Build Entity did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.
10. Nothing in this section shall impose liability upon the Owner that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

Public Contract Code Section 20104, et seq., provides:

11. For the purposes of this section, "Claim" means a separate demand by Design-Build Entity of \$375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Design-Build Entity arising under the Contract Documents and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by the Owner. Claims that together total more than \$375,000 do not qualify as a "separate demand of \$375,000 or less," and are not subject to this section.
12. A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim for purposes of this section. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under this section by submitting a separate Claim in compliance with Contract Documents Claim submission requirements.
13. Caution. This section does not apply to tort Claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort Claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the California Government Code.
14. The Claim must be in writing, submitted in compliance with all requirements of the Contract Documents.
15. For Claims of fifty thousand dollars (\$50,000) or less, the Owner shall respond in writing within forty-five (45) days of receipt of the Claim, or the Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or Claims the Owner may have against claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of the Owner and claimant. the Owner's written response to the Claim, as further documented, shall be submitted to claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by claimant in producing the additional information, whichever is greater.
16. For Claims over Fifty Thousand Dollars (\$50,000) and less than or equal to \$375,000: the Owner shall respond in writing within sixty (60) days of receipt of the Claim, or the Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or Claims the Owner may have against claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of the Owner and claimant; the Owner's written response to the Claim, as further documented, shall be submitted to claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by claimant in producing the additional information, whichever is greater.
17. Meet and Confer: If claimant disputes the Owner's written response, or the Owner fails to respond within the time prescribed above, claimant shall notify the Owner, in writing, either within fifteen (15) days of receipt of the Owner's response or within fifteen (15) days of the Owner's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand the Owner will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

#### **12.04 Compliance**

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code Claim under the Government Code. Design-Build Entity shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Design-Build Entity's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.03 above of the claims asserted. No suit may be brought against Owner arising out of or in connection with the Project unless and until Design-Build Entity presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910,

et seq. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.

- B. Failure to submit and administer claims as required in Article 12 shall waive Design-Build Entity's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.
- C. Design-Build Entity shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. Owner shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.
- D. Owner shall not be deemed to waive any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both Owner and Design-Build Entity; oral or implied modifications shall be ineffective.

#### **12.05 Mediation**

- A. Pursuant to Public Contract Code Sections 9204 and 20104, et seq., all contract claims shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding, pursuant to the construction mediation procedures of JAMS in Kern County, California, and utilize the services of a mediator mutually acceptable to the parties. If the parties are unable to agree, the mediator will be selected by JAMS from its panel of approved construction industry mediators, having a minimum of 20 years' experience in the construction industry.
- B. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Design-Build Entity claims shall be submitted to the same mediator. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of a mediation pursuant to this Paragraph, upon notice of the other party, exchange relevant, non-privileged project documents in compliance with Code of Civil Procedure Sections 2031.010, et seq. Additionally, the parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et. seq. The Mediator will have jurisdiction to resolve any discovery disputes relating to the Mediation.

### **ARTICLE 13 - UNDERGROUND CONDITIONS**

#### **13.01 Design-Build Entity To Locate Underground Facilities.**

- A. During construction, Design-Build Entity shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part: "Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."
- B. Design-Build Entity shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Design-Build Entity is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Design-Build Entity shall provide Owner with copies of all USA records secured by Design-Build Entity. Design-Build Entity shall

advise Owner of any conflict between information provided in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Design-Build Entity's excavation shall be subject to and comply with the Contract Documents.

- C. Design-Build Entity shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, manholes, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Existing Conditions Data, Contract Documents, or USA records, or discovered during Design-Build Entity's pre- or post-proposal investigation. Design-Build Entity shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

### **13.02 Design-Build Entity To Protect Underground Facilities.**

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Design-Build Entity shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in service installations damaged by Design-Build Entity's operations.
- B. Prior to performing Work at the Site, Design-Build Entity shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Existing Conditions Data, Contract Documents, USA records, or any material otherwise reasonably available to Design-Build Entity or discovered during Design-Build Entity's pre- or post-proposal investigations. Design-Build Entity shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Design-Build Entity shall immediately report to Owner for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Design-Build Entity's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7253.
- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown, indicated, or discovered in the materials and investigations described in Paragraph 13.02B, above, then Design-Build Entity shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Design-Build Entity shall be responsible for the safety and protection of such Underground Facility.
- D. The cost of all of the following will be included in the Contract Sum and Design-Build Entity shall have full responsibility for (a) reviewing and checking all available information and data including, without limitation, Existing Conditions Data, and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents or reasonably available information, or indicated by visual observation including, without limitation, and by way of example only, through performance of all pre-Proposal investigations required by this Document 00 7253 and Proposing Documents and post-Proposal investigations required by this Document 00 7253, and by engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with Government Code Section 4215, as between Owner and Design-Build Entity, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for proposing. Owner will compensate for the cost of locating and repairing damage not due to Design-Build Entity's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract

Documents or information made available for proposing with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Design-Build Entity shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

### **13.03 Concealed Or Unknown Conditions**

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Design-Build Entity shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an emergency as set forth in this Document 00 7253, and in no event later than seven Days after first observance of:
  - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
  - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Design-Build Entity's Notice of Differing Site Conditions under this Paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, Owner will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If Owner determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Design-Build Entity in writing, stating reasons (with Design-Build Entity retaining its rights under Article 12 of this Document 00 7253.)
- C. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Design-Build Entity knew or should have known of the existence of such conditions at the time Design-Build Entity submitted its Proposal, failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.
- D. Regarding Underground Facilities, Design-Build Entity shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
  - 1. Was not shown or indicated in the Contract Documents or in the information supplied for proposing purposes or in information on file at USA; and
  - 2. Design-Build Entity did not know of it; and
  - 3. Design-Build Entity could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Design-Build Entity for proposing purposes, in information on file at USA, or otherwise reasonably available to Design-Build Entity.)
- E. Design-Build Entity shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner for proposing purposes, in information on file at USA, or otherwise reasonably available to Design-Build Entity. Underground Facilities are inherent in construction involving digging of trenches or other excavations on Owner's Project, and Design-Build Entity is to apply its skill and industry to verify the information available.
- F. Design-Build Entity's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall



take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Design-Build Entity's or its subcontractor's proposal amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Design-Build Entity excavates in an area unexpected, then such costs would be recoverable entirely; while if Design-Build Entity extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

#### 13.04 Notice Of Hazardous Waste Or Materials Conditions

- A. Design-Build Entity shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document 00 7253), and in no event later than 24 hours after first observance of any:
  - 1. Material that Design-Build Entity believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (**hazardous material**); or
  - 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (**other materials**).
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Design-Build Entity shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Design-Build Entity complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Design-Build Entity's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Design-Build Entity, its Subcontractors, suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
  - 1. Design-Build Entity knew of the existence of such hazardous materials or other materials at the time Design-Build Entity submitted its Proposal; or
  - 2. Design-Build Entity should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Proposal; or
  - 3. Design-Build Entity failed to give the written notice within the required timeframe set forth below.
- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Design-Build Entity in writing, stating the reasons for its determination.
- F. In addition to the parties' other rights under this Document 00 7253, if Design-Build Entity does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Design-Build

Entity's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.

- G. If Design-Build Entity does not agree with any Owner determination of any adjustment in the Contract Sum or Contract Time under this Article, Design-Build Entity may make a claim as provided in Article 12 of this Document 00 7253.

## **ARTICLE 14 - LEGAL AND MISCELLANEOUS**

### **14.01 Laws And Regulations**

- A. Design-Build Entity shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Design-Build Entity or by Subs, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

### **14.02 Permits And Taxes**

- A. Design-Build Entity shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Owner will pay applicable building permits, sanitation and water fees for the completed construction, except as otherwise provided in the Contract Documents. Design-Build Entity shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Design-Build Entity shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

### **14.03 Communications And Information Distribution**

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Design-Build Entity may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.
- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.
- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of PDF copies of required correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to Owner's and Design-Build Entity's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between Owner and Design-Build Entity shall not be via Twitter,

Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

#### **14.04 Suspension Of Work**

- A. Owner may, without cause, order Design-Build Entity in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures). No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Build Entity is responsible.

#### **14.05 Termination Of Contract For Cause**

- A. The Design-Build Entity shall be in default of the Contract Documents and Owner may terminate the Design-Build Entity's right to proceed under the Contract Documents, for cause, in whole or in part, should the Design-Build Entity commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from Owner to the Design-Build Entity demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Design-Build Entity to avail itself of a time period in excess of 10 calendar days, the Design-Build Entity must provide Owner within the ten (10) day period with a written plan acceptable to Owner that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written plan).
- B. In the event of termination by Owner for cause as provided herein, the Design-Build Entity shall deliver to Owner possession of the Work in its then condition including, without limitation, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Design-Build Entity shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right that Owner may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Design-Build Entity shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and/or failure to comply with the Contract Documents.
- C. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Design-Build Entity shall have no greater rights than it would have had following a termination for convenience. Any Design-Build Entity claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Design-Build Entity.

#### **14.06 Termination Of Contract For Convenience**

- A. Owner may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to the Design-Build Entity notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.
- B. Design-Build Entity shall comply strictly with Owner's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Design-Build Entity shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Design-Build Entity of Work actually performed, up

to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, Owner shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.

- D. Under no circumstances may Design-Build Entity recover legal costs of any nature, nor may Contract recover costs incurred after the date of the termination.

#### **14.07 Contingent Assignment Of Subcontracts**

- A. Design-Build Entity hereby assigns to Owner each Subcontract for a portion of the Work, provided that:
1. The assignment is effective only after Owner's termination of Design-Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein.
  2. The assignment is effective only for the Subcontracts which Owner expressly accepts by notifying the Subcontractor in writing;
  3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
  4. After the effectiveness of an assignment, Design-Build Entity shall, at its sole cost and expense (except as otherwise provided in this Document 00 7253), sign all instruments and take all actions reasonably requested by Owner to evidence and confirm the effectiveness of the assignment in Owner; and
  5. Nothing in this Paragraph shall modify or limit any of Design-Build Entity's obligations to Owner arising from acts or omissions occurring before the effectiveness of any Subcontract assignment including, without limitation, all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

#### **14.08 Remedies And Contract Integration**

- A. Subject to Contract Documents provisions regarding Design-Build Entity claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between Owner and Design-Build Entity arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located. All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders, shall represent the entire and integrated agreement between Owner and Design-Build Entity regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. Owner and Design-Build Entity represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other information, which shall be inadmissible in any proceeding to enforce these documents.
- C. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term,

covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

- D. Neither acceptance of the whole or any part of Work by Owner nor any verbal statements on behalf of Owner or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein nor any right to damages provided in the Contract Documents.

#### **14.09 Interpretation**

- A. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Bridging Architect or any Owner's representative and Design-Build Entity; (ii) Owner and/or its Representatives and (except in the event of assignment upon termination) a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials or equipment; or (iii) between any persons or entities other than Owner and Design-Build Entity.

#### **14.010 Patents**

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Proposal price for doing the Work. Design-Build Entity shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents including, without limitation, the Board and each Owner's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Design-Build Entity agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

#### **14.011 Substitution For Patented And Specified Articles**

- A. Except as noted specifically in the instructions to Bidders or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Design-Build Entity may offer any substitute material or process that Design-Build Entity considers "equal" in every respect to that so designated and if material or process offered by Design-Build Entity is, in opinion of Owner, Equal in every respect to that so designated, its use will be approved. However, Design-Build Entity may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in Document 00 1119 (Request for Proposals). A substitution will be approved only if it is a true "or equal" item in every aspect of its design and quality including, without limitation, its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

#### **14.012 Interest Of Public Officers**

- A. No representative, officer, or employee of Owner no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

#### **14.013 Limit Of Liability**

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, WITHOUT LIMITATION, PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO DESIGN-BUILD ENTITY FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

### **ARTICLE 15 - WORKING CONDITIONS AND PREVAILING WAGES**

#### **15.01 Use Of Site/Sanitary Rules**

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

#### **15.02 Protection Of Work, Persons, And Property**

- A. Design-Build Entity shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Design-Build Entity shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Design-Build Entity shall be responsible for all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or

constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.

- B. Design-Build Entity shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify Owners of adjacent property and of Underground Facilities and utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Design-Build Entity shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Design-Build Entity's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Design-Build Entity's Work.
- D. Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Design-Build Entity for injury to persons or property shall be settled and Owner receives satisfactory evidence to that effect.
- F. Work within the right-of-way lines of the City, County and/or State shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Design-Build Entity before executing the work within such right-of-ways.

#### **15.03 Responsibility For Safety And Health**

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

#### **15.04 Emergencies**

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Design-Build Entity, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Design-Build Entity shall give Owner prompt written notice if Design-Build Entity believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Design-Build Entity in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

#### **15.05 Use Of Roadways And Walkways**

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

#### **15.06 Nondiscrimination**

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Government Code Section 12940. Every design-build entity for public works violating the provisions of Labor Code Section 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the California Labor Code.

#### **15.07 Prevailing Wages And Working Hours**

- A. Design-Build Entity shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Design-Build Entity shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- B. Design-Build Entity shall forfeit, as a penalty to Owner, \$200.00 for each laborer, worker, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, worker or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the Labor Code. The sums and amounts that are forfeited pursuant to this Paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Design-Build Entity under the Contract Documents, pursuant to this Document 00 7253 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- C. Design-Build Entity shall insert in every subcontract or other arrangement which Design-Build Entity may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.



- D. Design-Build Entity stipulates that it shall comply with all applicable wage and hour laws, including without limitation, Labor Code Sections 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Design-Build Entity and its Subcontractors shall be responsible for compliance with Labor Code Sections 1810-1815.
1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any worker employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
  2. Design-Build Entity and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.
  3. Design-Build Entity or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Design-Build Entity or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code Sections 1810-1815.
  4. Work performed on the Project by employees of Design-Build Entity or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.
- F. Design-Build Entity and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.
1. Design-Build Entity and Subcontractors must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
  2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-Build Entity as required by Labor Code Section 1776.
    - a. Design-Build Entity shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
    - b. Design-Build Entity or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Design-Build Entity or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Design-Build Entity is not subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.

3. With each application for payment, Design-Build Entity shall also deliver certified payrolls to Owner as set forth above in this Document 007253 (General Conditions), and concurrently therewith (but in no event less frequently than monthly) directly to the Labor Commissioner in the format prescribed by the Labor Commissioner.
4. Design-Build Entity shall post all jobsite notices if and when prescribed by regulation.

#### **15.08 Environmental Controls**

- A. Design-Build Entity shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, stormwater management and soil pollution controls and air pollution controls specified in Government Code Section 11017. Design-Build Entity shall be responsible for insuring that Design-Build Entity's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

#### **15.09 Shoring Safety Plan**

- A. Any conflict between this Paragraph and the Technical Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five Days in advance of any excavation five feet or more in depth, Design-Build Entity shall submit to Owner a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- C. During the course of Work, Design-Build Entity shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Design-Build Entity will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Design-Build Entity of its responsibilities under this Paragraph.
- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

**END OF DOCUMENT**

**DOCUMENT 00 7316**

**SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION**

**ARTICLE 1 INSURANCE**

- 1.01** At or before the date specified in Document 00 1119 (Request for Proposal), Design-Build Entity shall furnish to Owner satisfactory proof that Design-Build Entity has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:
- A. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (**Occurrence Form**). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards. The limits of such insurance shall not be coverage of less than **\$1,000,000** each occurrence, **\$2,000,000** general aggregate limit, and **\$2,000,000** aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.\
  - B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **\$1,000,000** each person Bodily Injury, **\$1,000,000** each occurrence Bodily Injury, and **\$1,000,000** each occurrence Property Damage.
  - C. All-Risk Course of Construction Insurance including damage to property owned by Owner, Design-Build Entity or third parties caused by fire. Insurance shall be in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed **\$10,000.00**. Each loss shall be borne by Design-Build Entity.
  - D. Workers' Compensation Insurance for all persons whom the Design-Build Entity may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
- 1.02** If Design-Build Entity normally carries insurance in an amount greater than the minimum amounts required by Owner in Paragraph 1.01 above, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Design-Build Entity hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.
- 1.03** All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of **[A-, VII]** or better, unless otherwise specified in Contract Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of Owner, warrant such increase. Design-Build Entity shall increase required insurance amounts upon direction by Owner.
- 1.04** Required Endorsements: The policies required under Document 00 7253 (General Conditions) and this Document 00 7316 (including any umbrella or excess liability policy(ies)) shall be endorsed as follows:
- A. Name Owner, its elected and/or appointed governing body and boards, employees, representatives, consultants, and agents, and Project Manager as additional insureds, but only with respect to liability arising out of the activities of the named insured. Additional insured language must be at least as broad as the Insurance Services Office (**ISO**) forms GC 20 38 04 13 and GC 20 37 04 13.

- B. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
  - C. Insurance shall be primary to Owner and no other insurance or self-insured retention carried or held by Owner shall be called upon to contribute to a loss covered by insurance for the named insured.
  - D. All endorsements shall include the applicable policy number, the named insured(s) and policy terms.
  - E. Design-Build Entity or its insurance broker shall submit to Owner a copy of the "**Declarations Page**" for each policy identified under Paragraph 1.01 above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of insurance provided, the effective date(s) of the policy, the insurance broker's name and license number, and a list of all coverage forms and endorsements.
- 1.05** Certificates of insurance and endorsements shall have clearly typed thereon Owner Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to Owner (Attention: Owner Risk Manager / Purchasing Agent) at the address listed in Document 00 5253 (Agreement), 60 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 Days of cancellation. Design-Build Entity shall maintain all insurance in full force and effect during entire period of performance of Contract Documents, including warranty and guarantee periods. However, Design-Build Entity may discontinue All-Risk Course of Construction Insurance after Final Payment, and shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph 1.01 above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Design-Build Entity shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon Owner's request, Design-Build Entity shall submit to Owner, within 30 Days, copies of the actual insurance policies or renewals or replacements.
- 1.06** Design-Build Entity shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Design-Build Entity fails to maintain insurance, Owner may take out comparable insurance, and deduct and retain amount of premium from any sums due Design-Build Entity under Contract Documents.
- 1.07** If injury occurs to any employee of Design-Build Entity, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Owner under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Owner, Owner may retain out of sums due Design-Build Entity under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Owner is compelled to pay compensation, Owner may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Design-Build Entity to reimburse Owner.
- 1.08** Nothing herein shall be construed as limiting in any way the extent to which Design-Build Entity or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.09** Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain \$1,000,000 in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Design-Build Entity with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Design-Build Entity shall cause the Subcontractors to furnish proof thereof to Owner within ten Days of Owner's request.

- 1.10** The following provisions apply to Designers and any other licensed professional engaged by Design-Build Entity to perform portions of the Work (**Professional**).
- A. Each Professional shall maintain the following insurance, unless otherwise specified in Contract Documents:
  - B. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than **[\$1,000,000]** combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.
    - 1. Professional shall satisfy all other provisions of this Document 00 7316 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.

## **ARTICLE 2 RESPONSIBILITY OF DESIGN-BUILD ENTITY AND INDEMNIFICATION**

- 2.01** Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Design-Build Entity releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Design-Build Entity shall defend, indemnify, and hold harmless, Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or part by any act or omission of Design-Build Entity, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except their sole negligence, willful misconduct, or active negligence.
- 2.03** With respect to third-party claims against Design-Build Entity, Design-Build Entity waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against Owner and each of its officers, employees, consultants and agents including, without limitation, Owner, the Board, Project Manager and each Owner's Representative. Owner shall provide timely notice to Design-Build Entity of any third-party claim relating to the Contract Documents, in accordance with Public Contract Code Section 9201.
- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Design-Build Entity, its Subcontractors of any tier, or the officers or agents of any of them.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Design-Build Entity fails to perform any of these defense or indemnity obligations, Owner may in its discretion

back charge Design-Build Entity for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.

**END OF DOCUMENT**

**DOCUMENT 00 7380**

**APPRENTICESHIP PROGRAM**

**ARTICLE 1 COMPLIANCE REQUIRED**

- 1.01** Design-Build Entity and Subcontractors shall comply with the requirements of Labor Code Sections 1776, 1777.5, and 1777.6 regarding the employment of apprentices by Design-Build Entity or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

**ARTICLE 2 CERTIFICATION OF APPROVAL**

- 2.01** Labor Code Section 1777.5, as amended, requires a Design-Build Entity or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:
- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
  - B. When the number of apprentices in training in the area exceeds a ratio of one to five;
  - C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
  - D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

**ARTICLE 3 FUND CONTRIBUTIONS**

- 3.01** Design-Build Entity is required to make contributions to funds established for administration of apprenticeship programs if Design-Build Entity employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

**ARTICLE 4 APPRENTICESHIP STANDARDS**

- 4.01** Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

**END OF DOCUMENT**

**DOCUMENT 00 9113**

**ADDENDA**

**KERN HEALTH SYSTEMS**

**NEW CARPORT SOLAR PHOTOVOLTAIC (PV) SYSTEM PROJECT**

**2900 BUCK OWENS BOULEVARD, BAKERSFIELD, CA**

**[DOCUMENT TO BE COMPLETED AS ADDENDA DURING BID PERIOD]**

**[If a conformed copy is created, delete bracketed line above and replace with the following:]**

The following Addenda were issued, modifying the Project Manual:

Addendum No. 1, issued on **[date]**

Addendum No. 2, issued on **[date]**

**[Continue as appropriate]**

(Addenda have been incorporated into the conformed Project Manual.)

**END OF DOCUMENT**



DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 1100**

**SUMMARY OF WORK**

**PART 1 GENERAL**

**1.01 Summary of Work.**

- A. Section includes Summary of Work and Work Restrictions including:
1. Work Covered By Contract Documents
  2. Proposal Item, Allowances and Alternates
  3. Specialty Items
  4. Work Under Other Contracts
  5. Future Work
  6. Work Sequence
  7. Work Days and Hours
  8. Shutdown for Discovery of Cultural Resources
  9. Cooperation of Design-Build Entity and Coordination with Other Work
  10. Partial Occupancy/Utilization Requirements
  11. Design-Build Entity Use of Site
  12. Air Quality Standards
  13. Construction Staking and Monument Protection
  14. Protection of Existing Structures and Underground Facilities
  15. Permits
  16. Owner-Furnished Products

**1.02 Work Covered by Contract Documents.**

- A. Work comprises of the design and construction of Owner's **New Carport Solar Photovoltaic (PV) System Project**, located at **2900 Buck Owens Blvd, Bakersfield, CA 93308**. The Work includes, without limitation, an all-inclusive, minimum 674.5 kW<sub>DC</sub> (540 kW<sub>AC</sub>) production carport solar PV system and a 120 kW<sub>AC</sub>/248 kWh production Battery Energy Storage System (BESS) with a discharge duration of two hours that shall be net-metered with the existing PG&E (utility) electrical service. The project includes all necessary site development due diligence, permitting, utility interconnection, under-canopy lighting, web-based monitoring, performance guarantee, related safety systems, rebates, incentives, and be aesthetically similar to the existing carport solar PV system. The design and installation of this PV system shall take into consideration the site's available solar resources, shading impacts of nearby (present or future) buildings or trees, structural and load constraints, available land space, parking lot lighting, utility interconnection requirements, applicable ordinances, codes, and regulations, contract budget constraints, and other relevant factors. The installation of carport sections will have to be conducted in phases and can be coordinated with the Facilities Superintendent since the parking lot has to continue to be used by employees throughout the construction. Contractor shall perform all appropriate assessments of the existing project site and building(s) to understand local conditions and their implications in terms of system design, construction, and operation. Contract Documents fully describe the Work.
- B. The Work of this Contract comprises construction of all the Work indicated, described in Section 00 5255 (Bridging Documents), or otherwise required by the Contract Documents. Unless provided otherwise in the Contract Documents, all risk of loss to Work covered by Contract Documents shall rest with Design-Build Entity until Final Acceptance of the Work. Cost of maintenance of systems and equipment prior to Final Acceptance will be considered as included in prices Proposal and no direct or additional payment will be made therefore.

- C. For all Proposal items, furnish and install all Work, including connections to existing systems, indicated and described in Section 00 5255 (Bridging Documents) and all other Contract Documents. Work and requirements applicable to each individual Proposal item, or unit of Work, shall be deemed incorporated into the description of each Proposal item (whether Lump Sum or Unit Price). Any Proposal item may be deleted from the Work and Contract Sum, in total or in part, prior to or after award of Contract without compensation in any form or adjustment of other Proposal items or prices therefore.
- D. Allowance Work shall be done as Change Orders and as specified in Section 01 2600 (Modification Procedures). Identify Allowance Items (See Document 00 4113 [Proposal Form]) work on the Progress Schedules and on Applications for Payment. The Amount given on Document 00 4113 (Proposal Form) under each Allowance Item is the sum of money set aside for each Allowance Item. These amounts shall be included in the Contract Sum on the Proposal Form. If the cost of Work done under any Allowance Item is less than the amount given on the Proposal Form under that Allowance Item, the Contract Sum shall be reduced by the difference between the amount given in the Proposal Form and the cost of Work actually done.
- E. Certain Design-Build Entity design services are described in this Section 001100 (Summary of Work) and in Section 01 11101 (Summary – Design Services).

#### **1.03 Alternates.**

- A. If Proposal Alternate 1 is selected by Owner, the design, procurement and installation of separate conduits for 4 level 3 EV charging stations from the carports to the electrical room will be part of contractor's scope. The location of the EV charging stations shall be selected by contractor and approved by Owner.
- B. If Proposal Alternate 2 is selected by Owner, contractor shall be responsible for operations and maintenance ("O&M") on an annual basis. Should Owner elect to proceed with Alternate 2 on or before the decision point date, Owner's election shall include an annual escalation factor of 3% in the annual pricing of O&M services. O&M should include daily online monitoring, twice a year scheduled general checkup including racking, modules, AC, DC and DAS systems, twice a year module washing, and two free 48 hours dispatch to site upon request. Coordination with equipment manufacturer after the installation is also responsibility of the O&M provider. Owner's Decision Point Date to decide whether or not to exercise Proposer's Alternate 2 shall be the Project's Substantial Completion date.

#### **1.04 Work Sequence.**

- A. Construct Work in stages and at times to accommodate Owner operation requirements during the construction period; coordinate construction schedule and operations with Owner.

#### **1.05 Work Days and Hours.**

- A. Work Days and hours: Monday-Friday inclusive, **7:00 a.m.-5:00 p.m.** local time.
- B. Work at the Site on weekends or holidays is not permitted, unless Design-Build Entity requests otherwise from Owner in writing at least 48 hours in advance and Owner approves in its sole discretion.

#### **1.06 Partial Occupancy/Utilization Requirements.**

- A. Make available, in areas occupied, on a 24 hour per day and 7 day per week basis if required, any utility services, heating, and cooling in condition to be put in operation at the time of occupancy.
  - 1. Responsibility for operation and maintenance of said equipment shall remain with Design-Build Entity.
  - 2. Make, and Owner shall certify, an itemized list of each piece of equipment so operated with the date operation commences.
  - 3. Itemized list noted above shall be basis for commencement of warranty period for equipment.

4. Owner shall pay for utility cost arising out of occupancy by Owner during construction.
- B. Use and occupancy by Owner prior to acceptance of Work does not relieve Design-Build Entity of its responsibility to maintain insurance and bonds required under the Contract until entire Work is completed and accepted by Owner.
- C. Prior to date of Final Acceptance of the Work by Owner, all necessary repairs or renewals in Work or part thereof so used, not due to ordinary wear and tear, but due to Defective materials or workmanship or to operations of Design-Build Entity, shall be made at expense of Design-Build Entity, as required in Document 00 7253 (General Conditions).
- D. Use by Owner of Work or part thereof as contemplated by this Section 01 1100 shall in no case be construed as constituting acceptance of Work or any part thereof. Such use shall neither relieve Design-Build Entity of any responsibilities under Contract, nor act as waiver by Owner of any of the conditions thereof.
- E. Owner may specify in the Contract Documents that portions of the Work, including electrical and mechanical systems or separate structures, shall be substantially completed on dates described in this Section 01 1100, if any, prior to Substantial Completion of all of the Work. Notify Owner in writing when Design-Build Entity considers any such part of the Work ready for its intended use and Substantially Complete and request Owner to issue a Certificate of Substantial Completion for that part of the Work.

**1.07 Design-Build Entity Use of Site.**

- A. The property is guarded seven days per week 24 hours per day. Access is available to the Site along the route indicated on the Site Plan. For access to Owner property, the entrance to the access road is protected with a gate and lock. Design-Build Entity may request a limited number of gate passes from the Facilities Department to help control unauthorized entry.
- B. For work in Owner building, Design-Build Entity shall contact Owner at least 2 Business Days prior to entering the building and performing Work to allow Owner to arrange access into the building. Access Request email shall be submitted 48 hours in advance of anticipated on-site Work to gain permission to enter Site and to allow notification to occupants.
- C. Confine operations at Site to areas permitted by Contract Documents, permits, ordinances, and laws. Do not unreasonably encumber Site with materials or equipment.
- D. Assume full responsibility for protection and safekeeping of products stored on premises. Move any stored products that interfere with operations of Owner or other contractor.
- E. Coordinate parking, storage, staging, and Work areas with Owner. Owner will provide a storage area for Design-Build Entity's equipment and materials. Do not store construction materials in the dripline of any tree.
- F. Prior to commencement of Work or excavation, Design-Build Entity and Owner shall jointly survey the area adjacent to the Project area making permanent note and record of such existing damage such as cracks, sags or other similar damage. This record shall serve as a basis for determination of subsequent damage to structures, conditions or other existing improvements due to Design-Build Entity's operations. All parties making the survey shall sign the official record of existing damage. Cracks, sags or damage of any nature to the adjacent Project area, not noted in the original survey but subsequently noted, shall be reported immediately to Owner.
- G. The Design-Build Entity shall follow all County and (as applicable) City ordinances in force during the duration of this Contract.
- H. It is essential that the Design-Build Entity perform the Work with as little interference and disturbance as possible to the surrounding neighborhood.
- I. When suspect materials, outside the scope of Work, are encountered during the Work or restoration process, the Design-Build Entity shall immediately contact the Project Manager for evaluation and approval of the methods for dealing with the material.

**1.08 Air Quality Standards.**

- A. Ensure that idling time for all heavy equipment is minimized to reduce on-Site emissions.
- B. Maintain equipment in good mechanical condition.
- C. Cover trucks hauling dirt.
- D. Limit dust emissions during periods of high winds (greater than 15 miles per hour).
- E. Replace ground cover in disturbed areas as soon as possible.
- F. Enclose, cover, water, or apply soil binders to exposed stockpiles.
- G. Remove earth tracked onto neighboring paved roads at least once daily.
- H. Limit equipment speed to 5 miles per hour on the property.

**1.09 Protection of Existing Structures and Underground Facilities.**

- A. In addition to reporting, if a utility is damaged, Design-Build Entity must take appropriate action as provided in Document 00 7253 (General Conditions).
- B. Additional compensation or extension of time on account of utilities not indicated or otherwise brought to Design-Build Entity's attention including reasonable action taken to protect or repair damage shall be determined as provided in Document 00 7253 (General Conditions).

**1.10 Permits.**

- A. All other permits that may be required, such as electrical, mechanical, fire prevention, irrigation, grading, slope protection, tree cutting, etc., have not been applied for and shall be obtained by Design-Build Entity. Applicable permit fees will be reimbursed to the extent specified in Document 00 7253 (General Conditions).

**1.11 Actual Damages for Permit Violations.**

- B. In addition to damages which are impracticable or extremely difficult to determine, for which liquidated damages will be assessed as described in Document 00 5253 (Agreement) and Document 00 7253 (General Conditions), Owner may incur actual damages, including fines imposed by any regulatory agency, where the violations result from Design-Build Entity's activities.
- C. Design-Build Entity shall be liable for and shall pay Owner the amount of any actual losses in addition to liquidated damages or other remedies provided by the Contract Documents.
- D. The amount of liquidated damages provided in Document 00 5253 (Agreement) and Document 00 7253 (General Conditions) is not intended to include, nor does the amount include, any damages incurred by Owner for reasons other than those listed in that paragraph. Any money due or to become due to Design-Build Entity may be retained by Owner to cover both the liquidated and the actual damages described above and, should such money not be sufficient to cover such damages, Owner shall have the right to recover the balance from Design-Build Entity or its sureties.

**PART 2 PRODUCTS**

**2.01 Owner-Furnished Products**

- A. Owner's Responsibilities:
  - 1. Arrange for and deliver Owner-reviewed Shop Drawings, Product Data, and Samples, to Design-Build Entity.
- B. Design-Build Entity's Responsibilities:
  - 1. Review Owner-reviewed Shop Drawings, Product Data, and Samples.
  - 2. Receive and unload products at Site; inspect for completeness or damage jointly with Owner.

3. Handle, store, install, and finish products.
4. Repair or replace items damaged after receipt.
5. Install into Project per Contract Documents.
6. Arrange and pay for delivery to Site.
7. On delivery, inspect products jointly with Design-Build Entity.
8. Submit claims for transportation damage and replace damaged, Defective, or deficient items.
9. Arrange for manufacturers' warranties, inspections, and service.

**END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 1101**  
**SUMMARY – DESIGN SERVICES**

**PART 1 GENERAL**

**1.01 Summary – Design Services.**

- A. Section includes summary of design services portions of Work including:
1. Design Services
  2. Schematic Design Phase
  3. Preliminary Design Phase
  4. Construction Documents
  5. Construction Phase
  6. Operation/Project Close Out
  7. Design-Build Entity's Responsibility for Finished Construction

**1.02 Design Services.**

- A. Summary of Design and Technical Requirements
1. The Design-Build Entity shall design the Project to satisfy the Owner's Project Requirements as described in the Document 00 5255 (Bridging Documents) including the Project Definition Report (Appendix 1 to the Bridging Documents). Design-Build Entity shall prepare designs to meet these requirements and submit deliverables as described in this Section 01 1101. The requirements of this Section 01 1101 supplement, but do not supersede, the requirements of the Bridging Documents.
  2. The design effort shall be completed in two phases. The first phase shall be referred to as the Preliminary Design Phase. During the Preliminary Design Phase, the Design-Build Entity shall complete site inspections and testing as they deem necessary for it to prepare a 30% complete Drawings and Specifications design package. The Construction Documents Phase shall commence after the Owner's approval of the 30% complete package.
  3. Design-Build Entity shall submit designs and deliverables meeting requirements of Bridging Documents and other Contract Documents at 60%, 90%, and 100% Construction Document completion, or prior to release to the field or to Subcontractors for construction, as required in this Section 01 1101. Design-Build Entity may elect to create incremental packages of major building components or activities it deems advantageous towards scheduling or permitting efficiencies.
  4. In the event of any conflict between the Bridging Documents and any other provision of Contract Documents, then the more stringent requirement providing Owner with the greater scope of work shall control. Unless specifically and expressly limited, Design-Build Entity's scope of work shall include all architectural, engineering, procurement and construction services necessary to complete the Project.
- B. Summary of Services
1. Unless specifically excluded in this Contract, Design-Build Entity shall provide to Owner all professional architectural and engineering services necessary to perform Design-Build Entity's obligations under Contract Documents and to complete the Project, including but not limited to, the requirements of the Bridging Documents (**Services**). Services will include, but are not limited to, providing all necessary professional architectural and engineering services, including but not limited to, all architectural services and all civil, electrical, fire protection, mechanical, structural engineering, landscape, and cost estimating services required to complete the Project and to perform Design-Build Entity's obligations under the Contract Documents.

2. Design-Build Entity shall perform the Services using the persons and subconsultants listed in Design-Build Entity's Proposal and may substitute personnel or subconsultants only upon Owner's written consent, which may be withheld or delayed at Owner's discretion. Design-Build Entity represents that it and its subconsultants possess all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of like nature and complexity of the Services. Design-Build Entity's licensed subconsultants (architectural and engineering) shall owe a duty of care to Owner in performing their architectural and engineering portions of the Services.
3. Design-Build Entity and its subconsultants shall make an independent assessment of the accuracy of the information provided by Owner concerning existing conditions (including, but not limited to, existing utilities and structures and tie-ins to existing or contemplated facilities) and the adequacy of available design information/technical reports. Design-Build Entity shall rely on the results of its own independent investigations and not on information provided by Owner. Design-Build Entity shall conduct such further investigations of existing conditions as it deems necessary for Design-Build Entity to complete the Preliminary Design Phase.
4. Design-Build Entity and its subconsultants' design shall provide that all surfaces, fixtures, and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA. All drawings, specifications, structural and electrical design calculations, site data, cost estimates and any other deliverable required by State or Federal law shall comply with State and federal standards. Design-Build Entity shall comply with any other requirements of public or private authorities with jurisdiction over the Project, the drawings and specifications, or tie-ins to the Project. Design-Build Entity shall comply with the applicable standard of care of a specialist when preparing drawings and specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, including necessary tie-ins, applicable to the Project and the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, energy tie-in, and disabled access requirements, regulations and standards of the Fire Marshal or other authorities having jurisdiction over the Project.
5. Design-Build Entity shall perform all services and activities necessary to comply with all applicable governmental regulations and requirements and to obtain all applicable governmental reviews and approvals for and regarding the Work.
6. Owner at all times shall have the right (but not the duty) to review Design-Build Entity's design work, whether performed by Design-Build Entity or a subconsultant of any tier, and whether in a final or preliminary form, to determine progress and conformance to the requirements of the Contract Documents. In the event Owner should ever dispute the conformance of any design work (at any stage) with the intent of the Bridging Documents, then Owner's determination shall control and Design-Build Entity and/or its subconsultants shall perform the disputed design services and/or work to completion in accord with Owner's determination. Design-Build Entity shall, however, retain its rights under the procedure in Document 00 7200 (General Conditions) Article 12 for claims and disputes, and Design-Build Entity may under that procedure, in its name, advance any claim of any subconsultant of any tier.

C. Coordination of Architectural and Engineering Subconsultants/Other Designers

1. Design-Build Entity shall fully coordinate all architectural and engineering disciplines and subconsultants involved in completing the Work. Design-Build Entity's subconsultants shall fully coordinate with Design-Build Entity and all architectural and engineering disciplines and subconsultants involved in completing the Work.

- (a) Design-Build Entity shall require its subconsultants to agree in their subcontracts to coordinate with Design-Build Entity and other subconsultants.
  - (b) Design-Build Entity shall conduct at least monthly design coordination meetings with all subconsultants employed by Design-Build Entity.
  - (c) Design-Build Entity shall present Owner with monthly design coordination reports. Design coordination reports shall include written verification that all design coordination responsibilities appropriate to the stage of Services have been fulfilled. These reports shall be included with each Design-Build Entity Application for Payment and will be a condition of payment.
- 2. Deliverables Required Under This Section - Generally
  - (a) All deliverables required under this Section 00 1101 shall be submitted in full compliance with Contract Documents, shall be submitted in at least triplicate (or such greater number as Owner may reasonably request) and, when contained on electronic media, shall be submitted in printed form as well as on electronic media when requested by Owner.
  - (b) Deficiencies in deliverables and modifications to conform with program requirements and modifications to achieve acceptability of deliverables to Owner, shall be promptly performed, and the cost thereof included in the Contract Price.

### 1.03 Preliminary Design Services

- A. The purpose of the Preliminary Services portion of this Project is to:
  - 1. Establish the working relationships between the Owner and the Design-Build Entity; and
  - 2. To document the design and performance criteria that will be used in the delivery of the Project.
- B. The Preliminary Services shall consist of the following four Tasks:
  - 1. Task #1: Project Set-Up and Management
  - 2. Task #2: Facility Conditions Review and Verification
  - 3. Task #3: Basis of Design Report
  - 4. Task #4: 30% Design Documents
- C. **TASK #1 – Project Management**
  - 1. Project Manager (PM)

The Design-Build Entity shall identify a Project Manager (PM) that will manage the Preliminary Services portion of the Project and serve as the single point of contact with the Owner. Project Management duties shall include but not be limited to organizing and facilitation of meeting, and management of staff, subcontractors, budgets, schedule, and scope. The PM will also be responsible for maintaining a Project Decision Log, preparation of monthly progress reports, submittal of progress payment requests, and schedule and budget updates on a monthly basis. The PM shall coordinate with the Owner's designated Owner's Representative on all matters.

#### 2. Project Meetings

The Design-Build Entity's PM will organize and facilitate meetings by telephone, online, or in-person. An agenda will be distributed to the Owner prior to the meetings and the PM will distribute meeting notes and action items within three days after each meeting. There will be a number of different types of meetings during the course of the Project. Some will be simple check-ins that can be completed by telephone, while others may require online meeting services or in-person, at the site meetings.

- (a) Kick-Off Meeting. A Project Kick-Off Meeting shall be held during Task #2, at which the following topics will be discussed:
    - (i) Roles and Responsibilities



- (ii) Design and Performance Criteria
  - (iii) Design and Construction Schedule
  - (iv) Submittal Process
  - (v) Change Order Procedures (design, budgets, schedules, unforeseen conditions)
  - (vi) Construction Sequencing to Maintain Uninterrupted Service
  - (vii) Commissioning and Acceptance Testing
- (b) Weekly Project Meetings. A Weekly Project Meeting shall be held between the Design-Build Entity's Project Manager and the Owner's designated Owner's Representative and other Owner staff, as required for the duration of the Project. The meeting can be held by telephone, by online conferencing services or in person. The purpose of the meeting is to provide brief updates on the Design-Build Entity's efforts and to document the progress of each phase of the Project. Each meeting agenda shall include but may not be limited to the following agenda items:
- (i) Progress/Status Report
  - (ii) Decisions Needed
  - (iii) Resolution of Issues Previously Discussed
  - (iv) Budget and Schedule Updates
  - (v) Payment Requests
- (c) Design Meetings/Workshops. A series of Design Meetings/Workshops will be held during the design process to address specific subjects and facilitate collaboration and development of ideas and decisions to be carried forward during design development. An agenda including desired outcomes and technical background documents will be distributed to workshop attendees prior to the meetings. Design meetings can cover more than one topic per meeting, as appropriate.

### 3. Schedule Management Plan

Prepare schedules for the design and construction phases of the Project in accordance with Section 01 3200 (Progress Schedule and Reports).

### 4. Budget Management Plan

Prepare a spreadsheet in Excel or another standard software program that illustrates how the budget is allocated to the various tasks included in both the Preliminary Services and Design-Build portions of the Project. The Plan should include milestones keyed to completion of the Work and will be used to evaluate and track Progress Payment Requests.

## D. **TASK #2 – Facility Conditions Review and Verification**

1. The Design-Build Entity's Project Manager and selected members of the Design-Build Entity's Team shall conduct field investigations at the site to review existing conditions, to verify the required work and attend the Project Kickoff Meeting (described above). The site visit will provide the opportunity for the Design-Build Entity's Team to meet with the Owner's staff at the facility and conduct any testing or evaluations they deem necessary to enable them to prepare the Basis of Design Report (described below) and the conceptual or schematic designs. The Design-Build Entity shall coordinate all field investigations of the Facility with the Owner and the Owner's Representative.
2. The Design-Build Entity shall complete a comprehensive review of the site and contiguous areas that may be affected by the Project, including legal and regulatory requirements that may affect the Project. All reviews performed under this Preliminary

Services Task shall be performed to the maximum extent reasonably possible in the circumstances and in a manner that provides a reasonable basis for the Design-Build Entity to undertake the risks assumed under this contract.

3. The Design-Build Entity's review and field investigations shall include, but not limited to:
  - (a) The existing site, permits, requirements, regulations, constraints, and the Owner's requirements and objectives for the Project.
  - (b) Site ingress and egress requirements and restrictions, traffic conditions, time of work restrictions, and requirements of public and private authorities with jurisdiction over roadways to and from the site, parking, and any other restrictions or considerations that may affect the Design-Build Entity's work.
  - (c) Existing conditions information at the site provided by the Owner, including all available as-built information, geotechnical reports, engineering studies and reports, environmental studies, data, memos, reports, surveys, and site measurements.
  - (d) Any other investigations deemed necessary by the Design-Build Entity to fully acquaint itself with existing conditions for purposes of performing the work.
4. The Design-Build Entity shall prepare a Technical Memorandum summarizing the pertinent information gathered during their investigations.

**E. TASK #3 – Basis of Design**

1. Basis of Design Report. The Design-Build Entity shall prepare a Basis of Design Report (BDR). The BDR will be based on the Bridging Documents and Design-Build Entity's field investigations and testing. The BDR shall be used to guide design and construction decisions and evaluate the success of the completed Project.
2. Basis of Design Development Workshop(s)/Meeting(s). After the field investigations and evaluations are complete, the Design-Build Entity shall prepare conceptual/schematic designs, and estimate costs for design, equipment and materials procurement and construction. They will prepare a Technical Memorandum that covers the following topics:
  - (a) Any requests for additional information or comments the Design-Build Entity may have on existing information and/or operations.
  - (b) Description of proposed equipment/systems and alternatives
  - (c) Conceptual/Schematic drawings including construction staging area requests
  - (d) Performance guarantees and warranties
  - (e) Construction and O&M considerations and costs
  - (f) Life cycle cost estimates for the alternatives
  - (g) Preliminary schedule for equipment delivery and installation
  - (h) Demolition and disposal/salvage/recycling
  - (i) Constructability (interface with existing systems)
  - (j) Maintenance of existing operations during construction
  - (k) Commissioning and acceptance testing
  - (l) Transition Services

The Design-Build Entity shall conduct meeting(s)/workshop(s) to present their findings, to discuss their approaches to construction and design, to reach consensus with the Owner on equipment selection and the design and performance criteria to be used for the Project. The workshop/meetings will be held at the Site and be facilitated by the Design-Build Entity's Project Manager. The information exchanged and decisions reached at the workshop/meeting shall be recorded in a Design Development Workshop Memorandum and submitted to the Owner for review and approval.

3. Draft and Final Basis of Design Report. After receiving comments on and approval of the Design Development Workshop Memorandum; the Design-Build Entity shall prepare and submit to the Owner a draft BDR which will present the Design-Build Entity's evaluations,

findings and specific recommended preliminary designs and equipment for the Project. The draft BDR will include as a minimum the following information.

- (a) Conceptual/Schematic drawings illustrating the layout of the system at a level of detail allowing evaluation of the concepts and a review of the constructability of the system.
  - (b) Make and model of the primary system components
  - (c) Performance guarantees and warranties for primary system components
  - (d) Preliminary Schedule of Values (cost breakdown) for the major system components, design and construction work
  - (e) Permitting considerations
  - (f) Preliminary Commissioning and Acceptance Testing Plan
  - (g) Transition Services
  - (h) Projected Operation & Maintenance Costs
  - (i) 20-year Life Cycle Cost Analysis
  - (j) Utility-Related Work
4. Utility-Related Work. The Design-Build Entity shall coordinate with the Owner and Utility to resolve interconnection issues and to determine whether and to what extent such improvements should be undertaken and completed by Utility or by the Design-Build Entity on behalf of the Owner or Utility.
  5. The draft BDR shall be subject to the review by the Owner. The Owner will return the draft BDR with comments and questions. The Design-Build Entity shall then meet with the Owner staff to discuss Owner comments and questions. The Design-Build Entity shall address the Owner's comments make changes as necessary. The Final Basis of Design Report shall be submitted to the Owner for their review prior to starting work on Task #4 – 30% Design Documents.
  6. Notwithstanding the Owner's review of the BDR and comments thereon, Design-Build Entity remains solely responsible for the design and shall not be relieved of its obligation to provide a complete Project that meets the Owner's Project Requirements.

**F. TASK #4 – 30% Design Documents Package**

1. After the Design-Build Entity receives the Owner's written notice that the Owner's comments, if any, have been satisfactorily addressed in the final BDR, the Design-Build Entity shall proceed with the preparation of the 30% Design Documents Package. The 30% Design Documents Package shall include the following:
  - (a) The 30 % Design Plan Set. The Plan Set shall include the site civil, architectural, mechanical, electrical, structural and details sheets typically included in design documents.
  - (b) Technical Specifications. A preliminary specifications package will be prepared that includes a table of contents listing all anticipated specification sections.
  - (c) The 30% Design Technical Memorandum. A Technical Memorandum will be prepared that includes:
    - (i) An explanation of any changes to the Final BDR the Design-Build Entity is requesting;
    - (ii) Preliminary Schedule of Values (cost breakdown) for the design and construction phases;
    - (iii) Preliminary Design and Construction Schedules (Project Schedule);
    - (iv) Health and Safety Plan that describes the standard procedures employed by the construction contractor during the course of construction;

- (v) Preliminary Commissioning and Acceptance Testing Plan that provides the outline for sections of the Commissioning Plan that will be used throughout the design and construction processes.
- 2. The 30% Design Document Package shall be submitted to the Owner for its review. After the Design-Build Entity has responded to comments and made corrections and the package has been reviewed by the Owner; they may begin with the Construction Documents Phase below.
- 3. Notwithstanding the Owner's review of the 30% Design and comments thereon, Design-Build Entity remains solely responsible for the design and shall not be relieved of its obligation to provide a complete Project that meets the Owner's Project Requirements.

#### **1.04 Construction Document Phase.**

- A. Period of Service
  - 1. Upon written authorization from Owner, Design-Build Entity shall proceed with the performance of the services called for in the Construction Documents Phase.
  - 2. Design-Build Entity shall submit the deliverables required by the Construction Documents Phase within the stipulated period required in the Project Schedule.
- B. Construction Documents. Design-Build Entity shall prepare for incorporation in the Contract Documents final Drawings and Specifications (together, **Construction Documents**) to show the work to be furnished and performed by Design-Build Entity. Construction Documents shall set forth in detail the requirement for construction of all work to be performed by the Design-Build Entity and to obtain all required permits. Construction Documents shall set forth in detail the requirement for construction of all Work to be performed, but shall not supersede Contract Documents (including Bridging Documents) where Contract Documents contain a more stringent requirement.
- C. Construction Documents Drawings shall be prepared in accordance with industry standards. Construction Documents Specifications shall be prepared in conformance with the division format of the Construction Specification Institute (CSI). Design-Build Entity shall have complete responsibility to secure timely review by all authorities with jurisdiction.
- D. Compliance with Codes, Regulations and Requirements. Prepare Construction Documents in full compliance with Contract Documents (including without limitation Bridging Documents), applicable building codes, ordinances, standards, governmental regulations and private restrictions, applicable to the Work.
- E. Design-Build Entity shall make full written disclosure to Owner, and obtain Owner's express written approval of any proposed innovative, unique, proprietary, or sole source design features.
- F. Warranty. Design-Build Entity warrants to Owner that the final design, as expressed in the Construction Documents:
  - 1. Will be constructible, workable, watertight, and completed within Design-Build Entity's detailed Project Schedules and Reports (per Section 01 3200);
  - 2. Will comply in all respects with the requirements of Contract Documents (including without limitation Bridging Documents);
  - 3. Will not call for the use of hazardous or banned materials; and
  - 4. Will fully comply with applicable building codes, ordinances, standards, governmental regulations, and private restrictions applicable to the Work.
- G. Design-Build Entity shall prepare and submit draft Construction Documents at the 60%, 90% and 100% level of completion to Owner for review. Owner shall conduct such review as necessary on the draft Construction Documents and shall advise the Design-Build Entity of any necessary modifications, amendments and additions as reasonably required by Owner. Following receipt of

Owner's comments, Design-Build Entity shall complete final Construction Documents. Such complete Construction Documents shall be deemed the Construction Documents for the Project.

- H. Upon completion and acceptance of the Construction Documents, Design-Build Entity shall submit them to the applicable agencies to obtain necessary permits for the construction and operation of the Project. During the same time period, Design-Build Entity shall submit to Owner **three** complete sets of Construction Documents for final approval.
- I. Permits. Design-Build Entity shall secure all necessary permits and approvals. This duty includes, but is not limited to, providing technical criteria, written descriptions and design data for use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and engage in consultations with appropriate authorities.
- J. Commissioning Plan. The Design-Build Entity shall prepare a Commissioning Plan (Cx Plan) for the Project. It shall provide a systematic methodology for monitoring and documenting the proper installation of equipment and systems by the Contractor and Subcontractors. The Cx Plan shall also cover the start-up, testing, and placing into operation of the equipment and systems and the performance testing of the equipment and systems. The Cx Plan shall include an Operations and Maintenance (O&M) Manual and the Design-Build Entity shall conduct at least 8 hours of training for the Owner staff in the operation and maintenance of the equipment and systems.

#### **1.05 Construction Phase.**

- A. Upon Owner's acceptance of Design-Build Entity's Construction Documents; satisfaction of any other requirement established in Section 00 5253 (Agreement); Design-Build Entity's obtaining of a building permit for construction; and submittal of the Commissioning Plan, the Design-Build Entity may commence construction of the Project.
- B. General Administration of Construction. Design-Build Entity's architectural, design, and engineering subconsultants shall make regular visits to the site at intervals appropriate to the various stages of construction as necessary to assure that construction conforms to the final design as approved.
- C. Commissioning Plan (Quality Control and Reporting). Design-Build Entity's architectural, design and engineering team and subconsultants shall participate fully in the implementation of the Commissioning Plan and shall have a duty to advise Design-Build Entity and Owner in writing of any observations of defective work, work not in conformance with Drawings and Specifications, and lack of progress consistent with the schedule of work in areas associated with their services.
- D. Design-Build Entity shall establish and maintain to the satisfaction of Owner, complete and accurate records of the Work including defective work, work not in conformance with Construction Documents, and lack of progress of Work consistent with the schedule, and shall cross reference such work to the Construction Documents sections violated. Design-Build Entity shall make such records available to Owner at all reasonable times and turn over the records in both hard and native electronic format to Owner upon completion or termination of the Project.

#### **1.06 Operation/Project Close-Out Phase.**

- A. Operation/Close Out. During the Operation/Project Close-Out Phase, Design-Build Entity and Design-Build Entity's architectural, design, and engineering subconsultants shall, when requested by Owner, provide all necessary services for:
  - 1. Commissioning of the Project; including start-up, testing, and placing into operation all equipment and systems, and refining, adjusting and correcting of any equipment or systems and documenting the specified performance of the equipment and systems.
  - 2. Completion of punchlist work.
  - 3. Training Owner's staff to operate and maintain all equipment and systems.
  - 4. Prepare and Operation and Maintenance (O&M) Manual and record keeping system for the Project.

5. Prepare Record Drawings consisting of electronic record sets, files and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints of the Construction Documents, Plans and other data.
6. Together with Owner, visit the Project to observe any apparent defects in the completed construction, correct such deficiencies, and supply information as needed regarding replacement, correction, or diminished value of defective work.

#### **1.07 Performance Test and Performance Liquidated Damages**

- A. Contractor shall conduct a Performance Ratio Test on the Project system in accordance with the NREL Weather-Corrected Performance Ratio method ("Performance Test"). The Performance Test must demonstrate that the Performance Ratio for the Project will be equal to or greater than 95% ("Minimum Performance Ratio"). Contractor further guarantees to Owner that, in any event, as will be demonstrated and measured during a Performance Test in accordance with NREL Weather-Corrected Performance Ratio method, the performance ratio of the project will be equal to or greater than 95%. Contractor shall do all things necessary or appropriate to cause the measured Performance Ratio to achieve 95% including, without limitation, exercise each and every repair or replacement alternative, regardless of cost to Contractor or difficulties associated therewith.
- B. If the Project system fails to reach Minimum Performance Ratio, Contractor shall pay "Performance Liquidated Damages" equal to **[TBD at completion of Design Phase]**, which shall be calculated based on loss of saving over the 300 months after commissioning, considering system degradation for each 1% shortfall and may be prorated for any shortfall of less than 1%.

#### **1.08 Design-Build Entity's Obligation For Finished Construction.**

- A. Owner's right to review Design-Build Entity's design and deliverables, including without limitation Construction Documents, shop drawings, samples and Submittals, as specified in Contract Documents, shall not relieve Design-Build Entity of its responsibility for a complete design and construction complying with the requirements of Contract Documents; but rather, such review shall be in furtherance of Owner's monitoring and accepting the design as developed and issued by Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with Contract Documents including, but not limited to, the applicable performance standards and any fully executed change orders, shall be absolute. Such duty may not be altered or diminished by any action other than a signed change order.
- B. Auto CAD and Other Electronic Data. Provide Auto CAD files of all Construction Documents including as-Proposal, as-built, and all record Drawings, in electronic format on a hard drive. Prepare electronic record sets and sets of reproducible record prints or Drawings showing those changes made during the construction process. Electronic data shall conform to Owner requirements for compatibility with Owner equipment and software.

### **END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 2000

MEASUREMENT AND PAYMENT

**PART 1 – GENERAL**

**1.01 SUMMARY**

- A. Section includes description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

**1.02 REFERENCES**

- A. Public Contract Code
- B. Code of Civil Procedure
- C. Government Code
- D. Civil Code

**1.03 COMPOSITION AND SCOPE OF CONTRACT SUM**

**A. Scope of Contract Sum**

1. The Contract Sum for performance of the Work under Contract Documents, or under any Proposal item, allowance, or Alternate, shall include full compensation for all Work required under the Contract Documents, including without limitation, all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental work and unexpected expenses, and all terms, conditions, requirements and limitations set forth in the Contract Documents.
2. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof.

**B. Unit Price items**

1. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by Owner based on, so far as practicable, actual number of units satisfactorily completed, as determined by Owner and certified by Design-Build Entity, within prescribed or ordered limits, and no payment will be made for Work unsatisfactorily performed or done outside of limits.
2. Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities proposed or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Design-Build Entity's incremental cost differential resulting from increased or decreased economies of scale.

**C. Lump Sum Items**

1. When estimated quantity for specific portion of Work is not indicated and/or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
2. Payment for lump sum Work, or items of Work subject to a lump sum (e.g. without limitation, change order work), shall be made on the basis of satisfactory completion of such Work or work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding the Design-Build Entity's percentage completion of the Work or item.
3. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.

D. **Allowance Items**

1. Allowances: Allowance Work will be authorized by Owner in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.

1.04 **PAYMENT PROCEDURES**

A. **Schedule of Values:**

1. Within ten Days from issuance of Notice of Award and prior to the Design-Build Entity's first Application for Payment, Design-Build Entity shall submit a detailed breakdown of its Proposal by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Design-Build Entity shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. This breakdown shall be referred to as the Schedule of Values.
2. Design-Build Entity's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Proposal item) and/or other financing, as well as "**general conditions costs**," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Design-Build Entity's total Contract Sum, less any allowances designated by Owner. Scheduling, record documents and quality assurance control shall be separate line items.
3. Owner will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by Owner, Owner will accept this Schedule of Values for use. Owner shall be the sole judge of fair market cost allocations.
4. Owner will reject any attempt to increase the cost of early activities, i.e., "**front loading**," resulting in a complete reallocation of moneys until such front loading is corrected. Repeated attempts at front loading may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Schedule of Values is acceptable to Owner.

B. **Design-Build Entity's Requests for Progress Payments**

1. If requested by Design-Build Entity, progress payments will be made monthly, under the following conditions:
2. On or before the 25th Day of each month, Design-Build Entity shall submit to Owner five copies of an Application for Payment for the cost of the Work put in place during the period from the last Day of the previous month to the end of the current month, along with one copy of an updated Progress Schedule. Such Applications for Payment shall be for the expected total value of activities completed or partially completed, based upon Schedule of Values prices (or Proposal item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. Owner and Design-Build Entity will reconcile any differences in the field, based on the reconciled monthly report sheets. If Design-Build Entity is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Design-Build Entity's Application for Payment being delayed for more than a Day for Day basis.
3. Except as otherwise required by Owner, concurrently with each Application for Payment, Design-Build Entity shall submit to Owner Design-Build Entity's and its Designer's and Subcontractors' certified payroll records required to be maintained pursuant to Labor Code Section 1776 for all labor performed during pay periods ending during the period covered by the Application for Payment.



4. No progress payment will be processed prior to Owner receiving all requested, acceptable schedule update information and certified payrolls, and in Owner's sole and absolute discretion, Owner may deny the entire Application for Payment for noncompliance.
5. Each Application for Payment shall list each Change Order and Construction Change Directive (**CCD**) executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities. Design-Build Entity shall submit a monthly Change Order/CCD status log to Owner.
6. If Owner requires substantiating data, Design-Build Entity shall submit information requested by Owner, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Design-Build Entity shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
7. If Design-Build Entity fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with Owner, Design-Build Entity shall not receive current payment until Design-Build Entity has participated fully in providing construction progress information and schedule update information to Owner.

**C. Owner's Review of Progress Payment Applications**

1. Owner will review Design-Build Entity's Application for Payment following receipt and during the Progress Schedule and Billing Meeting. If adjustments need to be made to percent of completion of each activity, Owner will make appropriate notations and return to Design-Build Entity. Design-Build Entity shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
2. If Owner determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then Owner may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
3. Pursuant to Public Contract Code Section 20104.50, if Owner fails to make any progress payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Design-Build Entity, Owner shall pay interest to the Design-Build Entity equivalent to the legal rates set forth in Code of Civil Procedure Section 685.010(a). The 30-Day period shall be reduced by the number of Days by which Owner exceeds the seven-Day return requirement set forth herein.
4. As soon as practicable after approval of each Application for Payment for progress payments, Owner will pay to Design-Build Entity in manner provided by law, an amount equal to 95 percent of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents and by law, provided that payments may at any time be withheld if, in judgment of Owner, Work is not proceeding in accordance with Contract, or Design-Build Entity is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In Owner's sole discretion, if Design-Build Entity has failed to comply with either its Progress Schedule update or project record documents requirements, Owner may retain an additional 5% of any earned amounts until such requirements are satisfied.
5. Before any progress payment or final payment is due or made, Design-Build Entity shall submit satisfactory evidence that Design-Build Entity is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from contractor and subcontractors for the current payment period.

**D. Payment for Material and Equipment Not Yet Incorporated Into the Work**

1. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified elsewhere in the Contract Documents or as may be agreed to by Owner in its sole discretion. Where Design-Build Entity requests payment on the basis of materials and equipment not incorporated in the Work, Design-Build Entity must satisfy the following conditions:
2. The materials and/or equipment shall be delivered and suitably stored at the Site or at another local location agreed to in writing, for example, a mutually acceptable bonded and insured warehouse.
3. Full title to the materials and/or equipment shall vest in Owner at the time of delivery to the Site, warehouse or other storage location. Obtain a negotiable warehouse receipt, endorsed over to Owner for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to Owner.
4. Stockpiled materials and/or equipment shall be available for Owner inspection, but Owner shall have no obligation to inspect them and its inspection or failure to inspect shall not relieve Design-Build Entity of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents.
5. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Design-Build Entity's expense.
6. At Design-Build Entity's expense, insure the materials and/or equipment against theft, fire, flood, vandalism, and malicious mischief, as well as any other coverages required under the Contract Documents.
7. Design-Build Entity's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner interest therein, all of which must be satisfactory to Owner. This documentation shall include, without limitation, conditional releases of mechanics' liens and stop notices from all those providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Design-Build Entity as they are incorporated.

**1.05 FINAL PAYMENT**

**A. Final Payment**

1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Design-Build Entity maintenance after Final Acceptance, Design-Build Entity shall submit its Application for Final Payment.
2. Provided Design-Build Entity has met all conditions required for Final payment, Owner will pay to Design-Build Entity, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.

**B. Final Accounting**

1. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
2. Design-Build Entity and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Document 00 6530 (Agreement and Release of Claims).

## **1.06 SUBSTITUTION OF SECURITIES**

- A. **Public Contract Code Section 22300.** In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:
1. At request and expense of Design-Build Entity, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and Owner which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such moneys to Design-Build Entity. Upon satisfactory completion of Contract, securities shall be returned to Design-Build Entity.
  2. Alternatively, Design-Build Entity may request and Owner shall make payment of retentions earned directly to the escrow agent at the expense of Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Design-Build Entity. Upon satisfactory completion of the work of the Contract Documents, Design-Build Entity shall receive from escrow agent all securities, interest, and payments received by the escrow agent from Owner. Consistent with Public Contract Code Section 7107(d), Design-Build Entity shall then pay to each Subcontractor, not later than seven Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Design-Build Entity.
  3. Design-Build Entity shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
  4. Design-Build Entity may enter into an escrow agreement, form included in Contract Documents, as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Design-Build Entity, and termination of escrow upon completion of Contract Documents.
  5. Public Contract Code Section 22300, in effect on Proposal Day, is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

**END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 2600**

**MODIFICATION PROCEDURES**

**PART 1 – GENERAL**

**1.01 SUMMARY**

- A. Section includes requirements that supplement the paragraphs of Document 00 7253 (General Conditions).
- B. Description of procedures for modifying the Contract Documents and determining costs for changes in Contract Sum or Contract Time.

**1.02 PROCEDURES FOR DESIGN-BUILD ENTITY INITIATED CHANGE ORDER**

- A. Design-Build Entity-Initiated Change Proposal Request (**CPR**) and Procedures:
  - 1. Design-Build Entity may initiate changes by submitting a Change Proposal Request (**CPR**).
  - 2. Whenever Design-Build Entity elects or is entitled to submit a CPR, Design-Build Entity shall prepare and submit to Owner for consideration a CPR using the Cost Proposal Form attached to this Section 01 2600 or otherwise included in this Project Manual. All CPR's must contain a complete breakdown of costs of credits, deducts and extras; itemizing labor, materials, equipment, markup, bonds, insurance and taxes; and any requested changes to Contract Time. All Subcontractor Work shall be so indicated. Individual entries on the CPR form shall include applicable Schedule of Values code, with all amounts determined as provided herein. After receipt of a CPR with a detailed breakdown, Owner will act promptly thereon.
  - 3. If Owner accepts a CPR, Owner will prepare a Change Order for Owner and Design-Build Entity signatures.
  - 4. If CPR is not acceptable to Owner because it does not agree with Design-Build Entity's proposed cost and/or time, Owner will provide comments thereto. Design-Build Entity will then, within seven (7) Days (except as otherwise provided herein), submit a revised CPR.
  - 5. When necessity to proceed with a change does not allow Owner sufficient time to conduct a proper check of a CPR (or revised CPR), Owner may issue a Change Directive (**CD**) as provided below.
- B. Design-Build Entity-Initiated Request for Information (**RFI**) Procedures, Requirements and Limitations:
  - 1. Design-Build Entity may submit RFI's for clarifications in Owner-prepared Contract Documents, which may result in the Design-Build Entity submitting a CPR.
  - 2. Whenever Design-Build Entity requires information regarding the Project or Owner-prepared Contract Documents, or receives a request for such information from a Subcontractor, Design-Build Entity may prepare and deliver an RFI to Owner. Design-Build Entity shall use RFI format provided on approval by Owner. Design-Build Entity shall not issue an RFI to Owner solely to clarify Design-Build Entity-prepared Construction Documents. Design-Build Entity must submit time critical RFIs at least 30 days before scheduled start date of the affected Work activity. Design-Build Entity shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Design-Build Entity's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Design-Build Entity's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
  - 3. Design-Build Entity shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Design-Build Entity shall not be entitled to additional compensation for the effort required to submit the RFIs. Design-Build Entity shall be responsible for Owner's administrative costs for

answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by Owner; at Owner discretion, such costs may be deducted from progress payments or final payment.

4. Owner will respond within 10 days from receipt of RFI with a written response to Design-Build Entity. Design-Build Entity shall distribute response to all appropriate Subcontractors.
5. If Design-Build Entity is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
6. If Design-Build Entity believes the response is incomplete, Design-Build Entity shall issue another RFI (with the same RFI number with the letter "A" indicating it is a follow-up RFI) to Owner clarifying original RFI. Additionally, Owner may return RFI requesting additional information should original RFI be inadequate in describing condition.

C. Time Requirements:

1. If Design-Build Entity believes that an Owner response to an RFI, submittal or other Owner direction, results in change in Contract Sum or Contract Time, Design-Build Entity shall notify Owner with the issuance of a preliminary CPR within 10 Days after receiving Owner's response or direction, and in no event after starting the disputed work or later than the time allowed under Article 12 of Document 00 7253 (General Conditions). If Design-Build Entity also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CPR, then Design-Build Entity shall submit the TIE required in these Contract Documents, including Section 01 3200 (Progress Schedules and Reports), concurrently with the CPR and in no event later than 10 Days after providing the notice of delay.
2. If Design-Build Entity requires more time to accurately identify the required changes to the Contract Sum or Contract Time, Design-Build Entity may submit an updated and final CPR and TIE within 14 days of submitting the preliminary CPR.
3. If Owner agrees with Design-Build Entity's CPR and/or TIE, then Owner will prepare a Change Order for Owner and Design-Build Entity signatures. If Owner disagrees with Design-Build Entity, then Design-Build Entity may give notice of potential claim as provided in Article 12 of Document 00 7253 (General Conditions), and proceed thereunder.
4. Design-Build Entity must submit all CPR's (preliminary and final), notices of potential claim and Claims, and TIE's within the required time periods. Any failure to do so waives Design-Build Entity's right to submit a CPR or file a Claim.

D. Cost Estimate Information:

1. Design-Build Entity and subcontractors shall, upon Owner's request, permit inspection of the original unaltered cost estimates, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its CPR or Claims arising from changes in the Work.

### 1.03 PROCEDURES FOR OWNER INITIATED CHANGE ORDERS

A. Owner Initiated Change Directives (CD):

1. Owner may, by Change Directive (CD) or initially by Instruction Bulletin or by following the procedures for disputed work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
2. If at any time Owner believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, or at any other time, Owner may issue a CD with its recommended cost and/or time adjustment (if any). Upon receipt of CD, Design-Build Entity shall promptly proceed with the change of Work involved and respond to Owner within ten (10) Days.
3. Design-Build Entity's response must be any one of following:
  - a. Return CD signed, thereby accepting Owner response, including adjustment to time and cost (if any).

- b. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if Owner so requests.
    - c. Give notice of intent to submit a claim as described in Article 12 of Document 00 7253 (General Conditions), and submit its claim as provided therein.
  4. If CPR or the CD provides for an adjustment to any Contract Sum, the adjustment shall be based on one of the following methods:
    - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
    - b. Design-Build Entity to proceed on cost reimbursable (force account) basis while negotiating towards a firm price.
    - c. Cost to be determined in a manner agreed.
  5. Change Directive signed by Design-Build Entity indicates the agreement of Design-Build Entity therewith, including adjustment in Contract Sum or the method for determining them. Such agreement shall be effective immediately and shall be finalized as a Change Order. Where Owner authorizes CD work on a time and materials basis up to a maximum amount, then Design-Build Entity shall promptly advise Owner upon reaching 75% of such maximum amount, otherwise Design-Build Entity shall accept fully the risk of completing the CD work without exceeding such maximum amount.
  6. If Design-Build Entity does not respond promptly or disagrees with the method for adjustment (or non-adjustment) in the Contract Sum, the method and the adjustment shall be determined by Owner on the basis of the Contract Documents and the reasonable expenditures and savings of those performing the Work attributable to the change. If the parties still do not agree on the proper adjustment due to a Change Directive, Design-Build Entity may file a Claim per Article 12 of Document 00 7253 (General Conditions) and/or Owner may direct the changed work through a unilateral change order. Design-Build Entity shall keep and present an itemized accounting in a manner consistent with the SOV, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided herein.
  7. Pending final determination of cost to Owner, Design-Build Entity may include amounts not in dispute in its Applications for Payment. The amount of credit to be allowed by Design-Build Entity to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Markup shall be figured on the basis of net increase, if any, with respect to that change.
- B. Owner Initiated Change Order (**CO**) or Request for Proposal (**RFP**):
  1. Owner may initiate changes in the Work or Contract Time by issuing a Request for Proposal (**RFP**) or Change Order (**CO**) to Design-Build Entity.
  2. Owner may issue an RFP to Design-Build Entity. Any RFP will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Design-Build Entity.
  3. In response to an RFP, Design-Build Entity shall furnish a CPR within 21 Business Days of Owner's RFP. Upon approval of CPR, Owner may issue a Change Directive directing Design-Build Entity to proceed with extra Work.
  4. If the parties agree on price and time for the work, the Owner will issue a Contact Change Order. If the parties do not agree on the price or time for a CPR, Owner may either issue a CD or decide the issue per Article 12 of Document 00 7253 (General Conditions). Design-Build Entity shall perform the changed Work notwithstanding any claims or disagreements of any nature.

#### **1.04 PROCEDURES THAT APPLY TO DESIGN-BUILD ENTITY- AND OWNER-INITIATED CHANGE ORDERS**

- A. Adjustment of Schedules to Reflect Change Orders or CDs:
1. Design-Build Entity shall revise Schedule of Values and Application for Payment forms to record each authorized Change Order or CD as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period.
  2. Design-Build Entity shall revise the Progress Schedules prior to the next monthly pay period, to reflect CO or CD.
  3. Design-Build Entity shall enter changes in Project Record Documents prior to the next monthly pay period.
- B. Required Documentation for Adjustments to Contract Amounts:
1. For all changes and cost adjustments requested, Design-Build Entity shall provide documentation of change in Contract Amounts asserted, with sufficient data to allow evaluation of the proposal.
  2. In all requests for compensation, cost proposals, estimates, claims and any other calculation of costs made under the Contract Documents, Design-Build Entity shall breakout and quantify costs of labor and professional services, equipment and materials identified herein, for Design-Build Entity and subcontractors of any tier.
  3. Design-Build Entity shall, on request, provide additional data to support computations for:
    - a. Quantities of products, materials, labor and equipment.
    - b. Taxes, insurance, and bonds.
    - c. Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
    - d. Credit for deletions from Contract, similarly documented.
  4. Design-Build Entity shall support each claim or computation for additional cost, with additional information including:
    - a. Origin and date of claim or request for additional compensation.
    - b. Dates and times Work was performed and by whom.
    - c. Time records and wage rates paid.
    - d. Invoices and receipts for products, materials, equipment and subcontracts, similarly documented.
    - e. Credit for deletions from Contract, similarly documented.
- C. Responses and Disputes:
1. For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
  2. For all disputes arising from the procedures herein, Design-Build Entity shall follow Article 12 of Document 00 7253 (General Conditions).

#### **1.05 COST DETERMINATION FOR CHANGES IN CONTRACT AMOUNTS**

- A. Calculation of Total Cost of Extra Work:
1. Total cost of changed Work, extra Work or of Work omitted shall be the sum of three components defined immediately below as: Component 1 (Direct Cost of Design and Construction or Direct Costs); Component 2 (Markup); and, Component 3 (Bonds, Insurance, Taxes)
  2. Component 1: Direct Costs of labor and professional services, equipment and materials, is calculated based upon actually incurred (or omitted) labor costs, equipment rental costs, and material costs, as defined herein;
  3. Component 2: Markup on such actually incurred Direct Costs, is applied in the percentages identified below; and

4. Component 3: Actual additional costs for any additionally required bonds, insurance, and/or taxes by Design-Build Entity, Subcontractors, or other forces, defined herein, is calculated without markup.
5. All amounts payable to Subcontractors under Components 1, 2, and 3: must be earned under the terms of the applicable Subcontracts; must be properly requested, documented and permitted under the terms of the applicable subcontract(s) and Contract Documents; and shall be payable only if changed Work complies with terms of Contract Documents.

**1.06 MEASUREMENT OF DIRECT COST OF DESIGN AND CONSTRUCTION (COST COMPONENT 1)**

**A. Composition of Component 1 (Direct Cost of Design and Construction):**

1. Component 1 has three subcomponents, also referred to as labor and professional services, equipment, and materials (**LEM**):
  - a. Labor and Professional Services (Component 1A)
  - b. Equipment (Component 1B)
  - c. Materials (Component 1C)

**B. Measurement of Cost of Labor and Professional Services (Component 1A):**

1. Cost of Labor shall be calculated as: Cost of labor for workers (including forepersons when authorized by Owner) used in actual and direct performance of the subject work, whether employer is Design-Build Entity, Subcontractor or other forces, in the sum of the following:
  - a. Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
  - b. Labor surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined, such as worker's compensation insurance. Such labor surcharge shall not exceed generally accepted standards in the State for labor rates in effect on date upon which extra Work is accomplished.
  - c. Cost of labor shall include no other costs, fees or charges.
2. Labor cost for operators of equipment owned and operated by Design-Build Entity or any Subcontractor, shall be no more than rates of such labor established by collective bargaining agreements for type of worker and location of Work, whether or not owner-operator (i.e., Design-Build Entity or Subcontractor) is actually covered by such an agreement.
3. Cost of labor shall be recorded and documented in certified payroll records, maintained in the form customary and/or required in the State, and delivered to Owner weekly.
4. Cost of Professional Services shall be at agreed rates for licensed architects and engineers established in Design-Build Entity's Proposal, provided that under no circumstances may the applicable rate for any individual exceed his or her regular rate for work and services on other California public entity projects.

**C. Measurement of Cost of Equipment (Component 1B):**

1. Measurement of Component 1B (Cost of Equipment). Cost of Equipment shall be calculated as: Cost of equipment used in actual and direct performance of the subject work, whether by Design-Build Entity, Subcontractor or other forces. Cost of Equipment shall be calculated as herein described.
2. For rented equipment, cost will be based on actual rental invoices, appropriate for the use and duration of the work. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by Owner.
3. Equipment rental cost for Design-Build Entity or Subcontractor-owned equipment, shall be determined by reference to, and not in excess of, the generally accepted standards in the State for equipment rental rates in effect on date upon which extra Work is accomplished.



If there is no applicable rate for an item of equipment, then payment shall be made for Design-Build Entity or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Caltrans Standard Schedules and Specifications, and absent a rental rate therein, then the Association of Equipment Distributors (**AED**) book.

4. In all cases, rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.
  5. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.
  6. For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by Owner. The following shall be used in computing rental time of equipment:
    - a. When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.
    - b. When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
    - c. Rates shall correspond to actual rates paid by Design-Build Entity, i.e., if Design-Build Entity pays lower weekly or monthly rates, then same shall be charged to Owner.
  7. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
    - a. Owner will pay for costs of loading and unloading equipment.
    - b. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
    - c. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission or appropriate State Dept. of Transportation.
    - d. Owner will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
    - e. Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which Owner directs Design-Build Entity to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and Owner legal holidays, unless equipment is used to perform extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.
  8. Employee vehicles are not part of Component 1A, rather, are included within Component 2 (Markup).
  9. Cost of Equipment shall include no other costs, fees or charges.
- D. Measurement of Cost of Material (Component 1C):
1. Cost of Material shall be calculated as herein described. Cost of such materials will be cost to purchaser (Design-Build Entity, Subcontractor or other forces) from supplier thereof, except as the following are applicable:

2. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to Owner notwithstanding fact that such discount may not have been taken.
3. For materials salvaged upon completion of Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
4. If cost of a material is, in opinion of Owner, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned delivered to Site, less any discounts as provided in this Paragraph.
5. Cost of Material shall include no other costs, fees or charges.

#### 1.07 MEASUREMENT AND PAYMENT OF MARKUP (COST COMPONENT 2)

##### A. Markup Percentages for Changed Work (Component 2):

1. Markup on Direct Cost of labor and professional services, materials and equipment for extra Work pursuant to the Contract Documents performed by Design-Build Entity shall be 15%.
2. When extra Work is performed by Subcontractors, regardless of the number of tiers, total Markup on Component 1 Direct Costs shall be 20%. Design-Build Entity and its Subcontractors shall divide the 20% as they may agree.
3. Under no circumstances shall the total Markup on any extra Work exceed 20%, stated as a percent of the Direct Cost of labor and professional services, equipment and materials. This limitation shall apply regardless of the actual number of subcontract tiers.
4. On proposals covering both increases and decreases in Contract Sum, Markup shall be allowed on the net increase only as determined above. When the net difference is a deletion, no percentage for Markup shall be allowed, but rather an appropriate percentage deduction shall be issued in the amount of the net difference.

##### B. Measurement and Payment of Markup (Component 2):

1. Markup (Component 2) provides complete compensation to Design-Build Entity and all Subcontractors for:
  - a. All Design-Build Entity and Subcontractor profit;
  - b. All Design-Build Entity and Subcontractor home-office overhead;
  - c. All Design-Build Entity and Subcontractor assumption of risk assigned to Design-Build Entity under the Contract Documents;
  - d. Subject to the qualifications below regarding self-performed work, all General Conditions and General Requirements of Design-Build Entity (and, if applicable, Subcontractors).
2. Profit. Compensation for profit included within Component 2 (Markup), includes without limitation: Fees of all types, nature and description; and Profit and margins of all types, nature and description.
3. Home Office Expenses. Compensation for home office expenses included within Component 2 (Markup), includes without limitation: Salaries and other compensation of any type of Design-Build Entity's and Subcontractor's personnel (management, administrative and clerical), and all direct and indirect operating, travel, payroll, safety, storage, quality control, maintenance and overhead costs of any nature whatsoever, incurred by Design-Build Entity and Subcontractors at any location other than the Project specific site office, including without limitation, Design-Build Entity's principal or branch offices; insurance premiums other than those for Project specific insurance directed by the Owner in a change order; all hardware, software, supplies and support personnel necessary or convenient for Design-Build Entity's capture, documentation and maintenance of its costs and cost accounting data and cost accounting and control systems and work progress reporting.
4. Assumption of Risk. Compensation for Design-Build Entity's and Subcontractor's assumption of risk under the Contract Documents, included within Component 2 (Markup), includes, without limitation loss, cost, damage, expense or liability resulting directly or indirectly from any of the following causes (**unallowable costs**), for Design-Build Entity

and Subcontractors of any tier: noncompliance with the Contract Documents, fault or negligence, defective or non-conforming Work, by Design-Build Entity or any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents; cost overruns of any type; costs in excess of any lump sum, not to exceed amount or GMP; costs resulting from bid or "buy out" errors, unallocated scope, or incomplete transfer of scope or contract terms to Subcontractors; any costs incurred by Design-Build Entity relating to a Change in the Work without a Change Order or Change Directive in accordance with the Contract Documents; costs for work or materials for which no price is fixed in the Contract Documents, unless it is expressly specified that such work or material is to be paid for as extra work.

5. General Conditions and Division 1 General Requirements. Compensation for Design-Build Entity's (and, if applicable Subcontractors') General Conditions and General Requirements Costs included within Component 2 (Markup) includes compensation for: Design-Build Entity's direct costs, without overhead or profit, for salaries and related forms of compensation and employer's costs for labor and personnel costs, of Design-Build Entity's employees and subconsultant's employees (if any), while and only to the extent they are performing Work at the Project Site, and all "General Requirements Costs" below. Personnel and Work compensated by this Component include, without limitation: All required Project management responsibilities; all on-site services; monthly reporting and scheduling; routine field inspection of Work; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders and other supporting documentation as necessary; salaries of project superintendent, project engineers, project managers, safety manager, other manager, timekeeper, and secretaries; all cost estimates and updates thereto; development, validation and updates to the project schedule; surveying; and estimating. General Requirements Costs included within Component 2 (Markup) include, without limitation: all scheduling hardware, software, licenses, equipment, materials and supplies; purchase, lease or rental, build out, procurement, supporting equipment and maintenance of temporary on-Site facilities, Project field and office trailers and other temporary facilities, office equipment and supporting utilities; platforms, fencing, cleanup and jobsite security; temporary roads, parking areas, temporary security or safety fencing and barricades, etc.; all Design-Build Entity's motor vehicles used by any Design-Build Entity's personnel, and all costs thereof; all health and safety requirements, required by law or Owner procedures; all surveying; all protection of Work; handling and disposal fees; final cleanup; repair or maintenance; other incidental Work; all items, activities and function similar to any of those described above; all travel, entertainment, lodging, board and the like.
6. Personnel compensated by the Markup Component do not include workers of foreman level or below in the case of self-performed work; rather, such personnel shall be treated as a Direct Cost of Construction. Costs compensated by Component 2 (Markup) do not include temporary measures specifically required by the changed work, not otherwise required or ongoing in the prosecution of the Work, that commence specifically to support the changed work and conclude with the completion of the changed work. Such costs shall be treated as Direct Costs of Construction. Examples of General Requirements costs that this component may not cover are the following: temporary barricades or fencing of specific areas required specifically for the changed work; cranes required specifically for the changed work; and extra security required specifically for the changed work.

#### **1.08 MEASUREMENT AND PAYMENT OF BONDS, INSURANCE, TAXES (COMPONENT 3)**

- A. Measurement of Bonds, Insurance, Taxes (Component 3):
  1. Component 3 (Bonds, Insurance, Taxes) consists of the cost of bonds, insurance and taxes, also referred to as **BIT**. All State sales and use taxes, applicable County and applicable City sales taxes, shall be included. Federal and Excise tax shall not be included.
  2. There is no markup on BIT.

## **1.09 EFFECT OF PAYMENT**

### **A. Change Order Compensation is All Inclusive.**

1. Except as provided expressly below regarding changes that extend the Contract Time, payment of calculated cost of extra work constitutes full and complete compensation for costs or expense arising from the extra Work, and is intended to be all inclusive.
2. Payment for Direct Cost of Design and Construction (Component 1 or LEM) is intended to be all-inclusive. Any costs or risks not delineated within cost of labor and professional services, equipment or materials herein, shall be deemed to be within the costs and risks encompassed by the applicable Markups and unallowable in any separate amount.
3. Payment of Markup (Component 2) is intended to be all-inclusive. Design-Build Entity waives claims for any further or different payment of cost and risk items delineated herein, other than the allowable percentage markup on costs set forth in the Contract Documents; such separate, further or different cost or risk items shall be unallowable, waived and liquidated within the allowable percentage markup.
4. Design-Build Entity shall recover no other costs or markups on extra work of any type, nature or description.

### **B. Exception for Changes Extending the Contract Time.**

1. Where a change in the Work extends the Contract Time, Design-Build Entity may request and recover additional, actual direct LEM costs, provided Design-Build Entity can demonstrate such additional costs are (i.) actually incurred performing the Work, (ii.) not compensated by Component 2 (Markup), and (iii) directly result from the extended Contract Time. Design-Build Entity shall make such request and provide such documentation following all required procedures, documentation and time requirements in the Contract Documents, and subject to all contract limitations of liability. Design-Build Entity may not seek or recover such costs using formulas (e.g., Eichleay).

### **C. Limits of Liability/Accord and Satisfaction.**

1. The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating Change Proposal Requests, Change Orders or CDs, or calculating claims and/or damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Design-Build Entity may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
2. Under no circumstances may Design-Build Entity claim or recover special, incidental or consequential damages against Owner, its representatives or agents, whether arising from breach of contract, negligence, strict liability or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
3. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.
4. Accord and Satisfaction: Every Change Order and accepted CD shall constitute a full accord and satisfaction, and release, of all Design-Build Entity (and if applicable, Subcontractors) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim. Design-Build Entity may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CD, and must also submit a Claim for the reserved disputed items pursuant to Article 12 of Document 00 7253 (General Conditions) no later than thirty (30) days after Design-Build Entity's first written notice of its intent to reserve rights. Execution of any Change Order or CD shall constitute Design-Build Entity's representation of its agreement with this provision.

#### **1.10 Miscellaneous Requirements**

**D. Owner-Furnished Materials.**

1. Owner reserves right to furnish materials as it deems advisable, and Design-Build Entity shall have no claims for costs and Markup on such materials.

**E. Records And Certification.**

1. All charges shall be recorded daily and summarized in Change Proposal Request form attached hereto. Design-Build Entity or authorized representative shall complete and sign form each day. Design-Build Entity shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; and a list by size type and identification number of equipment and hours operated.
2. Owner shall have the right to audit all records in possession of Design-Build Entity relating to activities covered by Design-Build Entity's claims for modification of Contract, including CD Work. This right shall be specifically enforceable, and any failure of Design-Build Entity to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to Article 12 of Document 00 7253 (General Conditions).

**END OF SECTION**

[COST PROPOSAL FORM FOLLOWS ON NEXT PAGE]

**COST PROPOSAL FORM**

**New Carport Solar Photovoltaic  
(PV) System Project**

**To: Kern Health Systems  
Attention: Facilities Department, Anthony Roberts  
2900 Buck Owens Boulevard  
Bakersfield, CA 93308  
Phone: (661) 617-2562**

**CP Number:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**In Response To** \_\_\_\_\_  
(RFP #, etc.)

**From: [Insert Design-Build Entity's Name/Address]** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Cost Proposal is in response to the above-referenced \_\_\_\_\_ [insert RFP, etc. as applicable].  
Brief description of change(s): \_\_\_\_\_  
\_\_\_\_\_

ITEM DESCRIPTION	PRIME DESIGN-BUILD ENTITY	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
LABOR AND PROFESSIONAL SERVICES						
EQUIPMENT						
MATERIAL						
TOTAL DIRECT COST OF DESIGN AND CONSTRUCTION (LEM)						
MARKUP FOR PRIME DESIGN-BUILD ENTITY'S SELF-PERFORMED WORK (15%)						
MARKUP FOR SUBCONTRACTOR-PERFORMED WORK (20%)						
BONDS, INSURANCE AND TAXES						
GRAND TOTAL						
REQUESTED CHANGE IN CONTRACT TIME (DAYS) (Time Impact Evaluation Enclosed)						

By Design-Build Entity: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 3119**

**PROJECT MEETINGS**

**PART 1 – GENERAL**

**1.01 SUMMARY**

- A. Section includes description of required project meetings.

**1.02 PROJECT KICK-OFF CONFERENCE**

**1.03 PRECONSTRUCTION CONFERENCE**

- A. Preconstruction Conference. Owner will call for and administer Preconstruction Conference at time and place to be announced (usually the week prior to start of Work at the Site). Design-Build Entity, all major Subcontractors, and major suppliers shall attend Preconstruction Conference. Agenda may include, without limitation, the following items:
1. Schedules
  2. Personnel and vehicle permit procedures
  3. Use of premises
  4. Location of the Design-Build Entity's on-Site facilities
  5. Security
  6. Housekeeping
  7. Submittal and RFI procedures
  8. Inspection and testing procedures, on-Site and off-Site
  9. Utility shutdown procedures
  10. Control and reference point survey procedures
  11. Injury and Illness Prevention Program
  12. Design-Build Entity's Initial Progress Schedule
  13. Design-Build Entity's Schedule of Values
  14. Design-Build Entity's Schedule of Submittals
  15. Jurisdictional agency requirements
  16. Owner will distribute copies of minutes to attendees. Attendees shall have seven Days to submit comments or additions to minutes. Minutes will constitute final memorialization of results of Preconstruction Conference.

**1.04 WEEKLY PROJECT MEETINGS**

- A. Owner will schedule and administer weekly progress meetings throughout duration of Work. Progress meetings will be held weekly unless otherwise directed by Owner. Meetings shall be held at Owner's Offices unless otherwise specified in Contract Documents.
1. Owner's Representative will prepare agenda and distribute it four Days in advance of meeting to Design-Build Entity.
  2. Participants with agenda items shall present them.
  3. The Architect/Engineer and other responsible entities shall attend meetings unless otherwise specified in Contract Documents or provided by Owner.
  4. Owner shall record and distribute the meeting minutes. Minutes shall be distributed by the Owner to the Design-Build Entity within three business days after the meeting. Design-Build Entity shall distribute the minutes to those affected by decisions made at meeting. Attendees shall have five business days to submit comments or additions to the minutes. Minutes shall constitute final memorialization of results of meeting.
  5. Progress meetings shall be attended by Design-Build Entity's job superintendent, major Subcontractors and suppliers, Owner, and others as appropriate to agenda topics for each

- meeting.
6. Agenda may contain the following items, as appropriate:
- a. Review, revise as necessary, and approve previous meeting minutes
  - b. Review of Work progress since last meeting
  - c. Status of Construction Work Schedule, delivery schedules, adjustments
  - d. Submittal, RFI, and Change Order status
  - e. Review of the Design-Build Entity's safety program activities and results, including report on all serious injury and/or damage accidents
  - f. Other items affecting progress of Work

**1.05 PROGRESS SCHEDULE AND BILLING MEETINGS**

- A. A meeting will be held on approximately the 20th of each month to review the schedule update submittal and progress payment application.
- B. At this meeting, at a minimum, the following items will be reviewed:
1. Percent complete of each activity;
  2. Time impact evaluations for Change Orders and Time Extension Request;
  3. Actual and anticipated activity sequence changes;
  4. Actual and anticipated duration changes; and
  5. Actual and anticipated Design-Build Entity delays.
- C. These meetings are considered a critical component of overall monthly schedule update submittal and Design-Build Entity shall have appropriate personnel attend. At a minimum, Design-Build Entity's General Superintendent and Scheduler shall attend these meetings.

**END OF SECTION**



DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 3200

PROGRESS SCHEDULES AND REPORTS

**PART 1 – GENERAL**

**1.01 SUMMARY**

- A. Section includes description of requirements and procedures for submitting progress schedules and submittals.

**1.01 DESIGN-BUILD ENTITY TO SUBMIT BASELINE AND PROGRESS SCHEDULES**

- A. Design-Build Entity shall submit an Initial Contract Schedule two weeks prior to the first Application for Payment. Design-Build Entity's Initial Contract Schedule is subject to Owner's review and comments. The approved Initial Contract Schedule shall be referred to as the **Baseline Schedule**.
- B. Design-Build Entity's Baseline Schedule and progress schedules shall show Design-Build Entity's construction and procurement activities including, without limitation, each major design deliverable. And completion equipment procurement and delivery (Design-Build Entity and Owner supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with Owner and third parties required to complete the Work in a timely manner and in accordance with Contract Time.

**1.02 SCHEDULE REQUIREMENTS.**

- A. Unless Owner agrees in writing otherwise, progress schedule shall be on Primavera P6, most current version of Sure Track, or equivalent software acceptable to Owner, as Owner may specify, which Design-Build Entity shall prepare and supply to Owner, with all datapoint entries completed for start dates, necessary work activities, durations (not longer than 21 calendar days), and logic ties.
- B. Design-Build Entity shall develop a network plan and schedule for the Project demonstrating complete fulfillment of all Contract requirements, shall keep the network plans up to date in accordance with the requirements of this Section 01 3200, and shall utilize the Critical Path Method (**CPM**) in planning, coordinating, performing and reporting the work under this contract, including all activities of Subcontractors, equipment vendors, and suppliers, and in assisting Owner in monitoring the progress of the Work.
- C. CPM network is a graphic depiction of the Design-Build Entity's design and construction plan, showing the sequential steps needed to reach completion of the Work within the prescribed Contract Time. It shall depict events and tasks as activities, and their interrelationships, and shall recognize the progress that must be made on one activity before subsequent activities can begin. These activities shall be logically represented in a CPM network showing their interrelationships in a chronological fashion. As each activity has a time allocation, the completed network shall show the critical path of activities that must be completed on time if the entire Project is not to be delayed. It shall also be possible to identify the earliest and latest start and finish times for each activity if the overall Project is not to be delayed. Therefore, the CPM network shall be comprehensive and shall include all interdependencies and interactions required to perform the Work of the Project.
- D. Design-Build Entity's Baseline Schedule and progress schedules shall be in the form of a CPM (arrow) diagram. Design-Build Entity shall provide Owner with native format electronic schedules and hard copies of the Baseline Schedule, schedule updates, and lookahead schedules. All electronic and hard copies of the schedule that Design-Build Entity provides to Owner shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through Substantial and Final completion within Contract Time.
- E. Unless Owner agrees in writing otherwise, progress schedules shall also show early and late start

and finish dates and total available float (float to the successor activity's late start date) for each activity.

- F. Owner has no obligation to accept an early completion schedule.

### **1.03 MONTHLY UPDATES**

- A. Design-Build Entity's progress schedule shall be updated monthly to reflect actual progress. The schedule shall be subject to Owner's review and acceptance for use in monitoring Design-Build Entity's Work and evaluating Applications for Payment.
- B. Design-Build Entity shall supply Owner with an electronic copy of the updated progress schedule with each monthly payment application. Design-Build Entity shall provide Owner with two-week lookahead schedules weekly, showing in detail and activities and resources scheduled for the immediate two week period.

### **1.04 RECOVERY SCHEDULE**

- A. Owner may request a recovery schedule should Design-Build Entity fall 21 or more Days behind any schedule Milestone, which schedule shall show Design-Build Entity's plan and resources committed to retain Contract completion dates.
- B. The recovery schedule shall show the intended critical path. If Owner requests, Design-Build Entity shall also:
  - 1. Secure and demonstrate appropriate Subcontractor and supplier consent to the recovery schedule.
  - 2. Submit a written plan and narrative explaining on trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or Subcontractors.

### **1.05 TIME IMPACT EVALUATION (TIE) FOR CHANGE ORDERS, TIME EXTENSIONS AND DELAYS**

- A. When Design-Build Entity requests a time extension for any reason, Design-Build Entity shall submit a TIE, in accordance with Article 11 of Document 00 7253 and Section 01 2600, Article 1.02.C that provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIE shall be in a form and content that is acceptable to Owner and that includes both a written narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall show how Design-Build Entity proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current Schedule update critical path or otherwise. Design-Build Entity is also responsible for establishing time extensions based on the TIE's impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable Owner to evaluate the impact of changed Work to the scheduled critical path.
- B. Design-Build Entity is responsible for all costs associated with preparing TIE's, and the process of incorporating TIE's into the current schedule update. Design-Build Entity shall provide Owner with four copies of each TIE.

**END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 3300**

**SUBMITTALS**

**PART 1 – PART 1 GENERAL**

**1.01 SUMMARY**

- A. Section includes description of requirements and procedures for submittals.

**1.02 SCHEDULE OF SUBMITTALS**

- A. Design-Build Entity shall prepare for Owner's review and acceptance prior to commencement of work on the Site, for purposes of contract administration, a schedule of submittals (also referred to as a submittal register) required to complete the Work, prepared by Design-Build Entity and accepted by Owner for contract administration. Schedule of submittals shall include, for each submittal: the specification or drawing reference requiring the submittal, if applicable; the material, item, or process for which the submittal is required; the submittal number and identifying title of the submittal; the Design-Build Entity's anticipated submission date and the approval need date.
- B. Design-Build Entity shall update monthly the schedule of submittals to reflect actual submission and acceptance dates for submittals. Review by Owner of schedule of submittals does not excuse Design-Build Entity of obligation to supply, schedule and coordinate all submittals required by the Contract Documents.

**1.03 DESIGN-BUILD ENTITY TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.**

- A. Design-Build Entity shall review for compliance with Contract Documents, approve and submit to Owner Shop Drawings, Product Data, Samples and similar submittals required by Contract Documents.
- B. Design-Build Entity shall schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Design-Build Entity shall include certifications to be submitted with the pertinent drawings at the same time.
- C. Design-Build Entity shall coordinate scheduling, sequencing, preparing and processing of all submittals with performance of work so that work will not be delayed by submittal processing.
- D. Submittals shall specifically identify any Work depicted that does not conform to the Contract Documents.

**1.04 OWNER REVIEW OF SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.**

- A. After review by Owner of each Submittal, material will be returned to Design-Build Entity with actions defined as follows:
  - 1. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with general design concept of the Work, future Submittals and additional partial Submittals for any portions of the Work not covered in this Submittal. Does not constitute acceptance or deletion of specified or required items not shown on the Submittal.
  - 2. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as item 1

- above, except that minor corrections as noted shall be made by Design-Build Entity.
3. REVISE AS NOTED AND RESUBMIT - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Design-Build Entity prior to subsequent review by Owner.
  4. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and/or Specifications in major respect, i.e.: wrong size, model, capacity, or material.
- B. Owner's review will not constitute acceptance by Owner of any responsibility for the accuracy, coordination, or completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be Design-Build Entity's sole and exclusive responsibility including responsibility to back-check comments, corrections, and modifications from Owner's review before fabrication. Design-Build Entity, Subcontractors, or suppliers may prepare Submittals. Design-Build Entity submission of any Submittal is a representation that Design-Build Entity has confirmed that the Submittal meets requirements of Contract Documents including, without limitation, conforming to structural space and access conditions at point of installation. Owner's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as indicated by the Contract Documents. Owner's review of Submittal, method of Work, or information regarding materials and equipment Design-Build Entity proposes to furnish shall not relieve Design-Build Entity of responsibility for errors therein and shall not be regarded as assumption of risks or liability by Owner, or any officer or employee thereof. Design-Build Entity shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of Work or material and equipment so accepted. Owner's review shall be considered to mean merely that Owner has no objection to Design-Build Entity using, upon Design-Build Entity's own full responsibility, plan or method of Work proposed, or furnishing materials and equipment proposed.
- C. Unless otherwise specified, Owner's review will not extend to the means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- D. Design-Build Entity shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the Owner has reviewed respective Submittal and the Work described in the Submittal is authorized to proceed in accordance with paragraphs 1.04.A.1 or 2, above. Otherwise, any such Work is at Design-Build Entity's sole risk for removal and replacement, at Owner's sole discretion, and at Design-Build Entity's sole expense.

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

### SECTION 01 4100

#### REGULATORY REQUIREMENTS

##### PART 1 – GENERAL

##### 1.01 SUMMARY

A. **Section includes:**

1. Regulatory requirements applicable to Contract Documents
2. Required provisions under Local Agency Disputes Act
3. Required references under federal law

##### 1.02 GENERAL

A. **Compliance with Laws**

1. Conform to all applicable codes, laws, ordinances, rules and regulations, which shall have full force and effect as though printed in full in these Specifications. Codes, laws, ordinances, rules, regulations and ordinances (**Regulatory Requirements**) are not furnished to Design-Build Entity, because Design-Build Entity is assumed to be familiar with these requirements.
2. Any listing of Regulatory Requirements for hazardous waste abatement Work in the Contract Documents is supplied to Design-Build Entity as a courtesy and shall not limit Design-Build Entity's responsibility for complying with all applicable Regulatory Requirements having application to the Work. Where conflict among the Regulatory Requirements or with these Specifications occurs, the most stringent requirements shall be used.
3. Specific reference in the Specifications to codes and regulations or requirements of regulatory agencies shall mean the latest printed edition of each adopted by the regulatory agency in effect at the time of the opening of Bids, except as may be otherwise specifically stated in the Contract Documents.

B. **Precedence**

1. Where specified requirements differ from Regulatory Requirements, the more stringent requirements shall take precedence. Where Drawings or Specifications require or describe products or execution of better quality, higher standard or greater size than required by Regulatory Requirements, then Drawings and Specifications shall take precedence so long as such increase is legal. Where no requirements are identified on Drawings or in Specifications, comply with all Regulatory Requirements of governing authorities having jurisdiction.
2. Should any conditions develop not covered by the Contract Documents wherein the finished Work will not comply with current codes, a Change Order detailing and specifying the required Work shall be submitted to and approved by Owner before proceeding with the Work.

##### 1.03 REGULATORY REQUIREMENTS

A. **Applicable Codes**

1. Codes that apply to Contract Documents include all Codes applicable to construction, including, without limitation, the following:

- a. California Building Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- b. California Electrical Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- c. California Plumbing Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for plumbing, sewage disposal and health requirements.
- d. California Mechanical Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- e. California Fire Code (2013 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- f. California Administrative Code Titles 15, 19 and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
- g. All State laws and City and County Ordinances, rules of the State or City or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations for mechanical and electrical work.

**B. Applicable Laws, Statutes, Ordinances, Rules, And Regulations**

1. During prosecution of Work to be done under Contract Documents, Design-Build Entity shall comply with applicable laws, ordinances, rules and regulations including, without limitation, the following:
  - a. Federal:
    - 1) Americans With Disabilities Act of 1990
    - 2) 29 CFR, Section 1910.1001, Asbestos
    - 3) 40 CFR, Subpart M, National Emission Standards for Asbestos
    - 4) Executive Order 11246
    - 5) Federal Endangered Species Act
    - 6) Clean Water Act
  - b. State of California:
    - 1) Code of Regulations, Titles 5, 8, 17, 19, 21, 22, 24 and 25
    - 2) Public Contract Code
    - 3) Health and Safety Code
    - 4) Government Code
    - 5) Labor Code
    - 6) Civil Code
    - 7) Code of Civil Procedure
    - 8) CPUC General Order 95, Rules for Overhead Electric Line Construction
    - 9) CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems
    - 10) Cal/OSHA
    - 11) OSHA: Hazard Communications Standards
    - 12) California Endangered Species Act
    - 13) Water Code
    - 14) Fish and Game Code
  - c. State of California Agencies:
    - 1) State and Consumer Services Agency
    - 2) Office of the State Fire Marshall
    - 3) Office of Statewide Health Planning and Development (if applicable)
    - 4) Department of Fish and Game
    - 5) All Air Quality Management Districts with jurisdiction
    - 6) All Regional Water Quality Control Boards with jurisdiction

7) Division of the State Architect (if applicable)

d. All Local Agencies with jurisdiction (cities, counties, fire departments)

**C. Change Orders and Claims:**

1. The Public Contract Code including, without limitation, Section 7105(d)(2), and the Government Code Section 930.2, et seq., apply to all contract procedures for changes, time extensions, change orders (time or compensation) and claims. Federal law (*U.S. v. Holpuch* 326 U.S. 234) shall supplement California law on the enforceability of these requirements.
2. Any change, waiver, or omission to implement contract change order and claim procedures shall have no legal effect unless expressly permitted in a fully executed change order approved by Design-Build Entity and Owner and approved as to form by their respective legal counsel.

**D. Required Provisions On Contract Claim Resolution**

1. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 201014, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.
2. Public Contract Code Section 9204 provides:
  - a. For the purposes of this section, "Claim" means a separate demand by Contractor for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by Owner.
  - b. Procedure:
    - 1) Upon receipt of a Claim the Owner shall conduct a reasonable review of the Claim and within 45 days, or if Owner's governing body must approve Owner's response to the Claim and the governing body has not met within the 45 days then within three (3) days of the governing body's meeting, shall provide Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Should Owner take no action on the Claim within 45 days of submission, it shall be deemed denied.
    - 2) If the Contractor disputes Owner's response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. Owner shall schedule such a meet and confer conference within 30 days for settlement of the dispute. Within ten (10) days of the meet and confer conference Owner shall provide Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. If the Contractor disputes Owner's statement it shall inform Owner and they shall mutually agree to a mediator within 10 business days of the written statement.
    - 3) Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.
    - 4) Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the claimant sharing the associated costs equally. The Owner and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of

- the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.
- 5) For claims under \$375,000, unless the parties agree otherwise in writing, mediation pursuant to these provisions shall excuse the mediation obligation under Public Contracting Code section 20104.4(a).
  - 6) The parties may mutually agree, in writing, to waive the mediation requirements of this subsection and proceed to the commencement of a civil action **[or binding arbitration, as applicable]**.
  - 7) Failure by the Owner to respond to a Claim from a Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A Claim that is denied by reason of the public entity's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.
  - 8) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
  - 9) If a Subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a Subcontractor or lower tier subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the Subcontractor or by a lower tier subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the Owner and, if the original Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.
  - 10) Nothing in this section shall impose liability upon an Owner that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
  - 11) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.
3. To the extent applicable, Public Contract Code Section 20104, et seq., provide:
- a. For the purposes of this section, "Claim" means a separate demand by Contractor of \$375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by Owner. Separate Contractor Claims that together total more than \$375,000 do not qualify as a "separate demand of \$375,000 or less," as referenced above, and are not subject to this section.
  - b. Caution. This section does not apply to tort claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.
  - c. Procedure:
    - 1) The Claim must be in writing, submitted in compliance with all requirements of Document 00 7253 (General Conditions), Article 12 including, without



limitation, the time prescribed by and including the documents necessary to substantiate the Claim, pursuant to Document 00 7253 (General Conditions), Paragraph 12.02. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in Document 00 7253 (General Conditions), Article 12 or elsewhere in the Contract Documents.

- 2) For Claims of fifty thousand dollars (\$50,000) or less, Owner shall respond in writing within forty-five (45) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of Owner and Claimant. Owner's written response to the Claim, as further documented, shall be submitted to Claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.
  - 3) For Claims over Fifty Thousand Dollars (\$50,000) and less than or equal to \$375,000: Owner shall respond in writing within sixty (60) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of Owner and Claimant; Owner's written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.
  - 4) Meet and Confer: If Claimant disputes Owner's written response, or Owner fails to respond within the time prescribed above, Claimant shall notify Owner, in writing, either within fifteen (15) days of receipt of Owner's response or within fifteen (15) days of Owner's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand Owner will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- d. Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Claimant submits its written claim as set forth herein, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

**E. Compliance With Americans With Disabilities Act**

1. Design-Build Entity acknowledges that, pursuant to the Americans with Disabilities Act (**ADA**), programs, services and other activities provided by a public entity to the public, whether directly or through a Design-Build Entity, must be accessible to the disabled public. Design-Build Entity shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Design-Build Entity agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Design-Build Entity, its employees, agents or assigns shall constitute a material breach of the Contract Documents.

**F. Compliance With IRCA**

1. Design-Build Entity acknowledges that Design-Build Entity, and all subcontractors hired by Design-Build Entity to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (**IRCA**). Design-Build Entity is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Design-Build Entity to perform services under this Agreement are in compliance with the IRCA. In addition, Design-Build Entity agrees to indemnify, defend and hold harmless Owner, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Design-Build Entity's employees, or employees of any subcontractor hired by Design-Build Entity, are not authorized to work in the United States for Design-Build Entity or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Design-Build Entity or Design-Build Entity's subcontractors.

**END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 4200**

**REFERENCES AND DEFINITIONS**

**PART 1 - GENERAL**

**1.01 SUMMARY**

**A. Section Includes:**

1. Reference standards, abbreviations, symbols, and definitions used in Contract Documents.
2. Full titles are given in this Section for standards cited in other Sections of Specifications.

**1.02 REFERENCE TO STANDARDS AND SPECIFICATIONS OF TECHNICAL SOCIETIES; REPORTING AND RESOLVING DISCREPANCIES**

**A. References**

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or laws or regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated in the Contract Documents.
2. If during the performance of the Work, Design-Build Entity discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any supplier, Design-Build Entity shall report it in writing at once to Owner's Representative and Architect/Engineer, and Design-Build Entity shall not proceed with the Work affected thereby until consent to do so is given by Owner.

**B. Precedence**

1. Except as otherwise specifically stated in the Contract Documents or as may be provided by Change Order, CCD, or Supplemental Instruction, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. The provisions of any such laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
2. No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of Owner, Owner's Representative, Architect/Engineer or Design-Build Entity, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to Owner, Architect/Engineer, or any of their consultants, agents, representatives or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

C. **Referenced Grades, Classes, and Types:**

1. Where an alternative or optional grade, class, or type of product or execution is included in a reference but is not identified in Drawings or in Specifications, provide the highest, best, and greatest of the alternatives or options for the intended use and prevailing conditions.

D. **Edition Date of References:**

1. When an edition or effective date of a reference is not given, it shall be understood to be the current edition or latest revision published as of the date Design-Build Entity executes Document 00 5253 (Agreement).
2. All amendments, changes, errata and supplements as of the effective date shall be included.

E. **ASTM and ANSI References:** Specifications and Standards of the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) are identified in the Drawings and Specifications by abbreviation and number only and may not be further identified by title, date, revision, or amendment. It is presumed that Design-Build Entity is familiar with and has access to these nationally- and industry-recognized specifications and standards.

1.03 **DEFINITIONS**

A. **Meaning of Words and Phrases**

Wherever any of the words or phrases defined below, or a pronoun used in place thereof, is used in any part of the Contract Documents, it shall have the meaning here set forth. Where abbreviations and symbols are used, such abbreviations and symbols shall be given their common meaning in the construction industry. In the Contract Documents, the neuter gender includes the feminine and masculine, and the singular number includes the plural.

While Owner has made an effort to identify all defined terms with initial caps, the following definitions shall apply regardless of case unless the context otherwise requires:

1. Addenda: Written or graphic instruments issued prior to Design-Build Entity's execution of Document 00 5253 (Agreement), which clarify, correct, or change the Request for Proposal requirements or the Contract Documents. Addenda shall not include the minutes of the Pre-Proposal Conference and/or Site Visit.
2. Agreement (Document 00 5253): Agreement is the basic Contract Document that binds the parties to construction Work. Agreement defines relationships and obligations between Owner and Design-Build Entity and by reference incorporates Conditions of Contract, , Bridging Documents, final Drawings, and final Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.
3. Alternate: Work added to or deducted from the base Proposal, if accepted by Owner.
4. Application for Payment: Written application for monthly or periodic progress or final payment made by Design-Build Entity complying with the Contract Documents.
5. Approved Equal: Approved in writing by Owner as being of equivalent quality, utility and appearance.
6. Architect of Record: Principal Designer if the Project is an architectural-based project.
7. Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.
8. Bid: Proposal.
9. Bidder: Proposer.
10. Bridging Designer: A person (or that person's firm) holding a valid California State Architect's or Engineer's license that prepared some or all of the Bridging Documents, and

represents the Owner in the administration of certain aspects of Contract Documents. Bridging Designer may be an employee of or an independent consultant to Owner. When Bridging Designer is referred to within the Contract Documents and not an employee of Owner, Bridging Designer shall be construed to include employees, consultants and subconsultants of Bridging Designer. When Bridging Designer is an employee of Owner, his or her authorized representatives on the Project will be included under the term Bridging Designer. If Bridging Designer is an employee of Owner, Bridging Designer is the beneficiary of all Design-Build Entity obligations to Owner, including without limitation, all releases and indemnities. Bridging Designer may also be referred to as Architect/Engineer, Bridging Architect or Bridging Engineer, Architect or Engineer.

11. Bridging Documents: The Performance Criteria, Concept Drawings and other items included, referenced or described in Document 00 5255 (Bridging Documents).
12. Board: The governing body of the Owner.
13. Business Day: Any Day other than Saturday, Sunday, and the following days that have been designated as holidays by Owner. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.
  - a. New Year's Day, January 1;
  - b. Martin Luther King Jr.'s Birthday, third Monday in January;
  - c. Presidents' Day, third Monday in February;
  - d. Memorial Day, last Monday in May;
  - e. Independence Day, July 4;
  - f. Labor Day, first Monday in September;
  - g. Thanksgiving Day, as designated by the President;
  - h. The Day following Thanksgiving Day;
  - i. Christmas Eve, December 24;
  - j. Christmas Day, December 25;
  - k. New Year's Eve, December 31; and
  - l. Each day appointed by the Governor of California and formally recognized by the Owner as a day of mourning, thanksgiving, or special observance.
14. By Others: Work that is outside scope of Work to be performed by Design-Build Entity under this Contract, which will be performed by Owner, other contractors, or other means.
15. By Owner: Work that will be performed by Owner or its agents at the Owner's expense.
16. Change Order (CO): A written instrument prepared by Owner and signed by Owner and Design-Build Entity, stating their agreement upon all of the following:
  - a. a change in the Work;
  - b. the amount of the adjustment in the Contract Sum, if any; and
  - c. the amount of the adjustment in the Contract Time, if any.
17. Change Proposal Request (CPR): Design-Build Entity-initiated change order document (if used).
18. Code Inspector: A local or state agency responsible for the enforcement of applicable codes and regulations.
19. Concealed: Work not exposed to view in the finished Work, including within or behind various construction elements.
20. Construction Change Directive (CCD): A written order prepared and signed by Owner, directing a change in the Work and stating a Proposer basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
21. Construction Documents: Final Drawings and Specifications. See Section 01 1101 (Summary – Designer Services).

22. Contract Amount: a change order price, line item price, Contract Sum, or other price assigned to a scope of work.
23. Contract Conditions or Conditions of the Contract: Consists of two parts: General Conditions and Supplementary Conditions.
  - a. General Conditions are general clauses that are common to the Owner Contracts, including Document 00 7253 (General Conditions).
  - b. Supplementary Conditions modify or supplement General Conditions to meet specific requirements for Contract Documents, including Documents 00 7300, *et seq.* (Supplementary Conditions).
24. Contract Documents and Contract: Contract Documents and Contract shall consist of the documents identified as the Contract Documents in Document 00 5253 (Agreement), plus all changes, Addenda, and modifications thereto.
25. Contract Modification: Either:
  - a. a written amendment to Contract signed by Design-Build Entity and Owner; or
  - b. a Change Order; or
  - c. a Construction Change Directive; or
  - d. a written directive for a minor change in the Work issued by Owner.
26. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by Owner to Design-Build Entity for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.
27. Contract Time: The number or numbers of Days or the dates stated in the Agreement to achieve Substantial Completion of the Work or designated Milestones; and/or to achieve Final Completion of the Work so that it is ready for final payment and is accepted.
28. Contractor: Design-Build Entity.
29. Contractor's Employees: Design-Build Entity's Employees.
30. Council: Board.
31. County: The county in which Project is located.
32. Day: One calendar day of 24 hours measured from midnight to the next midnight, unless the word "day" is specifically modified to the contrary.
33. Defective: An adjective which, when modifying the word "Work," refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including, without limitation, approval of Samples and "or equal" items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by Owner). Unapproved substitutions are defective. Owner is the judge of whether Work is Defective.
34. Design-Build Entity: The person or entity identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number and neutral in gender. The term "Design-Build Entity" means the Design-Build Entity or its authorized representative.
35. Design-Build Entity's Employees: Persons engaged in execution of Work under Contract as direct employees of Design-Build Entity, as Subcontractors, or as employees of Subcontractors.
36. Designers: The qualified, licensed architects, engineers and other design professionals retained or employed by Design-Build Entity or a Subcontractor (of any tier) to furnish design services required by Section 01 1101 and other provisions of Contract Documents.
37. Drawings: The graphic and pictorial portions of Contract Documents, wherever located and whenever issued, including without limitation prepared by Design-Build Team, Subcontractors or their Designers showing the final design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

However, unless the context clearly requires otherwise, Drawings do not include any Bridging Documents.

38. Equal: Equal in opinion of Owner. Burden of proof of equality is responsibility of Design-Build Entity.
39. Exposed: Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.
40. Final Acceptance or Final Completion: Owner's acceptance of the Work as satisfactorily completed in accordance with Contract Documents. Requirements for Final Acceptance/Final Completion include, but are not limited to:
  - a. Final cleaning is completed.
  - b. All systems having been tested and accepted as having met requirements of Contract Documents.
  - c. All required instructions and training sessions having been given by Design-Build Entity.
  - d. All Project Record Documents having been submitted by Design-Build Entity, reviewed by Owner, and accepted by Owner.
  - e. All punch list Work, as directed by Owner, having been completed by Design-Build Entity.
  - f. Generally all Work, except Design-Build Entity maintenance after Final Acceptance/Final Completion, having been completed to satisfaction of Owner.
41. Force Account: Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor, materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.
42. Furnish: Supply only, do not install.
43. Indicated: Shown or noted on the Drawings.
44. Install: Install or apply only, do not furnish.
45. Latent: Not apparent by reasonable inspection including, without limitation, the inspections and research required as a condition to proposing or performing construction work under Document 00 7253 (General Conditions).
46. Law: Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions.
47. Material: This word shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise), and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.
48. Milestone: A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.
49. Modification: Same as Contract Modification.
50. Not in Contract or "NIC": Work that is outside the scope of Work to be performed by Design-Build Entity under Contract Documents.
51. Notice of Completion: Shall have the meaning provided in Civil Code Section 9202, and any successor statute.
52. Off Site: Outside geographical location of the Project.
53. Owner: Owner is defined in Document 00 5253 (Agreement).
54. Owner-Furnished, Design-Build Entity Installed: Items furnished by Owner at its cost for installation by Design-Build Entity at its cost under Contract Documents.
55. Owner's Representative(s): See Document 00 5253 (Agreement).

- 56. Partial Utilization: Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.
- 57. PCBs: Polychlorinated biphenyls.
- 58. Phase: A specified portion of the Work (if any) specifically identified as a Phase in Document 00 5253 (Agreement) or Section 01 1100 (Summary).
- 59. Principal Engineer: Principal Designer if the Project is an engineering-based project.
- 60. Product Data: That information (brochures, catalog sheets, manufacturer's cut sheets, etc.) supplied by vendors having technical and commercial characteristics of the supplied equipment or materials and accompanying commercial terms such as warranties, instructions, and manuals.
- 61. Progress Report: A periodic report submitted by Design-Build Entity to Owner with progress payment invoices accompanying progress schedule. See Document 00 7253 (General Conditions).
- 62. Project: Total construction of which Work performed under Contract Documents may be whole or part.
- 63. Project Manual: Project Manual consists of Proposal Requirements, Agreement, Bonds, Certificates, Contract Conditions, Bridging Documents, and other items identified in Document 00 0110 (Table of Contents).
- 64. Project Record Documents: All Project deliverables required under the Contract Documents, including without limitation, as built drawings; Installation, Operation, and Maintenance Manuals; and Machine Inventory Sheets.
- 65. Proposal: The offer or proposal of the Proposer submitted on the prescribed form(s) setting forth the prices for the Work to be performed.
- 66. Proposer: One who submits a Proposal.
- 67. Provide: Furnish and install.
- 68. Request for Information (RFI): A document prepared by Design-Build Entity requesting information regarding the Project or Contract Documents. The RFI system is also a means for Owner to submit Contract Document clarifications or supplements to Design-Build Entity.
- 69. Request for Proposals (RFP): A document issued by Owner to Design-Build Entity whereby Owner may initiate changes in the Work or Contract Time as provided in Contract Documents.
- 70. Request for Substitution (RFS): A document prepared by Design-Build Entity requesting substitution of materials as permitted and to the extent permitted in Contract Documents.
- 71. Responsible Designer: The individual licensed Designer whom Proposer proposes to assume responsibility for the architectural or engineering design for the Project, as applicable.
- 72. RFI-Reply: A document consisting of supplementary details, instructions, or information issued by Owner that clarifies or supplements Contract Documents, and with which Design-Build Entity shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by Owner. RFI-Replies will be issued through the RFI administrative system.
- 73. Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 74. Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity (other than Drawings and Specifications) and submitted by Design-Build Entity to illustrate some portion of the Work.



- 75. Shown: As indicated on Drawings.
- 76. Site: The particular geographical location of Work performed pursuant to the Contract Documents.
- 77. Specifications: The written portion of the Contract Documents consisting of requirements for materials, equipment, construction systems, standards, and workmanship for the Work; performance of related services. However, unless the context clearly requires otherwise, Specifications do not include any Bridging Documents.
- 78. Specified: As written in Specifications.
- 79. Subcontractor: Subcontractor: A person or entity that has a direct contract with Design-Build Team to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Design-Build Team or subcontractors of a separate Design-Build Team. Also, while the term "Subcontractor" includes design-assist and design-build subcontractors (of any tier), unless the context clearly requires otherwise, it does not include Designers.
- 80. Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner as evidenced by a notice or certificate of Substantial Completion, the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended, and unperformed or incomplete work elements are minor in nature; or if no such certificate is issued, when the Work (or specified part) is complete and ready for final payment as evidenced by written recommendation of Owner for final payment. The terms **Substantially Complete** and **Substantially Completed** as applied to all or part of the Work refer to Substantial Completion thereof.
- 81. Supplemental Instruction: A written directive from Owner to Design-Build Entity ordering alterations or Modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.
- 82. Testing and Inspection Agency: An independent entity engaged to inspect and/or test the workmanship, materials, or manner of construction of buildings or portions of buildings, to determine if such construction complies with the Contract Documents and applicable codes.
- 83. TIE: Time Impact Evaluation. May also be referred to as Time Impact Analysis (**TIA**).
- 84. Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
- 85. Unit Price Work: Shall be the portions of the Work for which a unit price is provided in Document 00 5253 (Agreement) or Section 01 1100 (Summary).
- 86. Work: The entire completed design and construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents within the Contract Time (including without limitation Services). Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing design and other services and furnishing documents, all as required by the Contract Documents including, once approved by Owner as provided in Contract Documents, everything shown in the Drawings and set forth in the Specifications. Wherever the word "work" is used, rather than the word "Work," it shall be understood to have its ordinary and customary meaning.

**B. Other Defined Terms**

The following terms are not necessarily identified with initial caps; however they shall have the meaning set forth below:

1. Wherever words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood that direction, requirements, or permission of Owner is intended. Words “sufficient,” “necessary,” “proper,” and the like shall mean sufficient, necessary, or proper in judgment of Owner. Words “approved,” “acceptable,” “satisfactory,” “favorably reviewed,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by Owner.
2. Wherever the word “may” or “ought” is used, the action to which it refers is discretionary. Wherever the word “shall” or “will” is used, the action to which it refers is mandatory.

**END OF SECTION**

DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7700**

**CONTRACT CLOSEOUT**

**PART 1 - GENERAL**

**1.01 SUMMARY**

A. Section describes requirements and procedures for:

1. Project cleaning
2. Testing of equipment and systems
3. Substantial Completion
4. Final Completion
5. Close Out
6. Warranties

**1.02 SUBSTANTIAL COMPLETION**

A. Removal of Temporary Construction Facilities and Project Cleaning.

1. Prior to Substantial Completion inspection: remove temporary materials, equipment, services, and construction; clean all areas affected by the Work; clean and repair damage caused by installation or use of temporary facilities; restore permanent facilities used during construction to specified condition.

B. Equipment and Systems.

1. Prior to Substantial Completion, Design-Build Entity shall start up, run for periods prescribed by Owner, operate, adjust and balance all manufactured equipment and Project systems including, without limitation, mechanical, electrical, safety, fire, and controls.
2. Demonstrate that such equipment and systems conform to contract standards and manufacturer's guarantees. Where applicable, use testing protocols specified, and if the contract is silent, then consistent with manufacturer's recommendations and industry standards.

C. Procedure for Substantial Completion.

1. When Design-Build Entity considers Work or designated portion of the Work as Substantially Complete, submit written notice to Owner, with list of items remaining to be completed or corrected and explanation of why such items do not prevent Owner's beneficial use and occupancy of the Work for its intended purposes. Within reasonable time, Owner will inspect to determine status of completion.
2. Should Owner determine that Work is not Substantially Complete, Owner will promptly notify Design-Build Entity in writing, listing all defects and omissions. Design-Build Entity shall remedy deficiencies and send a second written notice of Substantial Completion. Owner will reinspect the Work. If deficiencies previously noted are not corrected on reinspection, then pay the cost of the reinspection.
3. When Owner concurs that Work is Substantially Complete, Owner will issue a written notice or certificate of Substantial Completion, accompanied by Design-Build Entity's list of items to be completed or corrected as verified by Owner.
4. Manufactured units, equipment and systems that require startup must have been started up and before a notice or certificate of Substantial Completion will be issued.
5. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided. If further Site visits are required to review punch list items due to incompleteness of the Work by Design-Build Entity, Design-Build Entity will reimburse Owner for costs associated with these visits.

### 1.03 FINAL COMPLETION

#### A. Requirements.

1. Final Completion occurs when Work meets requirements for Owner's Final Acceptance.

#### B. Procedure.

1. When Design-Build Entity considers Work is Finally Complete, submit written certification that:
  - (a) Design-Build Entity has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.
  - (b) Except for Design-Build Entity maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of Owner, and are operative.
  - (c) Project Record Documents are completed and turned over to Owner, and Work is complete and ready for final inspection.
2. In addition to submittals required by Contract Documents, provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.
3. Should Owner determine that Work is incomplete or Defective, Owner promptly will so notify Design-Build Entity, in writing, listing the incomplete or Defective items. Design-Build Entity shall promptly remedy the deficiencies and notify the Owner when it is ready for reinspection.

#### C. Final Adjustments of Accounts.

1. Submit a final statement of accounting to Owner, showing all adjustments to the Contract Sum and complete and execute Document 00 6530 (Agreement and Release of Claims).
2. If so required, Owner shall prepare a final Change Order for submittal to Design-Build Entity, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

#### D. Warranties.

1. Execute Design-Build Entity's Submittals and assemble warranty documents, and Installation, Operation, and Maintenance Manuals, executed or supplied by Subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized. Assemble in Specification Section order.
2. Submit material prior to final Application for Payment. For equipment put into use with Owner's permission during construction, submit within 14 Days after first operation. For items of Work delayed materially beyond Date of Substantial Completion, provide updated Submittal within 14 Days after acceptance, listing date of acceptance as start of warranty period.
3. Warranty Forms: Submit drafts to Owner for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents. Warranty shall be countersigned by manufacturers. Where specified, warranty shall be countersigned by Subcontractors and installers.
4. Rejection of Warranties: Owner reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
5. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of Final Completion of entire Work except where:
  - (a) Detailed Specifications for certain materials, equipment or systems require longer warranty periods.

- (b) Materials, equipment or systems are put into beneficial use of Owner prior to Final Completion as agreed to in writing by Owner.

E. Warranty of Title.

- 1. No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Design-Build Entity, to Owner free from any claim, liens, security interest, or charges, and further agrees that neither Design-Build Entity nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises or improvement or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or impair right of persons furnishing materials or labor under bond given by Design-Build Entity for their protection or any rights under law permitting persons to look to funds due Design-Build Entity in hands of Owner.

- F. Turn-In. Contract Documents will not be closed out and final payment will not be made until all keys issued to Design-Build Entity during prosecution of Work and letters from property owners, pursuant to Contract Documents, are turned in to Owner.

- G. Release of Claims. Contract Documents will not be closed out and final payment will not be due or made until Document 00 6530 (Agreement and Release of Claims) is completed and executed by Design-Build Entity and Owner.

- H. Fire Inspection Coordination. Coordinate fire inspection and secure sufficient notice to Owner to permit convenient scheduling (if applicable).

- I. Building Inspection Coordination. Coordinate with Owner a final inspection for the purpose of obtaining an occupancy certificate (if applicable).

**END OF SECTION**