

Contract General Conditions for Construction Manager at Risk

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Fresno Chaffee Zoo

August 24, 2011

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Article 1.00 DEFINITIONS

Addendum - A document that modifies or supersedes portions of the Contract Documents, which is produced by the Architect, approved by the Owner, and issued to the Construction Manager at Risk, prior to the agreement on the Guaranteed Maximum Price.

Agreement - The Contract Documents which collectively represent the entire agreement between the Owner and the Construction Manager at Risk, including Guaranteed Maximum Price, and which supersede any prior negotiations, representations, or agreements, either written or oral. See Contract Documents.

Architect - The person or organization, including the authorized representatives thereof, commissioned by the Owner for the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term "Architect" shall mean the design professional so commissioned for the project.

Bid Date - The date fixed for submission of technical and cost proposals.

Bidder - Any person or business entity acting directly or through an authorized representative who submits a technical and cost proposal for the work, in response to a Request for Proposal. See Proposer.

Change Order - A written agreement entered into after the award of the Contract that alters or amends the executed Contract.

Construction Manager at Risk (CM) - The Contractor who is selected to review and participate in the production of the construction documents and who agrees upon a Guaranteed Maximum Price to perform the work identified in the Contract Documents. See Contractor. The CM shall solicit trade bids from the trade contractors on a competitive basis and enter into contracts with these trade contractors to perform their trade work.

Construction Schedule - The CM's time use plan for completing the Work within the Contract Time.

Contract - The Contract Documents which collectively represent the entire agreement between the Owner and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

Contract Documents - The Request for Proposals, technical and cost proposals, bonds, insurance certificates, Plans, Specifications, Addenda, Agreement, Contract General Conditions, Supplementary General Conditions, Special Conditions, and Change Orders.

Contractor - The person or business entity that has entered into this contract with the Owner. See Construction Manager at Risk.

Contract Time - The period of time, set out in calendar days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by time extensions through Change Orders.

Field Instruction - A written communication to the CM from the Owner. The field instruction is issued by the Project Manager and may reject work, issue directives and/or coordination communications to the CM.

Guaranteed Maximum Price (GMAX) - The maximum price that the Owner and Construction Manager at Risk agree upon as payment for managing, supplying and installing all the work.

Plans - The drawings prepared by the Architect and approved by the Owner which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the work.

Prevailing Wages - The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

Progress Schedule - The periodically updated Construction Schedule that reflects the actual progress of the work and impacts on the work thereby maintaining a current projected date of completion. Impacts on the work include, but are not limited to, anticipated delays, re-sequencing of tasks, and Change Orders.

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Project - The total work required by the Contract.

Project Manager - The on-site representative of the Owner.

Project Schedule – The time used to complete the entire project from date of Notice to Proceed of the Preconstruction Services phase through the date of final completion of construction. Major tasks included in the Project Schedule shall include but not be limited to consultant selection and award, design phases, code approvals, bid and award, construction, move-in, and closeout.

Proposer – Any person or business entity acting directly or through an authorized representative who submits a technical and cost proposal for the work, in response to a Request for Proposal. See Bidder.

Site - The area specified in the Contract for the project and the area made available for the CM's operation.

Specifications - The instructions and requirements prepared by the Architect which complement the plans and describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

Subcontractor - Any person or business entity that contracts with the CM to furnish either labor and materials or equipment, or labor only. See Trade Contractors.

Superintendent - The representative of the CM at the construction site, who is authorized to receive instructions from the Architect and the Project Manager, and who is authorized to direct the performance of the work on behalf of the CM.

Supplier or Vendor - Any person or business entity that contracts with the CM or trade contractor to provide materials or equipment.

Trade Contractors – Appropriately licensed specialty contractors hired by the CM to perform portions of the work.

Owner - The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a Project Manager who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

Work - That which is proposed to be constructed or done under the Contract, including the furnishing of all design services, labor, materials, and equipment.

Article 2.00 NEGOTIATION OF GUARANTEED MAXIMUM PRICE

2.01 Duty to Carefully Examine These Instructions

The Construction Manager at Risk (CM) and the trade contractors for this project shall carefully examine the instructions contained herein and be cognizant of the conditions that must be satisfied prior to submitting a proposal, and the conditions that affect the award of the Contract.

2.02 Competence of CM and Trade Contractors

- a) License. No contractor shall participate in any work for which it is not properly licensed. A contract shall not be awarded to a CM or a trade contractor who does not possess the appropriate contractor's license, which is that specified in the Request for Proposal. Joint venture bidders must individually possess a current license when submitting the bid and the joint venture must possess a joint venture license at the time of award.
- b) If two or more prospective firms desire to submit a proposal as a joint venture on a single project, they must file an affidavit of joint venture with the Owner at least five days prior to the date and time set for opening proposals. The affidavit of joint venture will be valid only for the specific project for which it is filed.

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2.03 Necessity for Careful Examination of Site, Plans, and Specifications

The CM and trade contractors shall carefully examine the Site, the plans, and specifications for the project, and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the Site, the work to be performed, and materials to be furnished and as to the requirements of the proposal, plans, and specifications for the project. See Article 4.09, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc. Bidder certifies that Bidder has complied with the requirements of this provision by the submission of its bid.

Any failure by the CM and trade contractors to acquaint themselves with information that is available or with reasonable investigation may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soil borings unless required elsewhere in the Contract Documents.

- a) Subsurface Investigations. Where the Owner has made investigations of subsurface conditions, and that information is made available to the CM, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the CM. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen conditions or developments may not occur.
- b) Differing Site Condition. During the progress of the work, if the CM encounters a subsurface or latent condition at the Site that is substantially different from those indicated in the Contract Documents or made available for examination, a differing Site condition may exist. The CM shall immediately notify the Architect and the Project Manager in writing of the error, conflict, inconsistency, omission or any variance on the project as required herein and as required by laws, ordinances, codes, rules or regulations. The CM shall immediately report such condition to the Project Manager and the Architect in writing. The Architect shall investigate the assertion of a differing Site condition by collecting the facts and applying the facts as expressed by the Architect to the appropriate provisions of the Contract Documents. If the Architect in the exercise of reasonable discretion determines that a differing Site condition exists and that the differing site condition directly results in extra work, and if the Owner concur, the CM shall be entitled to a change order that shall compensate the CM for the extra work.

2.04 Clarification Prior to Guaranteeing the Maximum Price

The CM shall examine the plans and specifications in preparing the GMAX and shall report to the Architect any omissions, discrepancies, or apparent errors found in the plans and specifications. Before the date of agreeing to the GMAX, the CM shall submit a written request for clarification to the Architect who may give such clarification in the form of an addendum. Otherwise, in obtaining the cost of the project, the CM shall consider that any conflicts shall be governed by Article 5.01, Interpretation of Contract Requirements.

The CM is advised that the time period for submitting a proposed product as "an equal" is limited to the period prior to the date of agreeing to a GMAX. Refer to Article 5.04-c, Alternatives or Equals.

Only the Architect is authorized to answer questions or prepare addenda relative to the project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

2.05 Soliciting and Executing Trade Bid Packages

The CM shall develop the most logical, competitive, seamless and distinct trade contractor bid packages with all scopes of work included in the packages. Include bid alternatives (deductive or additive) in each trade contractor bid package to enable full utilization of the project budget. Include these General Conditions for Construction Manager at Risk in each trade contractor bid packages. The CM shall not cause the trade contractors to include any construction contingency or allowances in their bids unless authorized by the Owner. CM shall obtain the review and approval of the Owner's Representative of the proposed trade contractor bid documents and trade contractor agreements prior to bidding work. The Owner may require

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the CM to include language in the trade bid solicitation giving preferential treatment to Local Contractors, Disabled Veterans and/or Certified Small Businesses.

2.06 Assignment of Trade Contractors

The CM shall include in all trade contracts an assignment clause stating that the Owner has the right to require that the CM assign the trade contract(s) to the Owner. Upon direction from the Owner, the CM shall assign to the Owner for fully vesting in the Owner all rights and benefits of the CM under such trade contracts or purchase orders.

2.07 Listing of Trade Contractors

Upon receipt of bids from trade contractors for the GMAX, the CM shall submit to the Project Manager the List of Proposed Trade Contractors to be used on the project, identifying those trade contractors performing work in excess of one-half of one percent of the GMAX. The list of proposed trade contractors shall state the portion of work or labor or rendition of services that each such trade contractor will do and provide addresses, telephone numbers, and license numbers.

2.08 Substitution of Trade Contracts

The CM shall not substitute any trade contractor in place of a trade contractor identified and agreed upon at the time of agreeing to the Guaranteed Maximum Price except as authorized by the Owner

Article 3.00 AWARD AND EXECUTION OF CONSTRUCTION CONTRACT

3.01 Award of Construction Contract

At the completion of the Preconstruction Phase the CM shall submit to the Owner their GMAX proposal. The GMAX proposal will include:

- a) A list of the Drawings and Specifications, including all Addenda thereto.
- b) A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal.
- c) A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- d) The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.
- e) A date by which the Owner must accept the Guaranteed Maximum Price.
- f) A written statement warranting the construction documents are free of omissions, ambiguities and conflicts and that the trade contractor bid packages include all of the scope of work identified in the construction documents.

If the Owner and the CM agree to a Guaranteed Maximum Price, the Owner shall award a Contract to the CM to construct the project for the aggregate of direct cost of the work, as defined in Article 8.03, Direct Cost of the Work, plus the CM's fee for construction phase services, as defined in Article 8.04, Construction Phase Services, CM's contingency, and overhead and profit included in the response to the Request for Proposal. If there is no concurrence on the Guaranteed Maximum Price, the Owner shall not award a Contract to the CM and may procure the construction of the Project by other means.

3.02 Contract Bonds

The CM shall furnish in quadruplicate counterparts, two surety bonds. Each bond shall be in an amount equal to 100 percent of the awarded Contract price and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." One of the surety bonds shall guarantee faithful performance of the Contract by the CM and the other shall secure payment of laborers, mechanics, or materialmen employed on the project. Such bonds are subject to the approval of the Owner. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period.

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All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract, including determinations made under Article 7.01, Claims, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Whenever the Owner has cause to believe that the surety has become insufficient, the Owner may demand in writing that the CM provide such further bonds or additional surety, not exceeding that originally required, as in the Owner's opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to the CM or any assignee of the CM until the further bonds or additional surety has been furnished.

3.03 Execution of Contract

The Contract shall be signed by the successful CM in the requisite number of counterparts and returned to the Owner together with the Contract bonds and certificates evidencing the required insurance coverage (see Article 4.03, CM's Insurance) within ten days of receipt from the Owner, not including Saturdays, Sundays, or legal holidays. The CM and the Owner shall each sign two sets of plans, specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No contract shall be binding upon the Owner until it has been executed by the CM and the Owner and approved by the attorney appointed according to law and authorized to represent the Owner.

When the Contract has been fully executed, the Owner will issue a Notice to Proceed to the CM. The CM may not begin work before receiving the Owner's written Notice to Proceed. Any work performed by the CM before receipt of the Notice to Proceed shall be considered as having been done at the CM's own risk.

3.04 Failure or Refusal to Execute Contract

Failure or refusal by the CM to execute the Contract within the time set in Article 3.03, Execution of Contract, shall be cause for the rescission of the award. Failure or refusal to file acceptable bonds and insurance within the time set in Article 3.03, Execution of Contract, constitutes a failure or refusal to execute the Contract.

Article 4.00 CONDUCT OF THE WORK

4.01 Laws to be Observed - General

- a) The CM shall observe all state and federal laws that affect the work under this Contract. The CM shall hold harmless, defend and indemnify the Owner against any claim arising from the violation of any law, whether by itself or its agents, employees or trade contractors. If a conflict arises between the provisions of this Contract and a law, the CM shall immediately notify the Architect and the Project Manager in writing. "Law" as used in this paragraph includes statutes and regulations adopted pursuant to statute, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.
- b) The CM's work under this Contract shall comply with all applicable building codes identified in the Contract Documents. The CM is responsible to have general knowledge (see California Business and Professional Code section 7068) of applicable building codes, Any fines or damages resulting from the violation of these codes will be sole responsibility of the CM.

4.02 Laws to be Observed - Regarding Labor

- a) **Prevailing Wage.** CM represents and warrants that the Contract Amount includes sufficient funds to allow CM and all trade contractors and subcontractors to comply with applicable laws and contractual agreements. CM shall defend, indemnify and hold the Owner, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of CM or any trade contractor or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. CM agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Owner in relation to such failure.

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- b) The Work under this Contract is a public works project (see definition of public works, Labor Code section 1720) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8, California Code of Regulations, sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The prevailing wage rates set forth are the minimum that must be paid by the CM on a public works contract. Nothing herein contained shall be construed as preventing the CM from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the Owner due to the inability of the CM to hire labor at minimum rates, nor for the necessity for payment by the CM of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the CM's own satisfaction in preparing the bid.
- c) Pursuant to Labor Code section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work for each craft needed in execution of the Contract as set forth in the Contract Documents. It shall be the CM's responsibility to obtain the most current rates as provided by the Department of Industrial Relations.
- d) The CM and any trade contractor under the CM shall comply with Labor Code section 1775. The CM shall include provisions in its contract with its trade contractors that will require compliance with Labor Code section 1775. As required by section 1775(b) the CM shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the CM and the trade contractor. The CM shall monitor its trade contractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the CM and any trade contractor under the CM shall forfeit as a penalty \$50 for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in 1775(b), by any trade contractor under it. In addition to this penalty, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CM or trade contractor. If a worker employed by a trade contractor on a public works project is not paid the general prevailing per diem wages by the trade contractor, the CM is not liable for any penalties under 1775(a), unless the CM had knowledge of that failure of the trade contractor to pay the specified prevailing rate of wages to those workers, or unless the CM fails to comply with the requirements of 1775(b).
- e) In accordance with Labor Code section 1776, the CM and trade contractors shall keep an accurate payroll record, on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct and that the CM and trade contractors have complied with the requirements of Labor Code sections 1771, 1811 and 1815 for any work performed by its employees on the project. The CM's and trade contractor's payroll records shall be available for inspection at all reasonable hours, and a certified copy shall be made available upon request to the employee or his or her authorized representative, the Owner, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. Upon receipt of written notice from the Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, and within ten days of that receipt, the CM shall file with the requesting entity a certified copy of the payroll records. Should the CM or trade contractor fail to comply within the ten-day period, the CM or trade contractor shall forfeit \$25 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

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penalties shall be withheld from progress payments then due. The CM is not subject to a penalty assessment due to the failure of a trade contractor to comply with this section.

4.03 Environmental Requirements

- a) A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 4.05-c, Protection of Facilities).
 - 1. Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.
- b) Sound Control Requirements. The CM shall comply with all sound control and noise level rules, regulations and ordinances that apply to the work. In the absence of any such rules, regulations and ordinances, the CM shall conduct its work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Owner's requests to reduce noise levels.
 - 1. Each internal combustion engine, used for any purpose on the project or related to the project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.
- c) Archaeological Finds. If the CM discovers any artifacts during excavation and/or construction, the CM shall stop all affected work and notify the Owner, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary. If the CM discovers human remains, the CM shall notify the Owner who will be responsible for contacting the county coroner and a qualified archaeologist.

4.04 CM's Insurance

- a) The CM shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Owner.
 - 1) Policies and Coverage
 - i) The CM shall obtain and maintain for the term of the Contract the following policies and coverage:
 - 1. Comprehensive or Commercial Form General Liability Insurance on an occurrence basis, covering work done or to be done by or on behalf of the CM and providing insurance for bodily injury, personal injury, property damage and contractual liability. The aggregate limit shall apply separately to the work.
 - 2. Business Automobile Liability Insurance on an occurrence basis, covering owned, hired and non-owned automobiles used by or on behalf of the CM and providing insurance for bodily injury, property damage and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - 3. Workers' Compensation including Employer's Liability Insurance as required by law.
 - 2) Verification of Coverage. The CM shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Owner as evidence of the insurance coverage. The scope of coverage and endorsements shall provide for no cancellation or modification of coverage without thirty (30) days written notice to the Owner. Renewal certifications and endorsements shall be timely filed by the CM for all coverage until the work is accepted as completed pursuant to Article 8.01, Acceptance. The

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Owner reserve the right to require the CM to furnish the Owner complete, certified copies of all required insurance policies.

- 3) Insurance Provisions. Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.04. The insurance policies shall contain, or be endorsed to contain, the following provisions:
 - i) For the general and automobile liability policies the Owner their officers, employees, representatives, volunteers and agents are to be covered as additional insured.
 - ii) For any claims related to the work, the CM's insurance coverage shall be primary insurance as respects the Owner their officers, employees, representatives, volunteers and agents. Any insurance or self-insurance maintained by the Owner their officers, employees, representatives, volunteers and agents shall be in excess of the CM's insurance and shall not contribute with it.
 - iii) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the CM or the insurance carrier, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner.
 - iv) The Owner their officers, employees, representatives, volunteers and agents shall not by reason of their inclusion as additional insured incur liability to the insurance carriers for payment of premiums for such insurance.
- 4) Amount of Insurance.
 - i) For all projects the insurance furnished by CM under this Article shall provide coverage in amounts not less than the following:
 1. Comprehensive or Commercial Form General Liability Insurance – Limits of Liability
 - a. \$5,000,000 General Aggregate
 - b. \$2,000,000 Each Occurrence – combined single limit for bodily injury and property damage
 2. Business Automobile Liability Insurance – Limits of Liability
 - a. \$1,000,000 Each Accident – combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.
 3. Workers' Compensation limits as required by law.
- 5) Acceptability of Insurers. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII, or shall be a carrier otherwise acceptable to Owner.
- 6) Trade Contractor's Insurance. CM shall ensure that its trade contractors are covered by insurance of the types required by this Article, and that the amount of insurance for each trade contractor is appropriate for that trade contractor's work. CM shall not allow any trade contractor to commence work on its trade contract until the insurance has been obtained.
- 7) Miscellaneous.
 - i) Any deductible under any policy of insurance required in this Article, shall be the CM's liability.
 - ii) Acceptance of certificates of insurance by the Owner shall not limit the CM's liability under the Contract.
 - iii) In the event the CM does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner. The cost of the insurance shall be paid by the CM and, if prompt payment is not received, may be deducted from Contract sums otherwise due to the CM.

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- iv) If the Owner are damaged by the failure of the CM to provide or maintain the required insurance, the CM shall pay the Owner for all such damages.
 - v) The CM's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.
- b) The Owner shall insure or self-insure all work while in the course of construction, including materials incorporated in the work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God. The Owner shall issue to the CM a "Summary of Coverage" upon request of the CM.

4.05 Indemnification

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in this Article.

- a) The CM shall hold harmless, defend, and indemnify the Owner, their officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to (1) the failure of the CM to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the CM given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any trade contractor, or supplier, or laborer against the Owner arising out of any alleged act or omission of the CM or any other trade contractor, or anyone directly or indirectly employed by the CM or any trade contractor.
- b) The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable due to a non-delegable duty.
- c) The CM shall hold harmless, defend, and indemnify the Owner their officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Owner against the Owner arising out of any alleged acts or omissions of the CM, a trade contractor, anyone directly or indirectly employed by either the CM or trade contractor, or anyone for whose acts either the CM or trade contractor may be liable.
- d) The CM shall hold harmless, defend, and indemnify all separate contractors of the Owner their officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of the negligent acts or omissions or willful misconduct of the CM, a trade contractor, anyone directly or indirectly employed by the CM or trade contractor, or anyone for whose acts the CM or trade contractor may be liable. The Owner shall cause a reciprocal indemnification provision in favor of the CM to be included in its contracts with separate contractors of the Owner. Liability for any negligent act or omission or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

4.06 CM's Responsibility for the Work

The CM shall be responsible for all work performed under this Contract, and no trade contractor will be recognized by the Owner as being responsible for the work. For purposes of assessing responsibility to the CM, all persons engaged in the work shall be considered employees of the CM. The CM shall give its personal attention to the fulfillment of the Contract and keep all phases of the work under its control.

The Owner will not arbitrate disputes among trade contractors nor between the CM and one or more trade contractors concerning responsibility for performing any part of the project.

- a) Quality Control. The CM shall be fully responsible for the quality of materials and workers' skill in the project. The CM shall not rely upon the inspection and testing provided by the Owner or jurisdictions having authority other than those special inspections and tests performed by the Owner's selected laboratories for which there are written reports.

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- b) **Burden for Damage.** From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the Owner, the CM shall have the charge and care of and shall bear the risk of damage to the Project, and materials and equipment for the project.

The CM, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the Project and materials thereof before the acceptance of the Project by the Owner except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of work from any cause whatever, the CM shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the CM damages any property belonging to the Owner, the Owner may, in addition to other remedies available to the Owner, retain from the money due to the CM an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the Owner their officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the project and materials and equipment for the project.

- c) **Protection of Facilities.** From the issuance of the official Notice to Proceed until the formal acceptance of the project by the Owner, CM shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, CM shall furnish such watchman's services as necessary to safeguard materials and equipment in storage on the Project site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The CM shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

The CM shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of CM's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Owner. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules.

- d) **Safety.** The CM shall exercise precaution at all times for the protection of persons and their property. The CM shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The CM shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The CM shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the CM designates other employees, its superintendent shall have the duty of prevention of accidents. The CM shall institute a safety program that includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The CM shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, California Code of Regulations, section 1532.1).

The Owner and the Architect may bring to the attention of the CM a possible hazardous situation in the field regarding the safety of personnel on the site. The CM shall be responsible for verifying the compliance with all local, state, and federal workplace safety guidelines. In no case shall this right to notify the CM absolve the CM of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the CM has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the Owner and then shall be used only with the utmost care and within the limitations set in the written permission and

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in accordance with prudence and safety standards required by law. Storage of explosives on the project site is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the CM shall make available to the Owner copies of its accident report to its insurance carrier. The CM shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

e) Utilities

- 1) If the CM discovers utility facilities not identified in the Contract Documents, the CM shall immediately notify the Owner and the utility involved of such discovery. When the CM is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the Contract Documents with reasonable accuracy, the CM shall be compensated for any reasonable actual added cost incurred. The CM shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the CM to exercise reasonable care. All such compensation to the CM shall be based on an actual cost plus CM and trade contractor mark-up, as identified in Article 6.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5) and (6), except that both the CM's and the trade contractor's shall not receive any mark-up when the damage results from the failure of the CM or trade contractor to exercise reasonable care. The Owner or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs or relocation work, or permit the CM to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project. The CM shall not be assessed liquidated damages for delay in the completion of the project which is caused by the failure of the Owner or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.
 - 2) With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the provisions of subdivision (1) shall not apply to, and Owner shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.
 - 3) Except as expressly provided in subdivisions (1) and (2) above, the CM shall be responsible at its own cost for all work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The CM is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the CM at his own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
 - 4) The CM shall provide as-built drawings of all utilities encountered and constructed during the course of the work, indicating the size, horizontal location, and vertical location based on the project benchmark or a stable datum.
- f) The CM, by warranting the completeness of the Construction Documents, agrees that, if the CM uses design-build delivery on certain building elements such as fire protection systems, store front assemblies, etc., then the CM accepts responsibility for any impact which results from the design-build process such as deferred submittals, plan check approval and procurement.

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4.07 Occupancy by Owner Prior to Acceptance

The Owner reserve the right to occupy all or any part of the project before completion of the entire Contract, upon issuance of a Field Instruction. In such event, the CM shall be relieved of responsibility for any injury or damage to such occupied part as results from the Owner's occupancy and use. If the CM carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Owner, and if such occupancy results in increased premiums for such insurance, the Owner may pay to the CM the added premium costs for such insurance during the period of occupancy.

The Owner's occupancy shall not constitute acceptance by the Owner (see Article 8.01, Acceptance) either of the project as completed or of any portion thereof, nor will it relieve the CM of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the project as completed by the Owner and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages. However, when the project includes several separate facilities, and one or more of such facilities is entirely occupied by the Owner, then upon written request of the CM, the guarantee period for the occupied facility may commence from the date of occupancy subject to written consent thereto by the Owner.

4.08 Payments by CM

In accordance with section 7108.5 of the Business and Professions Code, the CM agrees to promptly pay all trade contractors within ten (10) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed CM on account of the work performed by its trade contractors, to the extent of each such trade contractor's interest therein.

4.09 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

With the exception of plan check and permit fees to the local jurisdiction the CM shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the CM's responsibility to ascertain the necessity of such permits and licenses in preparing its Guaranteed Maximum Price and include in its Guaranteed Maximum Price the cost thereof as well as adjustments for any delays that may be caused by securing permits and licenses.

4.10 Patented or Copyrighted Materials

The CM shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the project, and agrees to save harmless, defend, and indemnify the Owner their officers, agents and employees of each of them from all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

4.11 Property Rights in Materials and Equipment

Nothing in the Contract shall be construed as vesting in the CM any property right in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the Site of the work whether or not they have been so attached or placed. All such materials or equipment shall become the property of Owner upon being so attached or placed or upon payment of fifty percent or more of the value of the materials or equipment delivered on the Site but not yet installed and the CM warrants that all such property shall pass to the Owner free and clear of all liens, claims, security interests, or encumbrances.

4.12 Taxes

The CM shall pay all taxes imposed by law which are levied or become payable as a result of the CM's performance under this Contract.

4.13 Contract Time

- a) Time of the Essence. All time limits specified in this Contract are of the essence of the Contract.
- b) Starting and Completion Date. The Owner shall designate in the Notice to Proceed the starting date of the Contract on which the CM shall immediately begin and thereafter diligently prosecute the work to

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completion. The CM agrees to complete the work on the date specified for completion of the CM's performance in the Contract unless such time is adjusted, in writing, by change order by the Owner. The CM may complete the work before the completion date if it will not interfere with the Owner or their other contractors engaged in related or adjacent work. The work shall be regarded as completed on the acceptance date noted on the Owner's Notice of Completion. This date shall be used as the date the guarantee period begins as defined in Article 8.12, Guarantee.

- c) Adjustment of Contract Time Due to Acts of God, etc. The CM shall not be assessed with liquidated damages, nor the cost of engineering and inspection during any delay in the completion of the Project caused by acts of God, the public enemy, fire, flood, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the CM shall notify the Architect and the Owner in writing of the causes of delay within 24 hours from the beginning of any such delay. The Architect, in conjunction with the Owner, shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any, and advise the Owner. The Owner's findings thereon shall be final and conclusive.

There shall be no compensation to the CM for costs associated with this kind of delay.

The term "unusual action of the elements" is limited to extraordinary, adverse weather conditions and conditions immediately resulting there from which cause a cessation in the progress of the work which will delay the time of completion of the Contract.

The CM shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time for completion of the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

- d) Adjustment of Contract Time Due to Acts of the Owner or the Architect. If the CM is delayed in completing the Contract by reason of any act of the Architect or the Owner not provided by the Contract, or by reason of changes made pursuant to Article 6.01, Change Orders, without reaching agreement as to any time adjustments, the time for completion of the Contract may be extended for a period commensurate with the delay. The CM shall notify the Architect and the Owner in writing of the causes of the delay within seven days from the beginning of the delay. The causes of delay shall be subject to the same determinations as stated in Article 4.13-c, Adjustment of Time Due to Acts of God, above.
- e) CM to Fully Prosecute Work. No extension of time will be granted for any of the causes for which extensions are granted unless the CM demonstrates to the satisfaction of the Owner that the CM has made every reasonable effort to fully prosecute the work and complete the work within the Contract Time.
- f) Owner's Adjustment of Contract Time. Even though the CM has no right to an extension of time for completion, the Owner may extend the time at the request of the CM if they determine it to be in the best interest of the State. If the time is extended, the Owner may, in lieu of assessing liquidated damages, charge the CM, its successors, heirs, assigns, or sureties, and deduct from the final payment for the work all or any part, as they may deem proper, of the value of the lost use of the completed project, and of the actual cost to the Owner of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension.
- g) Adjustment of Contract Time Due to Reasons Beyond Owner's Control. Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond their control, the CM shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate the CM for time lost by such delay. Any such determinations will be set forth in writing.

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h) Liquidated Damages. Attention is directed to Article 7.02, Delay in Completion--Liquidated Damages.

4.14 Schedule

- a) Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the work. The work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the CM's Construction Schedule.
- b) The CM shall prepare and submit to the Owner, with copy to the Architect and the Project Manager, a detailed update to the Project Schedule, as utilized during the bid period, within thirty (30) calendar days after the starting date on the construction Notice to Proceed. The CM's updated Project Schedule shall include progress to date on preconstruction activities and be comprised of a Critical Path Method network. The portion of the Project Schedule from construction Notice to Proceed to final completion is the Construction Schedule. The CM shall input the critical path Construction Schedule electronically using Owner-approved software.

The CM's initial Construction Schedule shall show the dates on which each part or division of the work is expected to be started and completed. The initial Construction Schedule shall also show all submittals associated with each work activity, required by the Contract with activities for the submittal development, its review, and the fabrication/ procurement for each procurement, allowing 21 calendar days for the Architect's review of each submittal unless a longer period of time is specified. The work activities making up the Construction Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the work and such that, in the sole judgment of the Owner, it provides an appropriate basis for monitoring and evaluating the progress of the work. The Construction Schedule shall show the interdependence of each activity and a critical path. The CM shall also submit a separate listing of all submittals required under the Contract and noting the anticipated date that each submittal will be submitted.

CM shall submit a monthly cash flow schedule with the initial Construction Schedule and shall revise the cash flow schedule with each Construction Schedule revision. The cash flow schedule is the CM's estimate of the dollar value of Contract Work completed and billable each month of the project.

- c) The CM's initial Construction Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all work. The Construction Schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the CM's activities. The CM's initial Construction Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final completion. No more than twenty percent of the activities will have less than five workdays of float unless approved by the Owner. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Service or other approved source. The Construction Schedule shall be developed using an appropriate work breakdown structure. The transmittal provided with the initial Construction Schedule shall state whether the durations are in work days or calendar days.
- d) The CM may submit an initial Construction Schedule that shows the work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time. Total float, slack time or contingency is the unused time within the Construction Schedule and the difference in time between the project's early completion date and the required Contract completion date. Total float is not for the exclusive use of either the Owner or the CM, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.

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- e) The CM shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, constraints, unnecessary milestones, leads or lags on logic ties, and hammock type activities. Since float within the Construction Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Owner-caused delays on the project may be offset by Owner-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the Contractor, etc.). In such an event, the CM shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded and the Contract completion date is also exceeded.
- f) Comments made by the Owner on the CM's initial Construction Schedule during review will not relieve the CM from compliance with the requirements of the Contract Documents. The review is only for general conformance with the scheduling requirements of the Contract Documents. Upon the Owner's request, the CM shall participate in the review of the CM's initial Construction Schedule submissions (including the original submittal, all update submittals, and any re-submittals). The Owner may request the participation of trade contractors in these reviews, as determined necessary by the Owner. All revisions shall be resubmitted within fifteen (15) calendar days after the Owner's review.
- g) The submittal of a fully revised and acceptable CM's initial Construction Schedule shall be a condition precedent to the processing of the second monthly payment application, unless the Owner grants a time extension due to unusual circumstances
- h) The CM's Construction Schedule shall provide a workable plan for monitoring the progress of all the elements of the work, establish and clearly display the critical elements of the work, forecast completion of the construction, and match the Contract duration in time. Exclusive of those activities for submittal review and material fabrication and delivery, activity duration shall not be less than one (1) nor more than thirty (30) calendar days, unless otherwise approved by the Owner. In addition to the detailed network diagram, the Contractor shall submit the following reports with the original submittal and all updates and revisions:
- 1) Predecessor/Successor Report or a list showing the predecessor activities and successor activities for each activity in the Construction Schedule.
 - 2) Activity Report sorted by early start or a list showing each activity in the Construction Schedule, arranged by early start dates.

Electronic data files shall be provided.

- i) The CM shall submit an updated Construction Schedule to the Project Manager with a copy to the Architect five (5) days prior to the submittal of the CM's monthly payment request in both an electronic and printed (11"x17" minimum size) format. The submittal of the Progress Schedule that satisfies the requirements of this Article, accurately reflects the status of the work, revises the cash flow schedule, and incorporates all changes into the Construction Schedule, shall be a condition precedent to the processing of the monthly payment application. Progress Schedules shall also be submitted at such other times as the Owner may direct.

The CM's monthly Progress Schedule update shall include a report containing a narrative that includes the following:

- CM's transmittal letter
- Description of problem tasks, referenced to Field Instructions, Requests for Information (RFIs), change orders or claim numbers, as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay

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- Known or potential impact of the delay on other activities, milestones, and project completion date
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Pending change orders
 - Time extension requests
 - Other items
- Contract completion date status:
 - If ahead of Construction Schedule, the number of calendar days ahead
 - If behind Construction Schedule, the number of calendar days behind
- Other project or scheduling concerns
- Updated network diagram with target bars shown.
- Tabular report as specified in subdivision (h) above, including a listing of completed activities and activities in progress.
- Diskette or compact disc with the latest data files as specified in subdivision (h) above.

The CM shall not make unilateral revisions to the monthly updates. Should the CM desire to revise the schedule logic or durations, it shall first submit the monthly update based upon the previous monthly update with just actual start dates, actual finish dates, and/or percentages of completion. The CM shall not make any additional changes other than actual status data. Following this updating and submittal task, the CM can then submit a copy of this update with its proposed changes. The CM shall clearly identify this proposed revised update as a proposed revision in the Title, Number/Version and File Name, and CM shall submit a narrative with the proposed revision.

The CM shall set the schedule calculation setting for the monthly updates to retained logic, and may only utilize the progress override setting to identify the differential in the calculated finish date due to out of sequence progress. Should the differential in the project completion exceed ten days utilizing the retained logic setting vs. the progress override setting, the CM shall revise the successor logic of the out of sequence activities to eliminate the differential.

- j) If completion of any part of the work, delivery of equipment or materials, or submission of the CM submittals is behind the approved Construction Schedule and will impact the end date of the work past the Contract completion date (create negative float), the CM shall submit in writing, a revised Construction Schedule acceptable to the Owner for completing the work on or before the current Contract completion date. The revised Construction Schedule shall take some or all of the following actions:
- 1) Increase construction manpower in such quantities and crafts as shall substantially eliminate the backlog of work and meet the current Contract completion date.
 - 2) Increase the number of working hours per shift, the number of shifts per day, the number of work days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate the backlog of work.
 - 3) Reschedule work items to achieve concurrent accomplishment of work activities.

Under no circumstances will adding equipment or construction forces, increasing the working hours, or employing any other method, manner, or procedure to return to the contractually required completion date be justification for a change order or justification for a compensable acceleration, unless prior written approval is received from the Owner.

- k) Adjustment of Contract Times for Completion. In addition to the provisions in the Contract General Conditions, the Contract Time for completion of the work will be adjusted in accordance with these procedures.
- 1) Time Impact Analysis. Whenever the CM submits a request for an adjustment of the Contract Time for completion for changes or alleged delays, the CM shall also submit a complete Time Impact Analysis (TIA). The CM shall submit the TIA for review within seven (7) calendar

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days after the request. The Owner will not grant time extensions unless substantiated by the TIA, and then not until the project float becomes zero. If the CM fails to submit a TIA within the time specified, then the CM shall be deemed by the Owner to have agreed that there is no time impact and that the CM has irrevocably waived its rights to any additional Contract Time.

The CM shall ensure that each TIA provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIA shall be in the form and content acceptable to the Project Manager, and shall include, but not be limited to, the following:

- i) A fragmentary critical path method type network (Fragnet) illustrating how the CM proposed to incorporate the change or alleged delay into the current Monthly Baseline Schedule.
- ii) Identification of activities in the current Monthly Baseline Schedule which are proposed to be amended due to the change or alleged delay, together with estimates and other appropriate data justifying the proposal.

The CM shall determine the TIA based on the date or dates when the change or changes were issued or the date or dates when the alleged delay or delays began. The status of the construction project and TIA shall include event time computations for all affected activities including, but not limited to, work around sequencing or recovery options to maintain the original Contract completion date.

The Project Manager may require that the TIA be provided in order to demonstrate the time impact upon the overall project and the time for completion, at no additional cost to the Owner.

If the Project Manager finds, after review of the TIA, that the CM is entitled to any extension of time for completion, the Contract Time for completion will be adjusted accordingly by the Project Manager, and the CM shall then revise the Monthly Baseline Schedule accordingly.

- 2) No time extensions shall be granted nor indirect costs paid unless the CM can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other means. The CM shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract Time extension or delay damages.
 - l) Once each week, or as approved in writing by the Owner, the CM shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all work activities listed on the Progress Schedule for the reporting period.
 - m) As a condition precedent to the release of retained funds, the CM shall, after completion of the work has been achieved, submit a final CM's Progress Schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all work activities.

4.15 Labor Force and Superintendent

At all times the CM shall provide sufficient labor to properly prosecute the work and to ensure completion of each part in accordance with the schedule and within the Contract time. The CM shall employ competent workers who are skilled in the type of work required and whose workmanship is of the best, regardless of the quality of material. If, in the judgment of the Owner, any person is incompetent or disorderly, the CM shall promptly remove the person from the project and shall not re-employ such person thereon.

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The CM shall retain the staffing in accordance with their Statement of Qualifications submitted in response to the Request for Qualifications. This project staffing shall include a competent, full-time, on-site superintendent to represent the CM and to direct the project at all times while any work under this Contract is underway. The CM shall not replace a Superintendent without advanced written approval from the Owner. If, in the judgment of the Owner, the Superintendent is incompetent, unqualified, poorly performing or disorderly, the CM shall promptly remove such person from the project and shall not re-employ such person thereon. In this event the Owner shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report that includes worker count, work in progress, etc., and shall provide it to the Project Manager weekly. If the CM does not supply the staffing in accordance with their Request for Proposal, the Owner shall either demand that the prescribed staffing be supplied and/or credit back the value of the staffing not supplied.

The CM shall make certain that all subcontractors employed are properly licensed and are in good standing with the California Department of Industrial Relations.

4.16 Limitation of Construction Operations

The CM shall limit the area and nature of the construction operations to that which is authorized in the plans and specifications or approved by the Owner.

4.17 Coordination with Other Work

The Owner reserve the right to do other work in connection with the Project or adjacent thereto by contract or otherwise, and the CM shall at all times conduct the work so as to impose no hardship on the Owner or others engaged in the Owner's work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

The CM shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property, and for loss caused by failure to complete the work within the specified time for completion. The CM shall coordinate its work with the work of others so that no discrepancies shall result in the project.

4.18 Drawings Reflecting Actual Construction

During the course of construction, the CM shall maintain drawings daily to show the Project as it is actually constructed. Every sheet of the plans and specifications that differs from the actual construction shall be marked, and sheets so changed shall be noted on the title sheets of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The CM shall review the "as-built" drawings with the Architect and the Project Manager at least once a month to demonstrate that the CM is fully and accurately recording all changes that have occurred. The altered Contract drawings shall be sufficiently detailed so that future work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Before the completion of the project, and before release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Architect for further handling, with a copy of the transmittal to the Owner.

4.19 Access for Inspection

The CM shall be responsible for obtaining all approvals and inspection for the local jurisdiction having authority for such inspections. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval.

The CM shall at all times permit the Owner, the Architect, and the Project Manager to visit and inspect the work both at the site and at the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection.

The CM shall notify the Project Manager at least 24 hours in advance when special inspections or material testing is required of the Owner's testing and inspection laboratories.

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Additional Inspections. If a fabricator or manufacturer of a material or equipment requiring inspection is inefficiently performing or performing at multiple locations, then the Owner may charge the Contractor for the extraordinary costs incurred.

4.20 Cleanup of Project and Site

The CM shall clean up its work at frequent intervals and at other times when directed by the Architect, the Inspector, or the Owner. At all times while finish work is being done, floors shall be kept broom clean. Upon completion of the work, the CM shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the CM does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Architect, the Owner may, at their option, cause the Project or Site to be properly cleaned and may withhold the expense incurred therefore from payments due the CM.

4.21 Project Sign, Advertising

The CM shall furnish and install a Project sign designed by the Architect required as part of the work under the Contract. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the Project name, the Owner, the Architect, and the CM. No advertising is permitted on the Project or Site without written permission from the Owner.

Article 5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

5.01 Interpretation of Contract Requirements

- a) Correlation. Contract Documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.
- b) Conflicts. In the event of conflict in the Contract Documents, the priorities stated below shall govern:
 - 1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
 - 2) Contract General Conditions shall govern over all sections of the specifications and any notation on the Plans. No other section of the specifications shall modify the Contract General Conditions.
 - 3) In case of conflict between Plans and Specifications, the Specifications shall govern.
 - 4) Conflicts within the Plans:
 - i) Material and equipment schedules, when identified as such, shall govern over all other portions of the plans.
 - ii) Specific notes shall govern over all other notes and all other portions of the Plans except the material and equipment schedules described in paragraph (i) above.
 - iii) Larger scale drawings shall govern over smaller scale drawings.
 - iv) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - 5) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- c) Omissions. In the event of omissions in the Contract Documents, the following shall apply:
 - 1) If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or

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equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.

2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

d) Quality. The quality of the work by the CM shall be equal to or better than that required in the specifications, and if it is found that the work is of lesser quality, the specifications shall prevail.

5.02 Issuance of Interpretations, Clarifications, Additional Instructions

By reaching agreement on the Guaranteed Maximum Price, the CM agrees that it has reviewed the Construction Documents and verified their adequacy and completeness for constructing the project. CM agrees to supply and install all of the Work as identified or inferred in the Construction Documents necessary to provide a complete and operating facility. Some detailing, clarification, and coordination may be required, and this work is included in the Guaranteed Maximum Price.

Should the CM discover design errors or design deficiencies in the Construction Documents or have any question concerning interpretation or clarification of the Construction Documents, the CM shall request in writing an interpretation, clarification, or additional detailed instructions, before proceeding with the work affected. The written request shall be given to the Architect with copies to the Project Manager/Project Manager and the Owner.

The Architect, with review as required by the Owner, shall, within seven calendar days, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the CM proceed with the work affected before receipt of the interpretation, clarification, or instructions from the Architect, the CM shall replace or adjust any work not acceptable to the Architect and Owner, and shall be responsible for any resultant damage or added cost.

Should the CM consider that it has been given direction to perform Work that it considers is significantly different from the work shown on the approved Construction Documents, the CM must submit written notice thereof to the Architect within seven calendar days following receipt of such direction, and in any event prior to commencement of work thereon. The CM shall send copies of such correspondence to the Project Manager within this same seven calendar days. Within seven calendar days after the CM issues its written notice, the CM shall submit an explanation of how this direction constitutes work significantly beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

The Architect shall consider such notice and make a recommendation to the Owner. If, in the judgment of the Owner, the notice is justified, the direction shall be revised or the extra work authorized by Contract change order or by field instruction with a change order to follow. If the Owner decide that the claim is not justified, the Owner shall give the CM a written order that the claim is not justified and direct the CM to perform such work.

The CM must proceed with the work upon receipt from the Owner of a written order to do so, in accordance with the Architect's interpretation of the Contract requirements. If the CM objects to the order, the CM must notify the Architect and the Owner, in writing of its objection and the reasons therefore within seven days of receipt of the order. The CM shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (see Article 7.01, Claims). When performing disputed work, the CM shall prepare time and materials records for each day, and the Project Manager shall verify these records at the conclusion of each day. The CM shall have no claim for additional compensation because of such direction, unless it gives written notices required to the Architect within seven calendar days as specified above.

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5.03 Product and Reference Standards

- a) Product Designation. When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract, such designations shall be considered as being those found in industry publications of current issue at the date specified in the Request for Proposal.
- b) Reference Standards. When standards of the federal government, trade societies, or trade associations are referenced in the Contract by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the Request for Proposal shall be considered a part of this Contract.

5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions

- a) Submittal Procedure. The CM shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, material and equipment schedules, performance charts, brochures and catalogs and other data prepared by the CM or any trade contractor, manufacturer, supplier or distributor, and which illustrate some portion of the work. The CM shall promptly review and mark the shop drawing approved and submit to the Architect, so as to cause no delay in the work, together with samples as required by the Contract and shall also submit any offers of alternatives or substitutions. At least six copies of shop drawings shall be submitted as well as additional copies as required by Architect. All such submittals shall be sent to the Architect at the address given in the instructions to the CM at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the CM to identify all deviations may render any action taken by the Architect on the materials submitted to be void. Whether to void such action shall be in the discretion of the Architect. By submitting the approved shop drawings and samples, the CM represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.

- b) Samples. Samples are physical examples furnished by the CM to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the work will be judged.

The work shall be in accordance with the samples, submitted as required by the contract and reviewed by Architect. Samples shall be removed by the CM from the Site when directed by the Owner. Samples not removed by the CM, at the Owner's option, will become the property of the Owner or will be removed or disposed of by the Owner at the CM's expense.

- c) Alternatives or Equals. For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the CM complies with the following requirements:
 - 1) The CM shall submit its proposal to the Architect for an alternative as "an equal" in writing prior to the date of agreeing to a GMAX. In exceptional cases where the best interests of the Owner so require, the Project Manager may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The CM is responsible for timely submittal of its proposed "or equal."
 - 2) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Architect or the Owner.
 - 3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the CM. Where the material is specified by capacity or performance, the burden of proof shall be on the CM to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The CM shall

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furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Architect shall be the judge of such matters. If the Architect rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, Articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the CM's expense without recourse for reimbursement from the Owner.

- d) Substitutions. If the CM proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with the provisions of Article 5.04, but, in addition, the CM must submit any cost impact, and must pay the Architect's fees associated with the review of this substitution. By submitting a substitute, the CM waives any rights to claim a delay due to the processing of this substitution. The time for submittal of a substitution of an unequal product shall be restricted to the period prior to the issuance of the construction Contract. The Owner is not obligated to review or accept substitutions.

5.05 Quality of Materials, Articles and Equipment

Materials, Articles and equipment furnished by the CM for incorporation into the work shall be new. When the Contract requires that materials, Articles or equipment be furnished, but the quality or kind thereof is not specified, the CM shall furnish materials, Articles or equipment at least equal to the kind or quality or both of specified materials, Articles or equipment.

5.06 Testing Materials, Articles, Equipment and Work

- a) Materials, Articles, equipment or other work requiring tests are specified in the Contract. Materials, Articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The CM shall be solely responsible for notifying the Project Manager where and when materials, Articles, equipment and Work are ready for testing. Should any such materials, Articles, equipment or work be covered without testing and approval, if required, they shall be uncovered at the CM's expense. The Owner has the right to order the testing of any other materials, Articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Owner from materials, Articles or equipment to be used on the project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the Owner. The Owner shall select the laboratories for all tests. Decisions regarding the adequacy of materials, Articles, equipment or Work shall be issued to the Owner in writing.
- b) All costs of the initial required tests shall be borne by the Owner. The Owner may decide to take further samples and tests, and if the results show that the Work was not defective, the Owner shall bear the costs of such samples and tests.
- c) In the event the results of such additional samples and tests show that the Work was defective, the CM shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the CM. All retesting costs may be back-charged to the CM by the Owner.

5.07 Rejection

Should any portion of the work done or any materials, Articles or equipment delivered fail to comply with the requirements of the Contract, such work, materials, Articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Architect and the Owner, by the CM, at no additional expense to the Owner. Any materials, Articles or equipment which are rejected shall immediately be removed from the premises at the CM's expense. The Owner may retain 1.25% of the cost of the rejected materials, Articles, equipment, and work from any payments due the CM until it is made acceptable to the Architect and the Owner. The Owner may back charge the CM for design costs incurred in the correction of CM's rejected work.

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5.08 Off-Site Testing

The Owner shall bear the cost of off-site testing up to a distance of fifty (50) miles from the project site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. The increased cost of testing due to the fabrication yard or manufacturing plant being beyond this fifty-mile radius shall be borne by the CM. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the CM.

5.09 Responsibility of Quality

The testing and inspection provided by the Owner shall not relieve the CM of its responsibility for the quality of materials and workmanship provided by the CM, and the CM shall make good all defective work discovered during or after completion of the project.

Article 6.00 CHANGES IN THE WORK

6.01 Change Orders

The Owner reserves the right to issue written change orders directing changes in the Contract at any time prior to the acceptance of the Project without voiding the Contract, and CM shall promptly comply with such order. By signing the construction Contract for the Guaranteed Maximum Price, the CM agrees that it has reviewed and accepted the Construction Documents as complete and that it has no right for change orders or extra work due to conflicts, ambiguities or omissions. The Owner further agrees that unforeseen site conditions may be a basis for the issuance of a change order. The CM may request changes in the work, but shall not act on the changes until approved in writing by the Owner. Any change made without the Owner's written authorization shall be the responsibility of the CM. The Owner will not increase compensation or extend time for a change involving greater expense to the CM, and the Owner may reject changes involving greater or lesser expense, but with the consequent responsibility on the CM to replace at its own expense the changed work with that originally specified.

On the basis set forth herein, the Guaranteed Maximum Price shall be adjusted for any change order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the CM, set forth in Article 8.02, Partial Payments, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Owner in writing, the CM shall take all necessary steps to halt such other work in the area of the change that might be affected by the ultimate change. Changed work shall be performed in accordance with the original Contract requirements except as modified by the change order. Except as herein provided, the CM shall have no claim for any other compensation due to changes in the work.

- a) Proposed Change Orders. The Owner shall issue a Cost Request Bulletin (CRB) via the Architect to the CM, or a Field Instruction via the Project Manager for a proposed change order describing the intended change, and shall require the CM to respond with a proposed amount to be added to or subtracted from the Contract price due to the change supported by a detailed estimate of cost (hereinafter called a change order request). Upon request by the Owner, the CM shall permit inspection of the original Contract estimate, trade contract agreements, or purchase orders relating to the change. Any request for adjustment in time of final completion of the Project that is directly attributable to the changed work shall also be included, with substantiating detailed explanation, by the CM in its response to the cost request bulletin. Failure to request adjustment of time on the change order request shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed work. The CM shall submit the change order request with detailed estimates and any time extension request thereon to the Architect, the Project Manager, and the Owner within fifteen calendar days after issuance of the cost request bulletin. If the change order request is not submitted within the required fifteen calendar days, and the CM has not obtained the Architect's and the Owner's permission for a delay in submission, the Owner may order the CM, in writing, to begin the work immediately, in accordance with Article 6.01(d), Allowable Time Extensions, or Article 6.02, Emergency Changes, and the Contract price shall be adjusted in

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accordance with the Owner's estimate of cost, unless the CM, within fifteen days following completion of the changed work, presents proof convincing to the Owner that the Owner's estimate was in error. The CM must keep and submit time and materials records verified daily by the Project Manager to substantiate its costs and to furnish such proof.

When the Owner and the CM agree, in writing, on the amount to be added to or deducted from the Contract price and the time to be added to or deducted from the completion date the CM shall proceed with the changed work immediately. When the Owner and the CM agree to the adjustment in the CM's compensation for the performance of changed work, but fail to agree to the time adjustment for such work, the CM shall proceed with the work at the agreed price, reserving the right to further pursue its claim for a time adjustment. Any costs incurred to acquire information relative to a proposed change order shall not be borne by the Owner.

b) Allowable Costs Upon Change Orders. The only estimated or actual costs which will be allowed because of changed work, and the manner in which such costs shall be computed, shall be in accordance with the following eight provisions. In submitting a change order request, the CM affirms that the cost is submitted in good faith, that the cost is accurate and is in accordance with the provisions of the Contract requirements. Direct cost is defined as the actual cost of work before the application of any mark-ups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, clean-up (both periodic and final), trash removal, traffic control, and dust control.

1) Labor. Costs are allowed for the actual payroll cost to the CM for labor, field supervision of changed work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed work, (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination, or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, liability insurance premium on labor only, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

No labor cost will be recognized at a rate in excess of the prevailing wages that are being paid by the CM for similar work on the Project at the time the work is performed, nor will the use of a classification that would increase the labor cost be permitted unless the CM established to the satisfaction of the Owner the necessity for use of such higher classifications of workers. The CM and trade contractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change. The Owner may verify wage and burden by requesting certified payroll documents prepared in accordance with section 1776 of the California Labor Code. The unit cost of labor shall be an accurate accounting of actual costs being paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

2) Materials. CM's costs are allowed for the cost of the materials directly required for the performance of the changed work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the CM, it shall be credited to the Owner. If the materials are obtained from a supply or source owned wholly or in part by the CM, payment therefore will not exceed the current wholesale price for such materials. Cost for consumed materials may be charged on a reasonably estimated basis, but may not be a percentage of labor.

If, in the opinion of the Owner, the cost of materials is excessive, or if the CM fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Owner

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reserve the right to furnish such materials as they deem advisable, and the CM shall have no claim for costs or profits on material furnished by the Owner.

- 3) Equipment. CM's costs are allowed for the actual cost of the use of equipment directly required in the performance of the changed work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of \$200.00 or less shall be considered to be small tools or small equipment, and no payment therefore will be made unless it has been rented specifically for the changed work. Consumed equipment or tools, such as paint brushes, rollers, drill bits, etc. may be charged on an actual or reasonably estimated cost basis and are not to be charged as a percentage.

For equipment owned, furnished, or rented by the CM, no cost therefore shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the work is performed.

The amount to be paid to the CM including mark-up for the use of equipment as set forth above shall constitute full compensation to the CM for the cost of fuel (unless the CM has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to the CM incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 6.01(b) (1), above.

- 4) Mark-ups on Change Orders. The mark-ups allowed on the direct cost of changed work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance (however, per Article 6.01-b(1), cost of liability insurance premium for labor only is allowed as a cost for labor); and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the CM's mark-up. No mark-up on mark-up is permitted. If the trade contractor is owned, partially owned, or has a shared profits arrangement with the CM, any mark-up otherwise applicable to a change shall be reduced in proportion with the shared profits
- 5) Work by Trade Contractors and Vendors. For any portion of the changed work which is to be performed by a subcontractor (any tier), the CM shall furnish to the Owner a detailed estimate prepared and signed by trade contractor of the cost to trade contractor for performing the changed work. At the option of the Owner, a lump sum estimate of such cost to trade contractor may be accepted in lieu of the detailed estimate. The combined costs for trade contractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 6.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of trade contractor on any subcontractor tiers shall be seven (7) percent. The aggregate mark-ups allowed by trade contractors and multiple-tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000, thereafter, twenty-one (21) percent on the balance beyond \$50,000. Estimates of the amount to be deleted from trade contractor's portion of the work shall be gross value of the deducted work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted

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work. For changed work to be furnished by a vendor, the CM shall furnish upon demand of the Owner, a lump sum estimate of the cost of the items including taxes and cartage to the CM prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed work furnished by a vendor.

- 6) CM Mark-up for Added Work. When changed/added work is performed by a trade contractor, the CM may add no more than ten (10) percent mark-up to the trade contractor's total direct cost estimate (excluding the trade contractor's mark-up) for such work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. The CM's ten percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 6.01(b) (1), (2) and (3). Also refer to Article 4.06(e), Utilities, for special mark-up on repair of utilities. The CM may add up to fifteen (15) percent to its direct cost when self-performing the changed work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.
- 7) Credit for Deleted Work. Where an entire item or section of work is deleted from the Contract, the entire trade contract or subcontract value or bid value shall be considered the appropriate deduction less the value of work performed, and shall have at least six percent mark-up added thereto for the CM's saved overhead, bonds and insurance. If the subcontract value or bid value is not identifiable, then the amount to be deducted from the Contract amount shall be the estimated value of the deducted work plus at least six percent for saved overhead, bonds and insurance. The value submitted on the schedule of values shall be used to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For proposed change orders that involve both added and omitted work, the CM shall separately calculate its total added costs and its total deducted costs, and then shall sum its total added and deducted costs, resulting in the CM's net cost for the change order. The CM shall then apply the mark-up to this net cost. Similarly, the CM shall separately calculate each trade contractor's total added costs and total deducted costs, and shall then sum each trade contractor's total added and deducted costs, resulting in each trade contractor's net cost for the change order. If the resulting net costs for each trade contractor will increase the Contract price, then the CM shall apply separate mark-ups for added work as specified in Article 6.01-b (6). If the resulting net costs for each trade subcontractor will decrease the Contract price, then the CM shall apply separate mark-ups for deleted work as specified in Article 6.01-b (7).

For example:

CM – net cost is \$30,000, CM's mark-up is 15%, or \$4,500.

Trade Contractor A – net cost is \$20,000, CM's mark-up is 10%, or \$2,000.

Trade Contractor B – net cost is <\$10,000>, CM's mark-up is six percent, or <\$600>.

The CM's total mark-up for this example change order is \$5,900.

- 8) Market Values. Cost for added work shall be no more than market values prevailing at the time of the change, unless the CM can establish to the satisfaction of the Owner that it investigated all possible means of obtaining work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes work from the Contract, the computation of the amount thereof shall be the values which prevailed at the time bids for the work were opened, if the work is contained in a subcontract agreement or purchase order executed at or near the time bids were opened.

- c) Failure to Agree as to Cost

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- 1) For Added Work. Notwithstanding the failure of the Owner and the CM to agree as to the cost of the proposed change order, the CM, upon written order from the Owner, shall proceed immediately with the changed work. A Field Instruction or letter signed by the Owner shall be used for this written order. At the start of each day's work on the change, the CM shall notify the Owner in writing as to the size of the labor force to be used for the changed work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's work, the CM shall furnish to the Project Manager a detailed summary of all labor, materials, and equipment employed in the changed work. The Project Manager will compare his/her records with CM's daily summary and may make any necessary adjustments to the summary. After the Project Manager and the CM agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed work. The Owner, however, may make subsequent adjustments, based on later audits. When changed work is performed at locations away from the job site, the CM shall furnish in lieu of the daily summary, a summary submitted at the completion of the work containing a detailed statement of labor, material, and equipment used in the work. This latter summary shall be signed by the CM who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 6.01-b (1), (2) and (3). If changed work is to be paid based on time and materials, a credit for deleted Contract work shall be included. Mark-up shall be as provided in Article 6.01-b (4), (5), (6) and (7).

The CM shall maintain and furnish on demand of the Owner itemized statements of cost from all vendors and trade contractors who perform changed work or furnish materials and equipment for such work. All statements must be signed by the vendors and the trade contractors.

- 2) For Deleted Work. When a proposed change order contains a deletion of any work, and the Owner and the CM are unable to agree upon the value thereof, the Owner's estimate may be deducted from the Contract price and may be withheld from any payment due the CM until the CM presents proof convincing to the Owner that the Owner's estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 6.01-b (7), shall be the costs to the CM for labor, materials, and equipment which would have been used on the deleted work together with the credit mark-up. The provisions of Article 6.01-b shall be followed in computing the amounts involved for changes other than deletion of an entire item.
- d) Allowable Time Extensions. For any change in the work, the CM shall be entitled only to such adjustments in time by which completion of the entire work is delayed due solely to performance of the changed work. However, no extension of time shall be granted for a change in the work unless the CM demonstrates to the satisfaction of the Owner that the work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the CM is making, or has made, every reasonable effort to guarantee completion of the additional work called for by the change within the time originally allotted in the Contract.

Adjustment in Contract time shall be on a calendar day basis, except that if the new Contract completion date falls on a Saturday, Sunday, or legal holiday, it shall be extended through the next full working day. Such adjustment is applicable only once in the course of a Contract, and should occur only at the end of the Contract. Attention is directed to Article 4.13, Contract Time, and Article 4.14, Schedule.

- e) Use of CM's Contingency
- 1) If there is an omission or correction in the Construction Documents that should have been identified through a reasonable constructability check and coordination review of the Construction Documents by the CM, then the CM shall purchase and install the omitted

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equipment or material utilizing the CM's contingency. The CM shall obtain the Owner's approval of the use of any of the CM's contingency, and this approval shall not be unreasonably withheld.

- 2) The CM shall not include mark-up for overhead and profit on changes necessitated by omissions or corrections to the Construction Documents that should have been identified by a reasonable constructability check and coordination review.
 - 3) With each monthly payment request, the CM shall submit an accounting of the CM's use of their contingency, along with a documentation of the Owner's approval. This accounting shall be presented to the Owner as a draw against the CM's contingency.
- f) Use of Allowances
The Owner discourages the use of allowances, however, the Owner shall approve the use of any allowance, on a case by case basis. If the Owner so approves, allowances may only be used for work items that are indeterminate at the time of producing the GMAX. The CM shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Owner's approval. Overhead and profit mark-up on allowance items shall be in accordance with Article 6 for trade contractors work, but for the CM, shall be in accordance with the CM's Overhead and Profit fees as submitted in the CM's Fee Proposal.

6.02 Emergency Changes

Changes in the work agreed by the Owner to be necessary due to unforeseen Site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid a serious work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Owner are kinds of emergency changes which may be authorized by the Owner in writing to the CM. The CM shall commence performance of the emergency change immediately upon receipt of written direction from the Owner.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01 relating to ordinary changes. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01-d, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment and/or a time extension, as appropriate, are agreed upon, or the changed work is completed.

Article 7.00 CLAIMS AND DAMAGES

7.01 Claims

- a) CM's Claim(s) – Notice of Claim
In accordance with Article 5.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the CM disagree with the determination of the Owner on a matter that substantially affects the CM's costs, compensation or extent of work, the CM shall file a preliminary claim with the Owner and request a review of the decision. The CM must proceed with the work upon receipt from the Owner of a written order to do so. However, within seven days of receipt of the written order, the CM must notify the Architect and the Owner, by letter, that it protests the decision.
- b) CM Submission of Unresolved Claims to Claims Review Board
All unresolved claims arising from this Contract, for which the CM seeks resolution by a Claims Review Board, shall be submitted in writing to the Owner no later than 30 calendar days after the County Recorder's recordation date on the Owner's Notice of Completion. The CM's failure to submit its claims to the Owner within this 30-day period shall constitute a waiver by the CM of such claims. Once the claims have been submitted, and the 30 calendar days after the County Recorder's recordation date on the Notice of Completion have expired, CM may not submit any additional claims.

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The CM shall have 30 additional calendar days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-day period shall constitute a waiver by the CM of such claims.

Before the CM files a claim with the Owner, the CM shall make a reasonable effort to analyze the claim to determine the truth of the information comprising the claim. The CM shall not present a trade contractor claim without making a reasonable effort to determine the truth of the facts comprising the claim. Only claims reasonably determined by the CM to be true may be filed with the Owner. By submitting a claim, CM affirms that its claim is submitted in good faith, that the facts supporting the claim are true and accurate, and that the claim, in the reasonable opinion of the CM, constitutes a basis under the Contract for additional compensation.

c) **Owner's Claim(s) Submittal**

The Owner shall submit a rebuttal to the CM's claim, along with any Owner's claims to the Claims Review Board within 30 calendar days after the submission by the CM of a total and detailed claims package.

d) **CM Rebuttal to Owner's Claims**

Upon submission of any Owner claims, the CM shall have an additional 30 day period to submit to the Claims Review Board the CM's rebuttal to the Owner's claims.

e) **Claims Review Board**

The Owner will convene a Claims Review Board to hear the submitted claims at the completion of the project. Each Claims Review Board shall continue to function until all pertinent facts are reviewed, and it arrives at a recommendation. The Claims Review Board process shall be administered by the a designee of the Owner. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Review Board procedures. The Claims Review Board is a lay board; attorneys and third party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing. The decision of the Claims Review Board exhausts the CM's contractual and administrative remedies with the Owner.

7.02 Delay in Completion--Liquidated Damages

If the work is not completed within the time required, damage will be sustained by the Owner. It is, and will be, impractical and extremely difficult to determine the actual damage that the Owner will sustain by reason of the delay. It is therefore agreed that the CM will pay to the Owner the sum of money stipulated per day in the Contract for each day's delay in completing the work beyond the time prescribed. If the CM fails to pay such liquidated damages, the Owner may deduct the amount thereof from any money due or that may become due the CM under the Contract. If the Owner occupies all or the majority of the Project and can use it for its intended purpose, including operation of fire and life safety systems, the Owner may reduce the amount of assessment of liquidated damages, if it is determined to be in the best interest of the Owner. The Owner's assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

7.03 Termination for Cause

If the Owner deems that CM has failed to supply an adequate working force or material of proper quality, or the CM has failed in any other respect to prosecute the work with the diligence and force as required by the Contract, the Owner will give written notice to the CM and to the CM's sureties, that if the defaults are not remedied within 5 calendar days the contractor's control over the work will be terminated.

Upon such termination, the Owner may take possession of and use all or any part of the CM's materials, tools, equipment, and appliances upon the premises to complete the work. Thereupon, the Owner may take assignment of the trade contractors and purchase orders under Article 2.06, and complete the contract work themselves or may allow the surety to complete the contract work.

The CM's failure to complete a punch list with diligence is an example of a failure to prosecute the work with the diligence and force required by the Contract.

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If the costs of finishing the work exceed the unpaid balance of the Contract sum, the CM shall pay the difference to the Owner.

If it is subsequently determined that grounds for termination under this Article do not exist, then the CM shall be deemed to have been properly terminated for convenience under Article 7.04, Termination for Convenience.

7.04 Termination for Convenience

The Owner may terminate this Contract or any part thereof, for its sole convenience and without cause. Unless the Owner directs otherwise, upon written notice from the Owner of such termination, the CM shall:

- a) Stop all work under the Contract except that specifically directed to be completed before suspension of the work.
- b) Perform work the Owner deem necessary to secure the project for termination.
- c) Remove equipment and plant from the Site of the work.
- d) Take such action as is necessary to protect materials from damage.
- e) Notify all trade contractors, subcontractors and suppliers that the Contract has been terminated, and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Owner.
- f) Provide the Owner with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including their storage locations, and such other information as the Owner may request.
- g) Handle materials not yet used in the work as directed by the Owner. The CM shall provide the Owner with good title to all materials purchased hereunder, including materials for which partial payment has been made.
- h) Subject to prior written approval of the Owner, settle all outstanding liabilities and all claims arising out of trade contracts, subcontracts or orders for materials terminated hereunder. To the extent directed by the Owner, the CM shall assign to the Owner all the right, title and interest of the CM under trade contracts or orders for materials terminated hereunder.
- i) Furnish the Owner with the documentation required to be furnished by the CM under the provisions of the Contract.
- j) Take such other actions pertinent to terminating the Contract as the Owner may direct.
- k) Remain liable for any defective construction completed before termination.

The CM shall be paid in accordance with the provisions of Article 8.02, Partial Payments, with the following exception. The amount due the CM shall be based upon the Owner's final estimate of the actual work completed, or acceptable materials furnished but not used, to the date of suspension of the work, less any amounts required to be withheld pursuant to Article 8, Payment and Completion, and less any prior payment(s) made to, or on account of the CM.

7.05 Assignment of Trade Contracts

Should the CM's control over the work be terminated under Article 7.03, Termination for Cause, or Article 7.04, Termination for Convenience, the Owner may elect to take legal assignment of trade contracts and purchase orders. In such an event, the CM shall, as a condition of receiving the payments referred to in these Articles, execute and deliver all papers and take all steps, including the legal assignment to the Owner of trade contracts, purchase orders and other contractual rights of the CM, as the Owner may require for the purpose of fully vesting in the Owner all rights and benefits of the CM under such trade contracts, purchase orders, or other contractual rights in order that the Owner may proceed to finish the project.

7.06 Third-Party Claims

The Owner has full authority to compromise or otherwise settle any claim relating to a Contract at any time. However, the Owner shall notify CM of the receipt of any third-party claim relating to the Contract.

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Article 8.00 PAYMENT AND COMPLETION

8.01 Acceptance

When the Project has been completed in all respects in accordance with the plans and specifications, to the full satisfaction of the Owner, the Owner will file a Notice of Completion with the County Recorder in the county in which the Project is located. Projects bid with a segregation of costs for separate, independent portions may, at the Owner's discretion, have each of the separate portions accepted individually. The date of acceptance of the Project as stated on the Notice of Completion shall be the official completion date relating to liquidated damages. The County Recorder's date of recording on the Notice of Completion, if filed timely (within ten days of acceptance), shall be the official completion date relating to stop notices. All stop notices must be filed with the Owner within 30 calendar days after the County Recorder's recordation date on the Owner's timely filed Notice of Completion. All claims arising from this Contract shall be submitted in writing to the Owner no later than 30 calendar days after the recordation date on the Owner's Notice of Completion. See Article 7.01, Claims.

8.02 Partial Payments

To assist in computing partial payments, the CM shall submit to the Architect and the Project Manager a "Schedule of Values" of the CM's actual and estimated costs for each item of work. The cost breakdowns shall be in sufficient detail for use in estimating the work to be completed each month and shall be submitted within 21 calendar days after the date of commencement of work given in the Notice to Proceed.

Once each month during the progress of the work, the CM shall submit to the Project Manager and the Architect a partial payment request. The CM shall base the partial payment request on the approved schedule of values for the cost of the work completed plus, where applicable, a maximum of 90% of the verified supplier-invoiced amount and CM-purchased acceptable materials delivered to the Site or stored subject to the control of the CM but identified as the property of the Owner and not yet installed. The CM must make any materials stored offsite accessible to the Owner to verify invoiced value and shall deliver these materials to the Owner upon request.

The partial payment request shall be submitted on the monthly anniversary of the day selected by the CM in the job start meeting. The amount requested shall be based on the Schedule of Values multiplied by the percentage of work completed including the CM's Fee, prorated based on the percentage of work completed. If requested by the Owner, the CM shall submit a detailed cost report including additional substantiation such as trade contractor payments, material invoices, payrolls for all labor, and other such data supporting the CM's right to payment. The detailed cost report shall be forwarded to the Project Manager no later than seven (7) calendar days following receipt of the request.

The Architect and Project Manager shall review and certify as to the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Project Manager of materials invoiced. No partial payment shall be made without the certification of the Architect, unless the partial payment is strictly administrative, and is processed after the completion of the work (e.g. release of stop notice claims). Partial payment requests shall be processed with a minimum of ten percent retention. The Owner will hold this retention in part as security for the fulfillment of the Contract by CM, and in part, as retainage for liquidated damages, stop notices, Labor Code wage and penalty assessments, and Owner's back-charges such as for retesting and re-inspection. If the Owner deem that ten percent retention is inadequate, the Owner may increase the amount of retention.

Partial payments shall not be construed as acceptance of any work that is not in accordance with the requirements of the Contract. Once the Architect and the Project Manager have certified the partial payment request, it shall be submitted to the Owner approval and processing. The partial payment will then be processed and payment made within 30 calendar days, from the date of receipt by the Owner, prior to assessment of late payment interest.

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8.03 Direct Cost of the Work

The term "direct cost of the work" shall mean costs necessarily incurred by the CM in the proper performance of the work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The "direct cost of the work" shall include only the following items set forth in this Article.

- a) Labor Costs
 - 1) Wages of construction workers directly employed by the CM to perform the construction of the work at the Site or, with the Owner's agreement, at off-site workshops.
 - 2) Actual costs paid or incurred by the CM for taxes, insurance, contributions, assessments and benefits, associated with the construction workers directly employed by the CM, and as required by law.
- b) Trade Contractor Cost. Payments made by the CM to trade contractors in accordance with the requirements of the subcontracts.
- c) Cost of Materials and Equipment Incorporated in the Completed Construction
 - 1) Actual costs, including transportation of materials and equipment incorporated or to be incorporated in the completed construction.
 - 2) Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the work or, at the Owner's option, shall be sold by the CM. Amounts realized, if any, from such sales shall be credited to the Owner as deduction from the cost of the work.
- d) Cost of Other Materials and Equipment and Related Items
 - 1) Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM at the Site and fully consumed in the performance of the work. Cost for items previously used by the CM shall mean fair market value. The Owner reserves the right to dispose of all temporary structures and small tools that have been purchased but no longer required for the work.
 - 2) Costs of removal of debris from the site.
- e) Miscellaneous Costs
 - 1) Sales, use or similar taxes imposed by a governmental authority which are related to the work and for which the CM or Owner is liable.
 - 2) Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded by Article 5.06, Testing Materials, Articles, Equipment and Work, or other provisions of the Contract Documents.
 - 3) Deposits lost for causes other than the CM's fault or negligence.
 - 4) Cost of surveys if required for the work.
 - 5) Costs of obtaining and using all utility services required for the work, if not paid directly by the Owner.
- f) Other Costs.
 - 1) This category includes other costs incurred in the performance of the work if and to the extent approved in advance in writing by the Owner.
- g) Costs for Emergencies; Repairs to Damaged, Defective or Nonconforming Work
 - 1) Costs in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - 2) Costs in repairing or correcting work damaged or improperly executed by construction workers in the employment of the CM, provided such damage or improper execution did not result from the fault or negligence of the CM or the CM's employees, foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the CM.

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- 3) Costs in repairing damaged work other than that described in Article 8.03-g (2), provided such damage did not result from the fault or negligence of the CM or the CM's personnel, and only to the extent that the cost of such repairs is not recoverable by the CM from others and the CM is not compensated therefore by insurance or otherwise.
- 4) Costs in correcting defective or nonconforming work performed or supplied by a trade contractor or material supplier and not corrected by them, provided such defective or nonconforming work did not result from the fault or neglect of the CM or the CM's personnel to adequately supervise and direct the work of the trade contractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming work is not recoverable by the CM from the trade contractor or material supplier.

8.04 Construction Phase Services

The term "construction phase services" shall mean those costs incurred by the CM in the field management, supervision, and administration of the work. The CM's fee percentage for construction phase services, as included in the cost proposal, shall include the following items:

- a) Labor Costs
 - 1) Wages or salaries of the CM's supervisory and administrative personnel when stationed at the Site with the Owner's agreement.
 - 2) Wages and salaries of the CM's supervisory or administrative personnel engaged at factories, workshops (not including CM's principal or branch offices) or on the road expediting the production or transportation of materials or equipment required for the work, but only for that portion of their time required for the work.
 - 3) Wages or salaries of the CM's project manager, whether stationed at the Site or in the CM's principal office or branch offices, but only for that portion of his/her time required for the work.
- b) Materials and Equipment and Temporary Facilities and Accommodations
 - 1) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM at the site, whether rented from the CM or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - 2) Costs of long-distance telephone calls, project specific cell phone calls, postage and parcel delivery charges, telephone service at the site, and reasonable petty cash expenses at the Site office.
 - 3) That portion of the reasonable travel and subsistence expenses of the CM's personnel incurred while traveling in discharge of duties connected with the work.
- c) Miscellaneous Costs
 - 1) That portion of premiums for insurance and bonds directly attributable to the Contract.
 - 2) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM is required by the Contract Documents to pay.

8.05 Costs Not Included in Construction Phase Services

The cost of the work shall not include:

- a) Any costs incurred by the CM in providing pre-construction services paid under a separate service agreement executed between the CM and the Owner.
- b) Salaries and other compensation of the CM's personnel stationed at the CM's principal office or offices other than the Site office, except as specifically provided in Articles 8.03 and 8.04.
- c) Payments to CM's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
- d) Expenses of the CM's principal office and offices other than the Site office.
- e) Overhead and general expenses, except as may be expressly included in Articles 8.03 and 8.04.
- f) The CM's capital expenses, including interest on the CM's capital employed for the work.
- g) Rental costs of machinery and equipment, except as specifically provided in Article 8.03-d.

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- h) Except as provided in Article 8.03, costs due to the fault or negligence of the CM, trade contractors, anyone directly or indirectly employed by the CM or trade contractors, or for whose acts the CM or trade contractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the work.
- i) Electronic processing and personnel cost incurred by the CM in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the work.
- j) Any costs based on percentages, rather than actual costs paid by the CM, unless specific percentages are documented and approved by the Owner.
- k) Any fees paid to Contractor/CM organizations. (AGC, ABC, AIA etc.)
- l) Contractor's business license.
- m) Any cost not specifically and expressly described in Articles 8.03 and 8.04.
- n) Costs that would cause the Guaranteed Maximum Price to be exceeded.

8.06 Discounts, Rebates and Refunds

- a) Cash discounts obtained on payments made by the CM shall accrue to the Owner if (1) before making the payment, the CM included them in a payment request and received payment therefore from the Owner, or (2) the Owner has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the CM, it shall be credited to the Owner.
- b) Amounts, which accrue to the Owner in accordance with the provisions of Article 8.06-a, shall be credited to the Owner as a deduction from the cost of the work.

8.07 Escrow in Lieu of Retention

The CM has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner. When the CM deposits securities as a substitute for retained earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Agreement. Securities shall be held in the name of Owner, and shall designate the Contractor as the beneficial owner.

The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

Alternatively, on written request of the CM, the Owner shall make payments of the retention earnings directly to the Escrow Agent.

When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

8.08 Stop Notices

The Owner shall retain out of any money due or that may become due the CM, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop notice provisions of the law (Civil Code, section 3082 *et seq.*).

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Preliminary notices and stop notices should be addressed to the Project Manager and sent to the Owner at the address identified in the letter transmitting the Contract and at the preconstruction conference. CM shall be responsible to communicate this information to all trade contractors.

8.09 Guaranteed Maximum Price and Cost Savings Split

The Contract amount for the Project is guaranteed by the CM not to exceed the GMAX, as set forth in the Agreement. The GMAX is supported by a line item cost breakdown for each trade contractor, including contingency on overall cost of the work, and based on multiple trade contractor bids for each trade contract obtained as provided in these General Conditions. The GMAX shall be subject to additions and deductions by change order as provided in Article 6, Change Orders.

If the cost of the work, together with the CM's fee, exceeds the GMAX, adjusted from time to time by change order, the CM shall pay the overrun without reimbursement by the Owner. If the actual cost of the work, plus the CM's fee, is less than the GMAX, adjusted from time to time by change order, then the CM shall pay the Owner the percentage of such cost savings as identified in the SOQ proposal, with the Owner benefiting by the remaining percentage thereof. CM agrees to use all reasonable efforts to maximize the cost savings for the mutual benefit of the parties.

8.10 Final Payment

After acceptance of the Project as complete, the CM shall submit to the Project Manager a payment request indicating the total due under the Contract less retention. This payment request shall be substantiated by a detailed cost report. At the option of the Owner, additional substantiation may be requested such as trade contractor payments, material invoices, payrolls for all labor, and other such data supporting the CM's right to payment. The detailed cost report shall be forwarded to the Project Manager no later than seven (7) calendar days following the submission of the final payment request. This payment request will be processed in the same manner as the partial payment requests. Refer to Article 8.02, Partial Payments.

The Owner shall notify the CM of the date of recordation of the Notice of Completion. The CM shall then submit a request for payment of the retention to the Project Manager, who will process the retention payment 30 calendar days after the date of recordation by the County Recorder.

The Owner shall continue to retain funds to cover liquidated damages, stop notices, state labor commissioner claims, back charges from the Owner, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. If any stop notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop notice have been settled or the CM has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

The amount of such final payment shall be calculated as follows:

- a) Take the sum of the cost of the work for the entire project substantiated by the CM's final accounting and the CM's fee calculated previously, subject to a Owner audit if so requested.
- b) Add any cost savings on the completion of the project to which the CM is entitled pursuant to Article 8.09, Guaranteed Maximum Price and Cost Savings Split.
- c) Subtract amounts, if any, which the Owner are entitled to withhold to cover liquidated damages, stop notices, construction defects or non-conforming work or other withholds authorized by the Contract Documents.
- d) Subtract the aggregate of previous payments made by the Owner to the CM hereunder.

8.11 Auditing Rights of the Owner

The CM shall be subject to examination and audit by the Owner (or designee) at any time during construction and for a period of three (3) years after final payment of the Contract. Such examination and audit shall include access to the CM and the trade contractor records as delineated in the following:

- a) The CM's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; trade contractor files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original

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estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the CM's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the CM or any of his payees. The CM is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total project costs by cost codes; and a trade contractor history report including each subcontract amount and change orders issued thereto.

- b) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract.
- c) The Owner shall be allowed to interview any of the CM's employees, pursuant to the provisions of this Article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
- d) The CM shall require all trade contractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the CM and payee. Such requirements will also apply to trade contractors and subcontractors, etc. The CM will cooperate fully and will cause all related parties and all of the CM's trade contractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- e) The Owner shall have access to the CM's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article.
- f) If an audit inspection or examination in accordance with this Article, discloses overcharges (of any nature) by the CM to the Owner in excess of one-half of one percent (.5%) of the total Contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the CM. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CM's invoices and/or records shall be made within a reasonable amount of time (not to exceed 30 calendar days) from presentation of the Owner findings to CM.
- g) If an audit discloses overcharges on change orders, where a CM has submitted costs and has received payment of costs for a trade contractor's work, but has not passed on such payment to the trade contractor (including mark-up charged), and the CM's records do not reflect offsetting back charges, the CM shall reimburse the Owner for such overcharges upon receipt of a request from the Owner.

8.12 Guarantee

The CM hereby unconditionally guarantees the work under this Contract to be in conformance with the Contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project pursuant to Article 4.13-b, Starting and Completion Date,

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unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the CM agrees, within the guarantee period, to repair or replace any work, together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the Contract or which is defective in its workmanship or material, all without any expense whatsoever to the Owner. Special guarantees that are required by the Contract shall be signed by the CM who is responsible for the entire work and countersigned by the trade contractor that performs the work.

Contract bonds shall remain in full force and effect during the one-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

The CM further agrees that within 5 days notice by the Owner of any work not in accordance with the requirements of the Contract or of any defects in the work, CM shall commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the Contract within a reasonable period of time. The CM, in the event of failure to so comply, does hereby authorize the Owner to proceed to have the work done at the CM's expense, and it agrees to pay the cost thereof upon demand. The Owner shall be entitled to all costs necessarily incurred upon the CM's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Owner's employees, property, or licenses, the Owner may undertake at the CM's expense, without prior notice, all work necessary to correct such hazardous conditions caused by the work of the CM that is not in accordance with the requirements of this Contract.

-End of Contract General Conditions for
Construction Manager at Risk with Guaranteed Maximum Price Projects-