

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**BUILDING COMMITTEE MEETING
Thursday, April 4, 2024
9:30 A.M.**

MEMBERS OF THE COMMITTEE

Wayne Lindholm, Chair
Chris Prevatt, Vice Chair
Arthur Hidalgo
Jeremy Vallone

Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone (information below) from any location.

OCERS Zoom Video/Teleconference Information	
<p>Join Using Zoom App (Video & Audio)</p> <p>https://ocers.zoom.us/j/87980959639</p> <p>Meeting ID: 879 8095 9639 Passcode: 083339</p> <p>Go to https://www.zoom.us/download to download Zoom app before meeting. Go to https://zoom.us to connect online using any browser.</p>	<p>Join by Telephone (Audio Only)</p> <p>Dial by your location</p> <p>+1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York)</p> <p>Meeting ID: 879 8095 9639 Passcode: 083339</p>
<p>A Zoom Meeting Participant Guide is available on OCERS' website Board & Committee Meetings Page.</p>	

AGENDA

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

OPEN SESSION

1. **CALL MEETING TO ORDER AND ROLL CALL**
2. **BOARD MEMBER STATEMENT REGARDING PARTICIPATION VIA ZOOM (IF NECESSARY)**
(Government Code section 54953(f))
3. **PUBLIC COMMENTS**

Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the

meeting may do so from the podium located in the OCERS Boardroom. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

CONSENT AGENDA

All matters on the Consent Agenda are to be approved by one action unless a Committee member requests separate action on a specific item.

C-1 BUILDING COMMITTEE MEETING MINUTES

Building Committee Meeting Minutes

December 21, 2023

Recommendation: Approve minutes.

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee's discussion of the item. **Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary's box located near the back counter.**

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

A-2 OCERS REPLACEMENT HEADQUARTERS PROJECT – INTERVIEW OF RESPONDENTS TO DESIGN BUILD ENTITY RFP AND SELECTION OF DESIGN BUILD ENTITY

Recommendation:

1. Interview the four qualified firms that submitted proposals for design-build services.
2. Select one of the four qualified firms to serve as the Designer/Builder Entity (DBE) for the OCERS Replacement Headquarters Project and recommend that the Board award a contract for the scope of services as outlined in the Designer/Builder for OCERS Replacement Headquarters Project RFP, subject to satisfactory negotiation of terms.

INFORMATION ITEMS

Each of the following informational items will be presented to the Committee for discussion.

NONE

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

REGULAR BOARD MEETING

**April 15, 2024
9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

PERSONNEL COMMITTEE MEETING

**April 23, 2024
1:00 P.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

DISABILITY COMMITTEE MEETING

**May 20, 2024
8:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
BOARD OF RETIREMENT
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA**

**BUILDING COMMITTEE MEETING
Thursday, December 21, 2023
9:00 A.M.**

MINUTES

Chair Lindholm called the meeting to order at 9:04 A.M.

Recording Secretary administered the Roll Call attendance.

Attendance was as follows:

Present: Wayne Lindholm, Chair; Chris Prevatt, Vice Chair; Arthur Hidalgo, Board Member; Jeremy Vallone, Board Member

Also Present: Steve Delaney, CEO; Brenda Shott (Zoom), Assistant CEO of Internal Operations; Manuel Serpa, General Counsel; Fong Tse, Sr. Manager of Facilities and Operations Support Services; Peter Felix, Audio Visual Technician; Amanda Evenson, Recording Secretary; Marielle Horst, Executive Secretary

Guests: Roger Torriero (Zoom), Griffin Structures; John Hughes, Griffin Structures; Deryl Robinson, Griffin Structures; Dustin Alamo (Zoom), Griffin Structures; Tristen Nichols, Griffin Structures; Andrew Wright (Zoom), RIOS Architects

PUBLIC COMMENT

None.

CONSENT AGENDA

C-1 COMMITTEE MEETING MINUTES:

Building Committee Meeting Minutes

October 30, 2023

Recommendation: Approve minutes.

A **Motion** by Mr. Hidalgo, **seconded** by Mr. Prevatt, to approve staff's recommendation to approve the minutes.

The motion passed **unanimously**.

ACTION ITEMS

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

No items were trailed from the Consent Agenda.

A-2 OCERS REPLACEMENT HEADQUARTERS PROJECT- SPACE STUDY/NEEDS PROGRAMMING

Presented by Steve Delaney, Chief Executive Officer, OCERS and Owner’s Representative/Program Manager, Griffin Structures

Recommendation: Staff recommends the Committee to:

1. Direct Staff to proceed with the presented 65,309 SF programming or a different square footage desired by the Committee.
2. Authorize staff to fine tune and minimally adjust the Program as needed up to a maximum of additional 10% beyond the square footage target to achieve maximum operational efficiency and functions where occur.

Mr. Alamo from Griffin Structures presented OCERS’ program space needs relative to future operations based on their data collection. Mr. Delaney addressed the OCERS staffing headcount by year and anticipated staffing growth. After discussion, the committee decided to move forward onto the informational items to gain further insight regarding the action items.

After discussion, a **Motion** by Mr. Prevatt, **seconded** by Mr. Hidalgo, to direct staff to proceed with a 71,000 SF programming and the 10% variance beyond the square footage target; staff directed to utilize both properties as needed with no parking structure and proceed under the specific replacement/reconstruction exception.

The motion passed **unanimously**.

A-3 DESIGNATING OCERS REAL ESTATE NEGOTIATOR UNDER GOVERNMENT CODE SECTION § 54956.8

Presented by Manuel Serpa, General Counsel, OCERS

Recommendation: The Committee identifies a designated negotiator to assist in negotiating leases with existing tenants of the property located at 1200 N. Tustin Ave., Santa Ana, CA 92705.

A **Motion** by Mr. Prevatt, **seconded** by Mr. Vallone, to identify Brenda Shott as the designated negotiator in negotiating leases with existing tenants.

The motion passed **unanimously**.

INFORMATION ITEMS

I-1 OCERS REPLACEMENT HEADQUARTERS PROJECT - SITE PLAN CONCEPTS

Presented by Fong Tse, Senior Manager of Facilities & Operations Support Services, OCERS and RIOS Architects

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Mr. Wright from RIOS Architects presented the preliminary yield study for the OCERS replacement headquarters project in compliance with the current property zoning code. The committee discussed the presented site plan concepts.

Mr. Hidalgo directed staff and Griffin Structures to consider including two ingress and egress points in the building plan, one on Tustin and another on Wellington, to improve traffic.

The Committee recessed for break at 10:37 A.M.

The Committee reconvened from break at 10:50 A.M.

Recording Secretary administered the Roll Call attendance.

I-2 OCERS REPLACEMENT HEADQUARTERS PROJECT UPDATE

Presented by OCERS’ Project Owner’s Representative/Program Manager, Griffin Structures

Mr. Robinson from Griffin Structures presented the program level estimates of the OCERS headquarters project options and the preliminary development schedule.

The Committee adjourned to Closed Session at 11:33 A.M.

CLOSED SESSION

E-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section § 54956.8)

Property: 1200 N. Tustin Ave., Santa Ana, CA 92705

Agency negotiator: Negotiator identified in Action Item A-3

Negotiating parties: All existing tenants under lease at the above-noted property.

Under negotiation: Price and payment terms of lease, lease renewal, or lease renegotiation.

Recommendation: Take appropriate action.

The Committee returned from Closed Session at 11:42 A.M.

REPORT OF ACTIONS TAKEN IN CLOSED SESSION - Mr. Serpa noted there was no reportable action for item E-1.

STAFF COMMENTS

Mr. Tse presented the tentative meeting dates for the Building Committee in 2024.

CEO COMMENTS

Mr. Delaney sought clarification from General Counsel regarding the Board of Retirement Charter requirements for Building Committee decisions that need final approval from the Board.

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COUNSEL COMMENTS

Mr. Serpa clarified that the Building Committee has the authority to interview and recommend the finalist for the design builder entity and then the Board would approve that design builder entity and the related contracts. The Board of Retirement Charter states that it has the authority to approve the city review ready site plan for the project including building size, shape, number of stories, standalone versus integrated boardroom, amenities, location, placement on lot, parking, and property ingress/egress plan.

COMMITTEE MEMBER COMMENTS

None.

The meeting **ADJOURNED** at 11:48 A.M.

Submitted by:

Submitted by:

Approved by:

Brenda Shott
Staff Liaison to the Committee

Steve Delaney
Secretary to the Committee

Wayne Lindholm
Chair



Memorandum

DATE: April 4, 2024
TO: Members of the Building Committee
FROM: Brenda Shott, Assistant CEO, Finance and Internal Operations
SUBJECT: **OCERS REPLACEMENT HEADQUARTERS PROJECT – INTERVIEW OF RESPONDENTS TO DESIGN BUILD ENTITY RFP AND SELECTION OF DESIGN BUILD ENTITY**

Recommendations

1. Interview the four qualified firms that submitted proposals for design-build services.
2. Select one of the four qualified firms to serve as the Designer/Builder Entity (DBE) for the OCERS Replacement Headquarters Project and recommend that the Board award a contract for the scope of services as outlined in the Designer/Builder for OCERS Replacement Headquarters Project RFP, subject to satisfactory negotiation of terms.

Background/Discussion

In August 2023, the Board of Retirement authorized staff to enter into a professional services contract with Griffin Structures (Griffin) to provide Owner's Representative/Program and Construction Management services for the OCERS Replacement Headquarters Project (Project). Since then, Griffin, along with professional subconsultants, have completed the space needs/programming assessment, due diligence investigations, and the site concepts necessary to establish the Project's base parameters. The results of these studies were presented to the Building Committee (Committee) at its December 2023 meeting, upon which the Committee directed staff to target a 71,000 SF replacement headquarters on OCERS' 1200 N. Tustin Avenue-Santa Ana parcel with surface parking through city administrative approvals.

Staff thereafter issued a Request for Qualifications for DBE Services. The six (6) teams that submitted their Statement of Qualifications (SOQ), in alphabetical order were, Austin-Corgan, Bernards-HOK, Clayco-LJC, CW Driver-Ware Malcomb, Snyder Langston-Gensler, and Swinerton-LPA. A three member panel (Panel) consisting of OCERS Executive Management independently reviewed and rated the SOQs. On February 21, 2024, the Panel invited the top four rated teams to respond to the attached Request for Proposal (RFP) that was jointly developed by staff, Griffin, our in-house legal counsel and Best Best & Krieger, LLP. All four teams proposed by the March 22, 2024, submittal deadline.

Being that respondent teams are well known and respected within the Southern California vertical design and construction communities, each submitted a different set of ideas, and the Panel evaluated the proposals within a narrow band of total scores, staff is requesting the Committee to interview and have a discussion with each of these teams to further understand their work approaches and visions beyond their written responses for our Project in order to select the firm that closely aligns with the Committee's expectations.

As such, these teams are scheduled to meet with the Committee at the April 4, 2024 Building Committee meeting in



Memorandum

the following alphabetical order:

- 9:45 AM – Bernard/HOK
- 10:55 AM – CW Driver/Ware Malcolm
- 12:40 PM – Snyder Langston/Gensler
- 1:50 PM – Swinerton/LPA

Each team will be allotted 40 minutes for presentation followed by 20 minutes of Q&A.

Upon conclusion of the interviews, the Committee will have time for discussion and deliberations. After the Committee concludes their discussion and deliberations, staff recommends that the Committee select one of the firms to serve as the DBE and recommend the Board award a Contract for the scope of services as outlined in the DBE RFP, subject to satisfactory negotiation of terms. As an alternative, should the Committee decide further information is required before a final selection can be made, staff requests that the Committee provide direction on the next steps in the selection process.

Submitted by:



BMS - Approved

Brenda Shott
Assistant CEO, Finance and Internal Operations

Attachment

1. Request for Proposals

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
REQUEST FOR PROPOSALS FOR
DESIGN-BUILD SERVICES FOR THE
REPLACEMENT HEADQUARTERS PROJECT**

Date: February 20, 2024

1. INTRODUCTION

1.1. Overview & Purpose. The Orange County Employees Retirement System (“OCERS”) shortlisted design-build entities (“**Design Build Entity(ies)**”) pursuant to OCERS’ Request for Qualifications for Design-Build Services issued on or about December 15, 2023 (“**RFQ**”) for OCERS’ Headquarters project as further described in the “**PROJECT DESCRIPTION**” section below (“**Project**”). This Request for Proposals for Design-Build Services (“**RFP**”) establishes the requirements for the submittal of proposals based on the requirements of this RFP (“**Proposal(s)**”).

1.2. Design Build Entity. A Design Build Entity is a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to a design-build contract. OCERS will consider Design Build Entities that are one legal entity, or a legal entity comprised of separate member entities (e.g., a joint venture), that include, without limitation, a general contractor and another firm(s) providing the other required licensed services.

1.3. Design-Build Team. A “Design-build team” (“**Design Build Team**”) is the design-build entity and the individuals or other entities identified by the design-build entity as members of its team and includes, to the extent applicable the architect/designer, general contractor and, as needed in the design/construction of the project, all electrical, mechanical, and plumbing subcontractors holding valid “A”, “B”, and/or “Specialty-C” contractor license(s) issued by the California Contractors State License Board on the work shown on the city permitted plan sets and construction documents including building demolition, civil, landscaping, structural, water proofing, roofing, audio-visual, low voltage, security systems, fire prevention/protection systems, conveyance systems, commissioning, as well as for other necessary items of work such as construction site security and others needed to deliver the project functional as designed and completed in place.

1.4. Minimum Performance Criteria Documents. OCERS has retained consultants to prepare a Needs Assessment, Program requirements, and site zoning and feasibility analysis which are attached hereto as **Attachment 4 (“Program and Site Feasibility Documents”)**. **The Program and Site Feasibility Documents are essential to a Design Build Entity’s understanding of the Services and preparation of proposed compensation for the Design Build Entity’s performance of the Services, and Design Build Entities must carefully review the Program and Site Feasibility Documents and the Form Design-Build Contract attached hereto as Attachment 5 (“Form DB Contract”) prior to submitting a Proposal.** The documents to be submitted for City of Santa Ana Public Works, Building and Fire department approvals and permits shall be prepared in accordance with these departments’ respective Design Criteria and Code requirements.

1.5. Required Licenses. All architectural and engineering Work to be provided by the Design Build Entity must be provided in accordance with the professional registration requirements of the State of California's Business and Professions Code including, without limitation: (i) an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code; (ii) a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code; (iii) a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code; and (iv) a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code). Any design professional or consultant identified by a Design Build Entity must meet state licensing requirements. The Construction Work (as defined below) shall be performed by properly licensed contractors as per the Contractor's State License Board requirements.

1.6. CARB Compliance. The California Air Resources Board ("CARB") implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulations ("**Regulation**") which are effective on January 1, 2024 and apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of equipment used in California. A copy of the Regulation is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>. Design Build Entities are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 *et seq.* throughout the term of the Project. Design Build Entities must provide, with their Proposals, copies of the Design Build Entity's and all listed subcontractors the most recent, valid Certificate of Reported Compliance ("**CRC**") issued by CARB. Failure to provide valid CRCs as required herein may render the Proposal non-responsive. Design Build Entities must complete and submit the Fleet Compliance Certification, attached hereto, with their Proposals. Failure to provide a CRC for the Design Build Entity, and for all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the Proposal non-responsive.

1.7. Minimum Requirements of DBE. To be eligible to submit a Proposal, Design Build Entities shall ensure that the following requirements, at a minimum, are satisfied:

1.7.1. The Design Build Entity, each general contractor and architect/engineer that is a member of the DBE, and each member of the Design-Build Team, shall maintain all required professional licenses required to perform those portions of the Work (as defined below); and

1.7.2. Be able to meet the minimum insurance requirements in the Form DB Contract.

1.8. Proposal. Only Design Build Entities that were shortlisted pursuant to OCERS' RFQ process are invited to submit a Proposal, which shall include the submittal of:

1.8.1. A response to the "**Technical Proposal**" section of this RFP ("**Technical Proposal**"); and

1.8.2. A completed cost proposal form in the form attached hereto as **Attachment 1** ("**Cost Proposal Form**").

The Technical Proposal and Cost Proposal Form shall be fully complete and responsive to all requirements of this RFP, and timely submitted as required below.

1.9. RFP Attachments. This RFP is issued with the following attachments:

Attachment No.	Name
Attachment 1	Cost Proposal Form
Attachment 2	Required Certifications
Attachment 3	Proposal Scoring
Attachment 4	Program and Site Feasibility Documents
Attachment 5	Form of DB Contract and General Conditions
Attachment 6	Scope of Predevelopment Phase Services

1.10. Schedule of Events. OCERS shall follow this schedule for this RFP process (“Schedule of Events”):

Event	Time/Date
RFP Conference & Site Walk Meeting Location: Project Site Parking Lot	3:00 PM on February 29, 2024
Questions or Requests for Clarification Due	5:00 PM on March 6, 2024*
OCERS to Respond to Questions	5:00 PM on March 15, 2024*
PROPOSALS DUE	5:00 PM on March 22, 2024
Interviews	April 4, 2024
ANTICIPATED Date for Issuance of Notice of Intent to Award	May 20, 2024
ANTICIPATED Date for Board Selection of Design Build Entity & Approval of Contract	TBD by OCERS

The above-dates may be changed, in OCERS' sole discretion. RFP Invitees will be notified of any change to the Schedule of Events shall be made through the issuance of a written addenda through PlanetBids.

2. PROJECT DESCRIPTION

2.1. Project. The Project includes the demolition and removal of the existing medical office building and design and construction of a new headquarters to be located on OCERS existing 3.41 acre parcel at 1200 N Tustin Avenue, Santa Ana, CA, 92705 (“**Site**”) utilizing the design-build delivery method. The Project generally involves the design and construction of improvements of a replacement administrative office headquarters for OCERS consistent with the Program and Site Feasibility Documents (**Attachment 4**) for a project consistent with existing City zoning on the Site, i.e. “by right”, along with associated site clearing and disposal of existing interfering onsite improvements and structures, coordination with Verizon Wireless on their existing cellular tower removal and their construction of a new cell tower on same parcel, and any authorities having jurisdiction (“AHJ”)-required offsite improvements.

2.2. Estimated Project Cost / Target GMP. The total estimated cost for all DBE Work (as defined below) is **\$55 Million Dollars** (“**Estimated Cost**”). The Cost Proposal Form requires the Design Build Entity to itemize all costs to complete the design and preconstruction consulting services required in the Predevelopment Phase. A copy of

the required scope of work for the Predevelopment Phase is attached hereto as **Attachment 6**. The costs associated with developing and pricing the GMP are included in Section 2.1.5 of the Form DB Contract. The Cost Proposal Form includes certain elements of the GMP development process that all proposers must submit with RFP and commit to as part of the Final GMP as part of the Predevelopment Phase. At the conclusion of the Predevelopment Phase, OCERS expects the Design Build Entity to propose a Final GMP Amendment to the Design Build Contract that commits to a Final GMP not exceeding the Estimated Cost. If selected, a Design Build Entity's proposed compensation in the GMP for Predevelopment Phase Work (as defined below) shall be FIXED and not subject to adjustment unless agreed on by the parties and authorized by the contract. Design Build Entity's proposed compensation in the GMP for CONSTRUCTION WORK ONLY will be an estimate and the GMP will be a target GMP towards which Design Build Entity shall design the Project ("Target GMP").

2.3. Work. Contractor/DBE shall provide all necessary design, permitting, preconstruction, and construction services to complete the Project consistent with the Performance Criteria Documents and pursuant to all provisions of the Form DB Contract (collectively, "**Work**"). The Work shall proceed as follows:

2.3.1. Predevelopment Phase Work. The full scope of work for the Predevelopment Phase is attached hereto as **Attachment 6** and includes the following:

2.3.1.1. Design Work. Upon the issuance of a notice to proceed ("**NTP**"), Design Build Entity shall validate the proposed design elements in the Program and Site Feasibility Documents and perform all work necessary to prepare all studies, documents, drawings and specifications necessary to fully construct the Project and submitting same for OCERS' and applicable AHJ approvals during Early Design, Schematic Design, and Design Development (collectively "**Design Work**").

2.3.1.2. Preconstruction Services. Throughout the Design Work, Design Build Entity shall perform all necessary preconstruction work necessary to ensure that the design is buildable and will not exceed the Target GMP, including, without limitation, value engineering, constructability reviews, and periodic cost estimates (collectively, "**Preconstruction Services**").

2.3.2. Development Phase Work. The Development Phase work is further described in Form DB Contract attached hereto as **Attachment 5** and includes the following:

2.3.2.1. Final GMP Amendment. After the completion of the Predevelopment phase work set forth in Section 2.3.1 above, the DBE shall present and deliver to OCERS a Final GMP Amendment to the Design- Build Contract. The Final GMP Amendment shall be subject to OCERS review and approval, and OCERS in its sole and absolute discretion, may elect to reject the Final GMP Amendment and either terminate the Design Build Contract for convenience and/or exercise any other rights or remedies OCERS may have under the contract. After approval by OCERS and mutual execution of the Final GMP Amendment, the Final GMP for the Project may not be amended except as explicitly set forth in the Design-Build Contract.

2.3.2.2. Development Phase Design Work. The Final GMP shall also include and specify, the remaining Development Phase Design Work and corresponding cost that

within the Final GMP that is required to complete the construction documents for the Project as further described in the Design Build Contract.

2.3.2.3. Construction Work. After the parties amend the contract to include the Final GMP, OCERS will issue a NTP for construction documents and construction and Design Build Entity shall perform all work necessary to complete the construction of the Project (“**Construction Work**”).

2.4. Project Phasing and Pricing. The selected Design Build Entity will perform Work in the two (2) primary phases, the Predevelopment Phase and the Development Phase within the durations identified below. Work in connection with any phase, and the portion of the GMP payable to that phase, or any component of that phase, will be contingent on OCERS issuing a notice to proceed for that phase.

Phase (Milestone)	Contract Time for Phase (From Issuance of NTP)
Completion of Predevelopment Phase Work	450 CALENDAR DAYS
<i>Completion of Early Design</i>	<i>60 Calendar Days</i>
<i>Completion of Schematic Design Documents</i>	<i>90 Calendar Days</i>
<i>Completion of Design Development Documents</i>	<i>120 Calendar Days</i>
<i>Submission of Final GMP Amendment to OCERS for Final Approval</i>	<i>300 Calendar Days</i>
Completion of Development Phase Work	DAYS TO BE ESTABLISHED WITH FINAL GMP AMENDMENT

2.5. Prevailing Wage & Skilled and Trained Workforce Requirements

2.5.1. Prevailing Wage. Design Build Entity shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations (“**DIR**”). The Project is subject to compliance monitoring and enforcement by the DIR. Design Build Entity shall post job site notices, as prescribed by regulation. Design Build Entity shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project. The Design Build Entity and all Design Build Entity’s subcontractors shall pay all workers on Work performed pursuant to the Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the DIR for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 *et seq.* of the Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Project, as determined by Director of the DIR, are on file with OCERS. Prevailing wage rates are also available on the internet at (<http://www.dir.ca.gov>).

2.5.2. Skilled and Trained Workforce Requirements. The successful Design Build Entity and its subcontractors at every tier shall use a skilled and trained workforce at

minimum percentages, as defined in Public Contract Code section 2601, to perform all work on the Project that falls within an apprenticeable occupation. The selected Design Build Entity shall provide monthly compliance reports demonstrating compliance by itself and its subcontractors at every tier with the skilled and trained workforce requirements as prescribed by Public Contract Code sections 2601 and (collectively, "**SWF Statutes**"), as well as the applicable provisions in the Form DB Contract. OCERS recommends that Design Build Entities review the SWF Statutes and the "**Skilled and Trained Workforce Requirements**" in Section 46 of Exhibit C in the Form DB Contract.

2.6. Overview of Contract for Project. The successful Design Build Entity will enter into the Form DB Contract for the performance of the Work, subject to any amendments that OCERS may make as part of the RFP Addendum process. All requests for any exception and/or revision to the Form DB Contract shall be submitted in writing by proposers by the date indicated above in Section 4.2.1 for submission of Questions/Requests for Clarification. OCERS, in its sole and absolute discretion will review all such requests and if it makes any revisions to the Form DB Contract, such revisions will be published in one or more written addenda to the RFP. **OCERS will NOT accept revisions or exceptions to the Form DB Contract NOT RAISED DURING THE RFP PROCESS as described above and any Proposal that takes exception with any provisions of the Form DB Contract may be deemed nonresponsive, in OCERS' sole discretion, if such exceptions are not properly raised in the RFP Addendum process.** The Form DB Contract includes the following contractual provisions which proposers are advised shall not be subject to any substantive revision:

2.6.1. Liquidated Damages. The Form DB Contract sets forth the liquidated damages for the Project. As set forth in the Form DB Contract, the Project includes liquidated damages as set forth in Section 7 and Exhibit D of the Form DB Contract. Liquidated damages shall be calculated cumulatively, and consistent with the Form DB Contract. The Liquidated Damages amount for each day of delay for each milestone within the Predevelopment Phase above shall be **\$2,000**. The Liquidated Damages amount for each day of delay for Completion of the Project during the Development Phase shall be established in writing and mutually agreed to by the parties as part of the Final GMP Amendment.

2.6.2. Indemnity, Insurance & Bonds.

2.6.2.1. Indemnity. The Design Build Entity will be required to agree to defend and indemnify OCERS as set forth in Section 28 of Exhibit C in the Form DB Contract.

2.6.2.2. Insurance. The insurance requirements of the Design Build Entity are set forth in Section 36 of Exhibit C in the Form DB Contract.

2.6.2.3. Bonds. The Design Build Entity will be required to provide a Payment Bond and Performance bond prior to the performance of Construction Work at 100% of the cost of the Construction Work in the forms provided in Section 35 of Exhibit C in the Form DB Contract.

3. OVERVIEW OF DESIGN BUILD ENTITY SOLICITATION PROCESS

3.1. This RFP is Step 2 in the Design Build Entity selection process for the Project. Only Design Build Entities that were shortlisted in the RFQ (Step 1) are eligible to submit a

Proposal. There will **NOT** be a design competition nor any stipend paid to any prospective Design Build Entity.

3.2. Evaluation & Scoring of Proposals. To score Proposals, OCERS will create an evaluation committee to review and score the proposals (“**Evaluation Committee**”). The Evaluation Committee will evaluate and score Proposals utilizing OCERS’ best value scoring set forth in the proposal scoring matrix attached hereto as **Attachment 3 (“Proposal Scoring”)**. OCERS may invite all or some of the Design Build Entities to participate in interviews.

3.3. Selection. Based on the scoring by the Evaluation Committee, OCERS will arrange for the highest ranked respondents to interview with the Building Committee. The Building Committee will complete the interview process and recommend the Finalist to the Board of Retirement to authorize staff to negotiate the DBE Contract. The DBE Contract may be executed upon successful contract negotiations.

4. PROPOSAL REQUIREMENTS

4.1. RFP Conference & Sitewalk. A RFP conference and site walk to discuss this RFP, answer questions from prospective DBEs, and to walk the site will be held on **Thursday, February 29, 2024 on the Job Site Parking Lot beginning at 3:00 PM.**

4.2. Questions / Clarifications.

4.2.1. Any questions and/or requests for clarifications regarding the Project(s), the Form DB Contract, and/or this RFP must be in writing, submitted directly through **Planet Bids** at <https://home.planetbids.com> and must be received on or before the time indicated in the Schedule of Events. **PlanetBids will not accept late questions and OCERS will not respond to questions received after the date and time indicated in the Schedule of Events.**

4.2.2. Design Build Entities with questions or comments about this RFP shall not contact any other OCERS’ representative, Board member, consultant, or employee as per OCERS Quiet Period Policy <https://www.ocers.org/quiet-period-list>. **If a Design Build Entity fails to comply with OCERS Quiet Period Policy, OCERS may, in its sole discretion, deem the Proposal non-responsive.**

4.3. Preparation & Submittal of Proposals. The Proposal shall include: (i) a written Technical Proposal; and (ii) a completed Cost Proposal Form. Design Build Entity’s shall submit and prepare a Proposal fully compliant with, and responsive to, the requirements of this section.

4.3.1. Review of Proposal Documents and Examination of Project Site. Consistent with the requirements of the Form DB Contract, Design Build Entity shall, before submitting its Proposal, carefully study and compare the components of the Form DB Contract with this RFP, including, without limitation, the Program and Site Feasibility Documents, examine the Site, the conditions under which the Work is to be performed, and the local conditions and shall report errors, inconsistencies, or ambiguities immediately upon discovery. If Design Build Entity is awarded the Project, Design Build Entity waives any claim arising from any errors, inconsistencies or ambiguities that Design Build Entity became aware of, or reasonably should have become aware of, prior to Design Build

Entity's submission of its Proposal. By submitting its Proposal, Design Build Entity certifies that it has read, understands, and prepared its Proposal in accordance with the provisions of this RFP and the Form DB Contract. **By submitting its Proposal, the Design Build Entity agrees to all terms and conditions contained in the RFP and Form DB Contract and further agrees to execute, if selected for award, an agreement in the form of the Form DB Contract. DESIGN BUILD ENTITIES' PROPOSALS SHALL NOT INDICATE ANY PROPOSED REVISIONS, RESERVATIONS, OR EXCEPTIONS TO THE FORM DB CONTRACT.**

4.3.2. Submittal of Proposal. Design Build Entities shall submit their proposal only electronically through PlanetBids at <https://home.planetbids.com>, by the date and time identified in the Schedule of Events. The Technical Proposal and Cost Proposal Form shall be submitted together. However, Design Build Entities may include the Cost Proposal Form in the Technical Proposal, if the Design Build Entity desires. A Design Build Entity is solely responsible for ensuring PlanetBids timely receives Design Build Entity's Proposal and OCERS **shall not** be responsible for a Design Build Entity's failure to timely submit the Proposal through PlanetBids. PlanetBids will not accept late submittals.

4.3.3. Format of Technical Proposals. Each Design Build Entity's Proposal **must** be:

- 4.3.3.1.** 8½" x 11" paper, exclusive of the Letter of Interest, Table of Contents, Acknowledgement of Addenda, Certifications, and Letters of References;
- 4.3.3.2.** Concise and well organized;
- 4.3.3.3.** Consecutively numbered on each page; and
- 4.3.3.4.** Inclusive of all information requested in the "**Content of Proposal**" section below, and organized and tabbed consistent with the structure of that section.

4.3.4. Content of Technical Proposal. Each Design Build Entity's Proposal **must** include, at a minimum, the following:

4.3.4.1. Letter of Interest. A dated letter of interest ("**Letter of Interest**") no more than two (2) pages that includes: (i) the legal name of the DBE; (ii) address; (iii) telephone number, email, and the name, title, and signature of the person authorized to submit the Proposal on behalf of the DBE. The Letter of Interest should provide a brief summary of the Proposal and indicate whether there has been a change to any of the information contained in the Design Build Entity's SOQ submitted in response to the RFQ, including, without limitation, corporate form/structure of the DBE, members of DBE, and/or bonding capacity.

4.3.4.2. Table of Contents. A table of contents of the material contained in the Proposal following the Letter of Interest.

4.3.4.3. Conceptual Design. Provide an overall conceptual design for the Project that illustrates the Design Build Entity's vision and understanding of OCERS' design goals as set forth in the Contract Documents. This requirement is not intended to set up a design competition, but rather OCERS is seeking an indication of the design concept as well as the potential solutions to the site spatial challenges that the DBE is considering. The extent and level of detail of the materials presented is at the discretion of the DBE.

4.3.4.4. Project Team Organization & Key Personnel. Identify all key personnel performing Services for the Design Build Entity on the Project and include the following:

NOTE: This section may request information for key personnel's qualifications that a Design Build Entity may have provided as part of the Design Build Entities SOQ. Design Build Entities need only provide specific information related to personnel's qualifications if the personnel was not included in the SOQ. Additionally, if any of the key personnel identified in the SOQ are no longer employed with DBE, Design Build Entity must: (i) identify those key personnel; (ii) identify their replacement; and (iii) and provide all information required in the RFQ and hereunder to substantiate the need for that replacement. OCERS reserves the right to **DEDUCT** points from the scoring of the "Project Team Organization & Key Personnel" section of the Proposal Scoring if OCERS disapproves of any replacement key personnel; the deduction shall not exceed 15% of the maximum possible total points for the scoring of that section.

4.3.4.4.1. Identification of Design Team. Identify, at a **minimum**, the following design consultants: Architect, Interior Design Architect, Civil Engineer, Electrical Engineer, Landscape Architect, Low-Voltage Electrical Engineer, Mechanical Engineer, Structural Engineer, Acoustical Consultant, LEED Consultant, Waterproofing Consultant and Title 24/Code Consultant. .

4.3.4.4.2. Identification of Key Personnel. Identify and provide resumes of **ALL** (not just Design Build Entity members as in the RFQ) key personnel who would be performing Work for OCERS. The key personnel must include, at minimum, the following:

- 4.3.4.4.2.1.** Project(s) Manager(s) (both design and construction, if different);
- 4.3.4.4.2.2.** Superintendent;
- 4.3.4.4.2.3.** Record Architect(s);
- 4.3.4.4.2.4.** Quality Control Manager;
- 4.3.4.4.2.5.** Scheduler; and
- 4.3.4.4.2.6.** Cost Estimator

4.3.4.4.3. Resumes & Experience. For **EACH** person/firm identified above, include resumes and explain their experience.

4.3.4.4.4. Organizational Chart. Provide a Team Organizational Chart identifying all proposed key personnel within each team component (e.g., design consultants, preconstruction consultants, etc.) and how the team will be managed. Clearly define the duties of each key personnel for the Project. Indicate personnel who will serve as primary contact(s) for OCERS. Indicate each person's availability to provide the Work.

4.3.4.5. Minimum Project Criteria/Requirements. As described further in **Attachment 4** the Program and Site Feasibility Documents are essential to a Design Build Entity's understanding of the minimum Project criteria and performance requirements and should be thoroughly addressed in the Proposal.

4.3.4.6. Approach to the Work. Describe Design Build Entity's approach and workplan for the Project based on the planned two phase approach set forth herein for the Predevelopment Phase and the Development Phase. The approach shall include a narrative that addresses, at a minimum, the following:

4.3.4.6.1. Team Coordination. Describe how the Design Build Entity's team will work together to undertake the following tasks, and to maximize and achieve the Target GMP: design, design review, constructability review, estimating, value engineering, scheduling and phasing, construction methods, materials, equipment and systems, and the recommendation of specific building systems and materials and/or methods.

4.3.4.6.2. Coordination with OCERS. Describe how the Design Build Entity's team will proactively manage design and design review in conjunction with OCERS staff to deliver a project design consistent with OCERS' expectations while ensuring the Project is delivered on time and within budget. Identify how the Design-Build Team will facilitate and document the decision-making process, building consensus, maintaining the Project schedule, identifying risks, staying within the Target GMP and managing expectations.

4.3.4.6.3. Design Build Entity Specific Approach. Identify how innovation will be used on this Project to achieve OCERS' objectives outlined in the Performance Criteria Documents. This may also address, without limitations, streamline processes for faster design and construction, improved quality, cost-effective construction processes, improved performance, and overall results for the Project.

4.3.4.6.4. Risk Assessment. Identify Project risks, which are conditions or events that could negatively affect the Project scope, quality, schedule or cost. Design Build Entity shall evaluate the risk to include severity of impact, probability of occurrence and other factors as Design Build Entity deems appropriate and recommend ways to manage or mitigate each risk. Design Build Entity shall present the risk analysis in a risk matrix format.

4.3.4.7. Quality Control Management / Plan. Explain Design Build Entity's quality control management practices, and prepare a quality control plan that Design Build Entity will use during the Project for **BOTH** design and construction process taking into account the Predevelopment Phase as well as the Development Phase that includes, without limitation:

4.3.4.7.1. Processes to ensure design conforms with Program and Site Feasibility Documents;

4.3.4.7.2. Processes to identify constructability issues;

4.3.4.7.3. Processes to coordinate design amongst disciplines;

4.3.4.7.4. Processes to coordinate with authorities having jurisdiction (both during design and construction);

4.3.4.7.5. The methodology that will link the constructability, value engineering, and cost control management processes for a seamless flow from design to construction between the trades and as coordinated by the DBE;

4.3.4.7.6. Review and coordination of all submittals prior to submitting to OCERS for review;

4.3.4.7.7. Preconstruction services conferences to verify that the subcontractors are familiar with the scope of work and process required for the coordination of inspections, field testing, shop drawing approval, mock-ups, and submittal approval as related to their scope of work; and

4.3.4.7.8. The process and key personnel that will be tasked with assessing the craftsmanship and workmanship by all trades and verify that all materials installed are per the approved submittals and shop drawings

4.3.4.7.9. Processes to perform quality control prior to requesting inspections, material testing and special inspections.

4.3.4.8. Design & Construction Schedule. Provide a preliminary design and construction schedule for the Project, showing proposed progress from the NTPs from the Predevelopment Phase to preparing final GMP and commencement of the Development Phase from NTP to completion of construction. Include all phases, and components thereof, (including contract milestones) from schematic design to final completion. The schedule must include specific time for review and/or approval from authorities having jurisdiction and identify adequate time for OCERS to review submittals at all intervals. The schedule must account for both phases of this Project as well as make suggestions as to when long-lead-time items (such as large trees) should be sought and procured in advance.

4.3.4.9. Preconstruction Services / Subcontractor Procurement and GMP Development. The Design Build Entity shall procure subcontractors in an “open book” manner in accordance with the two phases of services described in this RFP. Proposers should describe the Design Build Entity’s process for completing preconstruction services, development of a final GMP and its process to provide transparent costs to OCERS through the Subcontractor Procurement process. Indicate Design Build Entity’s agreement to fully comply with the Subcontractor Procurement minimum requirements set forth in the Form DB Contract.

4.3.4.10. Life Cycle / Energy Efficiency Components / Cost Analysis. Describe the Design Build Entity’s capacity and intention to integrate and develop life cycle costs of products, equipment, and components of 15 years, 20 years and 25 years. Provide examples from other projects if possible.

4.3.4.11. Acknowledgement of Receipt of Addenda. An acknowledgement of receiving any addenda to the RFP that may be issued by OCERS.

4.3.4.12. Certifications. Complete the Required Certifications attached hereto as **Attachment 2**

4.3.5. Submittal of Cost Proposal Form. Design Build Entities shall fully complete and submit the Cost Proposal Form included herein as **Attachment 1**.

5. EVALUATION PROCESS

5.1. Proposal Costs Remain Open. By submitting a Proposal, and to facilitate negotiations, Design Build Entities agree that its Proposal and all costs included therein remain open for one hundred twenty calendar days (120) after the date of submission.

5.2. Best Value Selection Process. OCERS will select a Design Build Entity based on the best value selection method set forth in the Proposal Scoring (**Attachment 3**) and as further described below. OCERS shall abide by the Proposal Scoring criteria set forth therein and consider such criteria in determining whether a Design Build Entity provides the best value. OCERS will also evaluate the Design Build Entity's adherence to and understanding of the Program and Site Feasibility Documents.

5.3. Proposal Evaluation. OCERS' Evaluation Committee will receive and evaluate Proposals pursuant to OCERS' best value scoring criteria in the Proposal Scoring. OCERS will then rank Design Build Entities from highest to lowest based on their Proposal score.

5.4. Interviews. After the Proposals are scored, OCERS, at its sole discretion, may elect to interview one, some, or all of the DBEs, based on each Design Build Entity's score. Adequate time will be allowed for presentation of proposals followed by questions and answers with the OCERS Building Committee. OCERS anticipates scheduling interviews on the date identified in the RFP Schedule. Design Build Entity's key proposed personnel will be required to attend the presentation portion of the selection process, including the Project Manager, Design Phase Services Manager, Design Architect, Mechanical, Electrical, Structural, and Civil engineers, to the extent applicable.

5.5. Design Build Entity Selection & Award. OCERS will recommend a Design Build Entity for selection that OCERS determines to present the best value, which may **NOT** be the Design Build Entity that presents the lowest price in the Cost Proposal Form. The Design Build Entity Finalist will then be presented to the OCERS' Governing Board for consideration and potential award of a contract in the form of the Form DB Contract.

6. ADMINISTRATIVE PROVISIONS

6.1. Compliance with RFP Timely Submittal. Proposals must comply with all requirements of this RFP. OCERS reserves the right, in its sole and absolute discretion, to determine that a Proposal is nonresponsive or to waive any non-material irregularities in a Proposal. OCERS is not responsible for late delivery of a Proposal or the cost of preparing any Proposal. It is the responsibility of the responding Design Build Entity to ensure that any part of the Proposal is submitted on time to OCERS. PlanetBids will not accept late submittals. Any part of the Proposals that are received after the deadline will be deemed nonresponsive and rejected.

6.2. No Contracting Guarantee. OCERS reserves the right to contract with any Design Build Entity responding to this RFP, to reject any Proposal as nonresponsive, and not to contract with any Design Build Entity for a Project. OCERS makes no representation that participation in the RFP process will lead to an award of contract or any consideration whatsoever. OCERS shall in no event be responsible for the cost of preparing any Proposal.

6.3. Non-Discrimination. The selected Design Build Entities and each of its (their) subconsultants and/or co-venture partners, shall comply with all applicable federal and California laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment and Housing Act beginning with Government code section 12900, Labor Code section 1735, and any other applicable federal and state laws and regulations hereinafter enacted, including the Federal Americans with Disabilities Act (ADA). Design Build Entities shall be responsible for establishing and implementing an ADA program within the DBEs' workplace. Design Build Entities shall not discriminate against any prospective or active employee based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Any Design Build Entity selected for a contract in subsequent RFP shall cause the above provisions to be inserted in all subcontracts for any work covered by this RFP so that such provisions will be binding upon each subconsultant.

6.4. Public Records. All Proposals will become the property of OCERS and subject to the California Public Records Act, Government Code sections 6250, et seq. Those elements in a Proposal that are trade secrets as that term is defined in Civil Code section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" may not be subject to disclosure. OCERS shall not be liable or responsible for the disclosure of any such records including, without limitation, those so marked if disclosure is deemed to be required by law or by an order of the Court. A Design Build Entity that indiscriminately identifies all or most of its Proposal as exempt from disclosure without justification may be deemed nonresponsive. In the event OCERS is required to defend an action on a Public Records Act request for any of the contents of a Proposal marked "Confidential," "Proprietary," or "Trade Secret," the Design Build Entity agrees, by submission of its Proposal, to defend and indemnify OCERS from all costs and expenses, including attorneys' fees, in any action or liability arising under the Public Records Act.

ATTACHMENT 1
COST PROPOSAL FORM

[FORM ON THE FOLLOWING PAGE]

ATTACHMENT 1
COST PROPOSAL FORM
FOR RFP FOR DESIGN-BUILD SERVICES FOR THE
REPLACEMENT HEADQUARTERS PROJECT

Design Build Entities shall submit this Cost Proposal Form with their response to the RFP, by fully completing the following form. All line items shall be completed assuming the two phase scope of work more fully described in the RFP for the Predevelopment Phase and the Development Phase. All proposed amounts should be based on the assumed budget values set forth below. As further described in the RFP and the DB Contract all values proposed shall be incorporated in and consistent with the Final GMP for the Project:

Estimated Total DBE Budget for OCERS Headquarters Project \$55 Million Dollars

Item Description	Unit	Basis	Proposed Amount
I. PREDEVELOPMENT PHASE			
1. Lump Sum for Predevelopment Phase Services			\$ _____ Total Not to Exceed
i) Total <i>Design Costs for Predevelopment</i>			\$ _____
ii) Total <i>General Contractor Costs for Predevelopment</i>			\$ _____
II. DEVELOPMENT PHASE	Pricing to Assume an Estimated Construction Cost based on Total Budget above MINUS Proposer's Lump Sum for Predevelopment Phase		
1. Proposed Design Fee for Development Phase Services	%	Based on Estimated Construction Cost	_____ %
i) Additional breakdown may be inserted by Proposer			
2. Proposed General Contractor Costs for Development Phase Services			
i) Subcontractor Default Insurance	%	Based on direct trade cost	_____ %
ii) General Liability Insurance	%	Based on direct trade cost	_____ %
iii) GC Payment and Performance Bonds	%	Based on Estimated Construction Cost	_____ %

iv) GC Fee and Overhead	%	Based on Estimated Construction Cost	_____ %
III. LABOR RATES FOR ALL PHASES	Pricing to Assume Total Budget Above and Will Be Maintained for Project as well Allowable General Conditions/General Requirements in Final GMP		
1. Contractor Team Labor Rates			
Project Executive	Hr	Hourly rate level for project duration	\$ _____
Senior Project Manager	Hr	Hourly rate level for project duration	\$ _____
Assistant Project Manager	Hr	Hourly rate level for project duration	\$ _____
Project Engineer	Hr	Hourly rate level for project duration	\$ _____
Project Coordinator	Hr	Hourly rate level for project duration	\$ _____
Project Superintendent	Hr	Hourly rate level for project duration	\$ _____
Assistant Superintendent	Hr	Hourly rate level for project duration	\$ _____
Project Superintendent	Hr	Hourly rate level for project duration	\$ _____
Assistant Superintendent	Hr	Hourly rate level for project duration	\$ _____
IV. ADDITIONAL REQUESTED A/E TEAM FEE INFO FOR ALL PHASES	Pricing to Assume Total Budget Above		
All A/E Fees as percentage of GC Total Cost	%	GC cost. Include reimbursable allowance	_____ %
Fee through Schematic Design as percentage of all A/E Fees	%	Progress payment as portion of total	_____ %
Fee through Design Development as percentage of all A/E Fees	%	Progress payment as portion of total	_____ %
Fee through Construction Documents and Building Permits as percentage of all A/E Fees	%	Progress payment as portion of total	_____ %
Fee through Project Completion as percentage of all A/E Fees	%	Progress payment as portion of total	_____ %

Notes

A/E Fee to exclude commissioning

A/E Fee to exclude dry utility coordination

A/E Fee to exclude geotechnical engineering

A/E Fee to include LEED consulting

GC Fee to exclude Builder's Risk insurance

All fees exclude testing and inspection

ATTACHMENT 2
REQUIRED CERTIFICATIONS

[FORM ON THE FOLLOWING PAGE]

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing Proposal.

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

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

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

Name of Design Build Entity_____

Signature_____

Name_____

Title_____

**IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code section 2200 et seq.)**

As required by California Public Contract Code Section 2204, the Design Build Entity certifies subject to penalty for perjury that the option checked below relating to the Design Build Entity's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

The Design Build Entity is not:

(1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

OCERS has exempted the Design Build Entity from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, OCERS will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

The amount of the Contract payable to the Design Build Entity for the Project does not exceed \$1,000,000.

Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

FLEET COMPLIANCE CERTIFICATION

Design Build Entity hereby acknowledges that they have reviewed the California Air Resources Board’s policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the “Regulation”). Design Build Entity hereby certifies, subject to penalty for perjury, that the option checked below relating to the Design Build Entity’s fleet, and/or that of their subcontractor(s) (“Fleet”) is true and correct:

The Fleet is subject to the requirements of the Regulation, and the appropriate Certificate(s) of Reported Compliance have been attached hereto.

The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.

Design Build Entity and/or their subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Design Build Entity shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third party correspondence or vendor bids).

The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Design Build Entity shall only operate the exempted vehicles in the emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).

The Fleet does not fall under the Regulation or are otherwise exempted and a detailed reasoning is attached hereto.

Name of Design Build Entity: _____

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT 3
PROPOSAL SCORING

[FORM ON THE FOLLOWING PAGE]

PROPOSAL SCORING	
Scoring Category	Maximum Points
<p>Project Team Organization & Key Personnel. Design Build Entity has demonstrated that it has a DBE Team capable of performing all work, that maintains the required licenses, and is organized and includes key personnel with experience sufficient to manage and complete the Project.</p>	25
<p>Project Requirements / Enhancements. Design Build Entity has demonstrated an understanding of the Program and Site Feasibility Documents consistent with OCERS' vision for the Project.</p>	10
<p>Approach to the Work. Design Build Entity's approach to the work, including both construction and design, demonstrates that the Design Build Entity has competency and capability to complete Project, including, but not limited to demonstrating an understanding OCERS vision for the design of the Project through past similar projects.</p>	45
<p>Quality Control / Management Plan. Design Build Entity's quality control practices and plan demonstrate an understanding of its obligations for quality control and present a plan that reasonably mitigates potential project level issues.</p>	10
<p>Design & Construction Schedule Design Build Entity's proposed schedule is adequate and workable and demonstrates an ability to complete the Project within the OCERS' timeline..</p>	10
<p>Proposed Compensation (Cost Proposal Form). Design Build Entity's compensation is reasonable based on OCERS' experience with prevailing market conditions and the scope of Work to be performed.</p>	50
Maximum Total	150

ATTACHMENT 4
PROGRAM AND SITE FEASIBILITY DOCUMENTS

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

[INSERT PROGRAM AND SITE FEASIBILITY DOCUMENTS]

ATTACHMENT 5
FORM DB CONTRACT

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

**DESIGN BUILD CONTRACT
BY AND BETWEEN
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
AND [REDACTED]
REPLACEMENT HEADQUARTERS PROJECT)**

This DESIGN BUILD CONTRACT (“Contract”) is entered into and effective on [REDACTED] 2024 (“Effective Date”), by and between **Orange County Employees Retirement System**, a public entity organized under the laws of the State of California (“Agency”), and **@Design Build Entity**, a corporation organized under the laws of the State of [REDACTED] (“Design Build Entity”). Agency and Design Build Entity may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

- A. Agency owns and operates its administrative offices at 223 E. Wellington Avenue, Suite 100, Santa Ana, CA 92701 (“Site”) and desires to design and construct the Headquarters Project, as more specifically described in **Exhibit A (“Project”)**.
- B. Agency’s governing board (“Board”) has authorized Agency to solicit, and enter into a contract for design-build services with a qualified and appropriately licensed design-build entity to design and construct the Project based on the Project’s Program and Site Feasibility documents, that are attached to **Exhibit A as Attachment 1 (“Program and Site Feasibility Documents”)** and detailed Plans and Specifications (as defined below) prepared by the design-build entity, and approved by all relevant governmental authorities and Agency.
- C. On or about [REDACTED] 2023, Agency published a Request for Qualifications for Design Build Entities, attached hereto as **Exhibit J** and incorporated herein by reference (“RFQ”) to qualify contractors to be able to submit proposals to design and construction the Project, and after Agency qualified Design Build Entity, to the Agency issued a Request for Proposal for Design Build Services on or about February [REDACTED] 2024 attached hereto as **Exhibit K** and incorporated herein by reference (“RFP”). On or about on or about March [REDACTED] 2024, Design Build Entity submitted a proposal, which is attached hereto as **Exhibit L** and incorporated herein by reference (“Proposal”) and, based on Agency’s review and evaluation of the Proposal, Agency determined that Design Build Entity offered the best value to Agency to design and construct the Project.
- D. Agency desires that Design Build Entity design and construct the Project pursuant to the terms of this Contract, and Design Build Entity desires to design the Project consistent with the Target GMP (as defined below), solicit subcontractors for the project, and, if accepted by Agency, construct the Project within the final GMP (as defined below) and Contract Time (as defined below), and consistent with the Contract Documents (as defined below).
- E. Design Build Entity certifies and warrants that it has the experience, expertise, capability, training, and any certification(s) and/or license(s) necessary to perform all services required by the Contract Documents to fully design and construct the Project for compensation in an amount not-to-exceed the final GMP (as defined below) and within the Contract Time (as defined below), and that, if it is not sufficiently licensed to design any portion of the Work as required by applicable law, Design Build Entity shall directly hire a consultant with sufficient licensure to design that portion of the Work.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

AGREEMENT

- 1. **Incorporation of Recitals & Defined Terms.** This Contract shall be read in conjunction with all provisions of the Contract Documents (as defined below). Any capitalized term, title or phrase used in this Contract shall have the meaning provided in the Contract Documents, unless a specific meaning is contained in this Contract.

2. **Contract Price.** Design Build Entity shall furnish the Services or Work as further described in the Contract Documents to Agency in two main phases, the Predevelopment Phase and the Development Phase with the Contract Price established as follows:

2.1. Predevelopment Phase. The parties have mutually agreed that the Design Build Entity shall be entitled to the fixed **NOT TO EXCEED** price of [REDACTED] **Dollars** (\$ [REDACTED]) (“**Contract Price**”) for the Predevelopment Phase Services set forth herein.

2.2. Development Phase. Upon completion of the Predevelopment Phase services, the Design Build Entity shall prepare a proposed final **NOT TO EXCEED** guaranteed maximum price (“**Final GMP**”) for completion of all remaining design and construction services necessary to complete the Project. The Final GMP shall be memorialized in a separate mutually agreed upon written amendment to this Contract. The Design Build Entity acknowledges and agrees that this is a fixed-fee Contract and Design Build Entity shall not be entitled to any additional compensation unless expressly authorized by the Contract Documents. The Contract Price is broken down by stages as follows:

Stage	Total of Stage
Predevelopment Phase Services Compensation	\$ [REDACTED]
Target GMP for Development Phase Services (“Target GMP”) NOTE: Will be replaced with Final GMP (as defined below) after the Parties execute the GMP Amendment (as defined below)	\$ [REDACTED]

2.3. **Limitations on Contract Price on Effective Date.**

2.3.1. The Contract Price, as of the Effective Date, includes the cost for Predevelopment Phase Services. No portion of the Target GMP is payable unless and until the Agency accepts the Final GMP prepared by Design Build Entity and after Design Build Entity completes Predevelopment Phase Services and presents Agency with a proposed Final GMP to be incorporated into a mutually agreed upon written amendment to the Contract.

2.3.2. The Target GMP is only an estimate of the GMP and sets the cost parameters towards which Design Build Entity shall perform the Predevelopment Phase Services. The Target GMP may only be adjusted upon mutual agreement of the Parties consistent with the Contract Documents. If the Parties agree to a Final GMP, then the Parties will amend the Contract Documents to replace the Target GMP with the Final GMP accepted by Agency and Agency will issue a Notice to Proceed (as defined below) for Development Phase and all remaining Design Stage/Construction Stage Services.

2.3.3. Design Build Entity acknowledges and agrees that its compensation for the performance of the Predevelopment Phase Services is fixed as of the Effective Date, and that compensation for Development Phase Services authorized only after the Parties execute the Final GMP Amendment (as defined below) and the Agency issues a Notice to Proceed for such Services.

2.3.4. **DESIGN BUILD ENTITY UNDERSTANDS AND AGREES THAT AGENCY EXPRESSLY RESERVES THE RIGHT, IN ITS SOLE DETERMINATION, TO AGREE TO A FINAL GMP. DESIGN BUILD ENTITY FURTHER WARRANTS AND REPRESENTS THAT IT FULLY UNDERSTANDS AGENCY MAY TERMINATE THE WORK DURING ANY STAGE AND/OR MAY NOT AGREE TO THE PROPOSED FINAL GMP. IN ANY SUCH EVENT, AGENCY MAY OBTAIN ANY WORK FROM ANOTHER ENTITY IN AGENCY’S SOLE DISCRETION.**

2.3.5. **GMP.** The GMP includes the following costs for Construction Work:

- 2.3.5.1. **“Design Build Entity’s General Conditions”** means the costs for activities, facilities, and services required to support the Construction Stage for the Project and manage the Site, without mark-up, as identified in Design Build Entity’s proposal, which shall include only the items listed in Design Build Entity’s proposal.
- 2.3.5.2. **“Direct Cost of Work”** means all of Design Build Entity’s actual and direct costs of any Work performed, without mark-up. The Direct Cost of Work includes, as applicable:
- 2.3.5.2.1. Total Subcontractor(s)’ costs, fees and charges for Subcontractor performed Construction Stage Services, including bond costs, and all other costs necessary for Subcontractor(s) to perform Work pursuant to the Contract Documents; and
- 2.3.5.2.2. Total Design Build Entity’s costs, fees, charges for self-performed Construction Stage Services and all other costs necessary for Design Build Entity to perform such Work pursuant to the Contract Documents; and
- 2.3.5.3. **Design Costs.** All Design Build Entity’s Development Phase costs that the Parties agree are fixed as of the Effective Date of the Final GMP amendment once mutually agreed to by the parties in writing.
- 2.3.5.4. **Costs of Construction Administration.** The costs of construction administration during the Construction Stage.
- 2.3.5.5. **Design Build Entity’s General Conditions.** Design Build Entity’s General Conditions for the Construction Work, consistent with the detailed General Conditions presented with Design Build Entity’s proposal.
- 2.3.5.6. **Cost of Construction Work.** The Direct Cost of Work for Construction Stage Services.
- 2.3.5.7. **Bonds.** Performance Bond and Payment Bond costs calculated as the product of the percentage identified for bond costs applied to the Direct Cost of Work in Design Build Entity’s Final GMP proposal and amendment if executed.
- 2.3.5.8. **Insurance.** Design Build Entity and every Subcontractor must bid the Project to include the costs of the required insurance consistent with the requirements of the General Conditions of Contract (**Exhibit C**).
- 2.3.5.9. **Overhead and Profit.**
- 2.3.5.9.1. Design Build Entity’s mark-up for overhead and profit calculated as the product of the percentage identified for mark-up for overhead and profit applied to the Direct Cost of Work **and General Conditions** in Design Build Entity’s proposal. Overhead and profit shall be the full compensation owed to Design Build Entity for all mark-up for Direct Cost of Work. Design Build Entity shall not be entitled to apply mark-up for overhead and profit to any cost other than the Direct Cost of Work, unless otherwise provided in the Contract Documents.
- 2.3.5.9.2. Subcontractor’s mark-up for overhead and profit on Subcontractor performed work calculated as the product of the percentage identified for mark-up for overhead and profit applied to the Direct Cost of Work in Design Build Entity’s proposal
- 2.3.5.10. **Allowances.** Agency may either direct that an Allowance(s) be included in the GMP (Agency Allowance) or authorize Design-Build Entity’s inclusion of a requested Allowance(s) in the GMP (Design-Build Entity Allowance), in its sole and absolute

discretion and consistent with the Contract Documents. Design Build Entity allowances are not permitted in the GMP unless expressly authorized in writing by Agency prior to submission and/or acceptance of the Final GMP. Design Build Entity shall **NOT** be entitled to mark-up for bonds, insurance, and overhead and profit on the Direct Cost of Work for allowance(s). All allowances, if any, shall at all times remain the property of the Agency and any unused balances at the end of the Project shall be returned to the Agency.

- 2.3.5.11. **Contingency.** Agency may either direct and/or authorize the Design-Build Entity's inclusion of a requested Contingency(ies) in the GMP, in its sole and absolute discretion and consistent with the Contract Documents. Design Build Entity Contingencies are not permitted in the GMP unless expressly authorized in writing by Agency prior to submission and/or acceptance of the Final GMP. Design Build Entity shall **NOT** be entitled to mark-up for bonds, insurance, and overhead and profit on the Direct Cost of Work for Contingency(ies). All Contingencies, if any, shall at all times remain the property of the Agency and any unused balances at the end of the Project shall be returned to the Agency unless otherwise agreed to by the Agency as part of the Final GMP Amendment.

2.3.6. No Adjustment to GMP and Limitations on Escalation.

- 2.3.6.1. Unless otherwise provided in the Contract Documents, once Design Build Entity accepts the GMP, Design Build Entity shall not be entitled for any reason to any increase or decrease in the Contract Price for escalation or any other increased costs associated with the Construction Stage, including, without limitation, an increase to Design Build Entity's General Conditions or increase in Subcontractor costs, except as permitted in this section and the General Conditions of the Contract (**Exhibit C**).
- 2.3.6.2. **Escalation for General Conditions.** If, and only if, there is an unreasonable delay in the issuance of a Notice to Proceed for the Construction Stage, and to the extent such delay constitutes a Compensable Delay (as defined below), will Design Build Entity be entitled to additional payment for escalation of Design Build Entity's General Conditions. Design Build Entity must demonstrate to the reasonable satisfaction of Design Build Entity that specific, individual costs in Design Build Entity's General Conditions have increased, and that those increases correspond to the change in the current Consumer Price Index of the Bureau of Labor Statistic (Construction) applicable to the geographic area in which the Project is located for the time period in which the delay occurred. Design Build Entity shall only be entitled to the pro-rata difference between: (i) the price of each specific, individual costs of Design Build Entity's General Conditions that Design Build Entity demonstrated have escalated during the delay period; and (ii) the costs when the Parties initially established the GMP. Any additional compensation hereunder shall be conditioned upon Design Build Entity's compliance with all applicable provisions of the Contract Documents related to adjustments to the Contract Price and Contract Time.
- 2.3.6.3. **Subcontractor Escalation.** Design Build Entity shall not be entitled to additional payment for Subcontractor performed Construction Stage Services if the requested increase results from an escalation of Subcontractor costs compared to the Subcontractor's original bid during GMP Preparation (as defined below). Design Build Entity shall be entitled to such escalation costs only if: (i) the Work is suspended consistent with the provisions of the Contract Documents; and/or (ii) there is a delay in the issuance of a Notice to Proceed by Agency, or such similar notice from Design Build Entity to a Subcontractor not the fault of Design Build Entity or a Subcontractor. In either event, Design Build Entity must satisfy the requirements of the "Materials Escalation" section below if Design Build Entity seeks escalation costs for materials. Any additional compensation hereunder shall be conditioned upon Design Build Entity's compliance with all applicable provisions of the Contract Documents related to adjustments to the Contract Price and Contract Time. These provisions shall be included in any Subcontractor subcontract.

2.3.6.4. **Materials Escalation.** Design Build Entity may seek additional costs for escalation of materials after the establishment of the Final GMP, if, and only if, Design Build Entity demonstrates **all** the following conditions are satisfied:

2.3.6.4.1. **Condition 1.** Design Build Entity establishes that the escalation was caused by: (i) a force majeure as identified in the General Conditions of Contract (**Exhibit C**); or (ii) an event that would qualify as an event for Compensable Delay;

2.3.6.4.2. **Condition 2.** The escalated cost did not result from any action of Design Build Entity, including, without limitation, failing to properly or diligently plan, sequence, schedule, or coordinate the Work;

2.3.6.4.3. **Condition 3.** Design Build Entity timely ordered and/or purchased the materials at issue;

2.3.6.4.4. **Condition 4.** Design Build Entity's material costs, as reflected in Subcontractor bids, were reasonable at the time that Design Build Entity solicited Subcontractors during the Subcontractor Procurement Process;

2.3.6.4.5. **Condition 5.** The escalation of a particular material is significant. The term "significant" herein shall mean when the price of an item increases by 3% or more from the later of the following: (i) the date Design Build Entity Accepts the GMP; or (ii) the date that Design Build Entity enters a subcontract with a Subcontractor purchasing the material or a contract with a supplier to furnish that material.

2.3.6.4.6. **Condition 6.** Design Build Entity demonstrates an actual increase in the cost of materials after the Parties agreed to the GMP reflected in Design Build Entity's material cost paid either at time of purchase or delivery, whichever is earlier;

2.3.6.4.7. **Condition 7.** An actual price increase has occurred and can be substantiated by the Engineering News-Record 20-City Average Material Cost Index for the material at issue that demonstrates the increase in price of the material during the period of the delay; **and**

2.3.6.4.8. **Condition 8.** Design Build Entity complies with all procedures applicable to Change Orders or Claims.

If Design Build Entity satisfies all these conditions, Design Build Entity shall be entitled to compensation for demonstrated escalation costs. The escalation shall be calculated as the difference between the costs Design Build Entity would have paid, and the escalated costs of materials. Design Build Entity shall require that all subcontracts with Subcontractors include this provision, or that all Subcontractors review, acknowledge, and agree to these requirements.

3. **The Work.** Payment of the above Contract Price shall be Design Build Entity's total compensation to perform all Work for the Project pursuant to the requirements of the Contract Documents, which are part of the Project to engineer, design, procure, demolish, construct, install, program, field test and commission the Project ("**Services**" or "**Work**"):

3.1. Design.

3.1.1. Definitions.

- 3.1.1.1. The term “**Drawings**” shall mean the graphic and pictorial portions of the deliverables produced by Design Build Entity during the Design Stage showing the design, location, and dimensions of the Work, generally including, without limitation, plans, elevations, sections, details, schedules, and diagrams.
- 3.1.1.2. The term “**Specifications**” shall mean the written requirements that complement the Drawings for materials, equipment, systems, standards, execution, and workmanship for the Construction Stage Services, and performance of related services. The Specifications include both the “**Technical Specifications**” (Divisions 2-49) and the “**Division 1 Specifications**” (General Requirements). The Specifications are included in the Construction Documents and prepared by Design Build Entity and approved by Agency.
- 3.1.1.3. The term “**Construction Documents**” (or “**Plans and Specifications**” or “**CD(s)**”) shall mean means the final, permitted Drawings and Specifications, as well as shop drawings, reports, schedules, diagrams, and samples, fully completed by Design Build Entity that Design Build Entity shall utilize to perform the Construction Stage Services for the Project, and that: (i) comply with all requirements of the Contract Documents; (ii) are approved by Design Build Entity’s architect of record and applicable subconsultants; (iii) are accepted by Agency (as applicable); and (iv) have received all required approvals and permits from authorities having jurisdiction over the Project (as applicable).
- 3.1.2. **General Description of Design Services.** The Early Design Stage, Schematic Design Stage, Design Development Stage, 50% Construction Documents Stage and 100% Construction Documents Stage, and GMP Preparation, as further described in **Exhibit B**, may be referred to collectively as “**Design Stage Services**” or the “**Design Stage**”.
- 3.2. **Build (Construction Stage).** Design Build Entity shall be responsible for the construction, programming, field testing and commissioning of the Project at the Site, including, without limitation, incorporating and ensuring compatibility of all appurtenant and necessary components for a complete and fully operational system(s). All the work of the Project shall be based on the Construction Documents that are to be reviewed by Agency and, if required, approved by all governmental authorities having jurisdiction over the Project (“**AHJ(s)**”). This portion of the Work may be referred to as the “**Construction Stage**” and/or “**Construction Stage Services**”.
4. **Contract Price Breakdown / Contract Time / Project Schedule.** The Work established by the Final GMP amendment will be performed in phases as identified in **Exhibit D** with the Contract Price payable in each phase consistent with the requirements of the Contract, including, without limitation, the General Conditions of Contract (**Exhibit C**). Work for the Project and each milestone shall be completed within the time specified in **Exhibit D** attached hereto (“**Project Schedule**”) from the date specified in Agency’s Notice(s) to Proceed (as defined below), as applicable to the Project or milestone. The time for the performance of the Work, or portion thereof, shall be the “**Contract Time**,” which shall only be adjusted consistent with the terms of the Contract Documents.
5. **Contract Documents**
- 5.1. **Intent.** The Contract Documents (as defined below) are complementary, intended to be read cooperatively, and what is required by one shall be as binding as if required by all. Design Build Entity shall be required to perform any work to the extent consistent with, and reasonably inferable from, the Contract Documents.
- 5.2. **Contract Documents and Interpretation (Order of Precedence).** The Contract includes only the documents listed below, which are incorporated herein by this reference (“**Contract Documents**”). By signing this Contract, Design Build Entity agrees to comply with all Contract Documents. The Contract Documents are listed below in order of precedence and if there is a conflict between terms of the Contract Documents, that order of precedence shall apply:
- 5.2.1. Authorized changes to the Contract, the most recent taking priority, including, without limitation, amendments and Change Orders;

- 5.2.2. **Exhibit G** (List of Plans and Specifications), in the following order:
 - 5.2.2.1. Division 1 Specifications
 - 5.2.2.2. Technical Specifications
 - 5.2.2.3. Drawings
 - 5.2.3. Contract
 - 5.2.4. **Exhibit C** (General Conditions)
 - 5.2.5. **Exhibit B** (Design Stage Services Scope of Work)
 - 5.2.6. **Exhibit A** (Description of Project & Bridging Documents)
 - 5.2.7. **Exhibit H** (Subcontractor Procurement Process)
 - 5.2.8. **Exhibit K** (RFP)
 - 5.2.9. **Exhibit J** (RFQ)
 - 5.2.10. All remaining Contract Documents (in no particular order)
 - 5.2.10.1. **Exhibit D** (Project Schedule)
 - 5.2.10.2. **Exhibit E** (Construction Cost Worksheet) (“**Construction Cost Worksheet**”)
 - 5.2.10.3. **Exhibit F** (Agency’s Rules and Regulations)
 - 5.2.10.4. **Exhibit I** (Bonds & Certifications)
 - 5.2.10.4.1. Non-collusion Declaration
 - 5.2.10.4.2. Prevailing Wage Certification
 - 5.2.10.4.3. Workers’ Compensation Certification
 - 5.2.10.4.4. Public Works Contractor Registration Certification
 - 5.2.10.4.5. Certification Regarding Workers’ Compensation
 - 5.2.10.4.6. Drug-Free Workplace / Tobacco-Free Environment Certification
 - 5.2.10.4.7. Asbestos & Other Hazardous Materials Certification
 - 5.2.10.4.8. Conflict of Interest Certification
 - 5.2.10.4.9. Iran Contracting Act Certification
 - 5.2.10.4.10. Executive Order N-6-22 Certification
 - 5.2.10.4.11. Performance Bond (Agency’s Form)
 - 5.2.10.4.12. Payment Bond (Agency’s Form)
 - 5.2.10.4.13. Insurance Certificates and Endorsements
- 5.3. **Technical Specifications and Drawings.** With respect to the Technical Specifications and Drawings, the most recent, Agency-accepted shall take priority; provided, however, that the Construction Documents shall take priority over all other Drawings and Specifications.
- 5.4. **No Order Indicated / Conflict.** Where no order of precedence is stated, or in cases of conflict, the greater quantity and/or higher standard of workmanship shall apply unless Agency expressly accepts in writing a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of Agency in the matter shall be final. If it is not possible to determine the greater quantity and/or higher standard of workmanship, the more expensive of the requirements shown or specified shall be controlling.
- 5.5. **Differences from Solicitation Documents.** The Parties acknowledge that the Contract Documents may differ in some respect(s) from the RFQ, RFP, Proposal, and documents attached thereto. The Proposal is **NOT** is not part of the Contract Documents and is attached hereto for reference only. Unless agreed to in writing by the Parties, the Design-Built Entity’s Proposal shall not prevail over any contrary provision in the Contract Documents.
- 5.6. **Interpretive Provisions.**
- 5.6.1. Unless otherwise stated in the Contract Documents, technical words and abbreviations are used in accordance with commonly understood design/engineering and construction industry meanings. Non-technical words and abbreviations are used in accordance with their commonly understood meanings.
 - 5.6.2. The Contract Documents may omit modifying words such as “all” and “any” and articles such as “the” and “an” but the fact that a modifier or an article is absent from one statement and appears in

another is not intended to affect the interpretation of either statement. The use of the word “including” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”, “but not limited to”, or words of similar import) is used, but shall instead be read as including non-limiting language and be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of that general statement.

- 5.6.3. The terms “shall”, “will”, or “must” are mandatory and “may” is permissive.
- 5.6.4. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- 5.7. **Integration/ Modification.** The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of Agency and Design Build Entity. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.
6. **Notice(s) to Proceed (NTP(s)).** Agency will issue one or more notice(s) to proceed (“**Notice(s) to Proceed**” or “**NTP(s)**”) for the Predevelopment Phase Services, and a Notice(s) to Proceed for Construction Stage Services, at which time Design Build Entity shall proceed with the Work. For Construction Stage Services, Agency reserves the right to issue a Notice to Proceed for construction for each Site individually, for a group of Site, or for all Site, in its sole discretion. If Agency issues a Notice to Proceed for each Site individually or for a group of Site, the Parties shall make necessary adjustments to the Project Schedule, and amend this Contract accordingly. Agency reserves the right to issue one or more Notice(s) to Proceed for stage of the Project, or a portion thereof. The Parties specifically acknowledge that any Work which requires AHJ approval shall not commence until all AHJ approval(s) has(ve) been obtained. Design Build Entity shall only be authorized to perform Work as indicated in the particular Notice to Proceed. The time to complete the Work authorized by a particular Notice to Proceed shall be as indicated in the Notice to Proceed.
7. **Liquidated Damages.** Time is of the essence for all Work to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that Agency will sustain in the event of and by reason of Design Build Entity's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Design Build Entity shall forfeit and pay to Agency the following sum(s) as liquidated damages (“**Liquidated Damages**”):
- 7.1. **Submittal of Any Item on Project Schedule for Predevelopment Phase. One Thousand Dollars (\$1,000)** per day as Liquidated Damages for each and every day's delay beyond the time herein prescribed for each item on approved Project Schedule for the Predevelopment Phase Services.
- 7.2. **Project Completion.** A mutually agreed upon amount per day shall be established and memorialized in the Final GMP amendment as Liquidated Damages for each and every day's delay beyond the Contract Time to complete all the Work at the Site. If there are different deadlines for completion of the Work at an individual Site(s), or group of Sites, as set forth in the Project Schedule, Agency may assess liquidated damages cumulatively as set forth below if Design Build Entity fails to complete all the Work for the individual Site(s), or group of Sites, within the Contract Time as applicable.
- 7.3. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Design Build Entity is late in completing two milestones and the entire Project, Design Build Entity will forfeit and pay three separate Liquidated Damages amounts.

- 7.4. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount, nor any portion of the Liquidated Damage amount, are penalties.
- 7.5. Agency may deduct Liquidated Damages from money due or that may become due Design Build Entity under this Contract. Design Build Entity's forfeiture of Liquidated Damages to Agency, and Agency's right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
- 7.6. Liquidated Damages are automatically, and without notice of any kind, forfeited and payable by Design Build Entity upon the accrual of each day of delay. Neither Agency's failure nor delay in deducting Liquidated Damages from payments otherwise due Design Build Entity, nor Agency's failure or delay in notifying Design Build Entity of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of Agency's right to Liquidated Damages and/or Agency's right to withhold Liquidated Damages from any amounts that would otherwise be payable to Design Build Entity.
- 7.7. Design Build Entity and its surety shall be liable for and pay to Agency the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by Agency.
- 7.8. Liquidated Damages shall be in addition, and not in lieu of, Agency's right to charge Design Build Entity for Agency's cost of completing or correcting items of the Work.

Initials: **Agency** _____ **Design Build Entity** _____

- 8. **Insurance/Bonds.** Design Build Entity shall not commence any Work under this Contract until Design Build Entity has submitted and Agency has approved the endorsement(s) of insurance required under the General Conditions of Contract (**Exhibit C**) and Agency has issued a Notice to Proceed. Design Build Entity shall not perform any Work during the Construction Stage until Design Build Entity has submitted and Agency has approved the performance bond and the payment (labor and material) bonds. Design Build Entity shall submit updated bonds as the Parties include compensation for additional Construction Stage Services of the Project.
- 9. **CEQA.** Agency and Design Build Entity recognize that the Project activities contemplated by this Contract are subject to environmental review under the California Environmental Quality Act ("CEQA"), and that Agency, for the Project and its future use, must comply with the CEQA requirements as set forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. ("**CEQA Guidelines**"). Pursuant to CEQA Guidelines Section 15004(b)(2)(A), the Parties acknowledge that (i) approval and execution of this Contract by the Parties does not constitute Agency authorizing, approving, or awarding a "project" as defined by CEQA, and (ii) the Construction Stage of the Project shall not commence until Agency's Board provides Design Build Entity with a specific notice to proceed authorizing construction activity. In the event Agency does not issue such a Notice to Proceed authorizing construction activity and instead issues a notice of suspension or notice of termination, Agency will pay for Design Build Entity's undisputed and documented design and/or planning services rendered to the date of that notice.
- 10. **CARB Compliance.** To the extent applicable, Design Build Entity, shall comply, and shall ensure all subcontractors comply, with all requirements of the most current version of the California Air Resources Board ("**CARB**") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("**Regulation**").
 - 10.1. Throughout Project, and for three (3) years thereafter, Design Build Entity shall make available for inspection and copying any and all documents or information associated with Design Build Entity's and subcontractors' fleet including, without limitation, the CRCs, fuel/refueling records, maintenance records, emissions records, and any other information the Design Build Entity is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the Agency.

- 10.2. Design Build Entity shall be solely liable for any and all costs associated with complying with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Design Build Entity shall defend, indemnify and hold harmless the Agency, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation.
11. **Inspector of Record.** Design Build Entity hereby acknowledges that Agency may retain a Project Inspector(s) (“**Inspector**” or “**IOR**”) and, to the extent applicable to the scope of work, the Agency and IOR have authority to approve and/or stop Work if Design Build Entity’s Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, or all applicable laws. Design Build Entity shall be liable for any delay caused and extra work required by its non-compliant Work. Design Build Entity shall not be liable for delay to the extent caused by Agency or its agents.
12. **Inspection of Work.** Inspection and acceptance of the Work shall be performed by:
- 12.1. The Inspector with whom Agency will contract at or prior to Design Build Entity’s commencement of construction of the Project;
- 12.2. The director of construction for Agency and/or designee (“**Agency Representative**”);
- 12.3. Agency’s program architect (“**Architect**”), if applicable.
13. **Construction Management.** Design Build Entity recognizes that Agency reserves the right to obtain the services of a construction manager (“**Construction Manager**”) for this Project. The Construction Manager, if any, would be authorized to give Design Build Entity Services authorizations, and issue written approvals and Notices to Proceed on behalf of Agency. Agency reserves the right to designate a different Construction Manager at any time. Agency shall provide forty-eight (48) hours’ notice to Design Build Entity if Agency designates a different Construction Manager. Any task, including, but not limited to, reviews or approvals that Agency may perform pursuant to this Contract may be performed by the Construction Manager, unless that task indicates it shall be performed by Agency’s Board.
14. **Key Personnel.** The following individuals are Design Build Entity’s key personnel, none of whom can be replaced unless approved by Agency as provided herein (such approval not to be unreasonably withheld or delayed):

Project Director	
Estimator (Subcontractor Bidding)	
Superintendent	
Design Principal-in-Charge	
Design Project Manager	
Project Architect	
Structural	
Civil	
Landscape Architect	
Mechanical & Plumbing	
Electrical	

15. **Classification of Design Build Entity’s License.** Design Build Entity hereby acknowledges that it currently holds valid [redacted] Contractor’s license(s) issued by the State of California, Contractor’s State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
16. **Authority of Design Build Entity’s Representative.** Design Build Entity hereby certifies that its legal representative(s) on the Project and the person(s) it employees on the Project at or above the level of project

superintendent, each have the authority to act on behalf of and bind Design Build Entity; provided, however, that such employees have no authority whatsoever to bind Design Build Entity by way of oral agreement.

17. **Certification.** By signing the Contract, the Parties certify, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge at the time it signs the Contract. If, at any time after signing the Contract, it becomes known that the information provided in the Contract is no longer true, complete, and correct, each Party shall have a duty to provide the updated or differing information.
18. **Notice.** Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

AGENCY

Orange County Employees Retirement System

[Redacted]

ATTN: [Redacted]

Email: : [Redacted]

With a copy to:

Tyree Dorward, Esq.
 Best Best & Krieger
 655 W Broadway
 San Diego, CA 92101
 Email: Tyree.Dorward@bbklaw.com

DESIGN-BUILD ENTITY

@Design Build Entity

[Redacted]

ATTN: [Redacted]

Email: : [Redacted]

With a copy to:

[Redacted]
 [Redacted]
 [Redacted]
 ATTN: [Redacted]
 Email: : [Redacted]

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

19. **Information regarding Design Build Entity.**

- Type of Business Entity:
- Individual
 - Sole Proprietorship
 - Partnership
 - Limited Partnership
 - Corporation
 - Limited Liability Company
 - Other: _____

<p>Employer Identification and/or Social Security Number</p> <p>NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, Agency requires your federal tax identification number or Social Security number, whichever is applicable.</p>
--

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2022

Dated: _____, 2022

Orange County Employees Retirement System

Signature: _____
Print Name: _____
Print Title: _____
Address: _____

Telephone: _____
E-Mail: _____

@Design Build Entity

Signature: _____
Print Name: _____
Print Title: _____
CA Contractor License No.: _____
Architect License: _____
Engineer License: _____
DIR Registration No.: _____
Design Build Entity Local Representative:
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

Subcontractor License Information

Architect License: _____

Mechanical Engineer License: _____

Electrical Engineer License: _____

EXHIBIT A

DESCRIPTION OF PROJECT & SCOPE OF WORK

- 1. General Description.** Design Build Entity shall perform all Work to design and construct the Project pursuant to the Contract Documents and subject to this **Exhibit A**. The Design Build Entity's initial scope of work for the Predevelopment Phase Services for the fixed, not to exceed fee, set forth in the Contract, shall be as attached hereto in **Attachment 1**.
- 2. Description of the Project.** The Project generally consists of the design and construction of the following:
 - 2.1. OCERS desires to construct on the Land a new headquarters office building which will encompass a two-story office building of approximately 71,000 square feet, to include a board room with public seating capacity of 70 persons and on-site surface parking.
- 3. Program and Site Feasibility Documents.** Agency has attached the Program and Site Feasibility Documents in **Attachment 2** to this **Exhibit A**. Design Build Entity's Predevelopment Phase and Development Phase Services shall at all times be consistent with the Program and Site Feasibility documents unless otherwise approved in writing by the Agency. Any conflicts between and deliverable prepared by Design Build Entity, including the final Drawings and Specifications, shall be corrected at no cost to Agency.

DRAFT

ATTACHMENT 1
TO EXHIBIT A

PREDEVELOPMENT PHASE SCOPE OF WORK

[To be Attached]

DRAFT

ATTACHMENT 2
TO EXHIBIT A

PROGRAM AND SITE FEASIBILITY DOCUMENTS

[Begins on the Following Page]

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EXHIBIT B**DESIGN STAGE SERVICES SCOPE OF WORK****1. Design Services**

- 1.1. This **Exhibit B** sets forth Design Build Entity's obligations for Design Services for both the Predevelopment Phase Services and the Development Phase Services, subject to any limitation on approvals as set forth in the Contract Documents.
- 1.2. During the Design Stage and during the Construction Stage of the Project, Design Build Entity will meet with Agency to review the Program and Site Feasibility Documents, the Predevelopment Phase deliverables, the Project Schedule, conceptual documents, quality assurance plan and the basis of design.
- 1.3. During the Design Stage and during the Construction Stage of the Project, Design Build Entity will meet with Agency to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.
- 1.4. During the Work, and at least weekly, Design Build Entity will meet so that Design Build Entity may provide reports to Agency of the general status and progress of the Work, and to review the general status and progress of the Work.
- 1.5. Although the Parties acknowledge that Design Build Entity's Services are not completely severable between design, procurement, installation, construction, commissioning, and training, the following scope of Services will be generally referred to as the Services or Work that Design Build Entity shall perform during the Design Stage and, when the Design Stage is associated with construction, some of that Work during the Construction Stage of the Project, as applicable based on the Project as indicated in and consistent with the Construction Documents.

1.6. Scope, Responsibilities, and Services of Design Build Entity

- 1.6.1. Design Build Entity shall provide Services that shall comply with professional engineering standards, recognized industry standards professional skill and judgment, and applicable requirements of federal, state, and local law. Design Build Entity shall, at its sole cost and expense, perform any Design Services to correct errors and/or omissions in any deliverable submitted to Agency, or to perform revisions requested by Agency as allowed by the Contract Documents.
- 1.6.2. Design Build Entity agrees to design and construct the Project in consideration for Agency's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of the Contract Documents.
- 1.6.3. To the extent not already performed by Design Build Entity during the solicitation process for the Project, Design Build Entity shall utilize building components that provide Agency the best value based on initial cost, life expectancy, cost of operation and maintenance.
- 1.6.4. Design Build Entity shall prepare and update at each document submittal milestone the detailed estimates of cost of construction to substantiate that the Project will not exceed the Contract Price.
- 1.6.5. Prepare and update monthly the detailed Project Schedule to confirm the Project delivery within the milestones in **Exhibit D**.
- 1.6.6. Design Build Entity acknowledges that all California public entities are now obligated to develop and implement storm water requirements.
- 1.6.7. Design Build Entity is responsible to include in its schedule Agency quality assurance reviews of deliverables prepared during Design Stage Services.

- 1.6.8. During the course of the Work, upon Agency's reasonable request, Design Build Entity shall provide reports to Agency of the general status and progress of the Work appropriate for dissemination to community and end-users. Reports shall cover, without limitation, budget, schedule, scope, quality and communication.
- 1.6.9. Design Build Entity shall receive written approval by Agency before proceeding further with the Design Stage and during the Construction Stage.
- 1.6.10. Design Build Entity is to design the Project towards, and not-to-exceed, the Target GMP. At the conclusion of each stage of the Design Stage, Design Build Entity shall prepare and submit to Agency an estimate for the cost of the Construction Stage of the Project ("**Cost Estimate**"). Design Build Entity acknowledges that the purpose of the estimate(s) is to ensure that the cost of the Construction Stage Services shall not exceed the Target GMP. If there is a Contingency, Contingency preparation and use shall comply with the Contract Documents. If at any time during Design Stage Services, Design Build Entity believes that the cost of Construction Stage Services shall exceed the cost indicated in the Contract Price, Design Build Entity shall immediately notify Agency. **IF, AT ANY TIME, DESIGN BUILD ENTITY'S COST ESTIMATE(S) SUBMITTED TO AGENCY EXCEEDS THE TARGET GMP, THEN DESIGN-BUILD ENTITY SHALL REDESIGN THE PROJECT CONSISTENT WITH THE SCOPE OF THE PROGRAM AND SITE FEASIBILITY DOCUMENTS TO BRING THE COST ESTIMATE INTO ALIGNMENT WITH THE TARGET GMP AT NO ADDITIONAL COST TO AGENCY; PROVIDED, HOWEVER, THAT DESIGN-BUILT ENTITY MAY BE ENTITLED TO ADDITIONAL COMPENSATION FOR DESIGN SERVICES IF THE AGENCY MATERIALLY INCREASES THE SCOPE OF WORK FOR THE PROJECT AFTER THE EFFECTIVE DATE.**
- 1.6.11. Design Build Entity shall maintain consistency of formatting all documents during the Design Stage and during the Construction Stage throughout for all engineering disciplines and subcontractors.
- 1.6.12. Design Build Entity shall contract for or employ at Design Build Entity's expense, consultant(s) necessary for completion of its Services on the Project which may include architects, mechanical, electrical, and structural, as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between Agency and any consultant employed by Design Build Entity under terms of the Contract.
- 1.6.13. Design Build Entity is responsible for all areas of contract administration, including but not limited to Document Controls, Project Cost Controls, Project Scope control, Schedules, Communication, Quality Assurance and Control, and Value-Engineering Studies (if applicable). All documents shall be available to Agency in PDF digital format. Design Build Entity shall review on going contract administration and deliverables during the Construction Stage with Agency prior to commencement of any construction Work. Submittals and documents submitted by Design Build Entity shall be in a format accessible by Agency.
- 1.6.14. Agency shall provide to Design Build Entity information and documentation that Agency currently has related to the Site including geotechnical reports, topographic surveys, and related items. If Design Build Entity believes that the information or documentation Agency provides is insufficient for purposes of design or if Design Build Entity believes it needs additional information, including a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other tests reasonably related to performance of the Project, Design Build Entity shall inform Agency of that fact and the Parties shall mutually agree on the items required and the process and responsibility to procure those items.

- 1.6.15. Design Build Entity shall coordinate with Agency personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by Agency for the design, coordination, or management of other work on the Site.
- 1.6.16. Where applicable, Design Build Entity shall identify authorities having jurisdiction over essential building and design elements and coordinate with and implement the requirements of AHJs or their authorized agents, including, without limitation, State and local fire marshal(s) or departments, county and city health inspectors and any regulatory office or agency that has authority for review and supervision of the Project or Site.
- 1.6.17. As required, Design Build Entity shall provide Services required to obtain authorities having jurisdiction's (e.g., City, County, etc.) approval for off-Site work related to the Project, if applicable.
- 1.6.18. Design Build Entity shall coordinate with all Inspector(s).
- 1.6.19. Design Build Entity shall use reasonable efforts to provide pictures downloaded to computer files, updated as requested by Agency, that Agency may use on its website. Pictures shall be limited to Design Build Entity's Project scope.
- 1.6.20. Design Build Entity Deliverables shall include but are not limited to the following:

1.1.1.1. Design Stage Deliverables

- 1.1.1.1.1. Construction Documents (50% and 100%) at time of submittal to the applicable authority having jurisdiction;
- 1.1.1.1.2. Cost Estimates with supporting cost documentation;
- 1.1.1.1.3. Final, approved Construction Documents;
- 1.1.1.1.4. At 100% Construction Documents, Design Build Entity shall provide an updated final Cost Estimate to perform Construction Stage Services for the Project with documentation supporting that cost, broken down by scope of work (Subcontractor and self-performed), line-item cost for Design Build Entity's General Conditions, and mark-ups;
- 1.1.1.1.5. Final Project Schedule and, if applicable, phasing plan for Construction Stage; and
- 1.1.1.1.6. Schedule of Values

1.1.1.2. Construction Stage Deliverables:

- 1.1.1.2.1. Project Management Plan
 - 1.1.1.2.1.1. Update as required
- 1.1.1.2.2. Site Specific Safety Plan
 - 1.1.1.2.2.1. Safety Site Inspections
 - 1.1.1.2.2.2. Site Inspections
- 1.1.1.2.3. Monthly Project status report with progress photos, every month.

1.1.2. As part of the Services, Design Build Entity is **NOT** responsible for the following, however, it shall coordinate and integrate its Work with any of the following information and/or services provided by Agency:

1.1.2.1. Ground contamination or hazardous material analysis.

1.1.2.2. Any asbestos and/or lead and/or any other Environmentally Regulated Materials (ERM) testing, specifications, design, or reports.

1.1.2.3. Inspector Fees.

1.2. Design Build Entity Staff

1.2.1. Design Build Entity has been selected to perform the Services herein because of its skills and expertise.

1.2.2. Design Build Entity shall not change any of the key personnel without prior written approval by Agency, unless said personnel cease to be employed by Design Build Entity. In either case, Agency shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld or delayed.

1.2.3. If any designated lead or key person fails to perform to the reasonable satisfaction of Agency, then upon written notice Design Build Entity shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to Agency.

1.2.4. Design Build Entity agrees that any Drawings and/or Specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

1.3. Ownership of Data

1.3.1. The Contract creates a non-exclusive and perpetual license for Agency to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that Design Build Entity or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Work.

1.3.2. Design Build Entity retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Design Build Entity or its consultants prepares or causes to be prepared pursuant to this Contract.

1.3.3. Design Build Entity shall perform the Services and prepare design documents under the Contract with the assistance of Computer Aided Design Drafting ("CADD") (e.g., Revit or AutoCAD) Technology, utilizing a program suite acceptable to the Agency. Design Build Entity shall deliver the design documents to Agency, on request, in a "thumb" drive, and/or compact disc format, and compatible with AutoCAD 2020 (not .pdf), or a more recent version if available. As to any drawings that Design Build Entity provides in a CADD file format, Agency acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that Agency should rely on hard copies of all documents.

1.3.4. In order to document exactly what CADD information was given to Agency, Design Build Entity and Agency shall each sign a "hard" copy of reproducible documents that depict the information at the time Design Build Entity produces the CADD information. Agency agrees to release Design Build Entity from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Design Build Entity or Consultant(s) subsequent to it being given to Agency.

1.3.5. Following the termination of the Contract, for any reason whatsoever, Design Build Entity shall promptly deliver to Agency upon written request the following items (“**Instruments of Service**”) in electronic format (Microsoft Word), assuming Agency has made all payments to Design Build Entity as required by the termination provisions in this Contract.

1.3.5.1. One set of the Contract, including the bidding requirements, Specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

1.3.5.2. Where applicable, one set of fixed image CADD files in DXF format of the Drawings that are part of the Contract.

1.3.5.3. Where applicable, one set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.

1.3.5.4. All finished or unfinished documents, studies, reports, calculations, Drawings, maps, models, photographs, and reports prepared by Design Build Entity under the Contract.

1.3.6. In the event Agency changes or uses any fully or partially completed documents without Design Build Entity’s knowledge and participation, Agency agrees to release Design Build Entity of responsibility for such changes, and shall indemnify, defend and hold Design Build Entity harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys’ fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent Design Build Entity is found to be liable in a forum of competent jurisdiction. In the event Agency uses any fully or partially completed documents without Design Build Entity’s full involvement, Agency shall remove all title blocks and other information that might identify Design Build Entity and Design Build Entity’s consultants.

1.4. **Certificate of Design Build Entity.** Design Build Entity certifies that Design Build Entity is properly licensed under the laws and regulations of the State of California to provide the professional Services that it has herein agreed to perform.

2. **Scope of Design Stage Services**

2.1. **Early Design Stage.** Design Build Entity agrees to provide the services for the Early Design Stage as described below:

2.1.1. Design Build Entity shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Design Build Entity under the Contract, as well as coordination with all Master plans, studies, reports and other information provided by Agency. Design Build Entity shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.

2.1.2. Agency shall provide all information available to it to the extent the information relates to Design Build Entity’s scope of work. This information shall include, if available:

2.1.2.1. Physical characteristics;

2.1.2.2. Legal limitations and utility locations for the Project site(s);

2.1.2.3. Written legal description(s) of the Project site(s);

2.1.2.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;

- 2.1.2.5. Adjacent drainage;
- 2.1.2.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
- 2.1.2.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
- 2.1.2.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
- 2.1.2.9. Surveys, reports, as-built drawings;
- 2.1.2.10. Subsoil data, chemical data, and other data logs of borings;
- 2.1.3. Design Build Entity shall Visually Verify this information and all existing utilities and systems related to the Project, including capacity, and document the location of existing utility lines, vents, telephone, water, sewage, storm drains and other lines on or around the Project to the extent determinable by the documents provided by Agency.
- 2.1.4. Design Build Entity shall prepare and submit three complete conceptual design options with pricing of the project including site plan and building massing.
- 2.1.5. **Schematic Design Stage.** Upon Agency's acceptance of Design Build Entity's Work in the Early Design Stage and assuming Agency has not delayed or terminated the Contract, Design Build Entity shall prepare a set of Schematic Design documents for review by Agency ("**Schematic Design Stage**"), containing the following items as applicable to the Project scope:
 - 2.1.5.1. Prepare and review with Agency staff a scope of Work list and Work plan identifying specific tasks including, but not limited to: interviews, data collection, analysis, report preparation, planning, architectural programming, demolition, concepts and schematic design preparation and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities of Design Build Entity, required completion times necessary for the review and approval by Agency and by pertinent regulatory agencies and additional definition of deliverables.
 - 2.1.5.2. Design Build Entity to provide furnishing and fixture design.
 - 2.1.5.3. Review the developed Work plan with Agency and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.
 - 2.1.5.4. Quality Management Plan
 - 2.1.5.5. Risk Management and Issues Log
- 2.1.6. **Architectural**
 - 2.1.6.1. Scaled floor plans showing overall dimensions, identifying the various major areas and their relationship. Include circulation and room-by-room tabulation of all net usable floor areas and a summary of gross floor area. Also, provide typical layouts of major equipment or operational layout.
 - 2.1.6.2. Preliminary building exterior elevations and sections in sufficient detail to demonstrate design concept indicating location and size of fenestration.

2.1.6.3. As applicable, identify proposed roof system, deck, insulation system, and drainage technique.

2.1.6.4. Identify on the floor plans all door sizes and swings, interior and exterior window locations and sizes, and the use of movable partitions or other unique openings.

2.1.6.5. Identify minimum finish requirements, including ceiling, floors, walls, doors, windows, and types of hardware.

2.1.6.6. Identify code requirements, include occupancy classification(s) and type of construction.

2.1.7. Structural

2.1.7.1. Layout structural systems with dimensions and floor elevations. Identify structural systems (including pre-cast, structural steel with composite deck, structural steel bar joists, post and beams, and sheer walls); with preliminary sizing identified.

2.1.7.2. Identify foundation systems (including fill requirements, piles, caissons, spread footings); with preliminary sizing identified.

2.1.8. Mechanical

2.1.8.1. Calculate block heating, ventilation, and cooling loads including skin versus internal loading.

2.1.8.2. Select a minimum of two (2) HVAC systems that appear compatible with loading conditions for subsequent life cycle costing.

2.1.8.3. Show selected system on Drawings as follows:

2.1.8.3.1. Single line drawing(s) of all mechanical equipment spaces, ductwork and pipe chases.

2.1.8.3.2. Location and preliminary sizing of all major equipment and duct work in allocated spaces.

2.1.8.3.3. Schematic piping.

2.1.8.3.4. Temperature control zoning.

2.1.8.3.5. Provide design criteria to include the intent base of design for the Projects.

2.1.8.3.6. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.1.9. Electrical

2.1.9.1. Calculate overall approximate electrical loads.

2.1.9.2. Identify proposed electrical system for service, power, lighting, low voltage and communication loads.

2.1.9.3. Show system(s) selected on Drawings as follows:

2.1.9.4. Single line drawing(s) showing major distribution system.

2.1.9.5. Location and preliminary sizing of all major electrical systems and components including:

2.1.9.5.1. Load centers.

2.1.9.5.2. Main panels.

2.1.9.5.3. Switch gear.

2.1.9.5.4. Provide design criteria to include the intent base of design for the projects.

2.1.9.5.5. Evaluate and confirm the load requirements of all equipment and systems, the impact of those on existing facilities, and the requirements to increase these loads to accommodate the increase.

2.1.10. **Civil**

2.1.10.1. Develop on and off site utility systems such as sewer, water, storm drain, firewater lines, and fire hydrants.

2.1.10.2. Identify surface improvements including roadways, walkways, parking (with assumed wheel weights), preliminary finish grades, and drainage.

2.1.10.3. Coordinate finish floor elevations with architectural site plan.

2.1.11. **Landscape.** Develop and coordinate landscape design concepts entailing analysis of existing conditions, proposed components and how the occupants will use the facility. Include location and description of planting, ground improvements, and visual barriers.

2.1.12. **Specifications.** Prepare Specifications of proposed architectural, structural, mechanical and electrical materials, systems and equipment and their criteria and quality standards. Design Build Entity is to use Agency's standardized equipment/material list for new construction and modernization in development of the Project design and Specifications.

2.1.13. **Meetings.** During this stage, Design Build Entity shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

2.1.14. **Deliverables and Numbers of Copies.** Design Build Entity shall provide to Agency one hard copy of the above noted items produced in this phase, together with one copy of each item in electronic format:

2.1.14.1. Two (2) copies of meeting Reports/Minutes;

2.1.14.2. Two (2) copies of Schematic Design drawing set from all professional disciplines necessary to deliver the Project;

2.1.14.3. Two (2) copies of approvals files with AHJs, including all correspondence and meeting notes to date, or notification in writing that Design Build Entity has not met or corresponded with AHJs;

2.1.14.4. Two (2) copies of Project Schedule;

2.1.14.5. Two (2) copies of Commissioning Plan;

2.1.14.6. Two (2) copies of preliminary Cost Estimate;

2.1.14.7. Two (2) copies of Risk Management and Issues Log.

2.1.14.8. Updated Cost Estimate

2.2. **Design Development Stage.** Design Build Entity shall prepare Design Development documents (the “**Design Development Stage**”) consisting of the following for each proposed system within Design Build Entity’s scope of Work where applicable to the Work:

2.2.1. **Architectural**

- 2.2.1.1. Identification of all fixed equipment to be installed in contract.
- 2.2.1.2. Site plan completely drawing with beginning notes and dimensions.
- 2.2.1.3. Preliminary development of details.
- 2.2.1.4. Elevation Drawings of exterior and interior where equipment, material or fixtures are wall mounted.
- 2.2.1.5. Abbreviations that are specific to the Project.
- 2.2.1.6. Plans that are consistently formatted, including title block, for all disciplines.
- 2.2.1.7. Legend showing all symbols used on Drawings.
- 2.2.1.8. Floor plans identifying new equipment and systems.
- 2.2.1.9. Further refinement of Outline Specification for architectural, structural, mechanical, electrical, low voltage, controls, civil and landscape manuals, systems and equipment.
- 2.2.1.10. Typical reflected ceiling development including ceiling grid and heights for affected ceilings, showing:
 - 2.2.1.10.1. Light fixtures.
 - 2.2.1.10.2. Ceiling registers or diffusers.
 - 2.2.1.10.3. Access Panels.

2.2.2. **Structural**

- 2.2.2.1. Structural drawing with all affected members located and sized.
- 2.2.2.2. Preliminary Specifications.

2.2.3. **Mechanical**

- 2.2.3.1. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- 2.2.3.2. New mechanical equipment should be scheduled indicating size and capacity.
- 2.2.3.3. New Ductwork and piping should be substantially located and sized.
- 2.2.3.4. New Devices in ceiling should be located.
- 2.2.3.5. Legend showing all symbols used on Drawings.

2.2.3.6. More developed Outline Specifications indicating quality level and manufacture.

2.2.3.7. Riser diagram should be substantially complete.

2.2.3.8. New Control Systems or point of contacts to be identified.

2.2.3.9. Confirmation of the load requirements of new equipment and systems.

2.2.4. Electrical

2.2.4.1. New electrical equipment should be scheduled indicating size and capacity.

2.2.4.2. A single line diagram for new equipment being installed or replaced.

2.2.4.3. Legend showing all symbols used on Drawings.

2.2.4.4. More developed and detailed Outline Specifications indicating quality level and manufacture.

2.2.4.5. Confirmation of the load requirements of all new equipment and systems.

2.2.4.6. Design Build Entity shall be responsible for the coordination of the design and the layout of the technology backbone system of the Work with Agency's Information Technology Department and/or Agency's technology consultant, and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits and outlets and the required spaces to accommodate electrical, data and communication wiring. Design Build Entity and consultant(s) shall prepare and be responsible for documents prepared by Design Build Entity based on the information provided by Agency's technology consultant as appropriate to the level of design completion.

2.2.5. Deliverables and Numbers of Copies ("Design Development Documents")

2.2.5.1. Two (2) copies of Design Development drawing set from all professional disciplines necessary to deliver the Project;

2.2.5.2. Electronic copies of continued proposed revision to Specifications;

2.2.5.3. Electronic copies of files with AHJs, including all correspondence and meeting notes to date, or notification in writing that Design Build Entity has not met or corresponded with AHJs;

2.2.5.4. Electronic copies of the Cost Estimate;

2.2.5.5. Electronic copies of Project Schedule;

2.2.5.6. The Design Development deliverables shall be revised within the accepted program parameters until a final concept within the Contract Price.

2.2.5.7. The Design Development Stage will be reviewed and approved after Quality Assurance review by Agency. Design Build Entity to include Quality Assurance Review in its schedule.

2.2.5.8. Design Build Entity to maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by Agency. Both perceived risks and issues shall be reviewed and approved by Agency before proceeding to the Construction Documents Stage.

2.2.5.9. Narrative resolving any/all outstanding quality issues from the Schematic Design Quality Assurance review.

2.2.5.10. Updated Cost Estimate

2.2.6. **Meetings.** During this stage, Design Build Entity shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

2.3. Construction Documents Stage

2.3.1. **Construction Documents.** The Construction Documents Phase results in Construction Documents that set forth in detail the requirements for the construction of the Project. Based on approved Design Development documents, and any adjustments authorized by OCERS in the Project Program, Project Schedule, and Project Budget, Architect will prepare Construction Documents for approval by OCERS. The design must comply with the approved Basis of Design and Schematic Design in **Attachments** respectively, of the Prime Contract to the Prior Contract. Architect will manage and oversee all architectural and engineering disciplines and specialty Consultants for the preparation of Construction Documents by preparing the deliverables listed below required to obtain building permits and being able to build from. Construction Documents will include, but are not limited to, Building Department submittal, General and Special Conditions, Complete Construction Drawings including details, reports, solutions and final technical specifications for all Architectural, Structural, Mechanical, Electrical, Plumbing, Lighting, Signage and Graphics, Civil, and waterproofing. Architect must process the Construction Documents through approving agencies and incorporate all revisions/corrections as necessary to obtain the required approvals from those agencies. Architect will participate in technical reviews of the Construction Documents and cost estimates with OCERS prior to review and approval by OCERS at the 90% completion stage. The Construction Documents will include drawings and specifications that establish in detail the quality levels of materials and systems required for the Project and will graphically illustrate the extent, configuration, location, relationships, and dimensions of the Project, and are coordinated with the work of Consultants retained by Architect as part of its Basic Services and other Consultants (including those retained by Construction Manager or OCERS). It is incumbent upon Architect as a construction industry professional to set forth designs that are economical to build and use standard industry assemblies, systems, and components. The final Construction Documents will incorporate comments and mark-ups from appropriate governmental entities (Building, Fire Departments etc.) and will consist of:

2.3.1.1. CAD Scale Drawings:

- (1) Site Plan;
- (2) Floor, podium slab, roof, , stair & elevator plans (each level as applicable and required);
- (3) Building, Enlarged plans, exterior, enlarged, key interior, stair & elevator sections and elevations;
- (4) Building details;
- (5) Project Specifications
- (6) Grading Plan
- (7) Utilities Plan
- (8) Landscape Plan
- (9) Planting Plan
- (10) Irrigation Plan
- (11) Landscape Lighting Plan & Fixture Selection

- (12) Floor Plan for each level
- (13) Building Sections
- (14) Enlarged Elevation
- (15) Architectural Details
- (16) Waterproofing Details
- (17) Structural Plans and Details
- (18) MEP Plans and Details
- (19) Interior Design Plans, Elevations, and Reflected Ceiling Plans
- (20) Interior Finish Plans
- (21) Interior finish selections
- (22) Interior Plumbing & Lighting Fixture selections
- (23) Window wall and curtainwall Plans
- (24) Intentionally left blank
- (25) Audio/video systems plans
- (26) Civil Engineering Plans
- (27) Elevator Plans
- (28) Acoustics Details
- (29) Area Calculations
- (30) Furniture plans

2.3.1.2. **Informational Drawings:**

- (1) Drawing index/cover sheet;
- (2) Note sheets;
- (3) Schedules (door, window, hardware, & finishes);
- (4) Project data and area totals;
- (5) Code analysis and exiting plans.

2.3.1.3. **Specifications:**

Full Specifications showing the quality requirements of the Project plus delineate OCERS's selections.

2.3.2. Construction Document Package. Architect and/or its Consultants will (a) sign/seal Construction Documents as required by Building Department officials, (b) submit the Construction Drawings for Plan Check review and approval (OCERS to pay all plan check fees), (c) revise as needed for governmental and jurisdictional approval, advising OCERS of the required changes and (d) assist in resolving issues that may arise during plan check and amend the Construction Documents as may be required by the governing authority and do all things necessary to obtain the building permit. If government agency regulations are changed and become inconsistent with earlier regulations upon which written approvals were received and necessitate revisions, then Architect will be compensated for any such revisions as an Additional Service. After final review and

OCERS acceptance of the 100% Construction Documents, Architect will deliver a complete Construction Document package to OCERS.

- 2.3.3. LEED. Provide LEED/Sustainable consulting services in the Project's pursuit of LEED Silver certification from the U.S. Green Building Council.
- 2.3.4. Reproduction. As part of its Basic Services, Architect will provide OCERS with one set of reproducible, and one set of printed final Construction Documents (the cost of the printed Construction Documents is a reimbursable expense). The reproducible set will be provided after OCERS accepts the Construction Documents. Architect will upload the final Construction Documents to the FTP site established for the Project. As part of its Basic Services, Architect will issue specifications for the Project in compliance with all applicable Code Requirements, and provide OCERS with one electronic set of approved specifications (in Word format).
- 2.3.5. Coordination. Architect will retain, coordinate, and manage the civil engineer, mechanical engineer, electrical engineer, plumbing engineer, structural engineer, interior design consultant, landscape architect, code compliance consultant, LEED consultant, elevator consultant, audio/video consultant, and acoustics consultant, and will coordinate (as set forth in Section 1.6.3 of this Attachment A) the geotechnical engineer, testing and inspections consultants, and other related Consultants in its efforts to prepare Construction Documents. Architect's Basic Services include all meetings required to accomplish this objective, including but not limited to formal meetings with OCERS to review Architect's efforts; meetings to follow up on corrections required by OCERS or governmental agencies; formal pre-construction meetings with the DBE and any other party involved with the construction effort; and management and coordination meetings with basic Consultants.
- 2.3.6. Coordination with OCERS' Consultants. As part of its Basic Services, Architect will consult with OCERS, Construction Manager, and their respective Consultants in regard to geotechnical engineering and dry utility coordination components. Geotechnical and dry utility coordination work will be fully coordinated with Architect's drawings so that all features are coordinated within Architect's drawings. It is not intended that Architect replicate items outside of Architect's Scope of Services in Architect's drawings, but to illustrate proper locations, spatial requirements, and trade coordination and to allow for inclusion of other Consultant's work within the buildings. OCERS will provide Architect with any OCERS provided design drawings in a timely manner so that such designs can be properly coordinated within Architect's drawings. Revisions to such OCERS produced designs after incorporation by Architect will be an Additional Service and will be reimbursed by OCERS at the rates set forth in this Agreement. Architect is not responsible for the acts, errors, or omissions of Consultants that are not retained by Architect.
- 2.3.7. Shared Documents Website. All Construction Documents Deliverables will be available electronically on Architect's shared website and formatted into an 11x17 color PDF file format so that it can be readily printed by OCERS.
- 2.3.8. Electronic Copy. Architect will provide OCERS with an electronic version (in CAD and/or Revit format for drawings) of all Construction Documents (e.g., CAD files, Specifications, etc.) upon completion of the Construction Documents Phase.
- 2.3.9. **Construction Documents (CD) Final Back-Check / 100% Construction Documents (where applicable)**
- 2.3.9.1. The Construction Documents final back-check phase ("**100% Construction Documents Stage**") shall be for the purpose of Design Build Entity incorporating all regulatory agencies' comments into the Drawings, Specifications, and schedules and to produce final Construction Documents. All changes made by Design Build Entity during this stage shall be at no additional cost to Agency.

2.3.9.2. The final Construction Documents delivered to Agency upon completion of Design Build Entity's Work shall be the final set and shall consist of the original Drawings with designers' and engineers' State license stamp.

2.3.9.3. Design Build Entity shall attend, take part in, and, conduct meetings and Site visits as required for the Work and Services at no additional cost to Agency.

2.3.9.4. Upon Agency's receipt and approval of the above-referenced items, Agency shall review and shall determine whether to approve of final pricing. Any approval by Agency shall be made in writing in its sole and absolute discretion.

2.3.9.5. Design Build Entity shall **NOT** commence applicable Construction Stage Services until Agency has issued a Notice(s) to Proceed for Construction Stage Services and Design Build Entity has provided all required bonds and insurance to Agency as required by this Contract.

2.4. Final GMP Preparation and Subcontractor Procurement ("GMP Preparation")

2.4.1. After or during (if directed by Agency) Predevelopment Phase Services, Design Build Entity shall provide Agency a Final GMP proposal including all costs necessary to complete the design and construct the Project for review and approval consistent with the Construction Cost Budget and the requirements of the Contract.

2.4.2. **Upon Agency's approval, in its sole and absolute discretion, Design Build Entity shall solicit and procure subcontractors pursuant to the Subcontractor Procurement Process attached hereto as Exhibit E.**

2.4.3. After Design Build Entity completes the Subcontractor Procurement Process, and Agency approves of the subcontractor bids, Design Build Entity shall present Agency with the following:

2.4.3.1. A Final GMP not exceeding the Target GMP that is supported by and includes:

2.4.3.1.1. Detailed breakdown of the costs to construct the Project by scope of work, identifying Subcontractor and self-performed work (if any);

2.4.3.1.2. A completed Construction Cost Worksheet;

2.4.3.1.3. A detailed Project Schedule for the Project consistent with the requirements of the General Conditions of Contract (**Exhibit C**); and

2.4.3.1.4. A Schedule of Values for the Project.

2.4.3.2. Upon Agency receipt and approval of the above-referenced items, Agency shall review and shall determine whether to approve of final pricing. Any approval by Agency shall be made in writing.

2.4.4. **Rebidding the Work.** Design Build Entity is responsible for ensuring that Design Build Entity's proposed Final GMP does not exceed the Target GMP. As a result, if Design Build Entity's proposed Final GMP exceeds the Target GMP, as determined by Agency in its sole and absolute discretion, Agency may, in its sole and absolute discretion, require Design Build Entity to either:

2.4.4.1. Perform design services to reasonably eliminate scope and reduce the cost of construction consistent with the Construction Cost Budget; or

2.4.4.2. Proceed again through the Subcontractor Procurement Process and rebid the construction of the Project.

2.4.4.3. For either, Agency shall **NOT** owe Design Build Entity any additional compensation.

2.4.5. **Once the Parties have agreed in principle to the Final GMP for the Project, the Parties shall execute an amendment to the Contract incorporating the GMP (the "GMP Amendment"). No compensation shall be owed to Design Build Entity for Development Phase and Construction Stage Services unless and until the Parties execute the GMP Amendment.**

Agency is not required to execute the GMP Amendment unless it approves of Design Build Entity's proposed Final GMP, in its sole and absolute discretion.

- 2.4.6. Design Build Entity shall **NOT** commence the Development Phase and Construction Stage Services until the Parties have executed the GMP Amendment, Agency has issued a Notice(s) to Proceed for Construction Stage Services, or any portion thereof, and Design Build Entity has provided all required bonds and insurance to Agency as required by this Contract.
- 2.5. **As-Built & Record Drawings.** During Construction Stage Services, Design Build Entity shall incorporate all information on As-Built, sketches, details, and clarifications, and prepare one set of final Record Drawings for Agency. The Record Drawings shall incorporate onto one set of electronic Drawings, changes from As-Built, sketches, details, and clarifications. Design Build Entity shall deliver the Record Drawings to Agency at completion of the construction and it shall be a condition precedent to Agency's approval of Design Build Entity's final payment.
- 2.5.1. All changes illustrated on as-built Drawings and Specifications ("**As-Built Plans and Specifications**") must be performed by an experienced and qualified professional or draftsman using a software program or suite approved in advance by the Agency or Construction Manager. Such changes must utilize dimensioning techniques and other drafting standards that are consistent with those used in the Contract Documents. Each of the improved or modified utilities including, without limitation, the electrical, plumbing, mechanical and storm drain system shall be clearly marked with designated colors. If the Plans and Specifications are not of sufficient size, scale, or detail to appropriately illustrate the as-built Work, the Design Build Entity shall furnish its own drawings showing appropriate details and dimension. If shop drawings are used to illustrate portions of the as-built Work, the applicable portions of the As-Built Plans and Specifications must be marked to reference such Drawings. Changes, supplemental information and notes must be recorded in blank areas of the As-Built Plans and Specifications, such as page margins or the backs of opposite pages, or on separate sheets of paper inserted into the As-Built Plans and Specifications. As-built changes to text must include lining out any superseded text so that it is still legible and can be compared to the inserted text. Each update to the As-Built Plans and Specifications must include the name of the person who made the changes to the As-Built Plans and Specifications and the date such changes were made. The Construction Manager or Architect may provide a standard certification block for use by the Contractor in submitting updates to the As-Built Plans and Specifications.
- 2.5.2. Design Build Entity must obtain final approval of the As-Built Plans and Specifications from the Construction Manager and Inspector of Record. After obtaining such approval the Design Build Entity must employ a competent draftsman to: (i) transfer the as-built information to the Plans on electronic files using the most current version of AutoCAD or other commonly used program, as directed, or approved; and (ii) prepare a complete set of As-Built Plans through Bluebeam, unless another software or method is otherwise approved by the Construction Manager. Upon Completing the electronic As-Built Plans, the Design Build Entity must submit to the Construction Manager: (i) one archive-quality PF electronic file of the As-Built Plans and Specifications approved by the Inspector of Record that have been certified by the Design Build Entity as being complete and fully and accurately representing the as-built condition of the Work, provided on USB or via download link; and (ii) one complete set full color, bonded-paper copy of the As-Built Plans.
- 2.6. **O&M Manuals / Warranties.** Design Build Entity shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the Construction Documents. Design Build Entity shall deliver one hard copy sets and electronic PDF set of the O&M Manuals / Warranties to Agency at completion of the construction and it shall be a condition precedent to Agency's approval of Design Build Entity's final payment for the Project, or for the Construction Stage Services. Training shall be provided for all major equipment installation. Video recordings of training sessions shall be provided to Agency in a form, format, and quality that permits Agency and Agency staff to adequately understand the training. All products and equipment will include manufacturer's warranty and labor installation guarantee. O&M Manuals and Warranties will

be in PDF digital format packaged for the Project with an outline of information included in the package and a schedule of warranty periods for each product or equipment determined at beneficial occupancy or filing of Notice of Completion.

- 2.7. **Design Errors.** Design Build Entity shall be solely responsible for all design errors and for the correction of same at no additional cost to Agency, including, but not limited to, errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established Contract Documents.

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EXHIBIT C

GENERAL CONDITIONS1. **SITE EXAMINATION:**1.1. **Pre-Contract Site Examination Requirements:**

1.1.1. “**Visually Verify(ied)(cation)**” (or “**Verify(ied)(ification)**”) means confirmed by diligent physical inspection without any destructive or invasive action.

1.1.2. At the time that Design Build Entity enters this Contract, Design Build Entity acknowledges that Agency provided information available to Agency to the extent the information relates to Design Build Entity’s Work. This information included:

1.1.2.1. Physical characteristics;

1.1.2.2. Written legal description(s) of the Site;

1.1.2.3. Grades and lines of streets, alleys, pavements, and adjoining property and structures;

1.1.2.4. Adjacent drainage;

1.1.2.5. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);

1.1.2.6. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

1.1.2.7. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;

1.1.2.8. Surveys, reports, as-built drawings;

1.1.2.9. Subsoil data, chemical data, and other data logs of borings;

1.1.2.10. The location and physical characteristics of existing utility lines, telephone, water, sewage, storm drains and other lines on or around or relating to the Project.

1.1.3. Design Build Entity has Visually Verified the existence of the conditions identified by this information to the extent determinable by the documents provided by Agency (“**Site Examination**”). Design Build Entity has relied on its Site Examination in defining its scope of Work. Agency acknowledges and agrees that some of the information provided above was prepared by third parties and that Design Build Entity will have no liability for errors or omissions in such information.

1.1.4. **Variations.** If there are any variations to the scope of Work resulting from conditions not determinable from such Visually Verified information, Design Build Entity shall submit to Agency a PCO based on those conditions.

1.2. **Post-Contract Site Examination Requirements:**

1.2.1. The Site Examination shall not relieve Design Build Entity of its obligations to Verify the conditions of the Site and to satisfy itself that the conditions of the Site that may be discovered by a diligent physical inspection of the Site prior to performing Work. Notwithstanding the foregoing, after Agency issues a Notice(s) to Proceed to Design Build Entity, Design Build Entity shall again Visually Verify the conditions of the Site prior to performing any Work to satisfy itself of above-ground and utility conditions at the Site (“**Further Site Examination**”).

1.3. **Effect of Examinations:**

1.3.1. Design Build Entity acknowledges and agrees that the Contract Price is based on the Site Examination and Further Site Examination and that the Contract Price includes Work related to all conditions Visually Verified by Design Build Entity during each, and the cost of the Site Examination and Further Site Examination.

1.3.2. No claim for allowance of time or money will be allowed as to any other undiscovered condition on a Site that could and should have been discovered and Visually Verified during the Site Examination and Further Site Examination. Notwithstanding the foregoing, should Design Build Entity discover any latent or materially differing conditions, or any other condition which could not diligently have been discovered during the Site Examination or Further Site Examination, materially impacting the performance of the Work or materially increasing the Contract Price or Contract Time, Design Build Entity shall immediately inform Agency of such

fact in writing. This written notice may take the form of a PCO. Design Build Entity shall not be entitled to an increase to the Contract Price or Contract Time for Work relating to the conditions discussed in this provision unless Agency issues a Change Order authorizing such Work.

2. OVERALL PROGRESSION OF THE WORK:

2.1. Design Stage Services:

- 2.1.1. Prior to the commencement of Construction Stage Services, Design Build Entity shall prepare Drawings and Specifications consistent with the requirements of the Contract Documents, including, without limitation **Exhibit A** and **Exhibit B**.
- 2.1.2. Design Build Entity, its designers, contractors, and inspectors shall determine if any of the Work requires approval from AHJs and, if applicable, provide documentation for all approvals required by such AHJs.

2.2. Construction Stage Services:

- 2.2.1. Design Build Entity install and construct the Work at the Site. The Work shall be installed and constructed to conform to requirements of any AHJs and all applicable building codes. Design Build Entity's Work shall include meetings and discussions as needed with AHJs and others as needed to achieve Project approval.
- 2.2.2. Construction Stage Services shall commence only upon Agency's issuance of a Notice to Proceed for Construction Stage Services. Agency may issue more than one Notice to Proceed for Construction Stage Services depending on the phasing of those Services.
- 2.2.3. Design Build Entity's performance of Work for Construction Stage Services shall comply with all requirements of the Contract Documents and all laws applicable to the Project.
- 2.2.4. In addition to all other requirement herein, Design Build Entity shall comply with all requirements of the Plans and Specifications referenced herein in **Exhibit G**.
- 2.2.5. Design Build Entity shall notify Agency and Agency's Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.

3. EQUIPMENT AND LABOR: Design Build Entity shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Work herein described, the Work to be performed at such times and places as directed by and subject to the approval of the authorized Agency representative.

4. SUBCONTRACTORS:

- 4.1. Design Build Entity shall procure Subcontractors by complying the Subcontractor Procurement Process attached hereto as **Exhibit H** and incorporated herein by reference.
- 4.2. All subcontractors will be afforded the protections of State law, and all Work is subject to applicable prevailing wage laws.
- 4.3. Subcontractors, if any, engaged by Design Build Entity for any Service or Work under this Contract shall be subject to the approval of Agency, which shall not be unreasonably withheld.
- 4.4. Design Build Entity agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements.
- 4.5. Design Build Entity shall be responsible for all Work performed under this Contract. All persons engaged in the Work of the Project are the responsibility and under the control of Design Build Entity. Design Build Entity shall give personal attention to fulfillment of this Contract and shall keep the Work under Design Build Entity's control. In no event shall Design Build Entity refer Agency to any subcontractor or consultant of Design Build Entity for response or resolution of any matters related to this Contract, the Work or any obligations of Design Build Entity hereunder. If Design Build Entity shall subcontract any part of this Contract, Design Build Entity shall be fully responsible to Agency for acts and omissions of subcontractors and of persons either directly or indirectly employed by Design Build Entity.
- 4.6. Nothing contained in the Contract shall create any contractual relations between any subcontractor and Agency. Design Build Entity expressly acknowledges that its subcontractors are not third-party beneficiaries of this Contract.

5. TERMINATION:

- 5.1. If Design Build Entity fails to perform Design Build Entity's duties as required by this Contract, or if Design Build Entity fails to fulfill in a timely and professional manner Design Build Entity's material obligations under this Contract, or if Design Build Entity shall violate any of the material terms or provisions of this Contract and any such failure or violation is not excused by the terms of this Contract, Agency shall have the right to terminate this Contract, in whole or in part, unless such failures and

violations are caused by Agency, effective immediately upon Agency giving fifteen (15) business days prior written notice thereof to Design Build Entity, during which time Design Build Entity may attempt to correct such failures and violations to Agency's reasonable satisfaction. In the event of a termination pursuant to this subdivision, Design Build Entity may invoice Agency for all Services performed until the date of termination, but Agency shall have the right to withhold payment and deduct any amounts equal to Agency's costs because of Design Build Entity's negligent actions, errors, or omissions that caused Agency to terminate Design Build Entity. Agency may, at its discretion, provide Design Build Entity additional time to cure its default or breach.

- 5.2. Agency shall have the right in its sole discretion to terminate the Contract for its own convenience with fourteen (14) days prior written notice. In the event of a termination for convenience, Design Build Entity may invoice Agency and Agency shall pay all undisputed invoice(s) for Services performed and all undisputed costs incurred before the date of termination and actually and necessarily caused by the termination, as reasonably substantiated by Design Build Entity, including, without limitation, the actual cost of demobilization, actual charges incurred for specially fabricated materials and equipment, and such charges actually incurred by Design Build Entity's subcontractors/suppliers that Design Build Entity is contractually bound to compensate the subcontractor/supplier for, from Agency's Notice to Proceed until the date of termination.
- 5.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 5.4. Design Build Entity has the right to terminate this Contract if Agency does not fulfill its material obligations under this Contract. Termination shall be effective upon fourteen (14) days prior written notice to Agency. Design Build Entity may invoice Agency and Agency shall pay all undisputed invoice(s) for Services performed and costs incurred, as set for in the termination for convenience, until the date of termination.
- 5.5. If Agency suspends the Project for more than ninety (90) consecutive days, Design Build Entity shall be compensated for Work performed prior to the notice of suspension plus the reasonable costs of demobilization. When the Project is resumed, the Project Schedule shall be adjusted and Design Build Entity's compensation shall be equitably adjusted to provide for expenses incurred resuming Work, including any material price escalations if Design Build Entity establishes: (i) the materials were scheduled to be procured during the suspension; (ii) Design Build Entity was unable with reasonable diligence to procure materials prior to the suspension; **and** (iii) Design Build Entity was not a cause of its own failure to procure any materials prior to suspension. If Agency suspends the Project for more than one (1) year, Design Build Entity may terminate this Contract by giving written notice and shall receive compensation as if Agency terminated the Contract for its own convenience as described above. If Agency suspends this Contract because Agency does not have sufficient funds to pay for the Work resulting from Agency's budget for the succeeding fiscal year being reduced, and/or the State reducing funding to Agency, then Design Build Entity may elect to either: (i) after ninety (90) consecutive days of suspension, terminate the Contract; or (ii) after one hundred twenty (120) consecutive days of suspension, elect to maintain the Contract and demobilize from the Site until Agency gives written notice to Design Build Entity to recommence the Work. In either event, Design Build Entity may invoice Agency for all costs actually incurred by Design Build Entity directly caused by the suspension. Design Build Entity shall provide documentation, to Agency's reasonable satisfaction, substantiating that all claimed costs were incurred during and caused by the suspension. Design Build Entity shall make all reasonable efforts to mitigate any costs before invoicing Agency for such costs. If Design Build Entity elects to terminate the Contract, Design Build Entity may only invoice Agency from the date of suspension up to and until the date of termination; provided, however, Design Build Entity shall not be entitled to invoice Agency for costs incurred after one hundred twenty (120) consecutive days. If Design Build Entity elects to maintain the Contract, Design Build Entity shall be entitled to invoice Agency for costs caused by the suspension from the date of the notice of suspension up to and until the date Agency provides written notice to Design Build Entity to recommence the Work. In either event, Design Build Entity shall not be entitled to any delay costs, but may invoice Agency for the reasonable costs of demobilization and mobilization actually incurred by Design Build Entity exclusive of any consequential or economic damages. Any adjustment to the Contract Price hereunder shall be adjusted pursuant to a written Change Order. If the Parties disagree as to the cost owed to Design Build Entity, if any, Agency reserves the right to issue a Unilateral Change Order, and Design Build Entity may proceed as if any unpaid sums constitute a Claim. Notwithstanding the foregoing, Design Build Entity shall be entitled to

compensation for Work actually performed to Agency's reasonable satisfaction prior to the date of any suspension.

6. SAFETY AND SECURITY:

- 6.1. Design Build Entity is responsible for maintaining safety in its performance of this Contract. Design Build Entity shall be responsible to ascertain from Agency the rules and regulations pertaining to safety, security, and driving on Agency grounds, as per the requirements of **Exhibit F ("Agency's Rules and Regulations")** to the extent applicable. Design Build Entity shall coordinate with Agency regarding the applicability of Agency's Rules and Regulations. In the event Agency's Rules and Regulations conflict with any other terms of this Contract, the terms of this Contract shall prevail.
- 6.2. The Site may have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Design Build Entity shall locate these existing installations before proceeding with demolition and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, then the costs of repair shall be at Design Build Entity's expense and made to Agency's satisfaction.
- 6.3. Design Build Entity shall be alert to the possibility of the existence of additional structures and utilities. If Design Build Entity encounters additional structures and utilities, Design Build Entity will immediately report to Agency for disposition of same as indicated in the General Conditions.
- 6.4. To the extent that Design Build Entity's work involves undergrounding power lines, Design Build Entity shall conduct an engineering evaluation to determine whether any undergrounding power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Where the potential for electrolytic corrosion exists, Design Build Entity shall also design and install a cathodic protection system to protect such utilities.
- 6.5. Specific measures include:
- 6.5.1. Written Design Build Entity Safety Plans, signs and temporary fencing as needed.
- 6.5.2. Written Design Build Entity Quality Management Plan.
- 6.5.3. Engineering and stamped drawings for Agency, and approval from all AHJs (to the extent applicable).
- 6.5.4. To the extent applicable, Layout drawings for Fire Department review.
- 6.5.5. To the extent applicable, Single line and electrical drawings for applicable utility companies.
- 6.5.6. Layout drawings for Agency Technology Department review.

7. INFECTIOUS DISEASE

- 7.1. **Compliance with Orders.** Design Build Entity and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site, in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain ("**Infectious Disease**"). Design Build Entity's obligations hereunder shall include, without limitation providing personal protective equipment ("**PPE**") to its employees and to ensure that its Subcontractors provide PPE to its employees to prevent the spread of an Infectious Disease at the Site.
- 7.2. **Infectious Disease and Contract Time.** Design Build Entity agrees that the Contract Time is based on Design Build Entity's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in connection with an Infectious Disease. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these General Conditions.
- 7.3. **Infectious Disease and Extra/Change Work.**
- 7.3.1. Design Build Entity agrees that the Contract Price and the Contract Time are based on Design Build Entity's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with an Infectious Disease at the time the Parties entered into the Contract, or any amendment thereto. Therefore, any additional costs to Design Build Entity associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:
- 7.3.1.1. It occurred after the date of the award of the Project to Design Build Entity;

- 7.3.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and
- 7.3.1.3. Design Build Entity notifies Agency within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Design Build Entity substantiates those costs with detailed supporting documentation as required in these General Conditions, including, without limitation, comply with the Proposed Change Orders and, to the extent applicable, Claims provisions.
- 7.3.2. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce Design Build Entity price and the Contract Time due to the removal of the required efforts. If the parties cannot mutually agree on the appropriate reduction, Agency may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. Any dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these General Conditions.
- 7.4. **Infectious Disease Release.** Design Build Entity acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Work which will require Design Build Entity to enter upon and into the Site and that Design Build Entity use of the Site includes the possible exposure to and illness from an Infectious Disease. Design Build Entity further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Design Build Entity hereby releases Agency, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Design Build Entity, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Design Build Entity, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Work. Design Build Entity shall include this paragraph in all subcontracts with Subcontractors.
- 7.5. Design Build Entity shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Site.
- 7.6. Any cost to comply with these “**Infectious Disease**” provisions shall be at Design Build Entity’s sole expense, but may be included in the Contract Price.
8. **PROJECT SCHEDULE:**
- 8.1. **General Requirements:**
- 8.1.1. In addition to the Project Schedule in **Exhibit D** that sets forth the schedule for the completion of the Project, Design Build Entity shall prepare a detailed Project Schedule setting forth the critical path of the Project from the Notice to Proceed to Completion of the Project.
- 8.1.2. All costs associated with compliance with this Section shall be included in the Contract Price. All schedules to be provided by Design Build Entity shall fully integrate the work of all subcontractors and major suppliers and must comply fully with the milestones in **Exhibit D**.
- 8.2. **Time for Baseline Detailed Project Schedule:** Design Build Entity shall provide the detailed Project Schedule to Agency within seven (7) days of the execution of the Contract for review and approval. When submitting initial baseline Project Schedule, Design Build Entity shall attach a narrative report which explains Design Build Entity’s chosen method of determination and/or assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment in the Work.
- 8.3. **Minimum Requirements for Detailed Project Schedule:** At a minimum, the detailed Project Schedule shall:
- 8.3.1. Include all milestones in **Exhibit D**;
- 8.3.2. Utilize a Critical Path Method (“CPM”) format showing tasks, durations, and precedence between tasks;

- 8.3.3. Be prepared utilizing the Oracle Primavera (P6) software (latest version) and utilizing the CPM format in development and maintenance of the Project Schedule network in Precedence Diagram Mode (PDM);
- 8.3.4. Include all applicable review times by Review Agencies;
- 8.3.5. Include the then current date for Completion of the Project;
- 8.3.6. Show all major tasks, both on site construction and procurement including shop drawing review;
- 8.3.7. Include tasks of parties other than the Design Build Entity that directly affect the Work;
- 8.3.8. Show submittals, approval and procurement activities with reasonable durations;
- 8.3.9. Include time for closeout activities;
- 8.3.10. Take into account all foreseeable factors or risks affecting, or which may affect, the performance of the Work, including historical and predicted weather conditions, applicable laws, regulations, or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements;
- 8.3.11. Not use any "float suppression" techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably over-estimating activity durations in preparing its Project Schedule.
- 8.3.12. Include a phasing plan for the Work, that complies with the following:
 - 8.3.12.1. Sequence of work areas consist with the schedule in the Proposal;
 - 8.3.12.2. Phase construction to work around existing Site operation causing minimal disruption. Individual construction areas will generally be available to the Design Build Entity. When construction is completed in these areas, Site staff may reoccupy them, making other spaces available for construction.
 - 8.3.12.3. Work shall be performed as specified in the phasing plan and in morning and evening working shifts. Design Build Entity may perform critical work during non-business hours with Agency approval.
- 8.4. **Construction Stage Requirements.** For the Construction Stage **ONLY**, the following shall apply:
 - 8.4.1. No Construction activities shall:
 - 8.4.1.1. Have appropriate predecessors and successors
 - 8.4.1.2. Be constrained except for the milestones;
 - 8.4.1.3. Have negative lags
 - 8.4.2. For any item which Design Build Entity believes may have long lead times that may be impacted by unanticipated supply chain disruptions ("**Impacted Item(s)**"):
 - 8.4.2.1. Identify the item(s);
 - 8.4.2.2. The anticipated lead time for the specific item(s), including a date on which Design Build Entity shall place an order for the item(s); and
 - 8.4.2.3. The anticipated date of delivery for the item(s).
 - 8.4.2.4. One (1) week of float for **each** Impacted Item ("**Supply Float**"). Before seeking a time extension for any delay in Project arising from the late delivery of an Impacted Item, Design Build Entity shall utilize all available Supply Float for that Impacted Item.
- 8.5. **Additional Requirements for Impacted Items:**
 - 8.5.1. Concurrently with the detailed Project Schedule, Design Build Entity shall provide to Agency a list of Impacted Item(s).
 - 8.5.2. Design Build Entity shall retain in its files evidence that supports the specific lead time(s) and anticipated delivery schedule(s) for an Impacted Item(s), which may be used to justify a request for a time extension. Design Build Entity need not submit this information with the detailed Project Schedule, but shall present the information to Agency in the event it seeks a time extension whether in a PCO or Claim as substantiation that the item constitutes an Impacted Item.
- 8.6. **Float:** Float is not for exclusive use or benefit of either Agency or Design Build Entity but is an expiring resource available to both Parties on a non-discriminatory basis. Either Party may use float, as needed, to meet the Project Schedule and Contract Completion dates. Contract Time extensions for Contract performance will be granted only to extent that delays or disruptions to affected work path exceed total float along those paths of current updated Project Schedule (updated schedule) in effect at time of delay or disruptions. These delays or disruptions must also cause end

date of Work to exceed current contract date and be beyond control and without fault or negligence of Design Build Entity or any subcontractor at any tier. Delays or disruptions impact an already negative float path; Design Build Entity will not receive a time extension unless and until activity with highest negative float is driven even further negative. Delays or disruptions will not be a basis for time extension to this Contract unless, and until, such delays or disruptions are resolved as set forth in General Conditions. All extensions of Contract Time shall be subject to the requirements of the Contract Documents.

8.7. **Updated Detailed Project Schedule:**

8.7.1. **Three Week Look Ahead Schedules:** 48 hours prior to each weekly progress meeting, Design Build Entity shall submit three week look ahead schedules. During the weekly progress meeting, three week look ahead schedules will be reviewed and discussed in detail.

8.7.2. **Status Report / Monthly Updates:** Design Build Entity shall update the Project Schedule week and shall submit with each Application for Payment updated detailed Project Schedule that complies with the requirements herein, as well as the follow:

8.7.2.1. Include computer generated CPM network exhibits; and

8.7.2.2. Include bar charts, generated separately using the format template provided by Agency (and if none, in a format chosen by Design Build Entity) for:

8.7.2.2.1. Contract Milestones only (Baseline vs. forecast)

8.7.2.2.2. Summary Level (sorted by craft/trade and area);

8.7.2.2.3. Detail (sorted by Dates);

8.7.2.2.4. Detail (sorted by Responsibility),

8.7.2.2.5. Variance (Baseline vs. forecast);

8.7.2.2.6. Progress Curves (baseline vs. earned/forecast); and

8.7.2.2.7. Float (sorted low to high).

8.7.2.3. Provide all software backup/export data files electronically.

8.7.3. **Other Updates:** Design Build Entity shall revise the Project Schedule for Project scope changes. Should actual progress fall behind the Project Schedule **twenty-one (21) calendar days or more**, Design Build Entity shall submit for acceptance a recovery schedule and plan and shall take necessary remedial measures to recover lost time and finish on schedule, which may require additional resources, work hours, or changes in work plan, .

8.8. **Review and Acceptance:** The Construction Manager and Agency will review the Project Schedule and provide comments to the Design Build Entity within seven (7) working days. The Design Build Entity will then complete and resubmit for final acceptance within seven (7) working days. The Construction Manager will not process Design Build Entity payment requests until the Project Schedule has been reviewed and accepted.

8.9. **Failure to Comply with Requirements:**

8.9.1. If Design Build Entity fails to comply with the requirements specified herein, Agency reserves the right, but will not be required, to engage an independent scheduling consultant or provide its own expertise to fulfill those requirements, and back-charge Design Build Entity an amount equal to the payment Design Build Entity would have been due had it self-performed the delinquent or non-complying work.

8.9.2. In such event, Agency will require the participation of Design Build Entity to ensure that the information produced accurately reflects Design Build Entity's plan to execute the Work and the progress of the Work, in compliance with the Contract Documents.

8.9.3. If Design Build Entity fails to promptly cooperate by participating with Agency or its Consultant, or Agency's Representative in developing or in implementing the jointly-developed Project Schedule, Agency will complete the effort to the best of its ability with the information provided by Design Build Entity and issue that Schedule for the mandatory and immediate utilization by Design Build Entity in a unilateral Change Order to the Contract.

9. **ALLOWANCES**

9.1. **"Allowance(s)"** means an allocation(s) of the Contract Price to cover a scope(s) of Construction Stage Services that is not known or could not be specified sufficiently at the time Design Build Entity prepares and submits a Final GMP. The Project may include two types of Allowances: (i) The **"Agency Allowance(s)"** that are those included in the Final GMP by Design Build Entity as directed by Agency;

(ii) and/or the “**Design Build Entity Allowances**” that are those requested by Design Build Entity and approved by Agency for inclusion in the GMP as outlined herein.

9.2. **Permissible Allowances & Development of Allowances.**

9.2.1. Agency may direct that the Final GMP include a Agency Allowance(s) as set forth in the Contract Documents.

9.2.2. Other than those Allowances specified by Agency, a Design Build Entity Allowance(s) shall not be included in the Final GMP unless accepted and approved in writing by Agency **before** Design Build Entity presents Agency with the Final GMP. Design Build Entity shall work collaboratively with Agency to review all Allowances submitted by Design Build Entity for approval to determine whether **all** the following conditions are satisfied:

9.2.2.1. **Condition 1.** Design Build Entity demonstrates the Allowance is necessary by establishing that: (i) the Work constitutes Allowance Work; **and** (ii) the failure to obtain pricing or bids did not result from any Error or Omission, or any other error, by Design Build Entity, including, without limitation, Design Build Entity’s failure to comply with the Subcontractor Procurement Process.

9.2.2.2. **Condition 2.** The Allowance valuation is reasonable based on the design information available at the time the GMP is established.

9.2.2.3. **Condition 3.** Design Build Entity adequately and specifically described the scope of Allowance Work. Any description must include a degree of specificity enabling Agency to price the Allowance Work and to ensure that the Allowance(s) is necessary. This may include references to Drawings and Specifications.

9.2.3. Agency may, in its sole discretion, require that Design Build Entity perform any of the following at its sole cost and expense before Agency provides acceptance of any Allowance: (i) bid or re-bid the Allowance Work; (ii) to re-price the Allowance Work; or (iii) redesign or perform value engineering to reduce the price of the Allowance Work.

9.2.4. An Allowance(s) shall **NOT** be approved for Design Work Stage Services.

9.3. **Allowance Use and Approval Process**

9.3.1. An Allowance(s) may only be used for the specific and discrete scope(s) of Work for which Design Build Entity identified as set forth above. No part of an Allowance may be used to recover cost deficits arising from Design Build Entity’s failure to adequately price other scopes of Construction Work when preparing the GMP.

9.3.2. Design Build Entity shall only utilize an Allowance(s) upon prior written approval of Agency. To receive Agency written approval for use of an Allowance(s), Design Build Entity shall submit a written request to Agency for use of the Allowance(s) that:

9.3.2.1. Includes a description of the requested use, including the description of the Allowance Work and why it is necessary to complete the Construction Work;

9.3.2.2. Identifies which Allowance(s) the Allowance Work will be paid from and demonstrates that the proposed use falls within the specific and discrete scope of an Allowance(s); and

9.3.2.3. Substantiates the costs of the Allowance Work in the same manner Design Build Entity would substantiate a PCO; provided, however, Agency may waive this requirement and instead direct that Design Build Entity perform the Allowance Work on a time and material basis that in no event shall exceed the amount identified for that Allowance(s) in the Final GMP. In that event, the Parties shall comply with the procedures for establishing and pricing time and materials Change Work in the “Changes in the Work” section of these General Conditions.

9.3.3. After Agency authorizes the use of an Allowance(s) and Design Build Entity performs the Allowance Work, Design Build Entity shall provide the following documentation with its next Application for Payment: (i) itemization for Design Build Entity’s use of the Allowance(s); and (ii) an updated Schedule of Values indicating the amount of the Allowance(s) used and the remaining balance for that Allowance(s), if any.

9.3.4. If the Direct Costs of the Allowance Work for a Design Build Entity Allowance(s) exceed the cost specified for that Allowance(s), then Design Build Entity may use the Contingency, if any Contingency funds are available and Agency approves the use of those funds, in its sole discretion. If the Contingency is exhausted or Agency does not approve the use of Project

Contingency funds, Design Build Entity shall be responsible for any overage costs for the associated Allowance Work at Design Build Entity's sole cost and expense.

- 9.3.5. If the Direct Costs of the Allowance Work for a Agency Allowance exceed the amount specified for the Allowance(s) in the GMP, the GMP will be adjusted by an additive Change Order; provided, however, that Design Build Entity substantiates any costs by submitting a Proposed Change Order.
- 9.3.6. If the actual cost of the Allowance Work is less than the cost authorized by Agency, Agency shall be entitled to issue a deductive Change Order crediting Agency for unused portion of any Allowance(s), plus any mark-up.
- 9.3.7. At Completion, Agency shall retain any unused portion of any Allowance(s). If any unused Allowance(s) has not been credited to Agency, Agency shall issue a deductive Change Order crediting Agency for the unused portion of the Allowance(s), plus any mark-up, from any amounts due Design Build Entity.

10. CONTINGENCY

- 10.1. **"Contingency"** if expressly approved in writing by the Agency as part of the Final GMP Amendment, means an amount set by Agency that is part of the Final GMP and which Agency may use to pay for Change Orders for Construction Stage Services, in Agency's sole and absolute discretion. The Contingency shall be for the sole and exclusive use and benefit of Agency.
- 10.2. Agency Contingency shall be for the sole use of Agency in its absolute discretion and is included in the GMP. Agency Contingency may be used for any changes directed by Agency, including but not limited to, Change Orders, or for use any other use proposed by Agency, which may be accepted or denied in Agency's sole and absolute discretion.
- 10.3. **Design Build Entity Proposed Contingency Use.**
 - 10.3.1. If Design Build Entity desires to utilize the Contingency, it may only propose to utilize the Contingency for the following:
 - 10.3.1.1. Construction Stage Work shown or inferred on the Drawings and Specifications but missing from bid packages;
 - 10.3.1.2. Expenditures directed by Design Build Entity and agreed to by Agency, in its sole discretion, for the benefit of the Project.
 - 10.3.1.3. Coordination of installation tolerances between trades.
 - 10.3.1.4. Overages on Design Build Entity requested Allowances that were specifically approved by Agency
 - 10.3.1.5. Acceleration of the Contract Time.
- 10.4. **Prohibited Contingency Use.** The Contingency may never be used for:
 - 10.4.1. Additional or extended Design Build Entity's General Conditions, including Project management staff for Construction Stage Work.
 - 10.4.2. Weather protection for Work in place, or materials for the benefit of Subcontractors.
 - 10.4.3. Insurance co-pay costs.
 - 10.4.4. Construction Stage Work specified in subcontracts with Subcontractors of any tier.
 - 10.4.5. Replacing, correcting, or otherwise remedying defective or nonconforming use as required by the Contract Documents.
 - 10.4.6. Any Work specified in subcontracts.
 - 10.4.7. Any conflict, ambiguity, or increase in costs arising out of Design Build Entity's error and omissions
- 10.5. **Project Contingency Use and Approval Process.**
 - 10.5.1. Any written request by Design Build Entity to utilize the Project Contingency shall be supported by:
 - 10.5.1.1. A detailed description of the portion of the Construction Stage Work to which the request pertains. The description must demonstrate that the Construction Work falls within a permissible use(s) of Contingency as provided for herein; and
 - 10.5.1.2. Substantiation for the Direct Cost of Work arising from the proposed use of audit
 - 10.5.1.3. in the same manner Design Build Entity would substantiate a PCO; provided, however, Agency may waive this requirement and instead direct that Design Build Entity perform the Construction Stage Work on a time and material basis.
 - 10.5.2. Design Build Entity's use of Contingency shall be documented by a separate accounting accompanying Design Build Entity's monthly Application for Payment and not solely as a line

item in any Schedule of Values. The accounting shall include documentation and information in the level of detail required by the Contract Documents, including, without limitation: (i) a description of the Construction Stage Work for which Contingency was used; (ii) a breakdown of the costs of Contingency use; and (iii) an itemization of the amount used and an accounting of the Contingency balance.

11. CHANGE IN SCOPE OF WORK:

11.1. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid, mutually-agreed change order or amendment executed by the Parties.

11.2. **No Changes or Design Stage Services.** Design Build Entity shall not be entitled to any changes to the Contract Price for Design Stage Services unless authorized by the Contract Documents.

11.3. **Proposed Change Order:**

11.3.1. **Definition of Proposed Change Order:** A Proposed Change Order (“PCO”) is a written request prepared by Design Build Entity requesting that Agency issue a Change Order based upon a proposed change to the Work.

11.3.2. **Time to Submit PCO:** Design Build Entity shall submit its PCO within ten (10) business days of the date Design Build Entity discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by Agency. If additional time is necessary to estimate and prepare a PCO, then Design Build Entity shall submit to Agency within five (5) business days a written explanation of the reasons with a request for a specified extension to submit the PCO; provided, however, that any such request may be granted or denied in Agency’s reasonable discretion. If the extension does not provide enough time for Design Build Entity to adequately price or determine the precise scope for any PCO, Design Build Entity shall submit a placeholder PCO which sets forth a description of the Work and the price based on information available to Design Build Entity at that time. Within five (5) days that Design Build Entity knows the scope and price of the PCO, Design Build Entity shall submit a final PCO fully compliant with the Contract Documents. Time is of the essence in Design Build Entity’s written notice pursuant to the preceding sentence so that Agency can promptly investigate and consider alternative measures to the address the basis for the PCO. Accordingly, Design Build Entity acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit Agency’s review and evaluation) within this time frame shall be deemed Design Build Entity’s waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

11.3.3. **Changes in Contract Price:** A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.

11.3.4. **Changes in Contract Time:** A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in the Contract Documents. If Design Build Entity fails to request a time extension in a PCO, then Design Build Entity is thereafter precluded from requesting time and/or claiming a delay.

11.3.5. **Conditions Precedent for a Change Order:** Design Build Entity may only request changes to the Contract Price or Contract Time for Additional Work or delays to completion of the Project caused by the acts, errors, or omissions of Agency, or its agents or employees, or caused by Unforeseen Site Conditions, or Force Majeure if, and only if, Design Build Entity follows the procedures specified in this section. As used herein, “**Additional Work**” means new or unforeseen Work that Agency determines is not covered by the Contract Documents.

11.3.6. **Unknown and/or Unforeseen Conditions:** If Design Build Entity encounters conditions at the Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (“**Unforeseen Site Conditions**”), Design Build Entity shall promptly provide notice to Agency before conditions are disturbed and in no event later than five (5) working

days after first observance of the conditions. Agency will promptly investigate the conditions and, if Agency reasonably determines that they differ materially and cause an increase or decrease in Design Build Entity’s cost of, or time required for, performance of any part of the Work, Design Build Entity shall be entitled to an equitable adjustment in the Contract Price or Contract Time, or both. If Agency reasonably determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, Agency shall promptly notify Design Build Entity in writing, stating the reasons. If Design Build Entity disputes Agency’s determination, Design Build Entity shall perform the Work without any increase in Contract Price and/or Contract Time and may proceed under a reservation of rights and may seek compensation pursuant to the Claims Resolution provisions in the Contract.

11.3.7. **Format for Proposed Change Order:** The following format shall be used as applicable by Agency and Design Build Entity (e.g. Change Orders, PCO’s) to communicate proposed additions and deductions to the Contract, attaching documentation substantiating the change.

	SUBCONTRACTOR PERFORMED WORK	ADD	DEDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered) Rates per prevailing wage scale of work classifications, including Fringe Benefits		
(c)	Add Equipment (attach suppliers’ invoice)		
(d)	SUBTOTAL		
(e)	Add Subcontractor’s overhead and profit , not to exceed [Insert Percentage] (XX%) of item (d)		
(f)	SUBTOTAL		
(g)	Add Design Build Entity’s fee, overhead, profit & general conditions , not to exceed [Insert Percentage] (XX%) of the sum of item (f)		
(h)	SUBTOTAL		
(i)	Add Bond and Insurance , not to exceed [Insert Percentage] (XX%) of Item (h)		
(j)	TOTAL		
(k)	Time		Days

	DESIGN-BUILD ENTITY PERFORMED WORK	ADD	DEDUCT
(a)	Material (attach itemized quantity and unit cost plus sales tax)		
(b)	Add Labor (attach itemized hours and rates, fully encumbered). Rates per prevailing wage scale of work classifications, including Fringe Benefits)		
(c)	Add Equipment (attach suppliers’ invoice)		
(d)	SUBTOTAL		
(e)	Add Design Build Entity’s fee, overhead, profit & general conditions , not to exceed [Insert Percentage] (XX%) multiplied against the sum of item (d)		
(f)	SUBTOTAL		
(i)	Add Bond and Insurance , not to exceed one and one half percent (1.5%) of item (f)		
(j)	TOTAL		
(k)	Time		Days

11.3.8. **Requirement to Substantiate:** PCOs must include documentation reasonably necessary to substantiate all material, labor, and equipment included in Design Build Entity’s request for an increase or decrease to the Contract Price. If Agency believes that Design Build Entity failed to

adequately substantiate the PCO, Agency may require Design Build Entity to provide additional reasonable substantiation for the PCO. Design Build Entity's failure to respond to Agency's request for additional substantiation within a reasonable time shall constitute a waiver of Design Build Entity's claim for additional compensation for the work included in the PCO.

- 11.3.9. **Deleted Work:** All deductive change orders must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit. If the deleted work was to be performed by Design Build Entity, the deduction shall include a minimum of ten (10) percent for the total profit and overhead to be deducted with the value of the work. If the deleted work was to be performed by Design Build Entity's subcontractors, the deduction shall include a minimum of five (5) percent for the total profit and overhead to be deducted with the value of the work.
- 11.3.10. **Escalation.** Design Build Entity shall substantiate any request for additional compensation arising from escalation costs as required by the Contract.
- 11.3.11. **Delay:** Any request for an extension to the Contract Price or Contract Time relating to any alleged delay shall be included in a PCO and conform to the following requirements:
- 11.3.11.1. **Design Build Entity's Notice of Delay:**
- 11.3.11.1.1. In addition to the requirements indicated in this subsection, Design Build Entity shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions.
- 11.3.11.1.2. Design Build Entity shall, within **SEVEN (7)** calendar days of any delay impacting the critical path in completing the Work, notify Agency in writing of the causes of the delay including documentation and facts explaining the delay.
- 11.3.11.1.3. Any request by Design Build Entity for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in a PCO. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official approved Project Schedule as updated and approved by Agency at the time of occurrence of the delay or execution of Work related to any changes to the Work.
- 11.3.11.1.4. Any claim for delay must include the following information as support, without limitation:
- 11.3.11.1.4.1. **Duration:** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
- 11.3.11.1.4.2. **Logical Ties / Fragnets:** Specific logical ties to the Project Schedule for the proposed changes and/or delay showing the activity/activities in the Project Schedule that are affected by the change and/or delay (A portion of any delay of seven (7) days or more must be provided). Include a "fragnet" analysis for the portion of the schedule and the activities Design Build Entity contends are impacted by the delay.
- 11.3.11.1.4.3. **Updated Project Schedule:** A recovery or updated Project Schedule for all affected Site.
- 11.3.11.1.5. Agency shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in Agency's reasonable judgment, the findings of fact justify an extension.
- 11.3.11.1.6. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

- 11.3.11.1.7. An extension of time may only be granted if Design Build Entity has timely submitted the updated Project Schedule as required herein.
- 11.3.11.1.8. Following submission of a notice of delay, Agency may determine whether the delay is to be considered:
 - 11.3.11.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;
 - 11.3.11.1.8.2. How long the delay continues; and
 - 11.3.11.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.
- 11.3.11.2. **Strict Compliance.** Design Build Entity’s failure to request adjustment(s) of the Contract Time in strict conformance with applicable provisions herein shall be deemed Design Build Entity’s waiver of its right to assert a claim for a delay.
- 11.3.11.3. **Limitations Upon Adjustment of Contract Time on Account of Delays:** Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Project Schedule as of the date on which a delay first occurs. Agency shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if Agency shall deny a request by Design Build Entity for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Project Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to Agency’s review of that request, Design Build Entity shall insert into the then current and updated approved Project Schedule and a “fragnet” analysis representing the event that Design Build Entity claims to result in delay to the critical path as depicted in the updated approved Project Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.
- 11.3.12. **Excusable and Compensable Delay(s):**
 - 11.3.12.1. Design Build Entity is **not** entitled to additional compensation for any delay, even a delay caused by an Excusable Delay, unless **all** of the following conditions are met (“**Compensable Delay**”):
 - 11.3.12.1.1. Agency, the utility or an authority having jurisdiction is responsible for the delay;
 - 11.3.12.1.2. The delay is unreasonable under the circumstances involved, impacts the critical path of the Work, and extends the most current date for Completion of the Project, stage(s), and/or Work at a Site;
 - 11.3.12.1.3. The delay was not within the contemplation of Agency and Design Build Entity, determined based on the events that were included in the Project Schedule or should have reasonably been included therein;
 - 11.3.12.1.4. Design Build Entity complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract;

11.3.12.1.5. The delay could not have been avoided or reasonably mitigated by Design Build Entity’s care, prudence, foresight, and diligence;

11.3.12.1.6. The delay extends the most current Completion date (for the Project or any stage of the Project); and

11.3.12.1.7. The delay is not concurrent with a Design Build Entity -caused delay or other type of Excusable Delay.

11.3.12.2. In accordance with California Public Contract Code section 7102, if Design Build Entity’s progress is delayed by the events described in the preceding subsection, Design Build Entity shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Design Build Entity’s damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Design Build Entity seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Design Build Entity shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Design Build Entity shall only be entitled to the actual costs to Design Build Entity for any Compensable Delay, and Design Build Entity shall not be entitled to calculate those costs by any other formula including, without limitation, jury verdict method, total cost method, or modified total cost method.

11.3.13. Excusable and Non-Compensable Delay(s):

11.3.13.1. An “**Excusable Delay(s)**” shall mean an interruption of the Work beyond the reasonable control of Design Build Entity and that:

11.3.13.1.1. Could have not been avoided by Design Build Entity exercising reasonable care, prudence, foresight, and diligence, and

11.3.13.1.2. Actually extends the most current date for Completion of the Project, stage(s), and/or Work at a Site.

11.3.13.2. Design Build Entity may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but Design Build Entity shall not be entitled to additional compensation for an Excusable Delay.

11.3.13.3. Excusable Delays are limited to interruptions that satisfy the above requirements, or that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics or pandemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; supply chain disruptions beyond the contemplation of the Parties as of the Effective Date for an Impacted Item or unavailability of an Impacted Item; and Adverse Weather that satisfies the requirements herein.

11.3.13.3.1. Supply chain disruptions and unavailability of materials or equipment may constitute an interruption that may support Excusable Delay for an Impacted Item **only**, if Design Build Entity demonstrates **all** the following conditions are satisfied:

11.3.13.3.1.1. The supply chain disruption causes the procurement of an Impacted Item to exceed the amount of days for the delivery for the Impacted Item as indicated in the **initial** detailed Project Schedule;

11.3.13.3.1.2. Design Build Entity has exhausted any Supply Float for that Impacted Item;

11.3.13.3.1.3. Delay in the procurement of the Impacted Item materially impacts the progress of the Work by impacting the critical path of the Project; and

11.3.13.3.1.4. Design Build Entity in no way causes the delay in the procurement of the Impacted Item. Without in any way limiting the generality of the foregoing, Design Build Entity shall be deemed to “cause” a delay in the procurement of an Impacted Item if: (i) Design Build Entity unreasonably delays ordering the Impacted Item; and/or (ii) Design Build Entity fails to request permission from Agency to purchase the Impacted Item sufficiently in advance given then-current information regarding lead times for an Impacted Item and to store the Impacted Item on the Site or off-Site, with such storage complying with the requirements of the Contract Documents.

11.3.13.4. Design Build Entity is aware that governmental agencies and utilities, including, without limitation, gas companies, electrical utility companies, water districts, and other agencies (“**Review Agencies**”) may have to approve Design Build Entity-prepared drawings or approve a proposed installation. Design Build Entity has included in the Contract Price and design schedule, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Design Build Entity is only entitled to an extension to the Contract Time arising from delays caused by review of Design Build Entity’s drawings or other approvals of Review Agencies if any such event satisfies the conditions applicable to Review Agencies in the “**Force Majeure**” section below.

11.3.13.5. Neither the financial resources of Design Build Entity or any person or entity directly or indirectly engaged by Design Build Entity in performance of any portion of the Work shall be deemed conditions beyond the control of Design Build Entity. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Design Build Entity establishes: (i) full compliance with all applicable provisions of the General Conditions relative to the method, manner and time for Design Build Entity’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Design Build Entity’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Design Build Entity or any person or entity directly or indirectly engaged by Design Build Entity in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Design Build Entity’s request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Project Schedule or the most recent updated approved Project Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

11.3.14. Unexcused Delay(s) – Liquidated Damages:

11.3.14.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the “**Excusable and Compensable Delay(s)**” or the “**Excusable and Non-Compensable Delay(s)**” sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

11.3.14.2. Design Build Entity and Agency hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult

or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that Agency will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed Design Build Entity shall forfeit and pay to Agency as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract for each calendar day of delay in Completion. Design Build Entity and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

11.3.14.3. Design Build Entity shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay but instead shall be entitled to an extension of the Contract Time for such delay.

11.3.15. **Adverse Weather:** Design Build Entity may obtain an extension of time in the event of Adverse Weather.

11.3.15.1. “**Adverse Weather**” shall mean only weather that satisfies all of the following conditions:

11.3.15.1.1. Unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred;

11.3.15.1.2. Unanticipated; and

11.3.15.1.3. At a Project Site.

11.3.15.2. Design Build Entity will only be allowed a time extension for Excusable Delay caused by Adverse Weather if requested by Design Build Entity and only if all the following conditions are met:

11.3.15.2.1. The weather conditions constitute Adverse Weather, as defined herein;

11.3.15.2.2. Design Build Entity can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

11.3.15.2.3. Design Build Entity’s crew is dismissed as a result of the Adverse Weather; and

11.3.15.2.4. The number of days of delay for the month exceed those indicated in this table:

January	11	July	0
February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

A day-for-day extension will only be allowed for those days in excess of those indicated in this table.

11.3.15.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

12. **TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Design Build Entity must submit and obtain Agency acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

13. **EXCAVATIONS OVER FOUR FEET:**

13.1. If this Contract includes excavations over four (4) feet, Design Build Entity shall in compliance with Public Contract Code section 7104, promptly, and before the following conditions are disturbed, notify Agency, in writing, of any: (1) Material that Design Build Entity suspects may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the Site that differ from those indicated in the Construction Documents; or (3)

Unknown physical conditions at the Site of any unusual nature, or materially different from conditions ordinarily encountered and generally recognized as inherent in the character of the Work. Agency shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or involve hazardous waste, and cause a decrease or increase in Design Build Entity's cost of, or the time required for, performance of any part of the Work, Agency shall issue a change order or amendment as provided herein.

- 13.2. In the event that a dispute arises between Agency and Design Build Entity regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Design Build Entity's cost of, or time required for, performance of any part of the Work, if possible, Design Build Entity shall proceed with other Work to be performed under the Contract which is not subject to the dispute. Design Build Entity shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Parties.
- 13.3. Notwithstanding the above, the Work does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("**Hazardous Materials**"). The Work has been contemplated and priced based on the absence of Hazardous Materials at the Site. Design Build Entity will notify Agency immediately if it discovers or suspects the presence of any Hazardous Materials, and such discovery shall entitle Design Build Entity to suspend the Work until Agency can arrange proper remediation and the Parties can negotiate mutually-agreeable terms to complete the rest of the Work, if feasible.
14. **WORKERS:** Design Build Entity shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of Design Build Entity or a subcontractor whom Agency may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at the Site without written consent from Agency.
15. **CORRECTION OF ERRORS:** Design Build Entity shall perform, at its own cost and expense and without reimbursement from Agency, any work necessary to correct errors or omissions which are caused by Design Build Entity's failure to comply with the Contract.
16. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of Agency, which shall not be unreasonably withheld.
17. **DESIGN-BUILD ENTITY SUPERVISION:** Design Build Entity shall provide competent supervision of personnel employed on the Site, use of equipment, and quality of workmanship. Design Build Entity shall provide a full-time Project manager and a full-time, on-Site, non-working Project superintendent subject to acceptance of Agency.
18. **CLEAN UP:** Debris from the Work shall be removed from the Site by Design Build Entity. The Site shall be in order at all times when Work is not being performed and shall at all times be maintained in a reasonably clean condition.
19. **ACCESS TO WORK:** Agency shall provide Design Build Entity with the required Site access. Agency representatives shall at all times have access to the Work. Design Build Entity shall provide safe and proper facilities for Agency's access.
20. **PROTECTION OF WORK AND PROPERTY:** Design Build Entity shall erect and properly maintain all necessary safeguards, signs, barriers, lights, and security persons for protection of workers, the public and the Work and shall post clear and conspicuous notice warning of any hazards created by the Work. In an emergency affecting life, safety, Work, or adjoining property, Design Build Entity, without special instruction or authorization from Agency, is permitted to take any action Design Build Entity thinks necessary to prevent such threatened loss or injury.
21. **OTHER CONTRACTS/CONTRACTORS:** Design Build Entity acknowledges that it shall not have exclusive occupancy of the Site or of the Project. Agency reserves the right to let other contracts, and/or to perform other work with its own forces at the Site. Design Build Entity shall afford Agency's contractors reasonable opportunity for introduction and storage of materials and execution of contractor's work at the Site. If applicable, Design Build Entity shall properly coordinate and connect the Work with the work of Agency's contractors. In addition to Design Build Entity's obligation to protect its own Work, Design Build Entity shall use its best efforts to protect the work of any other contractor that Design Build Entity encounters while working on the Project. Design Build Entity shall not cause any unnecessary hindrance or delay to the use and/or operation(s) of the Site and/or to Agency or any other contractor working on the Project. If simultaneous execution of any contract or operation is

- likely to cause interference with performance of Design Build Entity's Contract, Design Build Entity shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify Agency of the resolution.
22. **ASSIGNMENT OF CONTRACT:** Design Build Entity shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of Agency. This provision shall not limit Design Build Entity's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of Agency (i) to direct affiliate of Design Build Entity; (ii) to an entity that is controlled by, controls, or is under common control with Design Build Entity; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
23. **COMMISSIONING:**
- 23.1. **Summary**
- 23.1.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract.
- 23.1.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 23.1.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 23.1.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.
- 23.2. **Description**
- 23.2.1. Design Build Entity Startup: prior to Agency's acceptance of Work, Design Build Entity shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
- 23.2.2. Agency and the Project Inspector (IOR) (if any) shall be present to observe, inspect, and identify deficiencies in Building Systems Operations.
- 23.2.3. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by Agency and the IOR.
- 23.2.4. Fine Tuning: Fine tuning is the responsibility of Design Build Entity after Agency occupancy and ending one year after Agency occupancy. During this time, Design Build Entity is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
- 23.2.5. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
- 23.2.6. Fine Tuning shall extend from date of Agency occupancy to one year after occupancy.
- 23.2.7. Design Build Entity is to include in its Building Life Cycle Cost Analysis the Commissioning scope of work.
- 23.3. **Definition of Terms**
- 23.3.1. Design Build Entity's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
- 23.3.2. Installation Verification Process: Includes the on-site inspection and review of related system components for conformance to the Contract. Design Build Entity shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by Agency and the IOR for future resolution.
- 23.3.3. Functional Performance Testing Process: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Design Build Entity certifies that systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
- 23.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by Agency and the IOR. Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.
- 23.4. **Commissioning Duties and Responsibilities**

- 23.4.1. Design Build Entity Duties and Responsibilities:
 - 23.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the commissioning process.
 - 23.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.
 - 23.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of system readiness for performance testing is required.
 - 23.4.1.4. Provide qualified representatives for the functional performance commissioning process.
 - 23.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.
 - 23.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of Agency and the IOR, and any other related Consultants on the project.
24. **COMPLETION:**
- 24.1. **Early Design Stage:** Design Build Entity shall be complete with this stage upon Agency's acceptance of final Early Design Stage Services, including, without limitation, the approval of any deliverables required to be provided by Design Build Entity to Agency.
 - 24.2. **Schematic Design Documents:** Design Build Entity shall be complete with this stage upon Agency's acceptance of final Schematic Design Documents, including, without limitation, the approval of any deliverables required to be provided by Design Build Entity to Agency.
 - 24.3. **Design Development Documents:** Design Build Entity shall be complete with this stage upon Agency's acceptance of final Design Development Documents, including, without limitation, the approval of any deliverables required to be provided by Design Build Entity to Agency.
 - 24.4. **50% Construction Documents:** Design Build Entity shall be complete with this stage upon Agency's acceptance of Construction Documents at 50% of completion, including, without limitation, the approval of any deliverables required to be provided by Design Build Entity to Agency.
 - 24.5. **100% Construction Documents:** Design Build Entity shall be complete with this stage upon:
 - 24.5.1. Agency's acceptance of final Construction Documents and Design Build Entity's submittal of those documents to AHJs, where applicable; and
 - 24.5.2. After Design Build Entity procures Subcontractors and Agency and Design Build Entity agree to the cost to perform Construction Stage Services.
 - 24.6. **Construction:**
 - 24.6.1. Design Build Entity acknowledges that the requirements for "**Completion**" hereunder apply to Construction Stage Services for the Project.
 - 24.6.2. **Walk-Through as Prerequisite to Determination of Completion:**
 - 24.6.2.1. Design Build Entity shall notify Agency when it thinks that the Work is complete except for minor corrective items. Design Build Entity shall provide to Agency a preliminary list of all minor corrective items that must be corrected. Agency and Design Build Entity shall then schedule a final walk-through of the Project to be attended by Design Build Entity, Agency, and the Inspector to determine whether and to what extent the Work is complete. Agency will schedule the walkthrough within five (5) business days after Agency's receipt of Design Build Entity's preliminary list, except in the event that all parties necessary for the walkthrough are reasonably not available (including, without limitation, the Construction Manager or IOR). Any erroneous claims of completion by Design Build Entity resulting in a premature walk-through shall be at Design Build Entity's sole cost and expense, and Agency shall be entitled to reduce its payments to Design Build Entity under the Contract by an amount equal to any costs incurred by Agency due to the erroneous claims by Design Build Entity that the Project is complete.
 - 24.6.2.2. Design Build Entity's preliminary list of all minor corrective items will be used by Design Build Entity to prepare a corrective items list ("**Punch-List**") that shall be identified in the final walk-through of the Project. Agency shall approve the Punch-List and may add omitted or missing items and provide a copy of an updated Punch-List to Design Build Entity at the conclusion of the walk-through or within a reasonable time thereafter, not to exceed five (5) days.

- 24.6.2.3. Agency may, at its sole discretion, accept as complete partial scopes or phases of Work as each is completed prior to completion of the entire Work or Project.
- 24.6.2.4. No later than five (5) business days after the walk through, Agency shall determine whether the Work is eligible for Completion.
- 24.6.2.5. If Design Build Entity and Agency (through its Agency Representative) determine that the Work is eligible for Completion, then the date of that determination shall constitute the final day of the Construction Stage of the Project when calculating Liquidated Damages (“**Staff Determination**”). Staff Determination of eligibility for Completion shall not be unreasonably withheld, delayed or conditioned; provided, however, that Agency’s determination, in its sole and reasonable discretion, that any Work is not complete in conformance with all Contract Documents shall not be considered “unreasonable”. Additionally, Agency shall promptly include the approval and acceptance of the Project and Notice of Completion on the Board’s next available agenda.
- 24.6.2.6. Design Build Entity shall attend a post-construction interview with Agency and provide a narrative of lessons learned for the Project.
- 24.6.3. **Agency’s Acceptance of Work:** Agency may either:
- 24.6.3.1. Accept the Work as complete notwithstanding Punch List items (as distinguished from incomplete Work), if the Work has otherwise been completed to the satisfaction of Agency and the Inspector; or
- 24.6.3.2. Refrain from accepting the Work as complete until the entire Work and all portions thereof, including all Punch-List items, have been completed to the satisfaction of Agency and the Inspector; provided however, that completion of Punch List items is not required for Agency to deem the Work at a Site Complete and cease the accrual or assessment of Liquidated Damages, if **all** other Work is complete.
- 24.6.4. The Work shall be accepted as complete by an action of Agency’s Board (“**Final Completion**” or “**Complete(ion)**”).
- 24.6.5. **Notice of Completion:** Once Agency accepts the Work, Agency may thereafter cause a Notice of Completion to be recorded in the County Recorder’s Office.
- 24.6.6. **Design Build Entity’s Failure to Correct Punch-List Items:** If Agency elects to accept Work with incomplete Punch List items, and Design Build Entity fails to complete the Punch List items within forty-five (45) days of days of Completion of the Project, Agency shall withhold from the final payment due Design Build Entity an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by Agency, of each Punch List item and all portions related thereto, until the item is complete.
- 24.6.7. **Time is of the Essence:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
25. **PARTIAL OCCUPANCY / BENEFICIAL USE:** Agency may occupy or use any completed or partially completed portion of the Work at any time provided that doing so does not unreasonably interfere with Design Build Entity’s ability to complete and Work. Neither Agency’s final acceptance, final payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by Agency shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve Design Build Entity or Design Build Entity’s Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. Agency and Design Build Entity shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities, or determination of Completion, shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, Agency shall have the right to occupy or use any portion of the Work that it needs or desires to use.
26. **FORCE MAJEURE CLAUSE:**
- 26.1. The term “**Force Majeure**” shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; disease, strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the

government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tornado; severe storm; insurrections; epidemics; pandemics; quarantine restrictions; strikes; civil disobedience; sabotage; supply chain disruptions; general unavailability of materials in the region in which the Work is to be performed beyond the contemplation of the Parties as of the Effective Date; restraint by court order or public authority (whether valid or invalid); which is beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably have been expected to avoid and which it has been unable to overcome.

26.2. Neither Party shall be considered to be in default in the performance of any material obligation of the Contract during the time and to the extent that the Party is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if its failure is due to causes arising out of the Party's negligence or due to removable or remediable causes which the Party fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill its obligations under the Contract by reason of an event of Force Majeure shall give prompt written notice of the fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming a Force Majeure event shall provide the other Party satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.

26.3. Design Build Entity is aware that Review Agencies may have to approve Design Build Entity-prepared drawings, plans or approve a proposed installation. Design Build Entity shall include in the Project Schedule time for possible review of its drawings, plans, and proposed installation and for reasonable delays or damages that may be caused by the Review Agencies. Design Build Entity shall be entitled to additional time in the Project Schedule for review of Design Build Entity's drawings, plans or proposed installation or other approvals from the Review Agencies, if all of the following conditions have been satisfied:

26.3.1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule; and

26.3.2. Design Build Entity has diligently pursued approval from the Review Agencies; and

26.3.3. The delay in Review Agencies' approval is not related to an uncured defect, error, or omission in Design Build Entity's drawings, plans, or proposed installation.

27. INDEMNIFICATION / HOLD HARMLESS CLAUSE:

27.1. To the furthest extent permitted by California law, Design Build Entity shall defend, indemnify, and hold harmless Agency, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers (the "**Indemnified Parties**") from any and all third party demands, losses, liabilities, claims, suits, and actions (the "**Indemnity Claim(s)**") of any kind, nature, and description, including, but not limited to, reasonable attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract to the extent the Indemnity Claims are caused by the negligence, recklessness, or willful misconduct of Design Build Entity. Agency shall have the right to accept or reject any legal representation that Design Build Entity proposes to defend Agency. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Design Build Entity to: (1) comply with any provision of law, and (2) timely and properly fulfill all of its obligations under the Contract, including, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

27.2. Further, Design Build Entity shall be directly liable to the Indemnified Parties for and, to the furthest extent permitted by California law, shall defend, indemnify, and hold harmless the Indemnified Parties from any Indemnity Claims of any kind, nature, and description arising out of, connected with, or resulting from the design component of the Project.

27.3. Design Build Entity's duty to defend under either of the above provisions shall begin upon Agency's notification to Design Build Entity of an Indemnity Claim. At that time, Design Build Entity shall pay for that defense at its sole cost. Design Build Entity's duty to indemnify and defend under this Contract shall apply during the term of this Contract and shall survive any expiration or termination of this Contract until any such Indemnity Claim(s) is barred by the applicable statute of limitations and is in addition to any other rights or remedies that Agency may have under the law or under this Contract.

28. PAYMENT:

- 28.1. **Transfer of Title:** Title to all or a portion of the Project equipment, supplies and other components of the Work will pass to Agency upon the date of payment for such Project equipment, supplies or components or portion thereof is made by Agency.
- 28.2. **Design Stage Services:**
- 28.2.1. Invoices shall be on a form approved by Agency and are to be submitted to Agency via Agency's authorized representative.
- 28.2.2. Design Build Entity shall submit to Agency on a monthly basis documentation showing proof that payments were made to its consultant(s).
- 28.2.3. Design Build Entity shall submit to Agency for approval a copy of Design Build Entity's monthly pay request format.
- 28.2.4. Upon receipt and approval of Design Build Entity's invoices, Agency agrees to make payments within thirty (30) days of receipt of the invoice.
- 28.3. **Construction Stage Services:**
- 28.3.1. During Construction Stage Services of the Project, Design Build Entity shall prepare and submit a separate Schedule of Values and separate Application for Payment consistent with the requirements below, as applicable.
- 28.3.2. On a monthly basis, Design Build Entity shall submit an application for payment based upon the estimated value for materials delivered or Services and Work performed under the Contract as of the date of submission ("**Application for Payment**") and consistent with the Project Cost Values set forth in **Exhibit D**, attached hereto. Design Build Entity shall certify each Application for Payment and the Inspector shall verify that the materials, Services, or Work were delivered or performed.
- 28.3.3. **Schedule of Values:** Design Build Entity shall provide a preliminary Schedule of Values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction ("**Schedule of Values**"). This preliminary Schedule of Values shall include, at a minimum, the following information and the following structure:
- 28.3.3.1. Divided into the following categories, to the extent applicable for the Work:
- 28.3.3.1.1. Overhead and profit;
- 28.3.3.1.2. Supervisions;
- 28.3.3.1.3. General conditions;
- 28.3.3.1.4. Layout
- 28.3.3.1.5. Mobilization;
- 28.3.3.1.6. Submittals;
- 28.3.3.1.7. Bonds and insurance;
- 28.3.3.1.8. Closeout documentation;
- 28.3.3.1.9. Demolition;
- 28.3.3.1.10. Installation;
- 28.3.3.1.11. Finishes;
- 28.3.3.1.12. Rough-in;
- 28.3.3.1.13. Testing;
- 28.3.3.1.14. Punchlist and acceptance;
- 28.3.3.1.15. Allowance(s), if applicable;
- 28.3.3.1.16. Contingency(ies), if applicable;
- 28.3.3.2. Divided by each of the following areas:
- 28.3.3.2.1. Site work;
- 28.3.3.2.2. By major trades;
- 28.3.3.2.3. By building;
- 28.3.3.2.4. By each floor (if applicable)
- 28.3.3.3. The preliminary Schedule of Values shall not provide for values any greater than the following percentages of the value of the portion of the Contract Price associated with Construction Stage Services:
- 28.3.3.3.1. Mobilization and layout combined to equal not more than 1%;
- 28.3.3.3.2. Submittals, samples and shop drawings combined to equal not more than 3%;
- 28.3.3.3.3. Bonds and insurance combined to equal not more than 2%.

- 28.3.3.4. **Closeout Documentation:** Closeout Documentation shall have a value in the preliminary Schedule of Values of not less than 1%. The value for Closeout Documentation shall be in addition to and shall not be a part of any retention. Closeout Documentation shall include the following, without limitation, as applicable for the Construction Stage Services:
- 28.3.3.4.1. A full set of final As-Built Drawings, as further defined herein.
- 28.3.3.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
- 28.3.3.4.3. All Warranties, as further defined herein.
- 28.3.3.5. Notwithstanding any provision of the Contract Documents to the contrary, payment of Design Build Entity's overhead, supervision, general conditions costs, and profit shall be paid by Agency, based on percentage complete consistent with the disbursement of progress payments and the final payment.
- 28.3.3.6. Design Build Entity shall certify that the preliminary Schedule of Values as submitted to Agency is accurate and reflects the costs as developed in preparing Design Build Entity's bid. The preliminary Schedule of Values shall be subject to Agency's review and approval of the form and content thereof. In the event that Agency objects to any portion of the preliminary Schedule of Values, Agency shall notify Design Build Entity, in writing, of Agency's objection(s) to the preliminary Schedule of Values. Within five (5) calendar days of the date of Agency's written objection(s), Design Build Entity shall submit a revised preliminary Schedule of Values to Agency for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary Schedule of Values shall continue until Agency has approved the entirety of the preliminary Schedule of Values as compliant with the Contract Documents. Any approval herein shall not be unreasonably withheld.
- 28.3.3.7. Once the preliminary Schedule of Values is approved by Agency, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by Design Build Entity without the prior consent and approval of Agency, which shall not be unreasonably withheld.
- 28.3.4. Within thirty (30) days after Agency's receipt of the Application for Payment, Design Build Entity shall be paid a sum equal to **Ninety-Five Percent (95%)** of the value of the Work performed (assuming the value of the Work performed is verified by Inspector and certified by Design Build Entity) up to the last day of the previous month, less the aggregate of previous payments and amounts to be withheld. Agency shall retain **Five Percent (5%)** from all amounts owing Design Build Entity as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.
- 28.3.5. To the extent applicable, with respect to any tax deduction and/or credit Design Build Entity receives based on the Project per Internal Revenue Code section 179(d), Design Build Entity shall issue a credit to Agency as an offset to Design Build Entity's fee equal to the amount of the credit minus any costs incurred by Design Build Entity in establishing that the Project qualifies for the credit.
- 28.3.6. After advance written notice and thirty (30) days opportunity to cure, Agency may deduct from any payment an amount reasonably necessary to protect Agency from loss due to:
- 28.3.6.1. Liquidated Damages which have accrued as of the date of Application for Payment;
- 28.3.6.2. Any sums expended by Agency in performing any of Design Build Entity's obligations under the Contract which Design Build Entity has failed to perform or has performed inadequately;
- 28.3.6.3. Defective Work not remedied;
- 28.3.6.4. Stop payment notices as allowed by state law;
- 28.3.6.5. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the scheduled Project completion date;
- 28.3.6.6. Unsatisfactory prosecution of the Work by Design Build Entity;
- 28.3.6.7. Unauthorized material deviations from the Contract;

- 28.3.6.8. Failure of Design Build Entity to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract during the performance of the Work;
- 28.3.6.9. Knowingly false estimates submitted by Design Build Entity of the value of the Work performed;
- 28.3.6.10. Any sums representing expenses, losses, or damages reasonably incurred by Agency for which Design Build Entity is liable under the Contract;
- 28.3.6.11. Failure to comply with skilled and trained workforce requirements; and
- 28.3.6.12. Any other sums which Agency is entitled to recover from Design Build Entity under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by Agency to deduct any of these sums from Design Build Entity's progress payment shall not constitute a waiver of Agency's right to the sums.
- 28.3.7. Payment or deposits needed for long-lead material items and for materials stored on or off the Site may be allowed at the sole discretion of Agency. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage shall be required. Design Build Entity shall furnish to Agency written consent from Design Build Entity's Surety approving the advanced payment for materials stored off Site. The maximum prepayment allowed by Agency shall be **One Hundred Percent (100%)** of the actual value of the material being considered, less retention. Design Build Entity shall protect stored materials from damage and shall be liable for any damage thereto. Damaged materials, even though paid for, shall not be incorporated into the Work. Design Build Entity shall be responsible to replace any damaged stored materials at its sole cost and expense.
29. **LOGISTIC PLAN:** Design Build Entity shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by Agency prior to Design Build Entity mobilizing on the Site for Construction Stage Services, which Agency may require be updated as reasonably required based on changes to the Work.
30. **PERMITS, APPROVALS, AND LICENSES:**
- 30.1. Design Build Entity and its employees, agents, and subcontractors shall secure and maintain in force, at Design Build Entity's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, Services or Work.
- 30.2. Design Build Entity is responsible for obtaining on behalf of Agency and at Design Build Entity's expense, local, county and state permits and approvals, required for the building, installation, and start-up of the Work which are required to complete the Project. Notwithstanding the foregoing, Agency is solely responsible for payment for the Inspector and any special inspections required.
- 30.3. Agency will cooperate and assist Design Build Entity in obtaining all permits required by the Contract or to perform the Work.
- 30.4. Agency shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable, inspections and any special inspections required.
31. **INDEPENDENT CONTRACTOR STATUS:** While performing the Services, Design Build Entity is an independent contractor, and not an officer, employee, agent, partner, or joint venture of Agency. Design Build Entity shall be solely responsible for its Worker's Compensation insurance, taxes, and other similar charges or obligations. Design Build Entity shall be liable for its actions, including Design Build Entity's negligence or gross negligence, and shall be liable for the acts, omissions, or errors of Design Build Entity's agents or employees.
32. **ANTI-DISCRIMINATION:** It is the policy of Agency that in connection with any work performed under contract with Agency, there be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of persons. Design Build Entity shall comply, and require compliance by all Design Build Entity subcontractors, with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, Government Code section 12900 et seq., and Labor Code section 1735.
- PAYMENT BOND AND PERFORMANCE BOND:** Design Build Entity shall not commence Construction Stage Services until it provides Agency, in the form provided by Agency herein, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to **One Hundred Percent (100%)** of the Contract Price. The Payment and Performance Bonds must be issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to Agency.

33. **DESIGN-BUILD ENTITY’S INSURANCE:** During the entire term of the Contract, Design-Build Entity shall have and maintain in force, the minimum policy limits indicated in this Article. Design-Build Entity shall not commence Work, nor allow any subcontractor, employee, or agent to commence Work until the insurance required of Design-Build Entity, subcontractor, or agent has been obtained. Design-Build Entity’s policy(ies) shall be primary and any insurance carried by Agency shall be secondary and supplemental. All policies shall contain waivers of subrogation against Agency, Construction Manager, Architect and Project Inspector. Excess/Umbrella policies can be used to satisfy the insurance required of Design-Build Entity.

33.1. All of Design-Build Entity’s insurance shall be placed with insurers **ADMITTED** in California with a current A.M. Best's rating of no less than **A-** or **A:VII**. Design-Build Entity shall provide documentation to Agency demonstrating this rating.

33.2. The limits of insurance shall not be less than the following amounts:

Commercial General Liability	Includes: Personal & Advertising Injury, Product Liability and Completed Operations and Third Party Property	\$2,000,000 each occurrence; \$4,000,000 general aggregate Third Party Property; Issued for the value and scope of Work stored off-site.
Automobile Liability – Any Auto	Combined Single Limit	\$2,000,000 per occurrence
Workers Compensation		Statutory limits pursuant to State law
Employers’ Liability		\$2,000,000 each accident, each disease; \$2,000,000 policy limit
Professional Liability		\$2,000,000 each occurrence; \$4,000,000 general aggregate

33.3. **Commercial General Liability Insurance:** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13). Agency shall be named as an additional insured on Design-Build Entity’s Commercial General Liability policy for any liability arising out of the Work.

33.4. **Automobile Liability:** Coverage to be written on an occurrence form. Agency shall be named as an additional insured on Design-Build Entity’s Automobile Liability policy for any liability arising out of the Work.

33.5. **Excess Liability Insurance:** Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability. Agency, by way of policy language, shall be an additional insured on Design-Build Entity’s Excess Liability Insurance which follows the underlying insurance policy.

33.6. **Workers Compensation:** Statutory limits.

33.7. **Employers’ Liability:** As indicated above.

33.8. **Builder’s Risk Insurance:** Design-Build Entity shall procure and maintain a Builder’s Risk Insurance Policy in relation to the Project that shall be effective when Agency issues a Notice to Proceed for any Construction Stage Services for the Project, which shall: (i) be written on a full replacement cost, “all risk” form, subject to customary sublimit and commercial availability (except that any insurer must be a California Admitted Insurer) (ii) cover the entire Work, including all equipment, materials, machinery, supplies, structures and other items intended to become a permanent part of the Project, and (iii) be maintained until the Commercial Operation Date. This Builder’s Risk Insurance Policy shall include the interests of Agency, Design-Build Entity, subcontractors, sub-subcontractors, vendors, and suppliers in the Work, naming each as loss payees.

33.9. **Professional Liability Insurance:**

33.9.1. Coverage to be written on a claims-made form and shall cover all non-construction Services including, all programming, design, engineering, and architectural Services performed by Design-Build Entity.

33.9.2. **Subcontractors / Subconsultants:** Subcontractors who perform non-construction services for the Project shall carry professional liability insurance at the same limits required of Design-Build Entity to cover that subcontractor’s work.

- 33.10. **Waiver of Subrogation:**
- 33.10.1. Design-Build Entity waives (to the extent permitted by law) any right to recover against Agency for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by Builder's Risk insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by Agency.
- 33.10.2. The provisions of this section are intended to restrict each Party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. Agency and Design-Build Entity shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.
- 33.11. **Additional Insured Endorsement Requirements:** On those policies described in this section where an additional insured requirement is included, Design-Build Entity shall name Agency, its trustees, members, officers, and employees, Construction Manager, Architect and Project Inspector as additional insureds. Subcontractors shall name Design-Build Entity, Agency, its trustees, members, officers, and employees as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by Agency in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by Design-Build Entity pursuant to this section must be designated in the policy as primary to any insurance obtained by Agency. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.
34. **SUBCONTRACTOR INSURANCE REQUIREMENTS:** Design Build Entity shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with limits equal to the amounts required of Design Build Entity, unless Agency and Design Build Entity agree otherwise. Design Build Entity shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Umbrella Liability Insurance.
35. **CERTIFICATES OF INSURANCE AND ENDORSEMENTS:** Design Build Entity shall provide to Agency certificate(s) of insurance and endorsements satisfactory to Agency. Design Build Entity shall provide Agency at least thirty (30) days' prior written notice of the cancellation, or non-renewal of the insurance. Furthermore, Design Build Entity shall indemnify Agency for any loss suffered by Agency to the extent that the loss is attributable to Design Build Entity's failure to provide Agency with thirty (30) days' prior written notice. Excess/Umbrella policies can be used to satisfy the insurance required of Design Build Entity.
36. **WARRANTY/QUALITY:** Except for any longer warranty called for elsewhere in the Contract Design Build Entity, manufacturer, or assigned agents shall guarantee the Work or Services performed against defective workmanship, defects or failures of materials for a period of **ONE (1)** year from date that all components of the Project commissioned and verified by Design Build Entity as being fully functional and operative, or upon Beneficial Use, whichever occurs first. All workmanship and merchandise must be warranted to be in compliance with the Contract Documents and applicable California energy, conservation, and environmental standards.
- 36.1. At Agency's sole option, Design Build Entity shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within the warranty period described above, without expense whatsoever to Agency. In the event of failure of Design Build Entity and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** days after being notified in writing; provided, however, that if Design Build Entity and/or Surety provide a reasonable reason for its inability to commence the replacement or repair within that time, Agency shall grant a reasonable extension of time, not to exceed **THIRTY (30)** days, Design Build Entity and Surety hereby acknowledge and agree that Agency is authorized to proceed to have defects repaired and made good at expense of Design Build Entity and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.
- 36.2. If, in the opinion of Agency, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to Agency or to prevent interruption of operations of Agency, Agency will attempt to give the notice required above. If Design Build Entity or Surety cannot be contacted or neither complies with Agency's request for correction within a reasonable time as

determined by Agency, Agency may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions Agency believes are necessary. The costs of correction or attention shall be charged against Design Build Entity and Surety of the guarantees provided in this Section or elsewhere in the Contract Documents.

- 36.3. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period, but after the expiration of the **one (1)** year Design Build Entity warranty period, Agency shall look solely to such manufacturer to resolve any warranty issues. Design Build Entity shall furnish to Agency all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by Agency.
- 36.4. Nothing herein shall limit any other rights or remedies available to Agency.
37. **CONFLICT OF INTEREST:** Design Build Entity understands that its professional responsibility is solely to Agency. Design Build Entity warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under the Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a Agency project; (b) entity(ies) connected or related to a trade union or joint labor management committee; or (c) Agency.
38. **COMPLIANCE WITH LAWS:** Design Build Entity shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Design Build Entity observes that any of the Work is at variance with any laws, ordinance, rules or regulations, Design Build Entity shall notify Agency, in writing, and, at Agency's option, any necessary changes to the scope of the Work shall be made and the Contract shall be appropriately amended in writing, or the Contract shall be terminated effective upon Design Build Entity's receipt of a written notice of termination. If Design Build Entity performs any Work that is in violation of any laws, ordinances, rules or regulations, without first notifying Agency of the violation, Design Build Entity shall bear all costs or expenses arising therefrom.
39. **STANDARD OF CARE:** Design Build Entity shall perform the Work and Services to the standard of care of an entity performing similar work for California public agencies in or around the same geographic area of Agency, as follows:
- 39.1. For all Work other than Construction Stage Services, the standard of care of architects or professional engineers; and
- 39.2. For all Construction Stage Services, the standard of care of licensed contractors.
- 39.3. If Design Build Entity has not met this standard of care, Design Build Entity shall be held liable consistent with the "**Indemnification/Hold Harmless**" section herein.
40. **AGENCY'S RIGHT TO AUDIT:** Agency retains the right to review and audit, at Agency's sole cost and expense, and the reasonable right of access to Design Build Entity's and any sub-consultant's non-confidential and non-proprietary records to review and audit Design Build Entity's compliance with the provisions of the Contract ("**Agency's Right**"). Agency's Right includes the right to inspect, photocopy, and to retain copies of any and all non-confidential and non-proprietary Project-related records with appropriate safeguards. Agency shall keep this information confidential, as allowed by applicable law.
- 40.1. Agency's Right includes the right to examine any and all non-confidential and non-proprietary Project books, records, documents and any other evidence of Project-related procedures and practices that are reasonably necessary to discover and verify that Design Build Entity is in compliance with all requirements of the Contract. This includes Design-Build Entity's express acknowledgement and agreement that this Contract is to be administered on an "open book" arrangement relative to costs of the Work. Design-Build Entity shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for the period set forth below, Agency and Agency's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Build Entity's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Build Entity shall preserve for the period and subject to the conditions set forth herein. Such inspection shall take place at Design-Build Entity's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Agency and Design-Build Entity as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, but the composition of such multiplier or markup is not subject to audit.

- 40.2. If there is a claim for additional compensation or for extra services or work, Agency's Right includes the right to examine non-confidential and non-proprietary Project-related books, records, documents, and accounting procedures and practices that are reasonably necessary to discover and verify all Project-related direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 40.3. Design Build Entity shall maintain complete and accurate Project-related records in accordance with generally accepted accounting practices in the industry, and in no event for less than five (5) years after Final Completion. Design Build Entity shall make available to Agency for review and audit all Project-related accounting records and documents, and any other financial data. Upon Agency's request and at Agency's sole expense, Design Build Entity shall submit exact duplicates of originals of all requested records to Agency.
- 40.4. Design Build Entity shall include these audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.
- 40.5. Design Build Entity shall comply with these provisions within thirty (30) days of Agency's written request to review and audit any or all of Design Build Entity's Project-related records and information.
41. **CLAIMS RESOLUTION:**
- 41.1. **Exclusive Remedy:**
- 41.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Design Build Entity's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("**Claims Resolution Process**").
- 41.1.2. Design Build Entity acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit Agency's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Design Build Entity's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the Contract Price on account of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation.
- 41.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.
- 41.2. **Performance during Claim Resolution Process:** Design Build Entity shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of Agency to resolve Claims with Design Build Entity as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Design Build Entity's failure to diligently proceed in accordance with Agency's instructions or the Contract terms will be considered a material breach of the Contract.
- 41.3. **Waiver:** If Design Build Entity fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Design Build Entity waives and releases its rights regarding further review of its Claim, unless Design Build Entity and Agency mutually agree in writing to other time limits. Nothing herein shall modify or alter Design Build Entity's obligation to comply with statutory notice requirements, including but not limited to, Government Code section 910 *et seq.*
- 41.4. **Intention:** The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.
- 41.5. **Other Provisions:** If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.
- 41.6. **Claim Presentation:**

- 41.6.1. **Claim:** A claim is a written demand by Design Build Entity (or by Design Build Entity on behalf of a Subcontractors) that Design Build Entity must submit by **registered mail or certified mail return receipt requested** for (“**Claim**”):
- 41.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by Agency for delay;
- 41.6.1.2. Payment of money or damages arising from work done by, or on behalf of, Design Build Entity pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or Design Build Entity is not otherwise entitled; or
- 41.6.1.3. Payment that is disputed by Agency.
- 41.7. **Subcontractors:**
- 41.7.1. Public Contract Code section 9204(d)(5) states that Design Build Entity may present to Agency a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Design Build Entity present a claim for Work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to Agency shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, Design Build Entity shall notify the subcontractor in writing as to whether Design Build Entity presented the claim to Agency and, if Design Build Entity did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- 41.7.2. Design Build Entity is responsible for providing this Claims Resolution Process to its subcontractors and for ensuring that all subcontractors or others who may assert Claims by and through subcontractors and/or Design Build Entity are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Design Build Entity shall indemnify, keep and hold harmless Agency and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its subcontractors or others who may assert Claims by and through subcontractors and/or Design Build Entity.
- 41.8. **Design Build Entity Must Timely Identify, Present and Document Any Claim:**
- 41.8.1. Every Claim shall be stated with specificity in writing and signed by Design Build Entity under penalty of perjury and presented to Agency within thirty (30) calendar days from the date Design Build Entity discovers or reasonably should discover, that an act, error or omission of Agency, its agents or employees, or action, condition or other situation has occurred that may entitle Design Build Entity to make a Claim. This shall include Design Build Entity’s actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which Design Build Entity believes there should an adjustment of the Contract Price or Contract Time. Design Build Entity shall provide this writing even if Design Build Entity has not yet been damaged, delayed, or incurred extra cost when Design Build Entity discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:
- 41.8.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
- 41.8.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments to the extent that Design Build Entity knows or reasonably should know of such adjustments; and
- 41.8.1.3. Identify in detail line-item costs if the Claim seeks money.
- 41.8.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts Design Build Entity is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once every two (2) weeks during

- any periods costs are incurred. A cost record will be considered current if submitted within ten (10) days of the date the cost reflected in the record is incurred. At the request of Agency, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).
- 41.8.1.5. Include an affirmative representation under penalty of perjury by Design Build Entity and any affected Subcontractor and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
- 41.8.1.6. Include a detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Design Build Entity, its Subcontractors and suppliers, prior to submitting a proposal for the Work.
- 41.8.2. Design Build Entity shall not be entitled to compensation for escalation of materials costs unless Design Build Entity demonstrates to the satisfaction of Agency that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of Design Build Entity, and were not reasonably foreseeable at the time of the award of the Contract. Design Build Entity shall provide evidence to Agency of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Design Build Entity timely ordered the materials at issue. Any increase to the Contract Price for escalation in the cost of materials shall be documented in a Change Order executed in accordance with the Contract Documents, and will be subject to Agency's sole discretion.
- 41.8.3. The writing shall be accompanied by all documents substantiating Design Build Entity's position regarding the Claim.
- 41.8.4. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- 41.9. **Certification:** Each copy of the Claim Documentation shall be certified by a responsible officer of Design Build Entity in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before Design Build Entity's signature: *"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."* Design Build Entity acknowledges that this requirement is not a mere formality but is intended to ensure that Design Build Entity only submits Claims that it believes are true and correct, substantiated and have merit. Should Design Build Entity fail to submit the foregoing written statement signed under penalty of perjury, Design Build Entity waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or Design Build Entity.
- 41.10. **Agency's Written Statement/Decision on Claim:** Agency shall issue a written statement/decision regarding the Claim to Design Build Entity within forty-five (45) days of receipt of the written Claim from Design Build Entity, or three (3) days after Agency's first regular Board meeting after that 45-day period if Agency's Board does not meet within that first 45-day period. If Agency fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.
- 41.11. **Design Build Entity Must Demand an Informal Meet and Confer Conference if Design Build Entity Pursues Any Claim:**
- 41.11.1. **FAILURE OF A DESIGN-BUILD ENTITY TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**
- 41.11.2. **Where There Is No Agreement:** If there is no agreement between Design Build Entity and Agency on a Claim, then within ten (10) calendar days of the date of Agency's written statement/decision in response to a Claim or PCO, if Design Build Entity pursues that Claim, then Design Build Entity must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Agency staff. A meet and confer conference with Agency staff shall be a condition precedent to Design Build Entity seeking any further relief, including a mediation as indicated below.
- 41.11.3. **Where There Is Partial Agreement:** If Design Build Entity and Agency partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a change order or

amendment, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Design Build Entity pursues those issues from that Claim, then Design Build Entity must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Agency staff regarding those issues. A meet and confer conference with Agency staff shall be a condition precedent to Design Build Entity seeking any further relief, including a mediation as indicated below, in connection with Agency's rejection.

- 41.11.4. **Meet and Confer Conference:** Agency and Design Build Entity shall schedule the meet and confer conference as soon as reasonably possible after Design Build Entity's written demand for a meet and confer conference, but in no case later than thirty (30) days after Design Build Entity's demand.
- 41.11.5. **Agency's Written Decision:** Within ten (10) **business** days of the meet and confer conference, Agency shall issue a written decision. If Agency fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
- 41.11.5.1. If Agency's decision completely resolves the Claim, then the Parties shall complete a change order or amendment, if applicable, for the issues and/or amounts agreed to.
- 41.11.5.2. If Agency rejects Design Build Entity's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- 41.11.5.3. Design Build Entity's costs incurred in seeking relief for Claims are not recoverable from Agency.
- 41.12. **Mediation:**
- 41.12.1. At Agency's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other Agency consultants.
- 41.12.2. Agency and Design Build Entity shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- 41.13. **Design Build Entity's Obligation to File a Government Code Claim:** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls Design Build Entity's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, Design Build Entity is required to present claims to Agency pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by Agency, Design Build Entity may proceed under the post-mediation provisions of this Claims Resolution Process.
- 41.14. **Post Mediation Provisions:**
- 41.14.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- 41.14.2. **Litigation of Claims in Excess of \$375,000:** If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.
- 41.15. Agency shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to Agency by Design Build Entity or any subcontractors under the standards set forth in Government Code section 12650 *et seq.* Any Design Build Entity or subcontractors who submits a false claim shall be liable to Agency for three times the amount of damages that Agency sustains

- because of the false claim. A Design Build Entity or subcontractor who submits a false claim shall also be liable to Agency for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.
- 41.16. **Documentation of Resolution:** If a Claim is resolved, Agency shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate. If Agency determines that an Agreement and Release of Any and All Claims form or other document is appropriate, Design Build Entity shall cooperate and execute that form and/or other document.
- 41.17. **Claim Resolution Process – Non-Applicability:** The procedures and provisions in this Claims Resolution section shall **not** apply to:
- 41.17.1. Agency’s determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
- 41.17.2. Agency’s rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a Design Build Entity from Agency contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;
- 41.17.3. Personal injury, wrongful death or property damage claims;
- 41.17.4. Latent defect or breach of warranty or guarantee to repair;
- 41.17.5. Stop notices or stop payment notices; or
- 41.17.6. Any other Agency rights as set forth herein.
- 41.18. Agency’s failure to respond to a Claim from Design Build Entity within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by Agency as to the merits of the Claim.
- 41.19. If Agency fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, Design Build Entity is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, Agency is entitled to withhold up to 150% of disputed amounts and Agency shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.
42. **LABOR CODE REQUIREMENTS:** Pursuant to sections 1770 et seq. of the California Labor Code, Design Build Entity and all subcontractors under Design Build Entity shall pay all workers on all Work performed pursuant to the Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the State of California Department of Industrial Relations (DIR) for the type of Work performed and the locality in which the Work is to be performed within the boundaries of Agency. Agency, as awarding body, shall comply with its obligations under the Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the DIR, are available from Agency or on the internet (<http://www.dir.ca.gov>). Agency shall make such copies available to any interested party upon request.
- 42.1. Design Build Entity shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:
- “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”*
- 42.2. Design Build Entity acknowledges that, for purposes of Labor Code section 1725.5, this Work is a public work to which Labor Code section 1771 applies. Design Build Entity shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all

- “subcontractors” (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Design Build Entity represents to Agency that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.
- 42.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Design Build Entity shall post job site notices, as prescribed by regulation. Design Build Entity shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
43. **SKILLED AND TRAINED WORKFORCE REQUIREMENT:** Design Build Entity is familiar with the hiring requirements set forth in Public Contract Code section 2601, et. seq., and as a condition of entering into this Facilities Lease, Design Build Entity understands and agrees that Design Build Entity and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Public Contract Code section 2601(d) (“**Skilled and Trained Workforce**”), to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.
- 43.1. **Monthly Workforce Report:** Design Build Entity will provide to Agency’s Board on a monthly basis while the Project is being performed, a report demonstrating compliance by Design Build Entity and its Subcontractors at every tier with the skilled work force requirements described in Public Contract Code section 2602 (“**Workforce Report(s)**”).
- 43.2. **Content of Workforce Report(s):** The Workforce Reports will state the following:
- 43.2.1. Each Subcontractor’s name and license number, or list Design Build Entity if Design Build Entity is self-performing the applicable scope of Work;
- 43.2.2. That each worker is either a registered apprentice in an apprenticeship program approved by the State or a skilled journeyman;
- 43.2.3. Of the skilled journeymen for each subcontractor and Design Build Entity, which are graduates of an approved apprenticeship program. It shall be sufficient for Design Build Entity to state the number of workers in each applicable category. Design Build Entity is not required to identify each individual worker who performed work on the Project in Design Build Entity’s monthly report;
- 43.2.4. The monthly and cumulative percentages that entity has achieved of those graduates. If a subcontractor (or Design Build Entity) is meeting the percentage cumulatively, Agency may utilize that information when it determines whether the report is sufficient.
- Time Frame:** Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to Agency no later than thirty (30) days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)
- 43.3. **No Report or Incomplete Report:** If the Design Build Entity fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the following shall apply:
- 43.3.1. Agency shall withhold further payments until Design Build Entity provides a complete Workforce Report for that month. Agency shall withhold from Design Build Entity an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the relevant Subcontractor(s), which Design Build Entity shall be entitled to withhold from the Subcontractor(s).
- 43.3.2. **Plan:** If Design Build Entity submits to Agency a plan to achieve substantial compliance with Public Contract Code section 2601, et seq., Agency shall resume making payments to Design Build Entity, including all previously withheld payments, unless, within a reasonable time, Agency rejects the plan as insufficient. In the event that Agency rejects Design Build Entity’s plan as insufficient, Agency shall provide an explanation in writing of the basis of for Agency’s rejection of Design Build Entity’s plan.
- 43.3.3. If the Workforce Report is incomplete due to the failure of a Subcontractor to timely submit to Design Build Entity information demonstrating compliance at every tier with the skilled workforce requirements, Agency shall only withhold from Design Build Entity an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the Subcontractor that failed to submit the required information to Design Build Entity.
- 43.3.4. Agency shall forward to the Labor Commissioner a copy of a Workforce Report submitted to Agency that fails to comply with Public Contract Code section 2602, et seq. In the event that Design Build Entity submits a plan to Agency to achieve substantial compliance with Public

Contract Code 2601 et. seq., Agency shall forward a copy of that plan to the Labor Commissioner, and the response to that plan, if any, by Agency.

- 43.4. **End-of-Project Reconciliation:**
- 43.4.1. At the end of the Project, if Design Build Entity cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation as defined in Public Contract Code section 2600, et seq., Design Build Entity may remedy its failure by paying to the appropriate trade apprenticeship fund(s), an amount equal to the number of additional hours required to meet the percentage, multiplied by the “Training” amount for that trade, at the Basic Hourly Rate. Design Build Entity must provide documentation to Agency reasonably sufficient to demonstrate this payment and the trade apprenticeship funds’ acceptance of payment(s).
- 43.4.2. If payment(s) to the applicable trade apprenticeship fund(s) are not made or accepted, then Agency shall have the right to permanently retain ten percent (10%) of the price for the out of compliance apprenticeable occupation’s Work, per month, as reflected in the Project’s schedule of values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). Agency shall withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, Agency will distribute those funds as directed by the Labor Commissioner or, if the Labor Commissioner determines that no violation was made or the penalty(ies) are less than the amount Agency is withholding, Agency shall pay the applicable withheld amounts to the Design Build Entity, with no interest or penalty.
- 43.4.3. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by Department of Industrial Relations or a court of competent jurisdiction that one or both of these remedies is insufficient.
- 43.4.4. Any payments Agency withholds from Design Build Entity for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.
44. **ANTI-TRUST CLAIM:** Design Build Entity and its subcontractor(s) agree to assign to Agency all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time Agency tenders final payment to Design Build Entity, without further acknowledgment by the Parties.
45. **GOVERNING LAW:** The Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which Agency administration office is located.
46. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
47. **BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
48. **WAIVER:** Waiver by either Party of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
49. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
50. **ENTIRE CONTRACT:** The Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter herein. The Contract may be modified only by a writing evidencing mutual consent of the Parties.
51. **OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS:** Agency shall not, by virtue of the Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Project. Design Build Entity shall grant to Agency a perpetual, irrevocable royalty-free license for any

and all software or other intellectual property rights necessary for Agency to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.

52. **OWNERSHIP OF ANY EXISTING EQUIPMENT:** Ownership of any equipment and materials existing at the Site at the time the Contract is executed, shall remain the property of Agency even if it is replaced or its operation made unnecessary by Work performed by Design Build Entity. If applicable, Design Build Entity shall advise Agency in writing of all equipment and materials that will be replaced at the Site and Agency shall, within five (5) business days of Design Build Entity' notice, designate in writing to Design Build Entity which replaced equipment and materials should not be disposed of off-Site by Design Build Entity (the "**Retained Items**"). It is understood and agreed to by both Parties that Agency shall be responsible for and designate the location and storage for the Retained Items. Design Build Entity shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Design Build Entity shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize any damage.
53. **RESPONSIBILITIES OF AGENCY:**
- 53.1. Agency shall examine the documents submitted by Design Build Entity and shall render decisions so as to avoid unreasonable delay in the performance of Work.
- 53.2. Agency shall verbally and in writing promptly advise Design Build Entity if Agency becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Design Build Entity's documents. Failure to provide such notice shall not relieve Design Build Entity of its responsibility therefore, if any.
- 53.3. In the event Hazardous Materials are present at the Site, and unless Agency and Design Build Entity agree that a Hazardous Materials consultant shall be a consultant of Design Build Entity, Agency shall furnish the services of a Hazardous Materials consultant or other consultants when the services are requested in writing by Design Build Entity and deemed necessary by Agency or are requested by Agency. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Design Build Entity. If the hazardous materials consultant is furnished by Agency and not a consultant of Design Build Entity, the specifications shall include a note to the effect that they are included in Design Build Entity's documents for Agency's convenience and have not been prepared or reviewed by Design Build Entity. The note shall also direct questions about the specifications to its preparer. Agency shall be responsible for the abatement and certification of identified hazardous materials, as applicable.
- 53.4. Agency personnel and/or its designated representatives shall coordinate with Design Build Entity as may be requested and desirable for the coordination or management of work related to the Project.
- 53.5. Agency shall provide Design Build Entity all relevant information in Agency's possession regarding the Project that Design Build Entity needs to perform its Services. Agency shall provide this information in a timely manner.
- 53.6. Review Design Build Entity's proposed schedule throughout the project.
- 53.7. Oversee Design Build Entity's quality assurance/control program.
- 53.8. Select and pay for Project Inspector with approval by Design Build Entity.
- 53.9. Review and approve payment applications from Design Build Entity.
- 53.10. Review construction progress and adherence to the schedule (and any recovery schedules).
- 53.11. Assist with the resolution of any disagreements.
- 53.12. Facilitate Project Post-Construction Interview (Lessons Learned/Best Practices).
54. **LIABILITY OF AGENCY:**
- 54.1. Other than as provided in the Contract, Agency's financial obligations under the Contract shall be limited to the payment of the Contract Price. In no event shall Agency be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Contract for the Services or Work.
- 54.2. Agency shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Design Build Entity, or by its employees, even though such equipment be furnished or loaned to Design Build Entity by Agency.

EXHIBIT D**PROJECT SCHEDULE**

The days indicated below will begin once Agency issues a Notice to Proceed for the Project. The Parties acknowledge the following. Agency intends to issue a Notice to Proceed for the Project as set forth below.

Any milestone hereunder shall only be extended consistent with the requirements of the Contract Documents.

Except for the Project Completion milestone date indicated herein, the other milestone dates are for reference only. Any delay in achieving the milestone dates indicated herein shall not be a basis upon which Design Build Entity can request an extension of the last milestone – Project Completion.

Design Build Entity shall have no right to request additional time to perform the Work unless authorized by the Contract Documents.

PROJECT		
Milestone	Date to Complete	Liquidated Damages per Calendar Day
Agency Issues a Notice to Proceed for Design Stage Services	, 202X	N/A
Design Build Entity Completes Final Engineering, Construction Documents and Permitting	, 202X	\$1,000
Agency Issues a Notice(s) to Proceed for Construction Stage Services	, 202X	N/A
Submittal of any item listed on the Project Schedule	Varies Per Item	\$100
Construction Mobilization	, 202X	N/A
Completion of Project	, 202X	\$2,500

Although Design Build Entity shall control its means and methods of Work, including staffing, Design Build Entity is solely responsible to ensure that the Project achieves Completion as set forth in the Project Schedule. Any additional staffing costs, including, without limitation have staff work seven (7) days per week, to maintain access and the Project Schedule, and to protect the Work under construction from the effects of weather shall be Design Build Entity's sole cost; provided, however, that if Agency directs Design Build Entity to accelerate the Work as a result of Excusable Delay or Compensable Delay to ensure Completion within the Contract Time, Design Build Entity may be entitled to compensation for acceleration if Design Build Entity complies with requirements of the Contract Time for a Change Order and, if necessary, a Claim.

The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

Design Build Entity shall prepare a detailed Project Schedule compliant with the Contract Documents that includes the above-milestones.

EXHIBIT E

CONSTRUCTION COST WORKSHEET

When preparing the GMP, Design Build Entity shall utilize the following Construction Cost Worksheet to calculate and breakdown its Final GMP.

1. **GMP Calculation Chart.** Design Build Entity shall calculate the GMP as follows, or an alternative approach subject to Agency prior written approval:

(A)	Cost to Perform Work Design Build Entity and Subcontractor Direct Costs of Work for all Construction Stage Services		\$ _____
(B)	General Conditions		\$ _____
(C)	SUBTOTAL OF COST TO PERFORM WORK & GENERAL CONDITIONS		\$ _____
MARK-UPS			
(D)	Bonds [Percentage in RFP]% multiplied by amount from (C)	% _____	\$ _____
(E)	Insurance [Percentage in RFP]% multiplied by amount from (C)		\$ _____
(F)	Overhead & Profit [Percentage in RFP]% multiplied by amount from (C)	% _____	\$ _____
(G)	TOTAL INITIAL MARK-UP		\$ _____
CONTINGENCIES(S) / ALLOWANCES			
(H)	Contingency	% of (C)	\$ _____
(I)	Allowance(s)		\$ _____
(J)	TOTAL CONTINGENCIES & ALLOWANCES		\$ _____
TOTAL CONSTRUCTION WORK COSTS ((C) + (G) + (J))			\$ _____

2. **Detailed Cost Breakdown.** Design Build Entity shall provide a detailed cost breakdown of the above calculation as follows:

Design Build Entity may add and/or revise subdivisions or components as outlined in this sample form and format as applicable to the Project.		
01000	General Requirements / General Conditions	\$
	Project Manager	\$
	Project Superintendent	\$
	Foreman	\$
	Clerical	\$
	Safety Officer / Coordinator	\$
	Vehicles	\$
	Trailer	\$
	Communications	\$
	Office Equipment / Supplies	\$
	Security	\$
	Temporary Utilities	\$
	Site Cleaning	\$
	Toilets	\$
	Mobilization / Layout (no more than 1%)	\$
	Layout	\$
	Fencing / Barricades	\$
	Dust Control	\$
	Waste Disposal	\$
	Count/City/Etc. Fees	\$
	Submittals, shop drawings (no more than 3%)	\$
	Close-out Documentation (not less than 5%)	\$
	Testing	\$
	Punch-List	\$
	Clean Up	\$
	Miscellaneous	\$
	Subtotal	\$
	(Add all subdivisions as required for detailed pricing)	
	[2] [SITE WORK]	\$
	[3] [CONCRETE]	\$
	[4] [MASONRY]	\$
	[5] [METALS]	\$
	[6] [WOOD AND PLASTICS]	\$
	[7] [THERMAL AND MOISTURE PROTECTION]	\$
	[8] [DOORS AND WINDOWS]	\$
	[9] [FINISHES]	\$
	[10] [SPECIALTIES]	\$
	[11] [EQUIPMENT]	\$
	[12] [FURNISHINGS]	\$
	[13] [SPECIAL CONSTRUCTION]	\$

[14]	[CONVEYING SYSTEMS]	\$
[15]	[MECHANICAL]	\$
[16]	[ELECTRICAL]	\$
[17]	[COMMUNICATIONS]	\$
Subtotal		\$
Bonds		\$
Insurance		\$
Overhead & Profit		\$
Contingency		\$
Allowances		\$
(Preliminary) Project Cost		\$

Other Contract Price Components

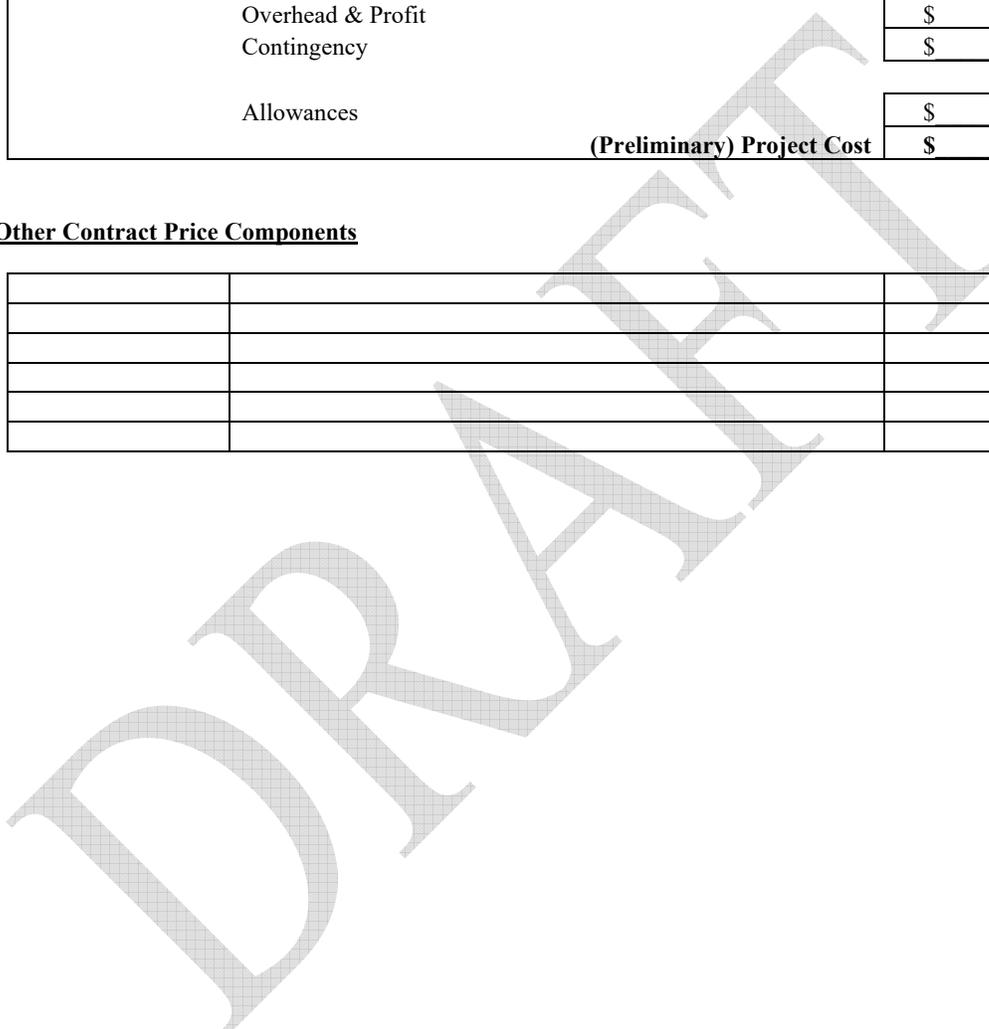


EXHIBIT F**AGENCY'S RULES AND REGULATIONS**

1. **Access.** Access to occupied buildings and entry to occupied buildings, classrooms, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with Agency and onsite Agency personnel before Work is to start. Unless agreed to otherwise in writing, only a custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available during regular business hours. If a custodian is required to arrive before 7:00 a.m. or leave after 5:00 p.m. to accommodate Design Build Entity's Work, the overtime wages for the custodian will be paid by Design Build Entity, unless, at the discretion of Agency, other arrangements are made in advance.
2. **Maintaining Services.** Design Build Entity is advised that Work is to be performed in spaces regularly scheduled for instruction. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities may be required in connection with the Project. These shall be only as arranged in advance with Agency. Design Build Entity shall provide temporary services to all facilities interrupted by Design Build Entity's Work.
3. **Maintaining Utilities.** Design Build Entity shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
4. **Alcohol & Firearms.** Design Build Entity shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Design Build Entity shall immediately remove from the Site and terminate the employment of any employee(s) found in violation of this provision.
5. **Work During Agency Operations.** Design Build Entity affirms that Work may be performed during ongoing operations in existing facilities. If so, Design Build Entity agrees to cooperate to the best of its ability to minimize any disruption to Agency operations at the Site up to, and including, rescheduling specific work activities, at no additional cost to Agency.
6. **Work Shall Not Disturb Staff or Members of Public.** Design Build Entity shall, at no additional cost to Agency and at Agency's request, coordinate its Work to not disturb Agency staff or members of the public.
7. **Badge Policy For Design Build Entitys.** All Design Build Entitys doing Work for Agency will provide their workers with identification badges. These badges will be worn by all members of Design Build Entity's staff who are working in a Agency facility. [INSERT PROJECT-SPECIFIC BADGING]
 - 7.1. Badges must be filled out in full and contain the following information:
 - 7.1.1. Name of Design Build Entity
 - 7.1.2. Name of Employee
 - 7.1.3. Design Build Entity's address and phone number
 - 7.2. Badges are to be worn when Design Build Entity or his/her employees are on site and must be visible at all times. Design Build Entitys must inform their employees that they are required to allow Agency employees or the Project Inspector to review the information on the badges upon request.
 - 7.3. Failure to display identification badges as required by this policy may result in the assessment of fines against Design Build Entity.
8. **Language.** Unacceptable and/or loud language will not be tolerated, "cat calls" or other derogatory language toward staff or members of the public will not be allowed.
9. **Disturbing the Peace (Noise and Lighting).**

- 9.1. Design Build Entity shall observe the noise ordinance of the Site at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
- 9.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. Agency reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).
- 9.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.
- 9.4. Equipment and impact tools shall have intake and exhaust mufflers.
- 9.5. Design Build Entity shall cooperate with Agency to minimize and/or cease the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.
- 9.6. Design Build Entity acknowledges that adjacent facilities may remain in operation during all or a portion of the Work period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 9.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to Agency a minimum of forty-eight (48) hours in advance of their performance.

10. Utility Shutdowns And Interruptions.

- 10.1. Design Build Entity shall give Agency a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. Agency will set exact time and duration for shutdown, and will assist Design Build Entity with shutdown. Work required to re-establish utility services shall be performed by Design Build Entity.

11. Traffic.

- 11.1. Driving on the Premises shall be limited to periods when members of the public are not present. If driving or deliveries must be made during the business hours, two (2) or more ground guides shall lead the vehicle across the area of travel. The speed limit on-the Site shall be five (5) miles per hour (maximum) or less if conditions require.
- 11.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by Agency in advance. Any damage will be repaired to the pre-damaged condition by Design Build Entity.
- 11.3. Agency shall designate a construction entry to the Site. If Design Build Entity requests, Agency determines it is required, and to the extent possible, Agency shall designate a staging area so as not to interfere with the normal functioning of Agency operations. Location of gates and fencing shall be approved in advance with Agency and at Design Build Entity's expense.
- 11.4. Parking areas shall be reviewed and approved by Agency in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

12. Barriers and Enclosures.

- 12.1. Design Build Entity shall obtain Agency's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.

- 12.2. Design Build Entity shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Site and/or Premises, the public, and workers. Design Build Entity shall also protect the Work and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.
- 12.3. Design Build Entity shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

13. Tree and Plant Protection.

- 13.1. Design Build Entity shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.
- 13.2. Design Build Entity shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.
- 13.3. Design Build Entity shall not park trucks, store materials, perform Work or cross over landscaped areas. Design Build Entity shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant materials damaged as a result of the performance of the Work shall, at the option of Agency and at Design Build Entity's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by Agency.
- 13.4. Design Build Entity shall remove soil that has been contaminated during the performance of the Work by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Design Build Entity's expense.

14. Excavation around Trees.

- 14.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from Agency.
- 14.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by Agency. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by Agency. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.
- 14.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.
- 14.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.
- 14.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.
- 14.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

15. Security.

- 15.1. Design Build Entity shall be responsible for Project security for materials, tools, equipment, supplies, and completed and partially completed Work.

16. Dust and Dirt.

- 16.1. Design Build Entity shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Work and from accumulating in the Work and adjacent areas including, without limitation, occupied facilities.
- 16.2. Design Build Entity shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
- 16.3. Design Build Entity shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
- 16.4. Design Build Entity shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

- 17. **Job Sign(s):** Signs other than a Agency-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by Agency.

- 18. **Publicity Releases.** Design Build Entity shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s).

- 19. **Infectious Disease.** Design Build Entity shall comply with all of the “**Infectious Disease**” provisions in the Contract Documents related to Design Build Entity’s staffing requirements and its compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with any Infectious Disease.

EXHIBIT G

LIST OF PLANS AND SPECIFICATIONS

The Parties agree to amend the Contract and replace this **Exhibit G** after when Design Build Entity completes Construction Documents.

DRAFT

EXHIBIT H

SUBCONTRACTOR PROCUREMENT PROCESS

Bidding for Subcontractor Work. The subcontractor procurement process for all Design Build Entity's subcontractors performing work valued in excess of 1% of the Contract Price shall be the following:

1. **Public Notice.** Design Build Entity shall provide notice of bidding for subcontractors in accordance with the publication requirements applicable to the competitive bidding process of the Agency to solicit Subcontractors in compliance with statutory requirements, if applicable, and Agency's process. **Agency intends to work with the successful Design Build Entity for the Project to issue an advertisement to solicit Subcontractors in compliance with statutory requirements, if applicable, and Agency's process. Design Build Entity's Subcontractor advertisement must be approved by Agency prior to publication.**
2. **Agency Review of Bid Packages and Notice.** At least fourteen (14) days prior to the bidding of subcontractor bid packages, Design Build Entity shall provide Agency with a copy of the written notice it will publish (including newspaper advertising) to solicit subcontractors, and the subcontractor bid packages for each scope of work. Agency reserves the right to request that Design Build Entity reasonably revise its published notice and adjust bid packages.
3. **Three Bona Fide Bids.** Design Build Entity is required to receive **at least** three (3) bona fide bids from subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to Design Build Entity seeking bids, Agency may, in its sole discretion, and upon Design Build Entity's written request, authorize Design Build Entity to utilize a different minimum number of bona fide bids from subcontractors.
4. **Prequalification.** Design Build Entity's subcontractors performing work valued in excess of 1% of the GPC must comply with the following:
 - a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; "MEP Subcontractor(s)"), and those MEP Subcontractors will be first-tier subcontractors to the contractor, those MEP Subcontractors must be prequalified with Agency to be eligible to be included in a Design Build Entity's proposal. MEP Subcontractors shall prequalify with Agency utilizing Agency's Prequalification Questionnaire. **Agency highly recommends that Design Build Entity informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**
 - b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Design Build Entity may prequalify non-MEP subcontractors solicited for work on this Project.
 - c. **LIMIT ON "BEST VALUE" SELECTION.** DESIGNER/BUILDER ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY "BEST VALUE" SELECTION PROCESS THAT THE AGENCY HAS APPROVED FOR THIS PROJECT. THE DESIGNER/BUILDER MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE AGENCY APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE DESIGNER/BUILDER DESIRES TO IMPLEMENT ON THIS PROJECT. DESIGNER/BUILDER CAN ONLY IMPLEMENT THOSE IF THE AGENCY PRE-APPROVES THEM, IN ITS SOLE DISCRETION.
5. **Open-Book / Bid Opening.** Design Build Entity shall invite Agency to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.

6. **Missing Scopes of Work in Subcontractor Bids (“Bid Levelling”).** When Design Build Entity has received all Subcontractor bids, Design Build Entity shall identify all scope(s) of construction Work for which Design Build Entity did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a subcontractor bid or was not bid on (“**Unbid Work**”). Agency expects very little if any Unbid Work, far less than 1% of the direct construction cost (before markups). After Agency reviews Design Build Entity’s justification, the Parties shall meet and confer and Agency shall reasonably determine, in its sole discretion, whether to:
- a. Direct Design Build Entity to rebid the Unbid Work; or
 - b. If Design Build Entity requests, allow Design Build Entity to self-perform the Unbid Work. If Design Build Entity self-performs the Unbid Work, Design Build Entity shall provide substantiation for the pricing for the Unbid Work that Design Build Entity intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Design Build Entity intends to self-perform. Agency reserves the right to seek its own pricing of that Work to verify the value of Design Build Entity proposed pricing.
7. **Low Bid.** Because the “best value” process was implemented as part of the subcontractor procurement process, once Design Build Entity receives Subcontractor bids, Design Build Entity shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
8. **Self-Performing Construction Work.** If Design Build Entity intends to propose to self-perform portion(s) of the construction Work, it must
- a. Receive Agency’s prior written approval.
 - b. Provide its pricing (its bid) to Agency 48 hours prior to Design Build Entity receipt of subcontractor bids for those portion(s) of the Work.
 - c. Receive a minimum number of two (2) bona fide bids from subcontractors for scope(s) of Work that Design Build Entity is bidding to self-perform, not including Design Build Entity pricing/bid.

EXHIBIT F

BONDS AND CERTIFICATIONS

[Documents Following This Page]

NON-COLLUSION DECLARATION
PUBLIC CONTRACT CODE SECTION 7106

TO BE EXECUTED BY DESIGN-BUILD ENTITY

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**,

the party making the foregoing Contract.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

END OF DOCUMENT

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project.

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work.

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No proposal will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Design Build Entity hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Design Build Entity: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: ____ Yes or ____ No

Unless Design Build Entity is exempt pursuant to the small project exemption, Design Build Entity further acknowledges:

1. Design Build Entity shall maintain a current DIR registration for the duration of the project.
2. Design Build Entity shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Design Build Entity _____

Signature _____

Name and Title _____

Dated _____

END OF DOCUMENT

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

DESIGN-BUILD ENTITY’S CERTIFICATE REGARDING WORKERS’ COMPENSATION

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Design Build Entity _____

Signature _____

Name _____

Title _____

Dated _____

END OF DOCUMENT

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990 (herein only, the “Act”), requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and Design Build Entity or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. Agency is not a “state agency” as defined in the applicable section(s) of the Government Code, but Agency is a local agency under California law and requires all Design Build Entities on Agency projects to comply with the provisions and requirements of the Act. Design Build Entity shall certify that it will provide a drug-free workplace by doing all of the following:

- 1 Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s or organization’s workplace and specifying actions which will be taken against employees for violations of the prohibition;
- 2 Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person’s or organization’s policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
- 3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I understand that if Agency determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code section 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

In addition, and pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and Agency Board Policies, all Agency sites, including the Project Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in Agency property. Agency property includes buildings and Agency owned vehicles and vehicles owned by others while on Agency property. I acknowledge that I am aware of Agency’s policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents to use tobacco and/or smoke on the Project site

Date: _____
 Proper Name of Design Build Entity: _____
 Signature: _____
 Print Name: _____
 Title: _____

END OF DOCUMENT

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Design Build Entity hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“**New Hazardous Material**”) shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design Build Entity’s Work on the Project for Agency.

Design Build Entity further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure. The costs of any such tests shall be paid by Design Build Entity if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material”-containing equipment will be immediately rejected and this Work will be removed at Design Build Entity’s expense at no additional cost to Agency.

Design Build Entity has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

CONFLICT OF INTEREST CERTIFICATION

I, _____, _____
Name Name of Design Build Entity

am the authorized representative of _____ (“**Design Build Entity**”), which hereby certifies that no employee, officer, agent, consultant, or subcontractor of Design Build Entity has any financial interest or business relationship with Agency, Agency’s staff or any individual member of Agency’s governing board; nor does Design Build Entity have any actual knowledge or reason to know that any such Agency board member(s) or staff will obtain a financial interest or present or anticipated benefit from the agreement contemplated by this Project that would constitute a conflict of interest under California Public Contract Code section 10365.5; Government Code sections 1090 et seq. or 87100 et seq., pertaining to conflicts of interest in public contracting.

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

IRAN CONTRACTING ACT CERTIFICATION (Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Design Build Entity shall complete **ONLY ONE** of the following two paragraphs.

1. Design Build Entity’s Proposal is less than one million dollars (\$1,000,000).
OR

2. Design Build Entity’s Proposal is one million dollars (\$1,000,000) or more, but Design Build Entity is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“**DGS**”) pursuant to Public Contract Code § 2203(b), and Design Build Entity is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

OR

3. Design Build Entity’s Proposal is one million dollars (\$1,000,000) or more, but Agency has given prior written permission to Design Build Entity to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from Agency is included with this Contract.**

I certify that I am duly authorized to legally bind Design Build Entity to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____
Proper Name of Design Build Entity: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

EXECUTIVE ORDER N-6-22 CERTIFICATION

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the **Orange County Employees Retirement System** funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the **Orange County Employees Retirement System** with State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The Design Build Entity hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the Design Build Entity is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Design Build Entity. This certification is made under the laws of the State of California.

Signature: _____

Printed Name: _____

Title: _____

Design Build Entity Name: _____

Date: _____

END OF DOCUMENT

PERFORMANCE BOND (100% of Contract Price)

(Note: Design Build Entity must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the **Orange County Employees Retirement System**, (hereinafter referred to as “Agency”) has awarded to _____, (hereinafter referred to as the “Contractor”) an agreement for _____, (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Agency in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Agency, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by Agency in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Agency, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Agency from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Agency’s rights or the Contractor or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the Agency to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Agency’s option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Agency, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term “balance of the contract

price” as used in this paragraph shall mean the total amount payable to Contractor by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the Contractor and any other set offs pursuant to the Contract Documents.

- iii. Permit the Agency to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term “balance of the contract price” as used in this paragraph shall mean the total amount payable to Contractor by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Agency may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Agency, when declaring the Contractor in default, notifies Surety of the Agency’s objection to Contractor’s further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety _____

By _____
Attorney-in-Fact

Title _____

(Attach Attorney-in-Fact Certificate)

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

PAYMENT BOND

Contractor's Labor & Material Bond (100% of Contract Price)

(Note: Design Build Entity must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the **Orange County Employees Retirement System** (hereinafter designated as the "Agency"), by action taken or a resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Agency in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Agency in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Agency and original contractor or on the part of any obligee named in

such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Signatures of those signing for the Contractor and Surety must be notified and evidence of corporate authority attached. A Power-of-Authority authorizing the person signing on behalf of the Surety to do so much be attached hereto.

EXHIBIT J

RFQ

[Documents Following This Page]

EXHIBIT K

RFP

[Documents Following This Page]

EXHIBIT L

PROPOSAL

[Documents Following This Page]

[INSERT FORM DB CONTRACT]

ATTACHMENT 6
SCOPE OF PREDEVELOPMENT PHASE WORK

[INSERT ON THE FOLLOWING PAGE]