



PROGRESSIVE DESIGN-BUILD CONTRACT

FOR

OCEAN OUTFALLS REHABILITATION

PROJECT NO. J-137

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PROGRESSIVE DESIGN-BUILD CONTRACT

BETWEEN ORANGE COUNTY SANITATION DISTRICT AND AQUEOS CORPORATION FOR THE PROJECT NO. J-137, OCEAN OUTFALLS REHABILITATION

This Progressive Design-Build Contract ("Contract") is made and entered into this 19th day of November, 2025 ("Effective Date") by and between the Orange County Sanitation District (hereinafter referred to as "OC SAN") and Aqueos Corporation (hereinafter collectively referred to as "Design-Builder"). OC SAN and Design-Builder are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

- A. OC SAN is a public agency of the State of California and is in need of turnkey design and construction for the Ocean Outfalls Rehabilitation ("Project"), which will include two phases: (1) preconstruction design phase services ("Phase 1"); and (2) final design services and construction services to complete the Project ("Phase 2"), each of which are more fully described in the Contract Documents (collectively, "Services").
- B. OC SAN is authorized by Public Contract Code section 22185 *et seq.* to use progressive design-build contracting on the Project and issued a request for proposals ("RFP") to interested and qualified teams to submit a proposal ("Proposal").
- C. OC SAN has awarded this Contract to Design-Builder based on Design-Builder's Proposal in response to the RFP.
- D. During Phase 1, Design-Builder shall perform Phase 1 Services consistent with the requirements of the Contract Documents, during or after which Design-Builder shall prepare and propose to OC SAN on an Open Book Basis a Guaranteed Maximum Price ("GMP") to complete Phase 2 Services and, if accepted by OC SAN, the Parties shall enter into an amendment to the Contract for Design-Builder's performance of Phase 2.
- E. In entering into this Contract, the Parties expressly agree that OC SAN is under no obligation to proceed with Phase 2.
- F. Design-Builder warrants and represents that it is duly licensed in the State of California and is able and qualified to perform the Services for the Project.
- G. The Parties desire to enter into this Contract for the purpose of setting forth the terms and conditions upon which Design-Builder will complete the Project.

TERMS

1. CONTRACT DOCUMENTS

1.1 Incorporation of Recitals; Contract Documents

(a) The above-referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following documents which are the "Contract Documents," including all exhibits, drawings, specifications and documents therein, and attachments, addenda, and amendments thereto:

- (i) Progressive Design-Build Contract
- (ii) General Conditions (Attachment 1)
- (iii) Phase 1 Scope of Work (Attachment 2)
- (iv) Special Conditions (Attachment 3)
- (v) Design-Builder's RFP Pricing (Attachment 4)
- (vi) Performance Bond (Attachment 5)
- (vii) Payment Bond (Labor and Materials) (Attachment 6)
- (viii) General Requirements (Attachment 7)
- (ix) Contractor Safety Standards (Attachment 8)
- (x) Human Resources Policies (Attachment 9)
- (xi) GMP Amendment
- (xii) Amendments
- (xiii) Assignment of Work Product License
- (xiv) Design-Builder Certifications from Proposal
- (xv) RFP and all addenda, attachments, and appendices
- (xvi) Change Orders
- (xvii) Permits
- (xviii) Construction Documents

1.2 Use of Defined Terms. Any capitalized term herein not defined in the Contract, or other Contract Documents, shall have the meaning set forth in Article 1 of the General Conditions.

1.3 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 OC SAN and Design-Builder. 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.

2. DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.1 Phase 1

(a) Phase 1 Services. Design-Builder promises and agrees to furnish to OC SAN all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform Phase 1 and complete Phase 1 Services consistent with the requirements in the Contract Documents. The Phase 1 Services are more particularly described in the Contract Documents, including, without limitation, the Phase 1 Scope of Work in Attachment 2.

(b) Phase 1 Commencement. Design-Builder shall commence the performance of Phase 1 Services upon OC SAN's issuance of a Notice to Proceed for a portion of or for the entirety of services for Phase 1. OC SAN has no obligation to issue a Notice to Proceed for Phase 1 Services. All Phase 1 Services performed by Design-Builder prior to OC SAN's issuance of a Notice to Proceed shall be at Design-Builder's sole risk.

(c) Phase 1 Amendments. Modifications and or additions to the Phase 1 Scope of Work shall be by Amendment, if applicable, in a form provided by OC SAN and shall be subject to all terms and conditions of the Contract Documents. No compensation shall be provided for any modified and/or added Phase 1 Services unless authorized by a fully executed Amendment.

(d) Phase 1 Term. Design-Builder shall complete the Phase 1 Work within four hundred sixty-eight (468) Days of OC SAN's issuance of the Notice to Proceed. Design-Builder shall not be entitled to any costs due to any impacts, disruption, or delays occurring during performance of Phase 1 Services. If OC SAN or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during Phase 1 Services, Design-Builder's sole remedy shall be an adjustment of the time period for performance of Phase 1 Services. Any delay that occurs during Phase 1 shall have no impact on OC SAN's right to terminate Phase 1 at any time as provided in the General Conditions.

(e) Early Purchase Items; Early Construction Packages. The Parties may agree to have Design-Builder procure Early Purchase Items and perform Early Construction Packages prior to commencing Phase 2 by executing an Early Purchase Item Amendment or Early Construction Package Amendment, as applicable.

2.2 Phase 2

(a) Commencement of Phase 2. Design-Builder shall not commence Work for Phase 2 until OC SAN executes a Phase 2 GMP Amendment and issues a Notice to Proceed for Phase 2. Design-Builder may request a Notice to Proceed with Construction Work prior to completion of the 100% Construction Documents, and OC SAN may issue the same with acceptance by Design-Builder, provided that Design-Builder shall not construct any portion of the Project until the design of such portion has been issued Governmental Approvals and OC SAN's approval for construction.

(b) Work Packages. OC SAN and Design-Builder may agree to complete the Construction Work with individual Work Packages. Each Work Package would be a discrete and defined portion of the Project that includes its own GMP and Milestone Date, agreed to by the

Parties in a GMP Amendment. OC SAN may issue Work Packages that Design-Builder can perform concurrently.

(c) Final Completion Date. Design-Builder shall complete Phase 2 within the Final Completion Date. As of the Effective Date, the Final Completion Date has not been agreed to by the Parties. The Final Completion Date will be established in a Phase 2 GMP Amendment and it shall run from the Notice to Proceed for Phase 2 even if issued prior to completion of the 100% Construction Documents.

3. DESIGN-BUILDER'S COMPENSATION

3.1 Phase 1 Compensation

(a) OC SAN shall pay Design-Builder a total not to exceed amount of **Sixteen Million One Hundred Thirty Thousand Dollars (\$16,130,000)** for performance of the Phase 1 Services based on the Work satisfactorily performed and accepted by OC SAN pursuant to the Contract Documents and at the rates and manner set forth in Design-Builder's RFP Pricing, subject to any additions or deductions as provided in the Contract Documents ("Phase 1 Fee"). For the purposes of this Contract, the billing rates will remain effective through the entire term of this Contract. Design-Builder will be reimbursed for hours worked at the hourly rates specified in Design-Builder's RFP Pricing. Design-Builder will be reimbursed for direct costs not covered by the billing rates. The reimbursable direct costs are identified in Design-Builder's RFP Pricing. The Phase 1 Fee includes all costs and expenses for all time and materials required and expended to provide the Phase 1 Services. OC SAN shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing Phase 1 Services, except as expressly provided for in this Contract. If, at any time, Design-Builder estimates the cost of performing Phase 1 Services will exceed seventy-five percent (75%) of the not-to-exceed amount of the Phase 1 Fee, including approved additional compensation, Design-Builder shall notify OC SAN immediately in writing. This written notice shall indicate the additional amount necessary to complete the Phase 1 Services. Any cost incurred in excess of the Phase 1 Fee, without the express written consent of OC SAN shall be at Design-Builder's own risk.

3.2 Phase 2 Compensation

(a) Construction Phase Compensation. Design-Builder's compensation for Phase 2 Services shall be Phase 2 Price as further described, and subject to, the limitations set forth below and as indicated in the Contract Documents. Design-Builder expressly agrees and acknowledges that, as of the Effective Date, Design-Builder is not entitled to any compensation for Phase 2 Services, and shall only be entitled to such compensation if: (1) OC SAN accepts the Design-Builder's Phase 2 Price Proposal; (2) the Parties execute, and the General Manager approves, a Phase 2 GMP Amendment; and (3) OC SAN issues a Notice to Proceed for Phase 2.

4. DESIGN-BUILDER'S LICENSE AND REGISTRATION

Design-Builder shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. Design-Builder (License No. CA# 1120651) shall act as the licensed contractor for the Project. Design-Builder shall perform all

services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the Design-Builder shall be fully responsible to OC SAN for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (DIR Registration No. 1000731616).

5. DESIGN-BUILDER'S DESIGN PROFESSIONAL

Design-Builder shall name a specific person to act as the Design Manager as described in the General Conditions, subject to the approval of OC SAN. Design-Builder hereby designates Debby Reece (**License No.: CA# 56148**) to act as the Design Manager for the Project. Design-Builder's Design Manager shall perform all Design Work required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and Design-Builder shall be responsible to OC SAN for any damages and/or delays to the Project as specified in the provisions of the Contract, including but not limited to the liquidated damages or indemnification provisions, each to the extent applicable. Any change in the Design Manager shall be subject to OC SAN's prior written approval, which approval shall not be unreasonably withheld. The new Design Manager shall be of at least equal competence as the prior Design Manager. In the event that OC SAN and Design-Builder cannot agree as to the substitution of a new Design Manager, OC SAN shall be entitled to terminate this Contract as described in the General Conditions.

6. NOTICES

Any notice required or permitted under this Contract shall be served by personal delivery or by certified mail, return receipt requested, at the address set forth below. Unless specified elsewhere in the Contract Documents or otherwise required by law, any notice may alternatively be given by electronic telecommunication to the email address set forth below. Any Party whose address changes shall notify the other Party in writing.

TO OC SAN:	Orange County Sanitation District 18480 Bandilier Circle Fountain Valley, California 92708 Attn: Clerk of the Board ocsanclerk@ocsan.gov
Copy to:	Orange County Sanitation District 18480 Bandilier Circle Fountain Valley, California 92708 Attn: Construction Manager rcuellar@ocsan.gov Scott C. Smith Best Best & Krieger LLP 18101 Von Karman Avenue, Suite 1000 Irvine, California 92612 scott.smith@bbklaw.com

TO DESIGN-BUILDER: Eric Legendre, President
John Schue Jr., Design-Builder Project Manager
Aqueos Corporation
418 Chapala Street #E
Santa Barbara, CA 93101
elegendre@aqueossubsea.com
schue@michels.us

7. AUTHORITY OF SIGNATORIES

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

**SIGNATURE PAGE TO PROGRESSIVE DESIGN BUILD CONTRACT BETWEEN THE
ORANGE COUNTY SANITATION DISTRICT AND AQUEOS CORPORATION.**

IN WITNESS WHEREOF, the Parties hereby execute this Progressive Design-Build
Contract as of the Effective Date.

**ORANGE COUNTY SANITATION
DISTRICT**

AQUEOS CORPORATION

By: _____

RYAN P. GALLAGHER
Board Chairman

By: _____

Its: _____

Printed Name: _____

By: _____

KELLY A. LORE
Clerk of the Board

1120651

Contractor's License Number

1000731616

DIR Registration Number

By: _____

KEVIN WORK
Purchasing & Contracts Manager

ATTACHMENT 1

GENERAL CONDITIONS

**ATTACHMENT 1
GENERAL CONDITIONS**

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ARTICLE 1 - DEFINITIONS

1.1 Applicability

- A. These General Conditions govern Phase 1, Phase 2, and completion of the Project by Design-Builder.

1.2 Defined Terms

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
 - 1. Act of God – Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 - 2. Allowance – A sum used by OC SAN for categories of Construction Work that cannot be established at the time of a GMP Amendment.
 - 3. Amendment – A written order by OC SAN's Representative, made bilaterally by OC SAN and Design-Builder or unilaterally by OC SAN, that authorizes an addition, deletion, or revision in the Work or an adjustment in the Phase 1 Fee, GMP, Contract Price, or the Contract Time in accordance with the Contract Documents. Change Order and Amendment may be used interchangeably.
 - 4. Applicable Laws – The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state, or federal governmental authorities, or private authorities with jurisdiction (including utilities), to the extent they apply to the Project.
 - 5. As-Built Drawings – A copy of the Construction Documents used by Design-Builder to record changes to the Work as specified in the General Requirements.
 - 6. Background Documents – Key documents provided to Design-Build Entity prior to the commencement of Phase 1 to further understand the requirements of the Project.
 - 7. Beneficial Occupancy – The intended use of a building, system, structure, or facility by OC SAN prior to Final Completion.
 - 8. Board – Board of Directors.
 - 9. Board of Directors – The Board of Directors of the Orange County Sanitation District, which is authorized to award a Contract.
 - 10. Change Order – A written order by OC SAN's Representative, made bilaterally by OC SAN and Design-Builder or unilaterally by OC SAN, that authorizes an

addition, deletion, or revision in the Work or an adjustment in the Phase 1 Fee, GMP, Contract Price, or the Contract Time in accordance with the Contract Documents. Change Order and Amendment may be used interchangeably.

11. Change Order Request – A request made by Design-Builder for an adjustment in the Phase 1 Fee, GMP, Contract Price, or Contract Time as the result of a Design-Builder-claimed change to the Work. The term Change Order Request and Request for Change may be used interchangeably.
12. Concurrent Delay – When the OC SAN caused delay to the Critical Path occurs simultaneously with a Design-Builder caused delay to the Critical Path.
13. Construction Documents – The Plans and Specifications prepared by Design-Builder for the Project and accepted by OC SAN and incorporated into the Contract through a GMP Amendment. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of Phase 2, Construction Documents become part of the Contract Documents upon their completion and acceptance by OC SAN. All amendments and modifications to the Construction Documents must be approved by OC SAN in writing.
14. Construction Work – That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment, and services in connection with the construction of the Project as set forth in the Contract Documents.
15. Contract – The entire integrated written agreement between OC SAN and Design-Builder concerning the Work. “Contract” may be used interchangeably with “Agreement”, “Progressive Design-Build Contract”, or “PDB Contract” in the Contract Documents.
16. Contract Price – The sum total of all compensation due to Design-Builder for all Phase 1 Services and Phase 2 Services under the Contract.
17. Contract Time – The number of days or the dates stated in the Contract Documents or GMP Amendment to achieve defined Milestone Dates, if any, and to complete the Work by the Final Completion Date.
18. Cost of Work – The Direct Cost, General Conditions Cost, and Subcontractor Construction Cost incurred in the performance of Work and more particularly described in the General Conditions.
19. CPM Schedule – A scheduling method that uses a network diagram to depict the sequences of tasks required to complete the Project, or a portion thereof, which are known as paths. Once the paths are defined, the duration of each path is calculated by an algorithm to identify the Critical Path, which determines the total duration of the Project, or a portion thereof.

20. Critical Path – A continuous sequence of schedule network activities with the least amount of total float, ending at a milestone.
21. Critical Supply Shortage – An unusual shortage in materials that is (a) supported by documented proof that Design-Builder made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Design-Builder at the time it entered a GMP Amendment. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
22. Day – A calendar day of 24 hours measured from midnight to the next midnight.
23. Defective Work – Work that is faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
24. Design-Build Team or Project Team – The Design-Builder and the individuals and other entities identified by Design-Builder as members of its team, including, but not limited to, Key Firms, Subcontractors, and Key Personnel.
25. Design-Builder – The individual or entity with which OC SAN has contracted for performance of the Work.
26. Design-Builder Contingency – An amount approved by OC SAN and part of a GMP that Design-Builder may use with the written approval of OC SAN for unanticipated work as further described in the Contract Documents.
27. Design-Builder Representative – The person or firm identified as the primary contact person and representative of Design-Builder as designated in the Contract Documents and who shall not be changed without prior written consent of OC SAN.
28. Design-Builder's Fee – Design-Builder's fee for its home office overhead and profit applied to Cost of Work, as further described in the Contract Documents.
29. Design-Builder's Proposal – The proposal submitted by Design-Builder in response to the RFP.
30. Designer of Record or Lead Designer – The individual, partnership, corporation, joint venture, or other legal entity of the Design-Build Team completing the Design Work on the Project and who provides the Design Manager for the Project.

31. Design Manager – The individual named in the Contract, and provided by the Designer of Record, who will provide the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
32. Design Work – The portion of the Work on the Project consisting of the design services and design deliverables required to be provided in connection with the design of the Project as set forth in the Contract Documents.
33. Differing Site Conditions – Concealed or latent physical conditions or subsurface conditions at the Site that: (i) Design-Builder believes 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; (ii) materially differ from those indicated in the Construction Documents or (iii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work. The term Differing Site Conditions does not include, among other things, conditions of which Design-Builder had knowledge of as of the applicable GMP Amendment date, including conditions that could reasonably have been known, discovered, or revealed as a result of the examinations, investigations, explorations, tests, or studies of the Site required to be performed by Design-Builder as part of Design Work or that Design-Builder could have reasonably inferred based on its exercise of the Standard of Care.
34. Direct Cost – Verifiable cost necessarily incurred in the performance of Construction Work and more particularly described in the General Conditions.
35. Draft Progressive Design-Builder Contract or Draft PDB Contract – The draft progressive design-build contract for the Project, including all of its exhibits, presented as an attachment to the RFP.
36. Early Construction Package – Construction Work negotiated separately from Phase 2 to commence demolition, grading, site preparation, utility work, mobilization, or other work prior to the start of Phase 2. Design-Builder shall perform an Early Construction Package subject to the requirements of the Contract Documents for Construction Work.
37. Early Construction Package Amendment – An approved amendment to the Contract authorizing Design-Builder to perform an Early Construction Package subject to the requirements of the Contract Documents for Construction Work.
38. Early Purchase Item – Long lead procurement items (manufactured/fabricated items, equipment, materials and supplies) for the Project procured by Design-Builder during Phase 1 as further described in the General Conditions.
39. Early Purchase Item Amendment – An approved amendment to the Contract authorizing Design-Builder to commence procurement of an Early Purchase Item.

40. Effective Date of the Contract – The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
41. Extra Work – New or unforeseen Work, or added Work of a different character or function and for which no basis for payment is prescribed in the Contract Documents; or that involves revisions of the details of the Work.
42. Final Acceptance – Action taken by OC SAN's General Manager, or as delegated pursuant to OC SAN's current Purchasing Ordinance and any amendments thereto, accepting Final Completion.
43. Final Completion – The time at which Work has been entirely completed by Design-Builder, at the sole discretion of OC SAN, as further described in the Contract Documents.
44. Final Completion Date – The time within which Design-Builder must achieve Final Completion of the Project.
45. Force Majeure Event – An event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics, or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Design-Builder and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances; emergency proclamations and orders; and rules (each only to the extent necessary to protect the public health, welfare, and safety); issued by OC SAN in its capacity as a municipal authority.
46. General Conditions – Legal and contractual instructions to Design-Builder setting forth both Design-Builder and OC SAN responsibilities for business-related activities pertaining to the Contract. The term "General Conditions" used in the Specifications shall be interpreted to refer to the General Conditions of the Contract Documents.
47. General Conditions Cost – The costs for activities, facilities, and services required to support the Construction Work and manage the Project site, without mark-up, which shall include, without limitation, those items listed in a GMP Amendment as further described in the Contract Documents.
48. General Manager – The individual designated by the OC SAN Board of Directors as its chief executive officer and agent.

49. General Requirements – Legal and contractual instructions to Design-Builder setting forth both Design-Builder and OC SAN responsibilities for technical aspects of the Work indicated under the Contract. The term “General Requirements” used in the Specifications shall be interpreted to refer to the General Requirements of the Contract Documents.
50. Governmental Approvals – Any permit, license, authorization, consent, certification, exemption, grant, waiver, ruling, entitlement, variance or other approval; and any revision, modification, amendment, supplement, renewal, or extension of any of the foregoing, issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Project.
51. Governmental Body – Any federal, state, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, or any official thereof, other than the Board of Directors, having jurisdiction in any way over or in respect of any aspect of the performance of the Contract or the Project.
52. Guaranteed Maximum Price or GMP – The maximum possible compensation paid by OC SAN to Design-Builder for the performance and completion of Work, subject to any additions or deductions as provided in the Contract Documents. There may be more than one GMP on the Project, which may be specific to a particular Work Package.
53. GMP Amendment – A written amendment duly executed by the Parties resulting from Design-Builder submitting a GMP Proposal and the Parties agreeing to a mutually acceptable GMP. There may be more than one GMP Amendment on the Project. The term Amendment and GMP Amendment may be used interchangeably.
54. GMP Proposal – Design-Builder’s proposal to OC SAN to complete Work or a portion of the Work, and further described in the Contract Documents. The Term GMP Proposal and/or Price Proposal may be used interchangeably.
55. Holidays – Holidays occur on:
- New Year’s Day - January 1
 - Martin Luther King Jr. Day – Third Monday of January
 - President’s Day – Third Monday of February
 - Memorial Day - Last Monday in May
 - Independence Day - July 4
 - Labor Day - First Monday in September
 - Veteran’s Day - November 11
 - Thanksgiving Day - Fourth Thursday in November
 - Friday after Thanksgiving
 - Christmas Eve - December 24
 - Christmas Day - December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays. OC SAN reserves the right to recognize additional Holidays without prior notice.

56. Inspector – The individual(s) designated by OC SAN's Representative as the field Project representative with delegated authority to enforce the requirements of the Contract Documents, subject to the approval of the General Manager.
57. Key Firms – Firms fulfilling the key roles that must be identified in the Proposal and are committed to work on the Project if Proposer is selected as the Design-Builder.
58. Key Personnel – Design-Builder's personnel identified as key to the overall success of the Project, and, at a minimum, including those positions defined as Key Personnel in Design-Builder's Proposal. Key Personnel are specifically identified in the Special Conditions.
59. Key Subcontractor – A Subcontractor identified in Design Builder's Proposal that Design Builder contracts with to fulfill a key role in Design Builder completing the Project. If any, Key Subcontractors are identified in the Special Conditions.
60. Laboratory – The materials testing laboratory authorized by OC SAN to test material and Work involved in a Contract.
61. Lead Contractor – The individual, partnership, corporation, joint venture, or other legal entity of the Design-Build Team that is licensed as a California general contractor and is the prime contractor for construction services for the Project.
62. Liens – Charges, security interests, or encumbrances upon Project funds or personal property, including, without limitation, Stop Payment Notices.
63. Lump Sum Price – If allowed by OC SAN as a substitute for a GMP, the maximum possible compensation paid by OC SAN to Design-Builder for the performance and completion of Work, subject to any additions or deductions as provided in the Contract Documents. There may be more than one Lump Sum Price on the Project, which may be specific to a particular Work Package.
64. Milestone Date – The date upon which Design-Builder is required to complete an Early Construction Package, Work, Work Package, or particular element or component of the Project. A Milestone Date may be defined as a date certain or as a number of calendar days or working days from a Notice to Proceed or other event.
65. Minimum Requirements – The requirements set forth in the RFP that, at a minimum, must be satisfied (or waived by OC SAN) in order for the Proposal to be evaluated and ranked according to the comparative evaluation criteria.

66. Notice of Completion – The form which may be executed by OC SAN and recorded by the county where the Project is located constituting Final Acceptance of the Project.
67. Notice to Proceed – A written notice given by OC SAN to Design-Builder fixing the date on which Design-Builder may proceed with a Phase, Early Construction Package, Early Purchase Item, GMP, Work, Work Package, or a particular element or component of the Project, and when the Contract Time will commence to run.
68. OC SAN – Orange County Sanitation District.
69. OC SAN's Representative – The person designated by OC SAN to act as its representative during the performance of the Contract, and identified in the Special Conditions, or other person authorized to act for and on behalf of OC SAN, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.
70. Open Book Basis – Design-Builder's provided information, including estimates and pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows OC SAN to check and verify the accuracy of the material presented. This entails all information Design-Builder used to develop the cost under consideration, including labor, fringe benefits, equipment, materials, productivity, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
71. Owner – Orange County Sanitation District.
72. Owner Advisor – Hazen & Sawyer.
73. Owner Contact – The sole point of contact between OC SAN and Proposers during the RFP.
74. Payment Bond – The labor and materials payment bond provided by Design-Builder's Surety to secure the payment obligations of Design-Builder for Work, as described in and maintained pursuant to the Contract and in the form set forth in the Contract Documents.
75. Performance Bond – The performance bond provided by Design-Builder's Surety to secure performance of Work, as described in and maintained pursuant to the Contract and in the form set forth in the Contract Documents.
76. Phase – Either Phase 1 or Phase 2.
77. Phase 1 – The first phase of the Project requiring Design-Builder to perform Design Work as further described in the Phase 1 Scope of Work.

78. Phase 1 CPM Schedule – A CPM Schedule to complete the Phase 1 Services within the Contract Time. The detailed requirements for the Phase 1 CPM Schedule are described in the Contract Documents.
79. Phase 1 Fee – The amount to be paid by OC SAN to Design-Builder as full compensation for performance of Phase 1 Services and completion of the Phase 1 Services, subject to any additions or deductions as provide in the Contract Documents.
80. Phase 2 – The second phase of the Project requiring Design-Builder to complete the Design Work, commence the Construction Work, and complete the Project, as further described in the Contract Documents.
81. Phase 2 CPM Schedule – A CPM Schedule to complete the Phase 2 Work on the Project within the Contract Time. The detailed requirements for the Phase 2 CPM Schedule are stated in the Contract Documents.
82. Phase 2 Price – The total price established by the Parties for Design-Builder's performance of Phase 2 Work and completion of the Phase 2 Work, in accordance with the Contract Documents and as reflected in a Phase 2 GMP Amendment, subject to any additions or deductions as provided in the Contract Documents. There may be more than one GMP Amendment that is part of the Phase 2 Price.
83. Plans – The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Construction Documents by Design-Builder.
84. Price Proposal – A Proposer's price proposal submitted to OC SAN in response to the RFP, as further described in the RFP.
85. Project – The total design, construction, and performance of the Work and all other requirements of the Contract Documents.
86. Project Organization Chart – A chart submitted by Proposers as part of the Proposal that identifies Key Personnel and the entity affiliation associated with such personnel.
87. Proposal – A Proposer's proposal submitted to OC SAN in response to the RFP, including the Price Proposal and Technical Proposal and all required documents, forms, appendices, and other information requested by OC SAN in the RFP, as further described in the RFP.
88. Proposer – The entity responding to the RFP and submitting a Proposal.
89. Proprietary Meetings – Confidential, one-on-one meetings with Proposers during the RFP procurement, as further described in the RFP.

90. Punch List – A list of items for Work which remain to be replaced or completed in accordance with the requirements for completion of Work.
91. Request for Change – A request made by Design-Builder for an adjustment in, GMP, Contract Price, or Contract Time as the result of a Design-Builder-claimed change to the Work. The Term Amendment and Change Order may be used interchangeably and more specifically when referring to adjustments of GMP, Contract Price or Contract Time in Phase 2.
92. Request for Information or RFI – Design-Builder's written request to OC SAN for clarification about a Project condition.
93. Request for Proposals or RFP – The request for proposals issued by OC SAN for the Project and includes all documents, exhibits, attachments, and addenda thereto.
94. Safety Plan – Design-Builder's plan for health and safety in implementing the Construction Work, to be developed as part of Phase 1 Services in accordance with the Contract Documents.
95. Schedule of Submittals – A schedule, prepared and maintained by Design-Builder, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
96. Schedule of Values – A schedule of values allocating the entire Phase 2 Price to the various portions of the Work in Phase 2 and prepared in such a form and supported by such data to substantiate its accuracy as OC SAN may require, subject to adjustment of the Phase 2 Price. A Schedule of Values will be provided with a GMP Proposal and incorporated into a GMP Amendment.
97. Security Plan – Design-Builder's plan for security at the Site in implementing the Construction Work, to be developed as part of Phase 1 in accordance with the Contract Documents.
98. Selection Committee – Individuals responsible for reviewing, evaluating, and scoring the Technical Proposals for the Project.
99. Self-Performed Construction Work – Construction Work performed by Design-Builder with its own forces in accordance with the Contract Documents.
100. Separate Contractor – A person, or firm, under separate contract with OC SAN performing other work at the Project site which may affect the Work.
101. Site – Lands or areas indicated in the Contract Documents as being furnished by OC SAN upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OC SAN which are designated for the use of Design-Builder.

102. Specifications – That part of the Construction Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
103. Stop Payment Notice – A written notice as defined in Civil Code section 8044.
104. Subcontracted Construction Work – Construction Work performed by Subcontractors, but not Key Subcontractors or Design-Builder, with their own forces in accordance with the Contract Documents.
105. Subcontractor – An individual or entity that has a contract with Design-Builder for performance of any portion of Work and, where applicable, any lower Tier subcontractors performing Services.
106. Subcontractor Construction Cost – Any and all costs by a Subcontractor with a direct contract with Design-Builder to perform Construction Work. What constitutes Subcontractor Construction Cost is further defined in the General Conditions.
107. Substantial Completion – The Work has progressed to the point that OC SAN can beneficially occupy or utilize the Work as a whole for the purpose for which it is intended, and the Work complies with applicable codes and regulations, including, if required, issuance of certificates of occupancy or certificate of suitability for use from the appropriate governmental agencies, as determined by OC SAN's Representative at his/her sole discretion.
108. Supplemental Agreements – Written agreements between OC SAN and the Design-Builder covering schedules, drawings, instructions, alterations, amendments, or extensions to the Contract and including Change Orders.
109. Supplier – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Builder or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
110. Surety or Sureties – The bondsmen or party or parties who guarantee the fulfillment of the Contract, or a portion of the Contract, by Performance Bond and Payment Bond and whose signatures are affixed to the bonds.
111. Technical Proposal – A Proposer's technical proposal submitted to OC SAN in response to the RFP, including all required documents, forms, appendices, and other information requested by OC SAN in the RFP, as further described in the RFP.
112. Tier – The contractual level of a Subcontractor, Supplier, or consultant with respect to Design-Builder. For example, a first tier Subcontractor is under subcontract with Design-Builder, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.

113. Underground Facilities – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
114. Work – The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.
115. Work Package – A package of Work for specific scopes of the Project developed by Designer of Record as part of the Construction Documents that are self-performed by Design-Builder or awarded to a Subcontractor. A Work Package may be a discrete and defined portion of the Project that contains (or will contain) its own GMP and Contract Time for completion.
116. Work Product – All papers, maps, models, estimates, plans, specifications, calculations, designs, studies, surveys, reports, data, notes, computer files, documents, drawings, and other work product developed by Design-Builder pursuant to the Contract Documents, including, but not limited to, the Construction Documents.

1.3 Terminology

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for the intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for the intended use.
 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Design-Builder is implied.

- B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

2.1 Intent of Contract Documents

- A. Complementary. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided by Design-Builder, whether or not specifically called for, at no additional cost to OC SAN.
- B. Completion of Work. Design-Builder shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project. If utilities to equipment or fixtures are not shown but are necessary to operate the equipment or fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control Design-Builder in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

2.2 Reference Standards; Interpretation of Contract Documents

- A. Standards, Specifications, Codes, Laws, and Regulations. Reference to federal specifications, federal standards, state standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of the Effective Date, and in case of Work during Phase 2, when the Parties executed a GMP Amendment, except as may be otherwise specifically stated in the Contract Documents.
- B. Responsibilities. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of OC SAN, Design-Builder, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to OC SAN, or any of its officers, directors, members, partners, employees, agents, consultants, or Subcontractors any duty or authority to supervise or direct the performance of Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

- C. Provisions Required by Law. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then, upon application of either Party, the Contract shall be amended in writing to make such insertion or correction.
- D. Interpretation of Contract Documents. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings. 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 with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. 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.

2.3 Order of Precedence

- A. Conflicts. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. Resolving Conflicts. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
1. Permits from other agencies and regulatory requirements as may be required by law;
 2. Amendments, Change Orders, and GMP Amendments, most recent first;
 3. Supplemental Agreements, most recent first;

4. Progressive Design-Build Contract;
 5. Special Conditions;
 6. Construction Documents, as follows:
 - a. Specifications
 - b. Drawings, which shall also be interpreted as follows:
 - (i) Figures govern over scaled dimensions
 - (ii) Detail drawings govern over general drawings
 - (iii) Drawings govern over standard drawings
 - (iv) Drawings govern over shop drawings
 7. Phase 1 Scope of Work;
 8. General Requirements;
 9. General Conditions;
 10. RFP and all addenda, attachments, and appendices;
 11. Design-Builder Certifications from Proposal;
 12. To the extent applicable, in the following order:
 - a. Local agency standards and specifications
 - b. Standard drawings
 - c. Reference documents
- C. Notwithstanding the orders of precedence established above, in the event of conflicts between the Drawings and the Specifications, the higher standard and higher quality shall always apply.

2.4 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order or amendments allowed by the Contract Documents.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to OC SAN, by one or more of the following ways:

1. OC SAN's Representative's review of a submittal, shop drawing, sample, or substitution request without exception (subject to the provisions of the Contract Documents); or
 2. OC SAN's Representative's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify Design-Builder's obligation to fully satisfy and comply with the requirements of the Contract Documents.

2.5 Examining Contract Documents, Project Site

- A. Confirming Contract Documents. OC SAN and Design-Builder acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which Design-Builder based its Proposal Prior to entering into this Contract, the Parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Following the GMP Amendment, once accepted by the Parties, the Construction Documents will become a part of the Contract Documents that defines the entire scope of Work, so long as such documents incorporate all minimum requirements of the Background Documents. Design-Builder shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.
- B. Examining Contract Documents. Before commencing any Work on the Project, Design-Builder shall carefully examine the Contract, the Contract Documents, the Background Documents, and other information given to Design-Builder as to Project requirements. Design-Builder shall immediately notify OC SAN's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither Design-Builder nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Contract, the Contract Documents, the Background Documents, or other information given to Design-Builder. If Design-Builder or its Subcontractors, material or equipment Suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear the cost of correction thereof without increase or adjustment to the GMP or the Contract Time. In no case shall any Subcontractor proceed with Work if uncertain without Design-Builder's written direction and/or approval.
- C. Contract Document Conformance with Laws. Before commencing any Work on the Project, Design-Builder shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, and rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project; all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project; and other special requirements, if any, designated in the Contract. In the event Design-Builder observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, Design-Builder shall immediately notify OC SAN's

Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. Design-Builder shall be solely liable for any such violation, inconsistency, or special requirement if Design-Builder fails to conduct such review or notification to OC SAN.

- D. Examination of Project Site. As part of Phase 1 and prior to all GMP Amendments, Design-Builder shall inspect and become familiar with the Site, its physical condition relevant to the obligations of Design-Builder pursuant to the Contract, including surface and subsurface conditions, normal and usual soil conditions, roads, Underground Facilities, topographical conditions, and air and water quality conditions and shall, among other things, review the Contract Documents, including, but not limited to, the Background Documents, relative to the Site. Design-Builder shall be familiar with all local and other conditions which may be material to Design-Builder's performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling, and storage of materials and equipment; and availability and quality of labor); Design-Builder shall have received and reviewed all information regarding the Site provided to or developed by it in connection with the Work pursuant to the Contract; and Design-Builder shall have made all other Site investigations that it deems necessary to make a determination as to the suitability of the Site and to submit a Phase 2 Proposal to OC SAN in accordance with the Contract Documents. Design-Builder's Phase 2 Proposal shall serve as a representation by Design-Builder that, based on the foregoing, the Site constitutes an acceptable and suitable site for the Work and that the Work can be performed on the Site within the Contract Price and in accordance with the Contract Documents, including the schedule requirements of the Contract.
- E. Reporting and Resolving Discrepancies. The Contract Documents are intended to be fully comprehensive and complementary. Before undertaking each part of the Work, Design-Builder shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Design-Builder shall promptly report in writing to OC SAN any conflict, error, ambiguity, or discrepancy which Design-Builder discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from OC SAN before proceeding with any Work affected thereby. If, during the performance of the Work, Design-Builder discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, Design-Builder shall promptly submit a written RFI to OC SAN. Design-Builder shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Design-Builder before receipt of an amendment or supplement shall be at Design-Builder's own risk.
- F. Responsibility for Review of Contract Documents. Design-Builder shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if

Design-Builder fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to OC SAN in writing.

2.6 Reuse of Documents

- A. Design-Builder and any Subcontractor shall not have or acquire any title to or ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the Designer of Record or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of OC SAN. The prohibitions of this Article will survive final payment and termination of the Contract. Nothing herein shall preclude Design-Builder from retaining copies of the Contract Documents for record purposes.

2.7 Ownership and Use of Construction Documents

- A. Ownership and Use. The Construction Documents, and all copies thereof, furnished to, or provided by, Design-Builder are the property of OC SAN. Design-Builder hereby assigns to OC SAN all right, title, and interest, including any copyrights, patents, and any other intellectual property rights in all Work Product and all ideas, methods, and information specifically developed as Work Product. Design-Builder will take such steps as are necessary to perfect or protect the ownership interest of OC SAN in such Work Product. Upon completion, expiration, or termination of the Contract, Design-Builder shall turn over to OC SAN all such original Work Product in Design-Builder's possession or control. OC SAN shall have unlimited rights, for the benefit of OC SAN, in all Work Product and other Work developed in the performance of the Contract for the Project, including the right to re-use details of the Construction Documents on any other OC SAN work at no additional cost to OC SAN. Design-Builder, for a period up to five (5) years from the date of completion of the Project, agrees to furnish and to provide access to copies of all such materials immediately upon the written request of OC SAN. Any use or reuse by OC SAN of the Construction Documents on any project other than this Project without employing the services of Design-Builder shall be at OC SAN's own risk with respect to third parties. If OC SAN uses or re-uses the Construction Documents on any project other than this Project, it shall remove the Designer of Record's seal from the Construction Documents and indemnify, defend, and hold harmless Design-Builder, Designer of Record, and their officers, directors, agents, and employees from claims arising out of the use or re-use of the Construction Documents on such other project.
- B. Design Subcontractors. To the extent Design-Builder does not directly perform Design Work, Design-Builder shall acquire a license meeting the requirements of this Article 2.7 from each of its designers in order to convey the rights to OC SAN. Further, in the event that a subconsultant to Design-Builder, or any other party that is not in privity with OC SAN under the Contract, maintains any right to a copyright or other intellectual property right in any portion of the Work Product, Design-Builder shall obtain from that party a grant of a non-exclusive and perpetual license in favor of OC SAN as described in Article 2.7 A. above. Design-Builder shall deliver said license to OC SAN prior to the subconsultant or other design entity performing any work on the Project. OC SAN's

obligation to compensate Design-Builder shall not commence until the license is delivered.

- C. Use of Design. In accordance with Public Contract Code section 22185.5(c)(2), design professionals responsible for performing Design Work on behalf of Design-Builder shall have sole liability for their design errors and omissions, provided OC SAN elects to use their complete and stamped designs with subsequent design-build entities or licensed contractors.

2.8 Confidential Information

- A. No Unauthorized Disclosure. All information gained or Work Product produced by Design-Builder in the performance of the Contract will be considered confidential, unless such information is in the public domain. Design-Builder shall not release or disclose any such information or Work Product to persons or entities other than OC SAN without the prior written consent of OC SAN, except as otherwise required by law. Design-Builder shall promptly notify OC SAN should Design-Builder, or its representatives, Subcontractors, or Suppliers, be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request or court order from any third party regarding the Contract and the Services performed under the Contract.
- B. Media. Design-Builder shall not comment publicly to the press or any other media or issue any news release or public relations item of any nature whatsoever regarding the Contract without prior review of the contents thereof by OC SAN and receipt of OC SAN's written permission.

ARTICLE 3 -EXECUTION OF CONTRACT; INSURANCE, BONDS, INDEMNIFICATION

3.1 Notice to Proceed

- A. After an approval to award the Contract is granted by OC SAN's Board of Directors (or as delegated pursuant to OC SAN's current Purchasing Ordinance and any amendments thereto) and, when applicable, by the State Water Resources Control Board, OC SAN will forward the Contract to the Design-Builder for execution. Design-Builder shall deliver the executed Contract, along with the specified insurance documents, to OC SAN within fifteen (15) calendar days from the date of award. Upon receipt of all properly executed documents, OC SAN shall execute all documents as necessary, establish the effective date of the Contract, and OC SAN shall issue a Notice to Proceed unless OC SAN's Representative determines that good cause exists to delay the issuance. In such case, OC SAN may delay issuance of the Notice to Proceed. Said Notice to Proceed shall be forwarded to the Design-Builder by mail or by any other means which shall provide confirmation of a date and time receipt acknowledgment, including, but not limited to, electronic telecommunication. In the event the Design-Builder does not return the executed Contract and insurance within the specified fifteen (15) Day period, OC SAN may reduce the time required for completion, beginning the sixteenth (16th) Day after the Contract is forwarded by OC SAN, on a day-for-day basis.

3.2 Contract Bonds

- A. Generally. Prior to Design-Builder's commencement of Construction Work, Design-Builder shall submit a Performance Bond and Payment Bond on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to OC SAN conditioned upon the faithful performance by Design-Builder of all requirements of the Contract Documents. The obligations of the Performance Bond Surety shall continue so long as any obligation of Design-Builder remains. Nothing herein shall limit OC SAN's rights or Design-Builder's or Surety's obligations under the Contract, law, or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. Amount of Bonds. The Performance Bond and Payment Bond shall each be in a sum no less than one hundred percent (100%) of the Phase 2 Price. No payment will be made to Design-Builder until the bonds have been approved by OC SAN. The amount of the Performance Bond and the Payment Bond shall be increased by Design-Builder to reflect the adjustment to the Phase 2 Price. Design-Builder shall, upon request of OC SAN, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to OC SAN. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Phase 2 Price), extensions of time, or modifications of the time, terms, or conditions of payment to Design-Builder will release the Surety. If Design-Builder fails to furnish any required bond, OC SAN may terminate the Contract for cause.
- C. Monitoring of Sureties. Design-Builder shall be responsible throughout the Project for monitoring the financial condition of any Surety issuing bonds under the Contract and for making inquiries no less often than annually to confirm that each such Surety complies with the qualification requirements specified in this Article. In the event any Surety is declared bankrupt, becomes insolvent, or has the rights to do business in the state terminated, Design-Builder shall promptly notify OC SAN of such event and shall promptly take steps to ensure continued compliance with this Article by furnishing or arranging for the furnishing of a substitute or additional bond of a Surety whose qualifications satisfy all above requirements.
- D. Insufficient Bonds. Should, in OC SAN's sole opinion, any bond become insufficient or Surety found to be unsatisfactory, Design-Builder shall renew or replace the affected bond within 10 Days of receiving notice from OC SAN. In the event the Surety or Design-Builder intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to OC SAN, and Design-Builder shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under the Contract until any replacement bonds required by this Article are accepted by OC SAN.

3.3 Insurance

- A. General. Design-Builder shall purchase and maintain, for the duration of the Contract, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the Work hereunder, and the results of that Work by Design-Builder, its agents, representatives, employees, or Subcontractors, in amounts equal to the requirements set forth below. Design-Builder shall not commence Work under the Contract until all insurance required under this Article is obtained in a form acceptable to OC SAN, nor shall Design-Builder allow any Subcontractor to commence Work on a subcontract until all insurance required of the Subcontractor has been obtained. Design-Builder shall maintain all of the foregoing insurance coverages in force through the point at which the Work under the Contract is fully completed and accepted by OC SAN pursuant to the Contract Documents. Furthermore, Design-Builder shall maintain all of the foregoing insurance coverages in full force and effect throughout the warranty period, commencing on the date of Final Completion. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of OC SAN by Design-Builder under Section 3.5 of these General Conditions. Notwithstanding nor diminishing the obligations of Design-Builder with respect to the foregoing, Design-Builder shall subscribe for and maintain in full force and effect during the life of the Contract, inclusive of all changes to the Contract Documents made in accordance with the provisions of the General Conditions, the following insurance in amounts not less than the amounts specified. OC SAN reserves the right to amend the required limits of insurance commensurate with the Design-Builder's risk at any time during the course of the Project. No vehicles may enter OC SAN premises/worksite without possessing the required insurance coverage. Design-Builder's insurance shall also comply with all insurance requirements prescribed by agencies from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the "Third Parties"). The Special Conditions may list such requirements and sample forms and requirements from such Third Parties and/or such requirements may be included in an attachment to the General Requirements. Design-Builder bears the responsibility to discover and comply with all requirements of third parties, including meeting specific insurance requirements, that are necessary for the complete performance of the Work. To the extent there is a conflict between the third parties' insurance requirements and those set forth by OC SAN herein, the requirement(s) providing the more protective coverage for both OC SAN and the Third Parties shall control and be purchased and maintained by Design-Builder.. Where permitted by law, Design-Builder hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against OC SAN, its or their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of OC SAN in connection with the planning, development, and construction of the Project. In all its insurance coverages (except for Professional Liability/Errors and Omissions coverages, if applicable) related to the Work, Design-Builder shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against OC SAN, its or their officers, agents, or employees, or any other contractor or subcontractor performing Work or rendering services at the Project. Where permitted by law, Design-Builder shall require similar written express waivers and insurance clauses from each of its Subcontractors of every Tier. A waiver

of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

B. Limits of Insurance

1. General Liability. Five Million Dollars (\$5,000,000) per occurrence and a general aggregate limit of Ten Million Dollars (\$10,000,000) for bodily injury, personal injury, and property damage. If aggregate limits apply separately to the Contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit. Coverage shall include each of the following:
 - a. Premises-Operations
 - b. Products and Completed Operations, with limits of at least Five Million Dollars (\$5,000,000) per occurrence and a general aggregate limit of Ten Million Dollars (\$10,000,000) which shall be in effect at all times during the warranty period set forth in the General Conditions, plus any additional extension or continuation of time to said warranty period that may be required or authorized by said provisions. If aggregate limits apply separately to the Contract (as evidenced by submission of ISO form CG 25 03 or CG 25 04), then the aggregate limit may be equivalent to the per occurrence limit.
 - c. Broad Form Property Damage, expressly including damage arising out of explosion, collapse, or underground damage.
 - d. Contractual Liability, expressly including the indemnity provisions assumed under the Contract.
 - e. Separation of Insured Clause, providing that coverage applies separately to each insured, except with respect to the limits of liability.
 - f. Design-Builder's Liability
 - g. To the extent first dollar coverage, including defense of any claim, is not available to OC SAN or any other additional insured because of any SIR, deductible, or any other form of self-insurance, Design-Builder is obligated to assume responsibility of insurer until the deductible, SIR, or other condition of insurer assuming its defense and/or indemnity has been satisfied. Design-Builder shall be responsible to pay any deductible or SIR.
 - h. If a crane will be used, the general liability or property insurance will be endorsed to add Riggers Liability coverage or its equivalent to cover the usage of the crane and exposures with regard to the crane operators, riggers, and others involved in using the crane.

- i. If divers will be used, the general liability insurance will be endorsed to cover marine liability or its equivalent or covered via a marine general liability policy to cover the usage of divers.
2. Automobile Liability. The Design-Builder shall maintain a policy of automobile liability insurance on a comprehensive form covering all owned, non-owned, and hired automobiles, trucks, and other vehicles providing the following minimum limit of liability coverage: combined single limit of Two Million Dollars (\$2,000,000) for bodily injury and property damage.
3. Umbrella Excess Liability. The minimum limits of general liability and automobile liability insurance required, as set forth above, shall be provided for either in a single policy of primary insurance or a combination of policies of primary and umbrella excess coverage. Excess liability coverage shall be issued with limits of liability which, when combined with the primary insurance, will equal the minimum limits for general liability and automobile liability.
4. Drone Liability Insurance. If a drone will be used, drone liability insurance must be maintained by Design-Builder in the amount of One Million Dollars (\$1,000,000) in a form acceptable to OC SAN.
5. Workers' Compensation/Employer's Liability. Design-Builder shall provide such workers' compensation insurance as required by the Labor Code of the State of California, including employer's liability with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily standard injury or disease. If an exposure to Jones Act liability may exist, the insurance required herein, or shall provide a separate policy for Jones Act coverage, shall include coverage with regard to Jones Act claims.
6. Claims Made. If Design-Builder provides coverage written on a claims-made basis, OC SAN has the right to approve or reject such coverage in its own discretion. If written on a claims-made basis, the Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract, and that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two years beginning from the time that the Project under the Contract is completed.
7. Errors and Omissions/Professional Liability Insurance. Design-Builder shall maintain in full force and effect, throughout the term of the Contract, professional liability / errors and omissions insurance coverage with coverage limits of not less than Five Million Dollars (\$5,000,000) in accordance with the provisions of this paragraph. If the policy of insurance is written on a "claims made" basis, said policy shall be continued in full force and effect at all times during the term of the Contract, and for a period of five (5) years from the date of the completion of the Work hereunder. In the event of termination of said policy during this period, Design-Builder shall obtain continuing insurance coverage for the prior acts or omissions of Design-Builder during the course of performing Work under the terms of the Contract. Said coverage shall be evidenced by either a new policy evidencing no gap in coverage or by separate extended "tail" coverage with the present or new carrier. In the event the present policy of insurance is written on an "occurrence" basis, said policy shall be continued in full force and effect during the

term of the Contract or until completion of the Work provided for in the Contract, whichever is later. In the event of termination of said policy during this period, new coverage shall be obtained for the required period to insure for the prior acts or omissions of Design-Builder during the course of performing Work under the terms of the Contract. Design-Builder shall provide to OC SAN a certificate of insurance in a form acceptable to OC SAN indicating the deductible or self-retention amounts and the expiration date of said policy and shall provide renewal certificates not less than ten (10) Days prior to the expiration of each policy term.

8. Marine Insurance: Marine Protection and Indemnity insurance with limits as specified herein, if the Design-Builder engages in marine operations in the execution of any part of the Work, or cause the Subcontractor to maintain, Marine Protection and Indemnity insurance. The insurance shall provide coverage with coverage limits of not less than Two Million Dollars (\$2,000,000) for the Design-Builder, or Subcontractor (whichever is doing the work) and for OC SAN (together with officials and employees) as an Additional Insured for bodily injury and property damage arising from marine operations under this Contract. Coverage shall include, without limitation, injury or death of crew members (if not provided through other insurance), removal of wreck, damage to piers, wharves and other fixed or floating objects and loss or damage to any other vessel or craft, or to property on such vessel or craft.

If carrying out any ocean, coastal or inland waterway shipments, the Design-Builder shall ensure a marine insurance policy is in place to fully insure the full replacement value of the shipment, and should cover the cargo on an "All Risks" basis from the point of origin of shipment until delivery to the job site, including the risk of unloading at the delivery point.

The Design-Builder shall maintain or cause to be maintained, if applicable, Hull and Machinery insurance covering the full replacement cost of all barges, scows and other watercraft owned, rented, or leased by the Design-Builder or Subcontractor.

C. Deductibles and Self-Insured Retentions. (NOT USED).

D. Other Insurance Provisions

1. Each such policy of general liability insurance and automobile liability insurance shall be endorsed to contain, the following provisions:
 - a. OC SAN, its directors, officers, agents, consultants, and employees, and all public agencies from whom permits will be obtained, and their directors, officers, agents, and employees are hereby declared to be additional insureds under the terms of this policy, but only with respect to the operations of Design-Builder at or from any of the sites of OC SAN in connection with the Contract, or acts and omissions of the additional insured in connection with its general supervision or inspection of said operations related to the Contract.

b. Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by OC SAN shall be excess only and not contributing with insurance provided under this policy.

2. Cancellation and Policy Change Notice. Design-Builder is required to notify OC SAN in writing of any insurance cancellation notice it receives or other knowledge of pending or actual insurance policy cancellation within two (2) working days of receipt of such notice or acquisition of such knowledge. Additionally, the Design-Builder is required to notify OC SAN in writing of any material change in the terms of insurance, including reduction in coverage, within fifteen (15) working days of receipt of such notice or knowledge of same.

Said notices shall be mailed to OC SAN at:

ORANGE COUNTY SANITATION DISTRICT
18480 Bandilier Circle
Fountain Valley, CA 92708
Attention: Contracts, Purchasing & Materials Management Division

3. Coverage shall not extend to any indemnity coverage for the active negligence of any additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Civil Code section 2782(b).
4. If required by a public agency from whom permit(s) will be obtained, each policy of general liability insurance and automobile liability insurance shall be endorsed to specify by name the public agency and its legislative members, officers, agents, consultants, and employees to be additional insureds.
- E. Acceptability of Insurers. Insurers must have an "A-," or better, Policyholder's Rating, and a Financial Rating of at least Class VIII, or better, in accordance with the most current A.M. Best Rating Guide. OC SAN recognizes that State Compensation Insurance Fund has withdrawn from participation in the A.M. Best Rating Guide process. Nevertheless, OC SAN will accept State Compensation Insurance Fund for the required policy of worker's compensation insurance, subject to OC SAN's option, at any time during the term of the Contract, to require a change in insurer upon twenty (20) Days written notice. Further, OC SAN will require Design-Builder to substitute any insurer whose rating drops below the levels herein specified. Said substitution shall occur within twenty (20) Days of written notice to Design-Builder by OC SAN or its agent.
- F. Verification of Coverage. Design-Builder shall furnish OC SAN with original certificates and mandatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by OC SAN before Work commences. In the event of a material claim arising out of this Contract that may be subject to the insurance that the Design-Builder is required to provide under this Contract, OC SAN reserves the right, following the execution of a commercially reasonable non-disclosure agreement, to view, at any time, complete, certified copies of all required insurance policies pertaining to the above mentioned claim, including endorsements, affecting the coverage required herein.

G. Subcontractors. Design-Builder shall be responsible to establish insurance requirements for any Subcontractors hired by Design-Builder. The insurance shall be in amounts and types reasonably sufficient to deal with the risk of loss involving the Subcontractor's operations and work. OC SAN and any public agency issuing permits for the Project must be named as "Additional Insured" on any general liability or automobile liability policy obtained by a Subcontractor. Design-Builder must obtain copies and maintain current versions of all Subcontractors' certificate of liability and mandatory endorsements effecting coverage. Upon request, Design-Builder must furnish OC SAN with the above-referenced required documents. In the event that OC SAN is entitled to view an applicable insurance policy of a Subcontractor under subparagraph F above, OC SAN agrees that it shall execute the non-disclosure agreement directly with the Subcontractor, who shall make such policy available for viewing directly to OC SAN.

H. Required Forms and Endorsements

1. Required ACORD Form

a. Certificate of Liability

(i) ACORD Form 25 or other equivalent certificate of insurance form

2. Required Insurance Services Office, Inc. Endorsements (when alternative forms are shown, they are listed in order of preference). In the event any of the following forms are cancelled by Insurance Services Office, Inc. (ISO), or are updated, the ISO replacement form or equivalent must be supplied.

a. Commercial General Liability

(i) Form CG 00 01

b. Additional Insured Including Products-Completed Operations

(i) Form CG 20 10 **and** Form CG 20 37. All other additional insured endorsements must be submitted for approval by OC SAN, and OC SAN may reject alternatives that provide different or less coverage to OC SAN.

c. Waiver of Transfer of Rights of Recovery Against Others to Us/Waiver of Subrogation

(i) Form CG 24 04

3. Required State Compensation Insurance Fund Endorsements

a. Waiver of Subrogation

(i) Submit workers' compensation waiver of subrogation endorsement provided by carrier for OC SAN approval.

b. Cancellation Notice

- (i) No endorsement is required. However, Design-Builder is responsible for notifying OC SAN of any pending or actual insurance policy cancellation, as described Cancellation and Policy Change Notice, above.

4. Additional Required Endorsements

a. Notice of Policy Termination

- (i) Manuscript Endorsement

5. Course of Construction Required Forms (if required)

a. Name Insured

- (i) Evidence Only Certificate

3.4 Design-Builder's Liability Not Limited by Insurance

- A. Nothing contained in these insurance requirements is to be construed as limiting the liability of Design-Builder or Design-Builder's Sureties.

3.5 General Indemnification

- A. Design-Builder shall, to the extent of Design-Builder's negligence, in a share proportional to Design-Builder's fault, and with respect to all Work covered by or incidental to these Contract Documents, indemnify, defend, and hold OC SAN and its directors, officers, agents and employees, and where required by Governmental Bodies issuing permits to the Design-Builder, free and harmless from and against all of the following:
- 1. Any claim, suit, or action of every name, kind, and description, loss, damage, cost, expenses, including reasonable attorney's fees and expert fees, costs of compliance with administrative orders and directives, litigation, arbitration, awards, fines, and administratively or judicially-imposed penalties or judgments, arising by reason of death or bodily injury to person(s), injury to property, or other loss, damage, or expense, resulting from the construction of the Work, design defects, defects in the Work, or by or on account of acts, errors, or omissions of the Design-Builder or Design-Builder's Subcontractors, Suppliers, employees, invitees, or agents arising during the progress of the Work or at any time prior to its completion and Final Completion, excluding any of the same resulting from OC SAN's alleged or actual acts, errors, or omissions regardless of whether on or off of the worksite. Said responsibility shall extend to claims, demands or liability for loss, damage, or injuries occurring or discovered after completion of the Work, as well as during the progress of the Work. Design-Builder shall not be obligated under the Contract to indemnify OC SAN or its consultants with respect to the negligence or willful misconduct of OC SAN or its consultants.
- B. In addition, if any action is brought against the Design-Builder or any Subcontractor to enforce a stop payment notice or notice to withhold, which names OC SAN as a party to said action, OC SAN shall be entitled to reasonable attorney's fees, costs, and

necessary disbursements arising out of the defense of such action by OC SAN. OC SAN shall be entitled to deduct its costs for any stop payment notice filed, whether court action is involved or not.

- C. In any and all claims against the indemnified parties by an employee of the Design-Builder, any Subcontractor, any Supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation as specified herein shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Design-Builder, or any Subcontractor, or any Supplier, or other person under Workers' Compensation acts, disability benefit acts, or other employee acts.
- D. The obligations of Design-Builder as specified herein shall not extend to the liability of consultants or their subconsultants, and each of their directors, officers, agents, and employees, arising out of or resulting from or in connection with the preparation of approval of maps, drawings, opinions, reports, surveys, designs, or specifications, provided that the foregoing was the sole and exclusive cause of the loss, damage, or injury.
- E. In the event Design-Builder or its insurer refuses or fails to provide a legal defense to OC SAN after receiving written notice of the legal action and a tender and demand for defense, OC SAN shall have the right to select counsel of its own choice to represent all the interests of OC SAN at Design-Builder's cost and expense. Design-Builder agrees that the amount of legal costs and expenses, including attorneys' fees, may be withheld by OC SAN from any Contract amounts due and owing to Design-Builder until such time as a final determination is made as to the responsibility for payment of said fees and costs. Design-Builder further agrees that to the extent OC SAN incurs such damages and the damages exceed any remaining Contract amounts due and owing to Design-Builder, Design-Builder shall reimburse OC SAN for all such additional damages upon demand by OC SAN for the same.
- F. Design-Builder's obligation to defend, indemnify, and/or hold harmless arises out of Design-Builder's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), and only to the extent required under Civil Code section 2782.8, which is fully incorporated herein, Design-Builder's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design-Builder, and, upon Design-Builder obtaining a final adjudication by a court of competent jurisdiction, Design-Builder's liability for such claim, including the cost to defend, shall not exceed Design-Builder's proportionate percentage of fault.
- G. Design-Builder and OC SAN agree that nothing in this Article is intended to be or is a prevailing party clause as it pertains to attorney's fees.

3.6 Joint and Several Liability

- A. If the Design-Builder is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Design-Builder that are assumed under or arise out of the Contract. Each of such venturers or

partners waives notice of the breach or non-performance of any undertaking or obligation of the Design-Builder contained in, resulting from, or assumed under the Contract, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder.

3.7 Personal Liability

- A. No director, officer, employee, or agent of OC SAN, or its consultants, shall be personally responsible for any liability arising under or by virtue of the Contract.

3.8 Limitation of Liability

Design-Builder's aggregate liability to OC SAN with respect to damages arising out of the performance or unexcused non-performance of any Work performed on the Project shall not exceed two hundred percent (200%) of the Contract Price. This limitation on liability shall not affect the Design-Builder's obligation to provide insurance pursuant to the Contract Documents. This limitation of liability excludes:

- i. Defense and indemnification obligations required of the Design-Builder;
- ii. Costs, liabilities, damages, or obligations arising from the gross negligence, reckless conduct, willful acts or omissions, intentional misconduct, fraud, illegal, or unlawful acts, willful injury to person or property, or violation of Applicable Law, whether based on contract, tort (including negligence), strict liability, or any other legal theory, by the Design-Builder or any of its employees, consultants, Subcontractors, or Suppliers, or anyone working directly or indirectly for whom such parties may be liable;
- iii. Claims covered by insurance required of the Design-Builder by the Contract Documents to the extent there are insurance proceeds available;
- iv. Liquidated damages;
- v. Design-Builder's warranties and guarantees under the Contract Documents, including, but not limited to, latent construction defects.

3.9 Waiver of Consequential Damages

Under no circumstances shall Design-Builder be liable to OC SAN for any indirect, incidental, consequential, exemplary, punitive or special damages arising from performing or failing to perform any obligation under this Contract, whether such liability arises in contract (including breach, express or implied warranty, or indemnity), tort (including fault, negligence or strict liability), or otherwise, including, but not limited to, any loss of profits, loss of bonding capacity, loss of other contracts, loss of revenue or of overhead, loss of opportunity or goodwill. This limit of liability shall not, however, apply to, limit or preclude recovery of all damages, regardless of the nature of those damages, related to:

- i. Design-Builder's obligation to pay liquidated damages as set forth in the Contract Documents.

- ii. Damages caused by Design-Builder's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts.
- iii. Design-Builder's obligations to indemnify and defend the OC San and other indemnified parties as set forth in the General Conditions.
- iv. Design-Builder's liability for any type of damage to the extent such damage is covered and paid by insurance required to be provided by or for Design-Builder as specified in the Contract Documents.
- v. Design-Builder's warranties and guarantees under the Contract Documents, including, but not limited to, latent construction defects, along with any resulting damage.

ARTICLE 4 - CONTROL OF THE WORK

4.1 Authority of OC SAN's Representative

- A. Generally. OC SAN's Representative serves as the agent of OC SAN and will observe the accomplishment of the Work in accordance with the provisions of the Contract. OC SAN's Representative will decide any and all questions which may arise as to the interpretations of the Contract Documents, as to the quality and acceptability of materials furnished and Work performed, as to the manner of performance, and as to the rate of progress of the Work. All questions as to the acceptable performance of the Contract on the part of Design-Builder shall be decided by OC SAN's Representative.
- B. Instructions. OC SAN's Representative shall have authority to make minor changes in the Work not involving extra or lesser cost, and not inconsistent with the intent of the Contract Documents. All instructions, rulings, and decisions of OC SAN's Representative shall be in writing, and shall be final and binding on Design-Builder unless formal written objection is made as specified herein.
- C. Authority of OC SAN's Representative. It is expressly agreed that OC SAN's Representative shall not have the power to waive any of the obligations of the Contract Documents for the furnishing by Design-Builder of good and suitable material, and for performing the Work as herein described. Failure or omission on the part of OC SAN's Representative to reject defective or inferior Work or materials, or OC SAN's Representative's release of Design-Builder from obligations to remedy the defective or inferior Work, shall not imply acceptance of the Work.
- D. Board Authority. The Board shall have the final authority in all matters affecting the Work. Within the scope of the Contract Documents, OC SAN's Representative shall have the authority to enforce compliance with the Contract Documents. Design-Builder shall promptly comply with all instructions from OC SAN's Representative which are made in accordance with the Contract Documents.
- E. Binding Authority. In all matters relating to acceptability of construction materials and equipment, execution and progress of Work, percentage of completion, the

interpretation of Contract Documents, delays and claims by Design-Builder, the decision of OC SAN's Representative shall be final and binding unless Design-Builder timely follows the appropriate procedures to object to the same as set forth herein, or unless otherwise ordered by the Board.

4.2 Supervision by Design-Builder

- A. Generally. Design-Builder is required to give personal attention to the fulfillment of the Contract, and to keep the Work under control. Design-Builder shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder shall have a copy of the Contract Documents available at the Site at all times. Design-Builder shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.
- B. Site Superintendent. Design-Builder shall provide a site superintendent with full authority to receive and execute such instructions, orders, or directions as OC SAN's Representative may issue in connection with the provisions of the Contract Documents. The site superintendent shall be available on site at all times during progress of the Work. Before any Work is done at the Site, Design-Builder shall give written notice to OC SAN's Representative stating the name, home address, and telephone number of Design-Builder's site superintendent. OC SAN's Representative shall be informed in writing prior to any change of site superintendent. A statement naming more than one representative at a time to be in charge, depending upon which is present at the time, will not be acceptable. If a site superintendent is not present at a particular location of the Site, OC SAN's Representative may inform the foreman, or other person in charge, regarding an interpretation of the Contract Documents or of any disapproval or rejection of materials or Work performed. Information so given shall be as binding as if given to the site superintendent.
- C. Employment of Workers. Design-Builder shall comply with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors and consultants to comply with the same. Each person executing the Contract on behalf of Design-Builder verifies that he or she is a duly authorized officer of Design-Builder and that any of the following shall be grounds for OC SAN to terminate the Contract for cause: (1) failure of Design-Builder or its Subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

- D. Labor Competency. Design-Builder shall, at all times, enforce strict discipline and good order among its employees. Design-Builder shall not employ on the Project any unfit person or any one not skilled in the services assigned to him or her. If any Subcontractor, site superintendent, foreman, or person(s) employed by Design-Builder shall fail or refuse to carry out the directions of OC SAN's Representative, or shall appear to OC SAN's Representative to be incompetent or to act in a disorderly or improper manner, that person(s) shall be discharged immediately on demand of OC SAN and such person(s) shall not again be employed on the Project. Design-Builder shall bear all costs associated with such discharge of any Subcontractor, site superintendent, foreman, or person(s) employed by Design-Builder and such discharge shall not constitute a basis for any Request for Change or claim against OC SAN.
- E. Emergency. Design-Builder shall file with OC SAN's Representative the names, addresses, and telephone numbers of representatives who can be contacted at any time in case of emergency. These representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice.

4.3 Access to Work

- A. OC SAN, OC SAN's Representative, their consultants and other representatives and personnel, independent testing laboratories, and Governmental Bodies with jurisdictional interests will have access to the Site and Project at reasonable times for their observation, inspection, and testing. Design-Builder shall provide them proper and safe conditions for such access and advise them of Design-Builder's safety procedures and programs.

ARTICLE 5 - SCOPE OF WORK

5.1 General Responsibilities

- A. Generally. Design-Builder agrees that it has single point responsibility for the design and construction of the Project, and agrees to utilize the generally accepted standards of design, engineering, and construction practices. Unless otherwise provided in the Contract Documents, Design-Builder shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. Design-Builder shall supervise, coordinate, and direct all Work on the Project using Design-Builder's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project. Design-Builder shall be responsible to OC SAN for acts and omissions of Design-Builder, its agents, employees, and Subcontractors, and their respective agents and employees. Design-Builder has the duty to act in good faith at all times throughout the course and performance of the Contract. If Design-Builder performs

any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission without notifying and obtaining the written consent of OC SAN's Representative, Design-Builder shall be responsible for the costs of correcting Defective Work.

- B. Governmental Approvals. OC SAN will not be liable for Design-Builder's failure to obtain, maintain, and comply with all Governmental Approvals. All fines and fees assessed by Governmental Bodies as a result of said failures shall be Design-Builder's responsibility. In the event OC SAN is assessed with any fines or fees related to Design-Builder's failure to comply with the requirements set forth in this Article, the amount of fees or fines will be deducted from the Contract Price.
- C. Standard of Care. Design-Builder's performance shall be consistent with the standards set forth in the Contract and the General Conditions. Design-Builder represents that it is fully experienced and properly qualified to perform the class of Work provided for in the Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. Design-Builder warrants to OC SAN that all Work shall be performed in accordance with the professional standards and degree of care applicable to those design and construction professionals who specialize in designing and providing services for projects in the location and of the type, scope, quality, and complexity of the Project utilizing the progressive design-build contracting mode ("Standard of Care"). Design-Builder shall perform the Services using its professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof, and applicable law (excluding the Applicable Laws of private authorities), code, rule, or regulation. Design-Builder warrants that the Work will be of the quality required by this Contract and industry standards and free from defects (except for Design Work, which shall be performed in accordance with the Standard of Care) and that all Work will conform with the requirements of the Contract Documents. Design-Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project. Design-Builder shall supervise, inspect, and direct the Services and Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Design-Builder shall perform, at its own cost and expense and without reimbursement from OC SAN, any services necessary to correct errors or omissions which are caused by Design-Builder's failure to comply with the standard of care provided for herein.
- D. Efforts. Design-Builder recognizes the obligation of good faith and fair dealing that are established by the Contract, and covenants with OC SAN to furnish Design-Builder's skill and judgment, and to actively cooperate and assist in furthering all matters pertaining to the Project. Design-Builder agrees to furnish efficient business administration and capable supervision, and to use every reasonable effort to keep upon the Work an adequate supply of workers and materials in order to secure its execution in the most expeditious and economical manner consistent with the Contract Documents. Design-Builder's employees assigned to the Project shall at all times be reasonably satisfactory to OC SAN.
- E. Independent Contractor. Design-Builder shall be responsible to OC SAN for acts and omissions of Design-Builder, its employees, Subcontractors, material and equipment

suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with Design-Builder or any of its Subcontractors. Design-Builder in the performance of the Contract shall be and act as an independent contractor. Design-Builder understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OC SAN, and are not entitled to benefits of any kind or nature normally provided employees of OC SAN or to which OC SAN's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design-Builder shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Design-Builder's employees. In the performance of the Services, Design-Builder is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Design-Builder's Services, OC SAN being interested only in the results obtained.

- F. Permits and Licenses. All necessary permits and licenses for prosecution of the Work shall be secured and paid for by Design-Builder, including, but not limited to, permits, licenses, and fees required by a Governmental Body or necessary encroachment permits for Work within the public rights-of-way, unless otherwise expressly provided by the Contract Documents. Design-Builder shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by Governmental Bodies, except for such off-site inspections delineated as OC SAN's responsibility pursuant to the Contract Documents. Before completion of the Project, Design-Builder shall submit all licenses, permits, certificates of inspection, and required approvals to OC SAN.

5.2 Design Work

- A. Generally. Design-Builder is responsible for the design and construction of the Project and shall use the design and engineering standards of care applicable to projects, buildings, or work of similar size, complexity, quality, and scope in performing Design Work on the Project. Design-Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies, or omissions in the Construction Documents. Design-Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design-Builder before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to OC SAN's Representative.
- B. Construction Documents
1. Generally. Design-Builder shall furnish design, architectural, and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. The Designer of Record shall design the Project and prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required to complete the

construction of the Project, other than such details customarily developed by others during construction. Design-BUILDER is required to deliver to OC SAN any and all Construction Documents and Work Product including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

2. Submittal and Review of Construction Documents. Design-BUILDER shall submit completed packages of the Construction Documents for review by OC SAN at the times indicated on the Phase 1 CPM Schedule and as defined in the Phase 1 Scope of Work. Unless otherwise expressly modified by the Phase 1 Scope of Work, meetings between Design-BUILDER and OC SAN to review the Construction Document packages shall be scheduled at least every two weeks, or as otherwise agreed to by the Parties, and held so as not to delay Work on the Project. Design-BUILDER will conduct these design meetings with OC SAN in accordance with the schedule approved by OC SAN. Design-BUILDER will be responsible for preparing and circulating for the parties' review, design meeting minutes from all such meetings. OC SAN's review of the Construction Documents shall be conducted in accordance with the approved Phase 1 CPM Schedule and with procedures set forth in the Contract Documents. Such review shall not relieve Design-BUILDER from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by OC SAN of any deviation from, or of Design-BUILDER's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by Design-BUILDER and approved by OC SAN. The production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Phase 1 CPM Schedule shall indicate the times for OC SAN to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
- C. Field Engineering. Design-BUILDER shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California. Design-BUILDER shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.
- D. Information and Documents. OC SAN will make the reference documents related to the Project available to the Design-BUILDER, including, but not limited to, any preliminary surveys, geotechnical information, and other information that describes the Site. The reference documents are provided for information only and will not be included as part of the Contract Documents. Design-BUILDER shall perform its own independent site investigations in accordance with the requirements of the Contract Documents. Design-BUILDER's reliance on any reference documents shall not be a basis for increases to the Contract Price or Contract Time, nor shall it result in any claims against OC SAN.

E. Geotechnical and Survey. NOT USED.

5.3 Design-Builder's Performance of Work

- A. Means and Methods. Design-Builder is solely responsible for the means and methods utilized to perform Work. Design-Builder shall perform all Work in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Design-Builder warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Design-Builder represents that it, its employees, and Subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of the Contract. Design-Builder shall perform the Work in full compliance with all Applicable Laws and requirements of all Governmental Bodies having authority over the Project.
- B. Design-Builder's Responsibility for Work. Responsibility for, and security of, all Work and materials related to Design-Builder's Work is the responsibility of Design-Builder until Final Acceptance of Design-Builder's Work by OC SAN. OC SAN shall not be held responsible for the care or protection of any material or parts of the Work prior to Final Acceptance. Design-Builder shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by Design-Builder. Design-Builder shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, OC SAN will pay for repair or restoration to damaged Work in excess of 5% of the Contract Price unless OC SAN has required Design-Builder to obtain insurance to indemnify OC SAN for any damage to the Project caused by an Act of God.
- C. Layout and Field Engineering. Design-Builder shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work and all necessary surveys to compute quantities of Work performed.

5.4 Construction Quality Assurance, Quality Control

- A. Generally. Design-Builder shall have full responsibility for quality assurance and quality control for the Construction Work, including compliance with the Contract Documents. Without limiting any other requirement hereunder, Design-Builder shall perform quality control inspection and testing services to ensure compliance with the Contract Documents. Sampling and testing of materials, laboratory inspection of materials and processes for quality control purposes shall be performed in compliance with the Contract Documents.
- B. Quality Control Plan. Design-Builder shall prepare and submit to OC SAN for review and approval a written Quality Control Plan that encompasses all requirements of the Contract Documents with regard to all quality control processes for the Construction Work. The Quality Control Plan shall identify Design-Builder's overall framework for implementation of its Quality Control programs across all aspects of the Work. Design-

Builder shall submit the Quality Control Plan for OC SAN's acceptance. OC SAN's acceptance of the overall Quality Control Plan shall be a condition precedent to Design-Builder performing Construction Work. The Contract Documents provide more detail on what shall be included in the Quality Control Plan.

- C. Internal Quality Control Audits. Design-Builder shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system. Audits shall be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed. Design-Builder's management personnel responsible for the relevant area shall take timely corrective action on deficiencies found during the audit. OC SAN shall have the right to request and review the audit results. Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken. OC SAN, at its sole discretion, may require Design-Builder to perform follow-up audits.
- D. Review and Update of QC Plan. Design-Builder shall continuously review the performance of the Quality Control Plan to ensure its continuing suitability in satisfying the requirements of the Contract Documents. Design-Builder's reviews shall, at a minimum, include review of the results of internal audits, OC SAN audit results, corrective actions taken, trends in Defective Work, and time to resolution. OC SAN may, in its sole discretion, participate in Design-Builder's reviews and may request data from the reviews. Design-Builder shall incorporate the findings and quality improvement recommendations of Design-Builder reviews into the Quality Control Plan.

ARTICLE 6 -LEGAL RELATIONS AND RESPONSIBILITIES

6.1 Laws to be Observed

- A. Applicable Laws. Design-Builder shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither OC SAN nor OC SAN's Representative shall be responsible for monitoring Design-Builder's compliance with any Applicable Laws. If Design-Builder performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Builder shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. Design-Builder shall defend and indemnify OC SAN, the Board of Directors, its consultants, and its subconsultants, each of their directors, officers, employees, or agents against any claim or liability arising from or based on the violation of any such law or regulation, whether by Design-Builder or any of Design-Builder's employees or agents, including its Subcontractors and Suppliers.
- B. Certified Electricians. Workers performing Work for Design-Builder installing, constructing, or maintaining any electrical system covered by the National Electric Code shall be certified as a General Electrician per California Labor Code section 3099.

- C. Travel and Subsistence Payments. Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with California Labor Code Section 1773.1.
- D. Nondiscrimination in Employment. Design-Builder must submit a signed statement pursuant to Government Code section 12940. The Contract obligates Design-Builder and Subcontractors not to discriminate in employment practices. Design-Builder must, if requested, submit a compliance report concerning its employment practices and policies in order to maintain its eligibility to receive the award of the Contract. Design-Builder must be prepared to comply in all respects with the requirements regarding nondiscrimination, including, but not limited to, California Labor Code section 1735.
- E. Public Records Act
1. Ownership and Disclosure. Except as otherwise provided herein, all records, documents, Construction Documents, Plans, Specifications, Work Product, and all other information relating to the conduct of OC SAN's business, including information submitted by Design-Builder ("Records"), shall become the exclusive property of OC SAN and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act. OC SAN's use and disclosure of its records are governed by this Act. OC SAN will use its best efforts to inform Design-Builder of any request for any financial records or documents marked "Trade Secret," "Confidential," or "Proprietary" provided by the Design-Builder to OC SAN. OC SAN will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
 2. Litigation Related to Disclosure. In the event of litigation concerning Design-Builder desire to prevent the disclosure of any Records, OC SAN's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. Design-Builder, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any such action concerning the Records and shall indemnify and hold OC SAN harmless from all costs and expenses including attorney's fees in connection with any such action.

6.2 Labor Requirements

A. Prevailing Rates of Wages

1. Prevailing Wage Laws. Design-Builder is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Design-Builder agrees to fully comply with such Prevailing Wage Laws. Design-Builder shall obtain a copy of the prevailing rates of per diem wages at the commencement of the Contract from the website of the Division of Labor Statistics and Research of the

Department of Industrial Relations (“DIR”) located at www.dir.ca.gov. In the alternative, Design-Builder may view a copy of the prevailing rate of per diem wages which is on file at OC SAN’s office and shall be made available to interested parties upon request. Design-Builder shall make copies of the prevailing rates of per diem wages available to interested parties, upon request, for each craft, classification, or type of worker needed to perform work on the Project and shall post copies at Design-Builder’s principal place of business and at the Project site. Design-Builder shall post, at appropriate conspicuous points on the Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned. Design-Builder shall defend, indemnify, and hold OC SAN, 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 Prevailing Wage Laws.

2. Penalties. Design-Builder shall forfeit as a penalty to OC SAN not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design-Builder.
 3. Davis-Bacon. If the Contract is subject to the Davis-Bacon Act, the federal minimum wage rates for the Project are predetermined by the United States Secretary of Labor. These rates are available directly from the Department of Labor at <http://www.wdol.gov> and included in the Contract Documents. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the director of the DIR for similar classifications of labor, Design-Builder and its Subcontractors shall pay not less than the higher wage rate.
- B. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, Design-Builder and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into the Contract, Design-Builder represents that it is aware of the registration requirement and is currently registered with the DIR. Design-Builder shall maintain a current registration for the duration of the Project. Design-Builder shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time the subcontract is entered into and maintain registration for the duration of the Project.
- C. Employment of Apprentices. Design-Builder and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of

Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

D. Hours of Work. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Design-Builder stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Design-Builder or by any Subcontractor under the Contract upon the Work or upon any part of the Project contemplated by the Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, Services performed by employees of Design-Builder in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. Design-Builder and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Services or any part of the Services contemplated by the Contract. The record shall be kept open at all reasonable hours to the inspection of OC SAN and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California. Design-Builder shall pay to OC SAN a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by Design-Builder or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

E. Payroll Records; Labor Compliance

1. Maintaining Records. Pursuant to Labor Code section 1776, Design-Builder and all Subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Services under the Contract. Design-Builder shall certify under penalty of perjury that records maintained and submitted by Design-Builder are true and accurate. Design-Builder shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. Furnishing Records. In accordance with Labor Code section 1771.4, Design-Builder and each Subcontractor shall furnish the certified payroll records directly to the DIR on the specified interval and format prescribed by the DIR, which may include electronic submission. Design-Builder shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.
3. Stop Orders. Any stop orders issued by the DIR against Design-Builder or any Subcontractor that affect Design-Builder's performance of Services, including any delay, shall be Design-Builder's sole responsibility. Any delay arising out of or

resulting from such stop orders shall be considered Design-Builder caused delay subject to any applicable liquidated damages and shall not be compensable by OC SAN. Design-Builder shall defend, indemnify, and hold OC SAN, its officials, officers, employees, and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Design-Builder or any Subcontractor.

4. Certifying Records. The payroll records described herein shall be certified and submitted by Design-Builder at a time designated by OC SAN. Design-Builder shall also provide the following:
 - a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Form of Records. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Copies of Records. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, OC SAN, the Division of Apprenticeship Standards, or the DLSE shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and Social Security number. The name and address of Design-Builder awarded the Contract or performing Services on the Contract shall not be marked or obliterated.
7. Noncompliance. In the event of noncompliance with the requirements of this Article, Design-Builder shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects Design-Builder must comply with this Article. Should noncompliance still be evident after such 10-Day period, Design-Builder shall pay a penalty of one hundred dollars (\$100.00) to OC SAN for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the DLSE, such penalties shall be withheld from progress payment then due.
- F. Nondiscrimination/Equal Employment Opportunity. Pursuant to Labor Code section 1735 and other Applicable Law, Design-Builder and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. Design-Builder will take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

- G. Debarment of Contractors and Subcontractors. Contractors and Subcontractors may not perform work on a public works project who are ineligible to perform work pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid, to a debarred Subcontractor by Design-Builder on the Project shall be returned to OC SAN. Design-Builder shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.
- H. Workers' Compensation. Pursuant to the requirements of California Labor Code section 1860, Design-Builder shall secure the payment of compensation to Design-Builder's employees in accordance with the provisions of Section 3700 of the California Labor Code. By executing the Contract, Design-Builder certifies the following:

"I am aware of the provisions of California Labor Code section 3700 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 the Contract."

6.3 Safety and Accident Protection

- A. General Safety Requirements. Design-Builder shall be solely responsible for all safety precautions and programs in connection with the Project. Design-Builder shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Builder shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all employees on the Site and all other persons who may be affected thereby. Design-Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws. Design-Builder shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Design-Builder shall maintain emergency first aid treatment for its employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. Design-Builder shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.
- B. Safety Manager. Design-Builder assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing Work, designate an individual with the qualifications and experience necessary to supervise the implementation and monitoring of all health and safety precautions and programs related to the Work. The

health and safety manager shall be an individual stationed full time at the Site and who shall have no other responsibilities with respect to the Project other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Work.

- C. Safety Inspections and Meetings. Design-Builder is solely responsible to inspect, survey, and assess the Site and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. Design-Builder's Site assessment shall begin upon the initiation of Work and continue throughout the duration of the Project. The health and safety manager shall make routine daily inspections of the Site and shall hold weekly health and safety meetings with Design-Builder's personnel, Subcontractors, and others, as applicable.
- D. Safety Program. Design-Builder shall submit an illness and injury prevention program and a Site-specific safety program to OC SAN prior to beginning Work ("Safety Program"). The Safety Program shall include, but not be limited to, worker safety, electrical safety, lock-out/tag-out, arc flash safety personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, health and safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, and related items. Design-Builder shall maintain a confined space program that meets or exceeds Applicable Law. Design-Builder needs to make itself aware of OC SAN's safety policies and procedures, and shall meet or exceed all OC SAN standards in areas where OC SAN must enter to perform inspections.
- E. Safety Compliance Requirements. Design-Builder shall, and shall cause all Subcontractors to, comply with: (1) all Applicable Law relating to safety; (2) the Safety Plan; and (3) any OC SAN health and safety requirements, including, but not limited to, Contractor Safety Standards. Design-Builder shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident, or near miss arising from the Work to OC SAN's Representative and, to the extent mandated by Applicable Law, to any Governmental Body having jurisdiction over health and safety-related matters involving the Project. OC SAN shall have the right to suspend any or all Work if Design-Builder fails to comply with its obligations hereunder without any requirements of increasing a GMP or Contract Time.
- F. Emergencies. Design-Builder shall develop an emergency response plan in accordance with the Contract Documents. The emergency response plan shall establish the protocols for Design-Builder in dealing with emergencies impacting the performance of the Work and ensure there is sufficient response to any medical or fire emergency, such as injury to an employee or a wildfire at the Site. The emergency response plan shall be subject to the approval of OC SAN. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, Design-Builder shall act immediately to prevent threatened loss, damage, injury, or death. Design-Builder shall notify OC SAN's Representative of the situation and all actions taken immediately thereafter. Prior to commencing Construction Work and at all times during the performance of the Work, Design-Builder shall provide OC SAN

with 24-hour emergency phone numbers where its representatives can be contacted. When OC SAN has been notified of emergency situations requiring, in OC SAN's reasonable opinion, immediate attention and rectification, OC SAN will so notify Design-Builder. In the event Design-Builder fails to commence actions to prevent threatened loss, damage, injury or death immediately after notification from OC SAN when Design-Builder is reasonably able to do so, OC SAN may take all appropriate rectification actions and deduct the costs thereof from monies owed to Design-Builder.

- G. California Voluntary Protection Program Annual Reporting Requirements. If Design-Builder will potentially work 1,000 combined hours in a quarter, for the term of the Contract, Design-Builder shall provide an annual report detailing its safety and health information, including, but not limited to, its total number of employees, work hours, number of injuries and illnesses, and number of injury and illness cases involving days away from work, restricted work activity and/or job transfer. Design-Builder shall furnish this report to OC SAN no later than January 20th each calendar year. Failure to provide this data by the required due date may result in suspension of Design-Builder's services with OC SAN. Any delay arising out of or resulting from such suspension shall be Design-Builder's sole responsibility and considered Design-Builder caused delay, which shall not be compensable by OC SAN.

6.4 Patents

- A. Patent Fees and Royalties. Design-Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. To the fullest extent permitted by Applicable Laws, Design-Builder shall indemnify, defend, and hold harmless OC SAN and OC SAN's Representative, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court, arbitration, and other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights. Design-Builder's Performance Bond shall be deemed to apply expressly to this provision of these General Conditions.

6.5 Responsibility for Loss, Damage, or Injury

- A. Disclaim Responsibility by OC SAN. Neither OC SAN, nor its Board, officers, employees, or agents shall be held responsible in any manner for any loss or damage that may happen to the Work or any part thereof during the course of construction; for any loss or damage to any of the materials, equipment, supplies, or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public; or for damage to property, from any cause that might have been prevented by Design-Builder, Design-Builder's workers, or anyone employed by the

Design-Builder, including, but not limited to, Subcontractors. The foregoing shall not apply to the extent that such loss or damage is caused by negligent or intentional acts of OC SAN.

- B. Design-Builder Responsibility. Design-Builder shall be responsible for all damages to persons or property that occur as a result of the Work. Design-Builder shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and Final Acceptance by OC SAN. All Work shall be solely at Design-Builder's risk, unless otherwise provided for herein. Design-Builder shall be responsible for the preservation of public and private property including along and adjacent to the Site. Design-Builder shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Design-Builder shall take every precaution necessary to prevent damage to pipes, conduits, and other underground structures and shall protect carefully from disturbance or damage all land, survey monuments, and property markers. When or where any direct or indirect damage is done to OC SAN's, or adjacent, property by or on account of any act, omission, neglect, or misconduct in the performance of Work or in consequence of the non-performance thereof on the part of Design-Builder, Design-Builder shall restore, at Design-Builder's own expense, such property to a condition equal to that existing before such damage was done by repairing, rebuilding, or otherwise restoring same, or Design-Builder will make good such damage in a manner acceptable to OC SAN or other property owner, as applicable.

6.6 Preservation of Property

- A. Document Site. With the latest technology and prior to Construction Work, Design-Builder shall document the Site as required by the General Requirements.
- B. Care at Site. Design-Builder shall exercise reasonable care to avoid injury to existing improvements or facilities, utility facilities, any private or public property wherever located, trees, shrubbery, and other landscaping which are not to be removed. Design-Builder is required to familiarize itself with the worksite.
- C. Protection of Existing Facilities. All trees, shrubbery, landscaping which are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings, structures and improvements, conduits, pipelines (under or aboveground), sewers, waterlines, highway or street facilities, and any other improvements or facilities with respect to any private or public property wherever located shall be protected from injury or damage. Design-Builder shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of Design-Builder's operation, they shall be replaced or restored at Design-Builder's expense to a condition equivalent to their condition prior to such injury or damage or as required by the Contract Documents.
- D. Continuous Protection of Site. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety, and property as above specified shall be considered as included in the GMP, and no additional allowance will be made therefor.

- E. Notification of Damage. Design-Builder is obligated to respond to a notification of damages to any private or public property wherever located caused by Design-Builder's operations by beginning Work on emergency repairs/restorations immediately, and in no event later than 4 hours from said notification and on non-emergency repairs/restorations within 72 hours of said notification. Within these required timeframes, Design-Builder must begin efforts to resolve issues of responsibility for any damages or losses for any asserted claim. Design-Builder shall supervise any repairs/restorations or other Work that, at OC SAN direction, must be performed by parties not employed by Design-Builder. For any claims the Design-Builder asserts are not related to its operations, Design-Builder must provide OC SAN with written notice to OC SAN stating its position and all documentation supporting the same, as well as written proof of referral to its insurance carrier and its determination, along with detailed rationale for any denial of coverage or denial of the claim. Said proof shall be submitted to OC SAN within 30 Days of the date of notification to Design-Builder of the damages or losses.
- F. Failure to Respond. In the event Design-Builder does not respond in the manner required herein and within the required timeframes, OC SAN may determine the validity of the claim and perform the Work itself or have another contractor or qualified entity perform the Work, and Design-Builder's next progress payment shall be reduced in amount commensurate with the cost of the work and/or resulting damages as a Contract deduction. If the cost of the work and/or resulting damages exceeds the amounts remaining due under the Contract, Design-Builder shall reimburse OC SAN for all remaining costs and/or damages immediately.
- G. Underground Facilities. The fact that any pipe or other underground facility is not shown on the Contract Documents, or is shown in a different location, shall not relieve the Design-Builder of responsibility under this section. Design-Builder shall be responsible for avoiding all injury or damage to any type of underground utility facility.
- H. Foundations. In addition to any requirements imposed by law, Design-Builder shall shore up, brace, underpin, and protect, as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the worksite which are, or may be, in anyway affected by the excavations or other operations connected with the performance of the Work. Whenever any notice is required to be given by OC SAN or Design-Builder to any adjacent or adjoining landowner or other party before commencement of any Work, such notice shall be given by OC SAN, unless Design-Builder is directed otherwise by OC SAN.
- I. Emergency. In an emergency affecting the safety of life or property, including adjoining property, the Design-Builder, without special instructions or authorizations, is authorized to act with discretion to prevent such threatened loss or injury.

6.7 Warranty of Title

- A. Clear Title. No materials, supplies, or equipment for the Work under the Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or Supplier. Design-Builder warrants clear and good title to all materials,

supplies, and equipment installed and incorporated in the Work and agrees, upon completion of all Work, to deliver the Work together with all improvements and appurtenances constructed or placed thereon to OC SAN free from any claims, liens, encumbrances, or charges, and further agrees that neither Design-Builder, nor any person, firm, or corporation furnishing any material or labor for any Work covered by the Contract shall have any right to a Lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude Design-Builder from installing metering devices or other equipment of utility companies or of municipalities, the title to which is commonly retained by the utility company or the municipality.

- B. Right of Suppliers. Nothing contained in this section shall defeat or impair the right of such persons furnishing materials or labor, under any bond given by Design-Builder for their protection, or any right under any law permitting such persons to look to unpaid funds due Design-Builder in possession of OC SAN. The provisions of this section shall be inserted in all subcontracts and material contracts, and notices of its provisions shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.
- C. Stop Payment Notices. Design-Builder is responsible for, and shall be obligated to pay, all stop payment notice claims asserted and proved to be an obligation of Design-Builder.

6.8 Property Rights in Material

- A. Rights. Nothing in these Contract Documents shall be construed as vesting in Design-Builder any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment has been made for materials delivered to the worksite or stored subject to or under the control of OC SAN. All such materials shall become the property of, and title shall pass to, OC SAN upon being so attached or affixed or upon payment for materials delivered to the worksite or stored subject to or under the control of OC SAN. Design-Builder shall promptly execute, acknowledge, and deliver to OC SAN proper bills of sale or other written instruments of title in a form as required by OC SAN. The written instrument of title shall convey to OC SAN title to material, goods, and/or equipment for the Work free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances. If title has not been vested in OC SAN previously, title shall pass to OC SAN upon Final Completion.
- B. Segregating Materials. Design-Builder at its own expense shall conspicuously mark such material, goods, and equipment necessary for the Work as the property of OC SAN, and shall not permit such material, goods, and equipment necessary for the Work to become commingled with non-OC SAN owned materials, equipment, or goods, and shall take such other steps OC SAN may require or regard as necessary to vest title to such material, goods, and equipment necessary for the Work to OC SAN free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- C. Transfer of Title. Transfer of title of Work to OC SAN shall not constitute or imply OC SAN's acceptance of the Work. Notwithstanding the transfer of title, Design-Builder shall continue to be liable and responsible to OC SAN for any damage to or loss of Work until the Work achieves Final Completion.

- D. Ownership of Site Materials. The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of Design-Builder or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by OC SAN. Neither Design-Builder nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Except as otherwise specified in the Contract Documents, Design-Builder will, as determined by OC SAN, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided OC SAN shall have the right to use or consume these materials without payment to a third party.

6.9 Taxes

- A. Design-Builder shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Design-Builder will be responsible. Without limiting any of the foregoing, in the event OC SAN seeks to obtain any available exemption under Applicable Law from sales, consumer, use, and similar taxes for the Project, Design-Builder will cooperate with OC SAN in seeking such an exemption, and will utilize (and cause its Subcontractors to utilize) any such exemption to the extent available in performance of the Work.

6.10 Assignment of Antitrust Actions

- A. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Builder, and Subcontractors, offers and agrees to assign to OC SAN all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C.A. Section 15), or under the Cartwright Act (Chapter 2 [commencing with section 16700] of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time OC SAN tenders final payment to the Design-Builder, without further acknowledgment by the Parties.

6.11 Subcontracting

A. Subcontracting Generally

1. Licenses. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. All Subcontractors performing Construction Work shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by Subcontractors at the commencement of the Construction Work and throughout the duration of the Work.

2. Responsibility for Subcontractors. Design-Builder shall be as fully responsible to OC SAN for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Design-Builder is for acts and omissions of persons directly employed by Design-Builder. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and OC SAN. OC SAN reserves the right to accept all Subcontractors. OC SAN's acceptance of any Subcontractor under the Contract shall not in any way relieve Design-Builder of its obligations in the Contract Documents. Subcontracts entered into by OC SAN for the performance of the Work shall neither supersede nor abrogate any of the terms or provisions of the Contract.
3. Claims. Design-Builder shall be responsible for settling and resolving all claims with Subcontractors. Design-Builder shall provide to OC SAN, promptly following the receipt thereof, copies of any notice of default, breach, or non-compliance received under or in connection with any subcontract that may have a material and adverse effect on performance by Design-Builder of its obligations under the Contract Documents.
4. Payment. Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective subcontracts and the requirements of this Article and Applicable Law. No Subcontractor shall have any right or claim against OC SAN for labor, services, materials, or equipment furnished for the Project. Design-Builder acknowledges that its indemnity obligations under the Contract shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials, or equipment in connection with the Project. Design-Builder shall, at OC SAN's request, furnish satisfactory evidence that all obligations of the nature designated above in this Article have been paid, discharged, or waived. If Design-Builder fails to do so OC SAN may, after having notified Design-Builder, withhold from Design-Builder's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Design-Builder will be resumed in accordance with the terms of the Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon OC SAN to either Design-Builder, the Surety, or any third party.
5. Assignment. Each subcontract agreement shall include a provision that allows for an irrevocable assignment of the subcontract to OC SAN, solely at OC SAN's election and without cost or penalty. The provision shall indicate that OC SAN's acceptance of the assignment shall not affect any obligations of the Subcontractor's performance or payment bond surety. OC SAN may accept the assignment by delivering written notice to Design-Builder and Subcontractor.

B. Subcontracting Design Work

1. Identified in Proposal. Design-Builder shall perform the Design Work within its own organization or with a design professional identified in the Proposal.

2. OC SAN Approval. Design-Builder may request to have a design professional perform Design Work that is not expressly identified in the Proposal by requesting written approval from OC SAN. The request shall include, among other things, the scope of Design Work performed by the design professional and the design professional's qualifications. OC SAN may accept the request or may reject any proposed Subcontractor as unsuitable, unqualified, not responsible, having a conflict of interest, or that OC SAN otherwise objects to performing Design Work on the Project.

C. Substitution of Subcontractors

1. Subcontractors Performing Design Work. Design-Builder shall not substitute a Subcontractor performing Design Work except with OC SAN's prior express written authorization.
2. Subcontractors Performing Construction Work. Subcontractors performing Construction Work shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*). Design-Builder shall not substitute Subcontractors that are awarded a contract pursuant to the above process, except in accordance with the Subletting and Subcontracting Fair Practices Act. Design-Builder may substitute a Subcontractor without following the Subletting and Subcontracting Fair Practices Act that Design-Builder procures through a noncompetitive procurement. Design-Builder shall not substitute in a Subcontractor for Self-Performed Construction Work except with OC SAN's prior express written authorization.
3. All Subcontractor Substitution. OC SAN will not grant an increase to a Phase 1 Fee, GMP or grant an extension of Contract Time in the event of a substitution of any Subcontractor.

D. Dismissal of Subcontractors

1. Subcontractor. OC SAN reserves the right to order Design-Builder to dismiss any Subcontractor and to terminate any subcontract if, in OC SAN's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to the Subcontractor's Work. Nothing herein contained shall create any contractual relation between any Subcontractor and OC SAN or relieve Design-Builder of any liability or obligation hereunder. All persons engaged in the Work will be considered as employees of Design-Builder and Design-Builder shall be responsible for their Work.
2. Staff Member of Subcontractor. If, at any time during the Project, OC SAN reasonably determines that the performance of any member of Subcontractor's staff performing Work is unsatisfactory, OC SAN may require Design-Builder to remove such staff member immediately and replace the staff member at no cost or penalty to OC SAN.
3. No Increase in Price, Time. OC SAN will not grant an increase to a GMP or grant an extension of the Contract Time in the event of a dismissal of any Subcontractor.

E. Flow Down Requirements

1. Each Subcontract and Supplier agreement shall preserve and protect the rights of OC SAN, its Board, officers, agents, and employees under the Contract Documents with respect to the Work to be performed by the Subcontractor or the deliverables to be provided by Supplier, as applicable. Where appropriate, Design-Builder shall require each Subcontractor and Supplier to enter into similar agreements with sub-Subcontractors or sub-Suppliers, as applicable. Design-Builder shall make available to each proposed Subcontractor or Supplier, prior to the execution of the subcontract or Supplier agreement, copies of the Contract Documents. In addition, upon the request of OC SAN, Design-Builder shall make available to OC SAN any and all subcontract and Supplier agreements pertaining to the Project and the Work thereunder. By appropriate agreement, written where legally required for validity, Design-Builder shall require:
 - a. Each Subcontractor and Supplier shall be bound to Design-Builder by the terms of the Contract Documents which are applicable to such Subcontractor or Supplier;
 - b. Each Subcontractor and Supplier shall assume toward Design-Builder all applicable obligations and requirements and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Design-Builder, by the Contract Documents, assumes toward OC SAN;
 - c. Each Subcontractor and Supplier shall require all subcontracted Work to be performed in accordance with the Contract Documents, as applicable, and that, with respect to the Work the Subcontractor or Supplier performs, the Subcontractor or Supplier assumes toward Design-Builder all the obligations and responsibilities which Design-Builder assumes toward OC SAN.
 - d. Each of its Subcontractors or Suppliers shall include in their contracts with lower-Tier Subcontractors or Suppliers these same requirements, and to require each Subcontractor or Supplier to make copies of the Contract Documents available to the Sub-Subcontractors or sub-Suppliers.
2. This section does not and shall not operate to relieve Design-Builder of any duty or liability under the Contract Documents, nor does it create any duty or liability on the part of OC SAN. Design-Builder shall have sole responsibility for promptly settling any disputes between its Subcontractors and between the Subcontractors and any of their lower-Tier Subcontractors.

6.12 Software Licensing Agreement and Provisions for Use

- A. To the extent that software is included in the Contract Documents, the following shall apply:
1. Deliveries. Design-Builder shall deliver to OC SAN the software, source code materials, and documentations in the format specified in the Contract Documents.
 2. Ownership. Design-Builder shall retain ownership of the software, source code materials, and documentation with the right to exploit the same, subject to OC SAN's rights as herein provided. OC SAN shall place such copyright notices affirming the Design-Builder's ownership rights as the Design-Builder may reasonably require on all materials licensed hereunder which are reproduced by OC SAN.
 3. License Rights. Design-Builder hereby grants to OC SAN a royalty-free, paid-up, non-exclusive license, in perpetuity, to use duplicate, and disclose the software, source code materials, and documentation, and to make modifications of and enhancements to the software, and permit others (who sign standard nondisclosure agreements) to do the same, but only for governmental purposes and not for any commercial purposes.
 4. Confidentiality. OC SAN shall hold the software, source code materials, and documentation in confidence; shall use and disclose them only as expressly authorized herein or as required by law and only to its employees, agents or sublicensees to whom disclosure is necessary or appropriate for the performance and exercise of its rights hereunder; and shall take reasonable steps to ensure that unauthorized persons will have no access to them.
 5. Warranty. Design-Builder warrants that the software will perform according to the specifications set forth in the Contract; that it is owner of the software, source code materials, and documentation; that it has the right to convey and grant the license herein granted to OC SAN; and that OC SAN's use thereof as herein contemplated will not infringe any third party's proprietary rights. The foregoing warranties shall not apply to the extent the software is modified by OC SAN.
 6. Modifications and Enhancements. Upon OC SAN's request, the Design-Builder shall generate modifications of the enhancements to the software not required by the Contract and/or beyond the scope of what was specified and/or provided under the Contract Documents, at the Design-Builder's rates charged for comparable services to its most favored customers.

6.13 Assignment

- A. The performance of all or any portion of the Contract may not be assigned except upon the prior written consent of OC SAN, and as specifically provided herein. Consent will not be given to any proposed assignment that would relieve the original Design-Builder or the Sureties of responsibilities under the Contract.

- B. Upon obtaining prior written consent of OC SAN, Design-Builder may assign monies due or to become due under the Contract, to the extent permitted by law, but any assignment of monies shall be subject to all proper setoffs in favor of OC SAN and to all deductions provided for in the Contract. In particular, all monies withheld, whether assigned or not, shall be subject to being used by OC SAN for the completion of the Work in the event that Design-Builder should default.
- C. No assignment of the Contract will be approved unless it contains a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the Work called for under the Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials and that OC SAN may withhold funds due until all Work required by the Contract Documents is completed to OC SAN's satisfaction.

6.14 Security

- A. Security Generally. Design-Builder shall be responsible for the security and protection of the Project and the Site, including any security requirements set forth in the Contract Documents. Design-Builder shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair, and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Documents. Design-Builder shall comply with, and cause all Subcontractors to comply with, all terms and conditions related to security.
- B. Security Plan. Design-Builder shall provide, for OC SAN's review and comment, a Security Plan, prepared in accordance with the Contract Documents. Design-Builder shall not perform any Construction Work until OC SAN has reviewed and commented on the Security Plan. Design-Builder shall provide a final Security Plan, having addressed any comments provided by OC SAN, as a pre-condition to Construction Work.

ARTICLE 7 -COST OF CONSTRUCTION WORK

7.1 Early Construction and Early Purchases

- A. Generally
 - 1. OC SAN may direct, or the Parties may agree, that Design-Builder will procure an Early Purchase Item or perform an Early Construction Package. For purposes of interpretation, and unless otherwise stated, the terms of these General Conditions that apply to procurement of equipment and material or Construction Work shall apply to an Early Purchase Item or an Early Construction Package. This includes, but is not limited to, applicable procurement requirements and compensation for an Early Purchase Item or an Early Construction Package.

Approval by OC SAN of an Early Purchase Item or an Early Construction Package shall not prejudice any right of OC SAN with respect to Phase 2 or the remainder of the Construction Work, including OC SAN's right to terminate the Contract if the

Parties cannot agree to a Phase 2 GMP Amendment and move to Phase 2 Work. For the avoidance of doubt, in no event shall an Early Purchase Item or Early Construction Package be construed as a Phase 2 GMP Amendment or as a Notice to Proceed with Phase 2 Work.

2. Design-Builder expressly agrees and acknowledges that this process for an Early Purchase Item or an Early Construction Package is a contractual mitigation measure to avoid increased costs and to avoid delay(s) to the construction of the Project. OC SAN's consent to this process hereunder shall in no way entitle Design-Builder to an increase in the Contract Price or an extension of the Contract Time after the issuance of the Notice to Proceed for Phase 2, unless otherwise permitted, and consistent with the requirements of, the Contract Documents.

B. Early Purchase Item

1. Design-Builder shall procure Early Purchase Items on either a best value or low-bid basis, as mutually agreed upon by OC SAN and Design-Builder. In the event that a best value procurement is utilized, Design-Builder will obtain approval of the evaluation criteria from OC SAN and OC SAN has the right to review all proposals submitted. In the event that a low-bid procurement is utilized, OC SAN has the right to review and approve all bids submitted.
2. Each Early Purchase Item Amendment, if any, shall set forth all pricing, schedule, and other relevant commercial terms specific to the corresponding Early Purchase Item. Design-Builder shall obtain express written authorization from OC SAN prior to procurement of any equipment as part of an Early Purchase Item. Design-Builder may procure equipment at its own risk without obtaining OC SAN's prior approval.
3. Upon delivery of an Early Purchase Item to Design-Builder, whether at the Site or off-site, Design-Builder shall provide OC SAN with verifiable documentation of the receipt of any Early Purchase Item(s) including bill of lading and photographs specifically identifying:
 - a. The Early Purchase Item;
 - b. The serial number of each Early Purchase Item; and/or
 - c. Other indicia authenticating the Early Purchase Item.
4. Design-Builder's obligations to store an Early Purchase Item shall comply with all requirements for storage of equipment and materials in the Contract Documents and shall ensure that all policies of insurance protecting property shall cover the Early Purchase Item.

C. Early Construction Package

1. If OC SAN chooses to authorize the preparation of a proposal for an Early Construction Package, the Parties will agree upon the specific process for doing

so, with the understanding that the process is intended generally to follow the submittal and negotiation process set forth for a Phase 2 GMP Proposal. Design-Builder shall comply with all applicable procurement requirements required by the Contract Documents.

2. An Early Construction Package shall set forth the proposed scope of work under the Early Construction Package, the proposed timing, a procurement plan for the work, and any other information necessary to approve and proceed with the Early Construction Package.
3. Each Early Construction Amendment, if any, shall set forth all pricing, schedule, and other relevant commercial terms specific to the corresponding Early Construction Package. If utilized, the form of the Early Construction Amendment shall be generally consistent with the form of a Phase 2 GMP Amendment.
4. Design-Builder shall not commence an Early Construction Package until OC SAN issues a Notice to Proceed for the Early Construction Package. OC SAN shall have no liability to Design-Builder with respect to an Early Construction Package unless and until OC SAN issues a Notice to Proceed for the Early Construction Package, and then only to the extent of the Early Construction Amendment for which OC SAN issued a Notice to Proceed.
5. All services performed pursuant to an Early Construction Amendment shall constitute Construction Work and shall be performed in accordance with the Contract Documents for Construction Work.

7.2 Guaranteed Maximum Price

- A. Design-Builder guarantees that the final cost to construct all or portion of the Work required by the applicable GMP shall not exceed the GMP for all or portion of the Work, subject to any additions or deductions as provided in the Contract Documents. Except as otherwise provided in the Contract Documents, Design-Builder shall assume the risk of all costs in excess of the GMP in the performance of Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should Design-Builder believe that it is entitled to additional compensation, whether money or time, it must request such compensation through a Request for Change. If the final accounting of the costs for Work exceeds the GMP for the Work, including all adjustments to the GMP in accordance with the Contract Documents, Design-Builder shall be solely responsible for all costs exceeding such amount.
- B. A GMP includes and assumes that from time to time, Design-Builder will encounter delays and difficult site conditions arising from limited access to work areas, other interference, or conditions at the Project site. Subject to Article 9.4 – Differing Site Conditions, Design-Builder assumes full responsibility for its examination, investigation and understanding of the difficulties which may be encountered, and has included in a GMP the cost of any Work associated with such difficulties.

7.3 Composition of Guaranteed Maximum Price

- A. GMP Elements. The GMP will be based on an Open Book Basis and comprised of the following elements:
1. Completion of Design Work for the Project, including any design support services during Phase 2.
 2. Cost of Work, including:
 - a. Direct Cost;
 - b. General Conditions Cost; and
 - c. Subcontractor Construction Cost.
 3. Bond costs without markup.
 4. Insurance costs without markup.
 5. Design-Builder's Fee applied to Cost of Work.
 6. Design-Builder Contingency, if any.
 7. Allowances, if any.
- B. Design Work Services. OC SAN and Design-Builder will negotiate an amount for Design-Builder to complete Design Work for the Project and design support services in Phase 2. The amount will be based on pricing in Design-Builder's RFP Pricing and how the Phase 1 Fee is established.
- C. Cost of Work Components
1. Direct Cost
 - a. Direct Cost includes the actual and verifiable Direct Cost necessarily incurred and paid by Design-Builder in the proper performance of Construction Work. Direct Cost includes, but is not limited to, the following:
 - (i) Field Labor Cost. The cost of field labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state, or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. OC SAN shall not be responsible for any labor rates in excess of the prevailing wage rate unless specifically authorized by OC SAN's Representative for individuals with special qualifications. Wages, burdens, and fringes will be paid at actual cost as verified as part of the labor compliance reporting process

and are fully auditable. They shall include the following: actual wages paid to employees; labor burden, including charges for social security taxes, Medicare taxes, federal unemployment taxes, state unemployment taxes, and other taxes pertaining to labor; and employer payments to or on behalf of the workers for health, welfare, pension, vacation, apprenticeship funds, and similar purposes, as well as assessments or benefits required by lawful collective bargaining agreements. Cost for supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in General Conditions Cost. Premium and overtime rates shall not be paid by OC SAN unless authorized or directed by OC SAN in writing.

- (ii) Materials, Equipment Cost. The cost of materials and equipment incorporated into the Project shall be actual costs, including purchase, transportation, inspection, testing, storage, and handling costs. Cost of materials described in the preceding sentence in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage, require written approval by OC SAN. Unused excess materials, if any, shall be turned over to OC SAN at the completion of the Project or, at OC SAN's option, shall be sold by Design-Builder; amounts realized, if any, from such sales shall be credited to OC SAN as a deduction from the Direct Cost. OC SAN reserves the right to furnish materials and equipment for the Project.
- (iii) Construction Equipment Cost. Regardless of ownership, rates for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof, shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed. Design-Builder shall furnish cost data supporting the establishment of the equipment rate. In the absence of an identified direct cost for the equipment, Design-Builder will be paid for the use of equipment at the rental rates identified for such equipment in the edition of the State of California Department of Transportation (Caltrans) publication "Labor Surcharge & Equipment Rental Rates" as supplemented by the Caltrans "Miscellaneous Equipment Rental Rates" publication in effect on the date the Work is performed. If that equipment is not listed in either Caltrans publication, the U.S. Army Corps of Engineers publication "Construction Equipment Ownership and Operating Expense Schedule" in effect on the date the Work is performed shall be used to determine the rental rate. The equipment rates paid, as above provided, shall include the cost of fuel, oil, lubrication supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, and all incidentals. Rates and quantities of equipment rented will be subject to OC SAN's prior approval. The time to be paid for equipment shall be the time the equipment is in productive operation on the Work being performed. Charges for time will not be allowed while equipment is inoperative due to

breakdowns. All equipment shall, in the opinion of OC SAN, be in good working condition and suitable for the purpose for which the equipment is to be used. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation. Individual pieces of equipment having a replacement value of five thousand dollars (\$5,000.00) or less shall be considered to be small tools or small equipment and no payment will be made for them. Small tools are part of General Conditions Cost.

(iv) Sales Tax. Design-Builder's charge for sales tax will be its actual, verified direct sales tax costs only.

(v) Travel; Lodging Cost. The reasonable cost of travel, accommodations, and meals for Design-Builder's personnel directly involved in the performance of the Work, negotiated in a GMP.

b. Costs Not Considered Direct Cost. Direct Cost do not include the following: General Conditions Cost; Subcontractor Construction Cost; Design Work; Design-Builder's personnel primarily stationed at Design-Builder's principal or home offices; material or equipment provided by OC SAN; cost of Design-Builder's capital used in the performance of the Construction Work; cost that would cause the GMP to be exceeded; discounts and rebates and the salvage value of tools and equipment consumed in the Work charged by Design-Builder; cost incurred in performing call-back, repair, and warranty work; cost due to the negligence, error, or omission of Design-Builder or to the failure of Design-Builder to fulfill a specific responsibility to OC SAN set forth in the Contract Documents; cost incurred as a result of a delay which does not constitute compensable delay under the Contract Documents; cost incurred in the performance of Phase 1 Services; legal fees, and costs related to or arising from disputes between the Parties, including, but not limited to, mediation and litigation fees; any cost not specifically and expressly described as a reimbursable cost; and cost Design-Builder is required to bear as a result of Design-Builder's failure to perform in accordance with the Contract Documents.

2. General Conditions Cost. General Conditions Cost will be negotiated between OC SAN and Design-Builder and established in a GMP Amendment. Design-Builder will be paid for its General Conditions Cost based on a fixed duration price (i.e., x amount per week or month) and not on the basis of actual verified costs, unless otherwise agreed to by the Parties. General Conditions Cost include Design-Builder's costs to manage and support the Construction Work for a GMP, including, but not limited to, the following:

- a. Design-Builder's staff at the Site, including the following:
 - (i) Hourly costs of wages or salaries, including fringe benefits, of all Design-Builder's supervisory and administrative personnel engaged in the performance of Construction Work but only for that portion of their time required for Work covered by the GMP, including but not limited to the project manager, construction manager, superintendent(s), and those responsible for managing and implementing Design-Builder's general conditions, including, but not limited to, scheduling, cost control, billing, surveying, Security Plan, and Safety Plan.
 - (ii) Hourly costs of wages or salaries, including fringe benefits, of the Design-Builder's supervisory and administrative personnel engaged off of the Site at suppliers, at workshops, or on the road, to assist in the coordination, production, or transportation of material or equipment for the Construction Work.
- b. Field office costs for Design-Builder staff, including the following:
 - (i) Design-Builder field office mobilization and demobilization
 - (ii) Office trailer rental
 - (iii) Office furniture and equipment
 - (iv) Office janitorial
 - (v) Office supplies
 - (vi) Office computers, software, and maintenance
 - (vii) Office telephones, telephone and internet services, and all job site communication for the Project
 - (viii) Document reproduction services (off-site or custom)
 - (ix) Copy machines, fax machines, printers, scanners, and paper shredders
 - (x) Postage, courier, and express delivery
 - (xi) Accounting and data processing costs
 - (xii) Jobsite radios/cellular phones
 - (xiii) Scheduling expenses
 - (xiv) Job meeting expenses
 - (xv) Employee identification system

- (xvi) As-Built Drawings
- (xvii) Project preconstruction and progress photos
- (xviii) Job Site security
- c. Temporary amenities and utilities (include hookup, metering, and consumption costs) including the following:
 - (i) Drinking water
 - (ii) Temporary toilets
 - (iii) Temporary water distribution and meters
 - (iv) Temporary fire protection
 - (v) Temporary power
 - (vi) Temporary and emergency lighting
 - (vii) Temporary construction facilities and services
 - (viii) Temporary heat and ventilation
- 3. Subcontractor Construction Cost. Subcontractor Construction Cost includes payments made by Design-Builder to Subcontractors for the proper performance of Construction Work. Subcontractor Construction Cost includes, but is not limited to, the following:
 - a. Payments made by Design-Builder to Subcontractors for any and all cost to perform Subcontracted Construction Work as part of the Work established in either a quote, proposal, or bid to Design-Builder, including, but not limited to, the Subcontractor's direct costs, indirect costs, field and office overhead, performance bonds, payment bonds, insurance, and profit.
- D. Bond Costs. Design-Builder's charge for Performance Bond and Payment Bond costs shall be its actual, verified costs, without any markup, and identified in a GMP Amendment.
- E. Insurance Costs. Design-Builder's charge for insurance shall be its actual, verified costs, without any markup, and identified in a GMP Amendment.
- F. Design-Builder's Fee. Design-Builder's Fee shall compensate Design-Builder for its home office overhead, profit, and other costs and expenses not specifically included in the Cost of Work. Design-Builder's Fee percentage is identified in the Special Conditions and shall only be applied to Design-Builder's Cost of Work.

- G. Design-Builder Contingency. Design-Builder may propose within the GMP a Design-Builder Contingency, in an amount to be approved by OC SAN and established in a GMP Amendment. If agreed upon by OC SAN and included within GMP Amendment, Design-Builder Contingency will be available for Design-Builder to cover any Construction Work or other mutually agreed upon issues that could not have been anticipated by Design-Builder on the effective date of the GMP Amendment, such as resequencing the Construction Work for the benefit of the Project. If a GMP includes Design-Builder Contingency, the GMP Amendment shall describe when Design-Builder Contingency may be used by Design-Builder. Use of Design-Builder Contingency requires OC SAN's approval, not to be unreasonably withheld. Design-Builder Contingency is not a separate fund, but is tracked as a separate line item within the GMP and will be used as a cost management tool. When used, Design-Builder Contingency funds will be subtracted from the Design-Builder Contingency line item and applied to one or more line items in the GMP.
- H. Allowances. In developing the GMP Proposal, Design-Builder may propose including appropriate Allowances for defined items of Work that cannot be appropriately quantified and estimated at the time the GMP Amendment is established. Each such item of Work will be covered in a separate line item and have a clear description in the GMP Amendment of what is covered by the Allowance. Allowance items will be converted to, and included as a line item within that GMP once conditions exist that allow them to be properly quantified and priced, only with specific written approval of OC SAN which shall not be unreasonably withheld. Allowance items that cannot reasonably be quantified and estimated before the Allowance Work begins will be reconciled based on the actual cost of the Allowance Work. If the actual cost of the Work covered by an Allowance will be greater than the amount of the Allowance, Design-Builder will notify OC SAN and if OC SAN authorizes the Allowance Work in a Change Order, the GMP will be increased by such difference with an additional agreed upon amount.

7.4 Convert GMP to Lump Sum Price

- A. If mutually agreed upon by OC SAN and Design-Builder, a GMP may be converted to a Lump Sum Price with a negotiated discount. To the extent that a GMP is converted to a Lump Sum Price, all references to GMP within the Contract Documents shall apply equally to the converted Lump Sum Price except as clearly and expressly indicated in any document effectuating the conversion.

7.5 Self-Performed Construction Work

- A. Self-Performed Construction Work Generally
1. Amount of Construction Work Performed. The Special Conditions provide for the mutually agreed upon minimum and maximum amount of Construction Work required to be performed by Design-Builder on the Project.
 2. Identification of Self-Performed Construction Work. Design-Builder is entitled to perform Self-Performed Construction Work, reviewed against an independent cost estimate, in accordance with applicable law and written OC SAN approval. To

perform Construction Work, Design-Builder must submit a written request to OC SAN seeking approval, which is at OC SAN's reasonable discretion, prior to submitting a GMP Proposal. The written request shall explain why the Work cannot be subcontracted and how performing the Work by Design-Builder will be most advantageous to OC SAN. OC SAN agrees to consider approving such request if Design-Builder demonstrates to OC SAN's satisfaction that providing this Construction Work is in the best interest of the Project. If OC SAN approves the requests, Design-Builder still must follow the best-value procedures for Self-Performed Construction Work.

B. Competitive Procedures for Self-Performed Construction Work

1. Design-Builder must submit to OC SAN's Representative as part of the GMP Proposal and on an Open Book Basis, pricing for Self-Performed Construction Work that includes a detailed description of the scope of the Work. The bid format shall be consistent with cost modeling provided during Phase 1 Services.
2. Prior to providing OC SAN with pricing for Self-Performed Construction Work, Design-Builder shall provide OC SAN notice of when the pricing will be submitted and allow OC SAN a sufficient amount of time to engage an independent cost estimator to perform an independent cost estimate.
3. Prior to receipt of Design-Builder's pricing for Self-Performed Construction Work, OC SAN will perform an independent cost estimate using, among other things, current local construction market costs.
4. Design-Builder shall submit revised pricing for Self-Performed Construction Work and an updated GMP Proposal as may be necessary to continue negotiations for a GMP Amendment. The process shall continue until either:
 - a. OC SAN agrees to the pricing for the Self-Performed Construction Work;
 - b. At OC SAN's sole discretion, allow Design-Builder to subcontract the Self-Performed Construction Work pursuant to the subcontracting procedures for Subcontractors in these General Conditions. Design-Builder shall not be allowed to compete against bidders for the Construction Work unless otherwise agreed to by OC SAN, in its reasonable discretion. If OC SAN allows Design-Builder to subcontract the Self-Performed Construction Work, the minimum and maximum amount of Construction Work required to be performed by Design-Builder on the Project will not change.
 - c. At OC SAN's sole discretion, follow the procedures in these General Conditions for when the Parties are unable to execute a GMP Amendment.
5. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time related to the foregoing process.

C. Costs to Price and Bid Self-Performed Construction Work

1. Any and all costs expended by Design-Builder to price Self-Performed Construction Work shall be part of the Phase 1 Fee.
2. If OC SAN allows Design-Builder to subcontract the Self-Performed Construction Work after failing to agree to pricing with Design-Builder for Self-Performed Construction Work, Design-Builder shall be responsible for any and all costs related to subcontracting the Self-Performed Construction Work. This includes, but is not limited to, costs to prepare Work Packages and following the competitive subcontractor procurement procedures.

7.6 Key Subcontractors

- A. If applicable, pricing for Key Subcontractors shall be determined by following the competitive procedures for Self-Performed Construction Work.

7.7 Subcontracted Construction Work

- A. Subcontracted Construction Work. Design-Builder shall develop and prepare separate and specific Work Packages for each category of Subcontracted Construction Work that clearly delineates the scope of subcontracted Work. Design-Builder shall be responsible for the assembly, reproduction, and distribution of all documents defining the scope of work for each category of Subcontracted Construction Work.
- B. Competitive Subcontractor Procurement
 1. Compliance with Law. Design-Builder shall procure Subcontractors through a competitive process that complies with Applicable Law, including, but not limited to, legislation that authorizes the Contract. Subcontractors shall be selected in accordance with protections provided by State law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*). Exceptions to the competitive process shall only be authorized as set forth in the Contract Documents.
 2. Prequalification. Design-Builder may, at its option, advertise for statements of qualifications in order to prequalify or shortlist interested subcontractors prior to soliciting bids or proposals.
 3. Public Notice. Design-Builder shall provide notice of bidding for Subcontracted Construction Work in accordance with the publication requirements applicable to OC SAN's competitive bidding process including a fixed date and time on which qualification statements, bids, or proposals will be due. These posting requirements shall also apply to a request for qualifications.
 4. Award Based on Best Value. Design-Builder shall award subcontracts to responsible subcontractors based on a best value basis. The solicitation shall identify all evaluation factors and their relative importance to determination of the award. Design-Builder shall develop a written method of determining the proposer

who will provide the best value to the Project, which shall include consideration of price and other relevant factors. Design-Builder shall document its basis for making the award.

5. OC SAN Review of Bid Packages and Notice. At least fourteen (14) Days prior to the release of Subcontracted Construction Work for bidding, Design-Builder shall provide OC SAN with a copy of the written notice it will publish (including newspaper advertising) to solicit potential subcontractors and a copy of the Work Packages for the Subcontracted Construction Work. OC SAN reserves the right to request that Design-Builder reasonably revise its published notice or Work Package for Subcontracted Construction Work.
6. Bid/Proposal Opening. Design-Builder shall invite OC SAN to attend all bid and proposal opening(s) for Subcontracted Construction Work and shall, within 48 hours of the bid or proposal opening(s), provide copies or access to all bid or proposal documents provided by all proposers or bidders.
7. Review of Bids, Proposals
 - a. Solicitations shall include a procedure, developed and administered by Design-Builder, for protesting a prequalification determination or contract award. Design-Builder shall notify OC SAN of any protest prior to responding to such protest. Design-Builder shall be solely responsible for determining any protests to any of its subcontract awards.
 - b. Design-Builder may reject all bids or proposals and may waive any inconsequential irregularities in any bid or proposal. If Design-Builder rejects a bid or proposal as non-responsive, or otherwise determines the bidder or proposer is not eligible or qualified, Design-Builder shall document the basis for any rejection.
8. Contracts. Construction subcontracts shall be on a lump sum or unit price basis, and Design-Builder shall not award contracts to Subcontractors on a basis that uses a percentage of construction cost contracting.
9. Rights of OC SAN
 - a. Without limiting anything set forth herein, Design-Builder acknowledges and agrees that OC SAN shall have the right to: (a) review and comment on all Work Packages or procurement documents; (b) attend any bid or proposal openings; (c) attend any meetings with prospective subcontractors; (d) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including Design-Builder's tabulation, scoring, or evaluation materials; and (e) otherwise participate in the contract award process. Design-Builder shall provide OC SAN sufficient time, but in no case less than 20 Days, to exercise its rights regarding the foregoing. Upon contract award, Design-Builder shall provide OC SAN with a description of the competitive process undertaken in connection with such contract award,

together with copies of all material documents used in connection therewith and agreements resulting therefrom.

- b. OC SAN, in its discretion, shall have the right to direct Design-Builder to reject any or all bids and proposals and re-solicit any Subcontracted Construction Work in accordance with the procurement requirements of this Article in the event OC SAN is not satisfied that the competitive process or pricing received is fair, reasonable, and consistent with industry standards for similar services. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time if OC SAN requires Design-Builder to re-solicit any Subcontracted Construction Work due to Design-Builder failing to follow the Contract requirements for solicitation of Subcontracted Construction Work.

C. Noncompetitive Subcontractor Procurement

1. Design-Builder may procure Subcontractors without following the above competitive procurement procedures only if:
 - a. The Phase 2 Price is less than \$10,000,000; or
 - b. If the Phase 2 Price is equal to or greater than \$10,000,000, the Subcontracted Construction Work is equal to or less than one-half of one percent (0.5%) of the Phase 2 Price.
2. If, following Design-Builder's diligent and good faith solicitation of a number of sources, Design-Builder determines that competition is determined to be inadequate, Design-Builder may, with OC SAN's express written authorization, utilize a noncompetitive process or may self-perform the Subcontracted Construction Work by following the procurement procedures for Self-Performed Construction Work.
3. For a noncompetitive procurement, Design-Builder may obtain quotes, negotiate price, or utilize any other selection method. Noncompetitively procured Subcontractors must still meet all other requirements of the Contract Documents, including, but not limited to, agreeing to being registered with the Department of Industrial Relations to perform public works and maintaining all appropriate licenses and qualifications to perform the respective Subcontracted Construction Work.

7.8 GMP Proposal

A. Generally

1. As part of Phase 1 Services, Design-Builder shall prepare a GMP Proposal as directed by OC SAN.
2. Prior to providing OC SAN a GMP Proposal, Design-Builder shall provide OC SAN notice of when the GMP Proposal will be submitted. OC SAN shall be provided a sufficient amount of time to review a GMP Proposal.

3. The GMP Proposal shall include and be based upon the Contract Documents and all other information, analysis, findings, and reports provided to Design-Builder during the performance of Phase 1 Services, and shall be prepared in accordance with the Contract Documents, including the Phase 1 Scope of Work .
 4. Design-Builder shall develop the GMP on an Open Book Basis, providing OC SAN with full access to all details that make up the GMP Proposal.
 5. Each GMP Proposal shall include a detailed and comprehensive description of how the proposed GMP was derived and the material factors on which it was based, all in compliance with the contractual requirements for establishing the GMP, together with any other related information required pursuant to this Article. All costs, bids, quotes, estimates, and other information supporting the GMP Proposal shall be made available to OC SAN.
 6. Design-Builder shall not be entitled to an increase of the GMP or any extension of Contract Time related to the GMP Proposal process.
- B. Components of GMP Proposal. Design-Builder shall include with the GMP Proposal a written statement of its basis for the GMP, which shall include the following:
1. A list of the Construction Documents, including, among other things, the Plans and Specifications used as the basis for the GMP;
 2. A list of the assumptions, exceptions, and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the Construction Documents;
 3. Design-Builder's proposed GMP on an Open Book Basis, including, but not limited to, the following:
 - a. A proposed cost to complete the Design Work for the Project and provide design support services during Phase 2;
 - b. A proposed Cost of Work with Design-Builder's Fee
 - c. A proposed bond cost;
 - d. A proposed insurance cost;
 - e. A proposed Design-Builder Contingency, if any;
 - f. A proposed Allowance, if any;
 - g. A proposed Schedule of Values for the Work; and
 - h. A proposed list of Subcontractors performing Subcontracted Construction Work, if known.

4. A proposed Phase 2 CPM Schedule.
 5. A proposed Contract Time; and
 6. Any other information requested by OC SAN as necessary or appropriate to negotiate and execute the GMP Amendment.
- C. Early Purchase Items; Early Construction Packages. In the event that an Early Purchase Item Amendment or Early Construction Package Amendment has been executed prior to submittal of the Phase 2 Proposal, a proposal as to the manner in which the technical, price, schedule, and other terms and conditions contained in the Early Purchase Item Amendment or Early Construction Package Amendment will be incorporated and taken account of in the Phase 2 GMP Amendment, with the objective that the Phase 2 GMP Amendment will contain and supersede all of the terms and conditions of any Early Purchase Item Amendment or Early Construction Package Amendment.

7.9 GMP Amendment

A. Obligations of Design-Builder

1. Design-Builder shall be obligated (1) to make a complete bona fide GMP Proposal in accordance with this Article and the Contract Documents, and (2) to negotiate in good faith toward a GMP Amendment based on the GMP Proposal.
2. If the GMP Proposal does not comply with the requirements of the Contract, OC SAN's Representative shall provide written notice to Design-Builder of any additions, corrections, or revisions required to achieve such compliance. In such event, Design-Builder, at its cost and expense and without any increase in the Phase 1 Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of Design-Builder to provide a GMP Proposal in accordance with the Contract Documents shall be a material breach of the Contract.

B. Negotiation, Execution of GMP Amendment

1. OC SAN and Design-Builder acknowledge and agree that each intends to negotiate and enter into a GMP Amendment mutually acceptable to the Parties for the performance of the Work based on the GMP Proposal.
2. The execution and delivery of the GMP Amendment shall establish the GMP and the Contract Time, along with other basic terms and conditions of the Contract which were not established at the Effective Date. Unless otherwise expressly stated by the Parties in the GMP Amendment, the GMP Amendment shall not modify any portion of the Contract Documents.
3. The execution of a GMP Amendment shall not prejudice any right of OC SAN with respect to the remainder of the Construction Work, including OC SAN's right to terminate the Contract and not construct Work Packages.

C. Representations in the GMP Amendment

1. In the event the Parties execute a GMP Amendment, the GMP Amendment shall be deemed to constitute a representation by Design-Builder that:
 - a. It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Project;
 - b. It has thoroughly reviewed and verified all information provided to or obtained by Design-Builder through the performance of Phase 1 Services, including reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site;
 - c. It has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Project;
 - d. It is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Project;
 - e. It has considered the information known to Design-Builder, including information commonly known to contractors doing business in the localities of the Site; information and observations obtained from visits to the Site; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
 - (i) The cost, progress, and performance of the Project; and
 - (ii) The means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents.
 - f. Based on all of the foregoing and the performance of Phase 1 Services, the Site constitutes an acceptable and suitable location for construction of the Project;
 - g. It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into a GMP Amendment for the completion of Work for the GMP within the Contract Time, and in accordance with the other terms and conditions of the Contract;
 - h. The Contract Documents are sufficient to enable Design-Builder to determine the GMP and Contract Time; and
 - i. Subject to the terms and conditions of the Contract, the GMP can be completed in accordance with the Contract Documents for the GMP within the Contract Time.

D. Failure to Execute GMP Amendment

1. If the Parties are unable to reach an agreement on Design-Builder's GMP Proposal and execute a GMP Amendment, OC SAN reserves the right, in its sole discretion, to, without limitation, do any of the following (or, a combination thereof):
 - a. Allow the Design-Builder to complete Phase 1, if not yet completed. OC SAN shall pay Design-Builder only for the compensation agreed to for Phase 1. All deliverables, including, but not limited to, Work Product, Early Purchase Items, and Construction Documents shall become the exclusive property of OC SAN.
 - b. Complete the Project as a traditional design-bid-build project and have the Design-Builder prepare a fully biddable set of Plans and Specifications, provide bid phase support, and provide design support services during construction. OC SAN and Design-Builder shall negotiate compensation for Design-Builder to perform such services based on Design-Builder's RFP Pricing.
 - c. Terminate Design-Builder for convenience in accordance with the General Conditions and take possession of, among other things, any Work Product, Early Purchase Items, and Construction Documents, even if not complete.
 - d. Complete the Project by any other project delivery method, including, but not limited to, soliciting proposals to complete the Project from other firms that submitted Proposals in response to the RFP for this Project, or seek approval from OC SAN's Board that it is in the best interest of OC SAN to formally solicit proposals from other design-build entities. Design-Builder shall not be entitled to bid or propose on any part of the Project.
2. OC SAN shall have the right to proceed to develop and implement Work Packages with other contractors. OC SAN may exercise such right during the performance of Phase 1 Services, upon termination of the Contract, upon any failure of the Parties to execute a GMP Amendment or in the event of OC SAN's operational emergency requiring Work Packages to proceed earlier than planned by the Design-Builder.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Progress of the Work

- A. Design-Builder shall proceed expeditiously with adequate forces and shall achieve full completion of the Work within the Contract Time. Subject to Article 10 – Contract Time; Schedule, if OC SAN's Representative determines that Design-Builder's progress is such that Design-Builder will not achieve full completion of the Work within the Contract Time, the Parties will meet and discuss how Design-Builder will take measures to ensure full completion of the Work within the Contract Time, including, but not limited to, discussing whether Design-Builder anticipates that the cost will exceed the potential liquidated damages amount mitigated by such measures. If necessary and not cost prohibitive, Design-Builder shall, at no additional cost to OC SAN, take all measures necessary, including working such overtime, additional shifts,

Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time..

8.2 Defective Work

A. Correction of Defective Work

1. Failure to Correct. If Design-Builder fails to correct Defective Work, remove and replace rejected Work as required by OC SAN, or fails to perform the Work in accordance with the Contract Documents, OC SAN may, after seven (7) Days written notice to Design-Builder, correct or remedy any such deficiency if Design-Builder has failed to commence correcting such deficient Work.
2. Correction of Work by OC SAN. In connection with such corrective or remedial action, OC SAN may 1) exclude Design-Builder from all or part of the Site, 2) take possession of all or part of the Work and suspend Design-Builder's services related thereto, 3) take possession of Design-Builder's tools, appliances, construction equipment, and machinery at the Site which are intended to be incorporated into the permanent Work, and 4) incorporate in the Work all such materials and equipment stored at the Site or for which OC SAN has paid Design-Builder but which are stored elsewhere. Design-Builder shall allow OC SAN, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable OC SAN to exercise the rights and remedies to correct the Defective Work.
3. Costs of Correcting Defective Work. All claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) incurred or sustained by OC SAN correcting the Defective Work will be charged against Design-Builder, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OC SAN shall be entitled to reimbursement of the costs from Design-Builder. Such claims, costs, losses, and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work. If the Change Order is executed after all payments under the Contract have been made by OC SAN and the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Builder will promptly alert the escrow holder, in writing, of the amount of retention to be paid to OC SAN. Design-Builder shall not be allowed an extension of Contract Time because of any delay in the performance of the Work attributable to OC SAN correcting Defective Work.

- B. Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of Defective Work, OC SAN prefers to accept it, OC SAN may do so. Design-Builder shall pay all claims, costs, losses, and damages (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) attributable to OC SAN's evaluation of and determination to accept the Defective Work and for the diminished value of the Work. A Change Order will be issued incorporating the necessary

revisions in the Contract Documents with respect to the Work, and OC SAN shall be entitled to an appropriate decrease in the GMP, reflecting the diminished value of Work and reimbursement of all costs incurred by OC SAN.

8.3 Use Prior to Final Completion (Beneficial Occupancy)

- A. OC SAN shall have the right to Beneficially Occupancy of all or a portion of the Work at no additional cost to OC SAN.
- B. If OC SAN elects to take Beneficially Occupancy of any completed or partially completed portions of the Work, OC SAN's Representative shall so document in writing the scope of Work of which it elects to take possession and an inspection shall be made by Design-Builder and OC SAN's Representative of said scope of Work. Based on such inspection, OC SAN's Representative will attempt to list all incomplete and/or deficient items of Work observed, and provide the Design-Builder with such a list. However, the absence of an item from the list shall not relieve Design-Builder of responsibility to perform all of the Work in accordance with the Contract Documents, and any and all areas so occupied will be subject to final inspection after the Design-Builder completes the Punch List, before Final Completion. If such prior use by OC SAN delays the progress of the Work or causes additional expense to Design-Builder, Design-Builder may file a written Request for Change.
- C. Until Final Acceptance of the Work, Design-Builder shall guarantee, through the provision and maintenance of sufficient warranties, the following: (1) that the portions of the Work Beneficially Occupied shall perform at all times as part of a fully integrated system consisting of all elements which are being Beneficially Occupied; (2) that the portions of the Work Beneficially Occupied are free from all defects due to faulty materials, equipment, or workmanship; and (3) that Design-Builder shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. OC SAN shall promptly give notice to Design-Builder of observed defects. In the event that Design-Builder fails to make adjustments, repairs, corrections, or other work made necessary by such defects, OC SAN may do so and charge Design-Builder the cost incurred. Design-Builder's warranty shall continue as to any corrected deficiency until the later of (1) the remainder of the original warranty period or (2) one year after acceptance by OC SAN of the corrected work.
- D. If OC SAN's need to occupy the Work, or any portions thereof, prior to such time as the Work is complete is caused by Design-Builder's failure to complete the Work within the period of performance, including due allowance for extensions of time made in accordance with the Contract Documents, if any, Design-Builder shall bear any and all additional costs associated with completing the Work.

8.4 Substantial Completion

- A. When Design-Builder considers that Substantial Completion has been achieved, the Design-Builder shall notify OC SAN's Representative that the Work is substantially complete to the required stage and is ready for inspection and shall include with its Notice of Substantial Completion of the Work a list of minor items, (including Design-

Builder's Punch List) to be completed or corrected that would not affect Beneficial Occupancy or suitability for use.

- B. After receipt of Design-Builder's Notice of Substantial Completion of Work, OC SAN's Representative and Design-Builder, and any other representative as OC SAN's Representative deems appropriate, shall make an inspection of the Work to determine whether the Work has been completed in accordance with the Contract Documents and to review Design-Builder's Punch List. If, in OC SAN's Representative sole opinion, the Work has not achieved Substantial Completion, the Parties shall cease the inspection and all costs incurred by OC SAN as a result of the premature inspection shall be deducted from the payments due Design-Builder. Design-Builder shall thereafter perform all remaining Work to reach Substantial Completion, and re-submit its Notice of Substantial Completion of Work. The inspection of the Work will recommence as set forth above. If the Work has achieved Substantial Completion, a Punch List shall be prepared by OC SAN's Representative and consist of those items listed by Design-Builder to be completed or corrected as supplemented by those items observed during the inspection. Failure to include any items on OC SAN's Punch List shall not alter the responsibility of Design-Builder to complete all Work in accordance with the Contract Documents, nor shall the Punch List amend the Contract Documents. All deficiencies and/or items identified on OC SAN's Punch List must be corrected within 30 Days of said initial inspection conducted at the Substantial Completion phase, unless otherwise specified in writing by OC SAN's Representative.

8.5 Final Completion and Final Acceptance

- A. Final Inspection. Design-Builder shall notify OC SAN's Representative in writing when all Punch List items have been completed, all Work is completed in accordance with the Contract Documents, and all clean-up has been done. Clean-up shall be completed when all waste, materials, excess materials, tools, and equipment such as scaffolding, temporary structures, and unneeded facilities such as fencing and sanitary facilities are removed from the Project. OC SAN's Representative will then make final inspection for the purposes of ascertaining that the Work has been fully completed in accordance with the requirements of the Contract Documents.
- B. Final Completion. After OC SAN's Representative has made the final inspection and is satisfied that the Work has been completed in accordance with the Contract Documents, including all Punch List items, and is satisfied that all submittals have been made and accepted, including, but not limited to, all materials required by the Contract Documents and all As-Built Drawings by the Design-Builder and any other required record documents have been completed and accepted, all Change Order Work has been completed and accepted by OC SAN's Representative, and all other requirements of the Contract Documents, except for any unexecuted Change Orders, possible future warranty and guarantee Work, have been accomplished, OC SAN's Representative shall certify, in writing, the full completion of the Work and the date thereon.

C. Final Acceptance

1. The Work, after achieving Final Completion, is subject to Final Acceptance by OC SAN. Final Acceptance occurs in accordance with the following:
 - a. Design-Builder is required to provide adequate resources to fully support administrative Project close-out efforts identified in the Contract Documents, including, but not limited to, execution of all Change Orders, agreement on all final quantities, and all other activities specified herein. Such support and completion of all administrative close-out activities as required herein must be provided within the timeframe(s) requested by OC SAN and is condition precedent to Final Acceptance.
 - b. OC SAN's Representative shall, after certifying the date of Final Completion of the Contract, make a final estimate of the amount of Work done thereunder, and the General Manager or designee shall certify, as specified in the OC SAN delegation of authority, as amended, the value of such Work and the date of Final Completion. If the designated authority finds that the Work has been completed according to the Contract Documents, it shall establish the date of Final Acceptance, and find and declare the Work accepted pursuant to this Article, which shall be evidenced by a Notice of Completion.
 - c. A Notice of Completion shall be recorded with the Orange County Clerk Recorder's Office immediately after the Final Acceptance, and in no event later than 15 Days from Final Acceptance.
 - d. Only upon Final Acceptance shall final payment be processed. Processing of final payment shall occur in accordance with provisions in these General Conditions. Final Completion and Final Acceptance are for purposes of issuing final payment, and neither shall act to relieve the Design-Builder from any of its obligations under the Contract Documents, and under no circumstances shall Final Acceptance of the Contract Work waive any rights related to, among other things, claims by OC SAN pertaining to warranties and guarantees, latent defects, indemnity, fraud on the part of the Design-Builder, gross mistakes on the part of the Design-Builder amounting to fraud, or as otherwise provided in the Contract Documents.

8.6 **Warranty (Design-Builder's Guarantee)**

- A. Generally. Design-Builder warrants and guarantees, without limitation, the following:
 1. Construction Work shall: (i) be new, of recent manufacture, and of good quality; (ii) conform to the requirements of the Contract Documents; and (iii) be free of material faults or defects.
 2. All items having a manufacturer's warranty installed under the Contract shall be installed by or under the directive of the manufacturer or its certified agent in order to conform with the manufacturer's warranty requirements. All Work, including any repairs or replacements, involving manufacturer's products shall be performed in

accordance with manufacturer's recommendations in order to maintain all warranties.

3. Neither final payment nor any provision in the Contract Documents shall relieve Design-Builder of responsibility for faulty materials or workmanship.
- B. Warranty Work. Design-Builder shall and hereby does guarantee the entire Work, and its performance through maintenance of sufficient warranties, that the entire Work shall perform at all times as part of a fully integrated system consisting of all Work elements specified in the Contract Documents for a period of one (1) year after the Final Acceptance of the Work by OC SAN. Any portion of the Work with Beneficially Occupancy shall be additionally warranted as described in these General Conditions. During the warranty period, Design-Builder shall repair or remove and replace any Work, together with any other work which may be displaced in so doing that is found to be defective in workmanship and/or materials without any expense to OC SAN, ordinary wear and tear and unusual abuse or neglect excepted. In the event of failure to comply with the above-mentioned conditions within one (1) week after being notified in writing, OC SAN is hereby authorized to proceed to have the defects remedied at the expense of Design-Builder who hereby agrees to pay the cost and charges thereof immediately on demand. Such action by OC SAN will not relieve Design-Builder of the warranties required by this Article or elsewhere in the Contract Documents. Design-Builder's warranty shall continue as to any corrected deficiency until the later of:
1. The remainder of the original one-year warranty period; or
 2. One year after acceptance by OC SAN of the corrected Work.
- C. Warranty Benefits. All guarantees and warranties, expressed or implied, shall inure to the benefit of both OC SAN and Design-Builder during the performance of the Work. Upon Final Completion of the Work, such guarantees and warranties shall inure to the benefit of OC SAN.
- D. Immediate Warranty Work. If, in the opinion of OC SAN, Defective Work is detected during the warranty period which creates a dangerous condition or requires immediate correction or modification to prevent further loss to OC SAN or to prevent interruption of OC SAN operations, OC SAN will attempt to give the notice required by this Article. If Design-Builder cannot be contacted or does not comply with OC SAN's request for correction within a reasonable time as determined by OC SAN, OC SAN may, notwithstanding the provisions of this Article, proceed to make such correction or provide such modification. The costs of such correction or modification shall be charged against the Design-Builder. Such action by OC SAN will not relieve Design-Builder of the warranties required by this section or elsewhere in the Contract Documents.
- E. Manufacturer's Warranties. Without limiting any warranties or guarantees of Design-Builder in the Contract Documents or at law, Design-Builder shall obtain for OC SAN all warranties that would be given in normal commercial practice and assign to OC SAN any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Design-Builder and provided as part of the Work, to the extent that

such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Assignments will not relieve Design-Builder of its responsibility in the case of a manufacturer's or installer's failure to fulfill guarantee or warranty provisions. Design-Builder shall furnish OC SAN with all warranty and guarantee documents prior to Final Completion of the Project by OC SAN as required. Nothing in these Contract Documents is intended to limit any third-party warranty that provides OC SAN with greater warranty rights than those provided herein.

- F. OC SAN Furnished Materials and Equipment. When specifically indicated in the Contract Documents or when directed by OC SAN, OC SAN may furnish materials or equipment to Design-Builder for installation and incorporation into the Work. In the event any act or failure to act by Design-Builder shall cause a warranty applicable to any materials or products purchased by OC SAN for installation by Design-Builder to be voided or reduced, Design-Builder shall be responsible to OC SAN for the cost of any repairs, replacement, or other costs that would have been covered by the warranty but for such act or failure to act by Design-Builder.
- G. Warranty Not Limited. This Article does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which a manufacturer or Supplier gives a warranty for a longer period, and shall not limit Design-Builder's liability or responsibility imposed by the Contract or Applicable Law with respect to the Work, including to latent defects, gross mistakes, or fraud. Design-Builder agrees to act as a co-guarantor with such manufacturer or Supplier and shall furnish OC SAN all appropriate guarantee or warranty certificates upon completion of the Project and acceptance by OC SAN. No warranty period, whether provided for in this Article or elsewhere, shall in any way limit the liability of Design-Builder, Sureties, or insurers. Nothing in the Contract Documents shall be construed to limit the rights and remedies available to OC SAN at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -PROJECT SITE

9.1 Use of Project Site

- A. Availability of Site. OC SAN shall furnish the Site. OC SAN shall notify Design-Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Design-Builder must comply in performing the Work. Design-Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to OC SAN.
- B. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Project will be provided as shown in the Contract Documents. Unless otherwise specified in the Contract Documents, Design-Builder shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required.. Design-Builder shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or

equipment. Design-Builder shall not use the Site for anything not directly related to constructing the Work, including, but not limited to, housing employees and other non-Work activities. Design-Builder shall assume full responsibility for any damage to any such land or area, or to OC SAN or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

- C. Utility Usage. All temporary utilities, including, but not limited to, electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Builder. Design-Builder shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Project, Design-Builder shall remove all temporary distribution systems. Design-Builder shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project, including, but not limited to, startup and testing required in the Contract Documents. All permanent meters installed shall be listed in Design-Builder's name until the Project is accepted. For Work to be performed in existing OC SAN facilities, Design-Builder may use OC SAN's existing utilities, provided such use is reasonable under the circumstances. If Design-Builder uses OC SAN utilities, it will not need to compensate OC SAN for reasonable consumption of utilities, but Design-Builder will be responsible for any excessive, unreasonable, or wasteful utility usage.
- D. Site Maintenance. During the progress of the Work, Design-Builder shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris, including, without limitation, before the end of each shift. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. Design-Builder shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.
- E. Cleaning. Prior to completion of the Project, Design-Builder shall clean the Site and make it ready for utilization by OC SAN. At the completion of the Project, Design-Builder shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- F. Parking. Design-Builder shall be responsible for the parking of any and all vehicles belonging to its employees or employees of its Subcontractors in a legal manner at no additional expense or inconvenience to OC SAN.

9.2 Conditions at Project Site

- A. Reports and Drawings. OC SAN has provided to Design-Builder those reports known to OC SAN of explorations and tests of subsurface conditions at or contiguous to the Site; and those drawings known to OC SAN of physical conditions relating to existing surface or subsurface structures at the Site, including, among other things, Underground Facilities.

- B. Verification of Reports and Drawings. As part of Phase 1, Design-Builder shall independently verify and confirm the accuracy, completeness, and sufficiency of any documents furnished by OC SAN, and shall promptly report in writing to OC SAN any error, omission, or insufficiency in such documents that Design-Builder discovers.
- C. Unverified Reports and Drawings. For “technical data” in reports and drawings provided to Design-Builder, but not verified during Phase 1, Design-Builder may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents.
- D. Reports and Drawings. Design-Builder shall make its own interpretation of the “technical data” in the reports and drawings and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Design-Builder may not rely upon or make any claim against OC SAN, OC SAN’s Representative, or Designer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. The completeness of such reports and drawings for Design-Builder’s purposes, including, without limitation, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, and safety precautions and programs incident thereto;
 2. Other data, interpretations, opinions, conclusions, and information contained in such reports or shown or indicated in such drawings; or
 3. Any Design-Builder interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

9.3 Trenches

- A. Trenches Five Feet or More in Depth. Design-Builder shall submit to OC SAN prior to Construction Work, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. Design-Builder shall designate, in writing, the “competent person” as defined in Title 8, California Code of Regulations, who shall be present at the Site each day that trenching and excavation is in progress. The “competent person” shall prepare and provide daily trenching and excavation inspection reports to OC SAN’s Representative. Design-Builder shall also submit a copy of its annual Cal/OSHA trench and excavation permit.

9.4 Differing Site Conditions

- A. Phase 1 Services. Design-Builder shall, during Phase 1, take all measures necessary to determine the conditions of the Site. Design-Builder shall be responsible for any Site conditions that are not as Design-Builder reasonably anticipated after performing Phase 1 Services, and such conditions shall not be considered to materially differ.
- B. Discovery of Differing Site Conditions
1. If Design-Builder encounters a Differing Site Condition, Design-Builder shall within three (3) Days, and before the Differing Site Condition is further disturbed, notify OC SAN in writing of the Differing Site Condition.
 2. The written notice from Design-Builder shall describe the specific Differing Site Condition encountered and demonstrate that a Differing Site Condition exists, why Design-Builder could not reasonably have worked around the Differing Site Condition, and how the Differing Site Condition adversely impacted the GMP or Contract Time.
 3. OC SAN shall promptly investigate the conditions and, if it finds that there is a Differing Site Condition that causes an increase in the GMP or Contract Time, shall issue a Change Order under the procedures described in these General Conditions.
 4. In the event that a dispute arises between OC SAN and Design-Builder as to whether there is a Differing Site Condition or whether it causes an increase in the GMP or Contract Time, Design-Builder shall not be excused from the GMP or Contract Time, but shall proceed with all Work to be performed under the Contract. Design-Builder 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.

ARTICLE 10 -CONTRACT TIME; SCHEDULE

10.1 Time for Completion

- A. Completing Work. Design-Builder shall complete all or any designated portion of the Work called for under the Contract in all parts and requirements within the Contract Time. If, at any time, Design-Builder's Critical Path Work progress falls behind schedule due solely to Design-Builder's own fault, OC SAN reserves the right to require Design-Builder to work overtime to bring the Project back on schedule. Such overtime shall be at the Design-Builder's expense. Design-Builder shall furnish OC SAN's Representative a monthly statement showing the following:
1. Number of days originally specified for completion;
 2. Number of days charged to date;
 3. Number of days of time extensions approved;

4. Number of days remaining to completion; and
 5. Revised date for completion.
- B. Time for Completion. The Contract Time shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and, in both cases, shall be completed within the Contract Time. OC SAN is under no obligation to consider early completion of the Work and Contract Time shall not be amended by OC SAN's receipt or acceptance of Design-Builder's proposed earlier completion date. Any difference in time between Design-Builder's early completion and the Contract Time shall be considered a part of the Project float. Design-Builder shall not be entitled to compensation, and OC SAN will not compensate Design-Builder, for delays which impact early completion. Design-Builder shall not, under any circumstances, receive additional compensation from OC SAN (including, but not limited to, direct, indirect, general, administrative, or other forms of overhead costs) for the period between the time of earlier completion proposed by Design-Builder and the Contract Time.
- C. Failure to Perform. Failure of Design-Builder to perform any covenant or condition contained in the Contract Documents within the Contract Time shall constitute a material breach of the Contract entitling OC SAN to terminate Design-Builder's performance under the Contract unless Design-Builder applies for, and receives, an extension of Contract Time in accordance with the procedures set forth in the Contract Documents, as well as any and all other remedies available to OC SAN by law, in equity, or pursuant to the provisions of the Contract.
- D. No Waiver. Failure of OC SAN to insist upon the performance of any covenant or condition within the Contract Time shall not constitute a waiver of Design-Builder's duty to complete performance within the Contract Time unless the waiver is in writing. OC SAN's agreement to waive a specific time provision or to extend the Contract Time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of Design-Builder to complete performance promptly within the additional Contract Time authorized in the waiver or extension of time Change Order shall constitute a material breach of the Contract entitling OC SAN to terminate Design-Builder's performance under the Contract and to any and all other legal or equitable remedies.

10.2 Extension of Time For Delay

- A. Procedure for Extension of Contract Time and Delay Damages. Design-Builder shall not be entitled to any extension of Contract Time or adjustment to the GMP for delay damages unless Design-Builder properly notices the delay and requests a Change Order in accordance with the Change Order provisions in these General Conditions. Design-Builder's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Design-Builder's right to an extension of Contract Time or adjustment to the GMP for delay damages.

B. Extension of Time

1. OC SAN-Caused Extension of Time. Design-Builder's entitlement to an extension of Contract Time for an OC SAN-caused delay shall only be allowed when, and then only to the extent that, the OC SAN-caused delay extends the Critical Path beyond the Contract Time. The delay to the Critical Path must be established by a proper time impact analysis. Each time impact analysis shall include a fragnet demonstrating how Design-Builder proposes to incorporate the change or delay into the current CPM Schedule. The fragnet shall include the sequence of new and/or existing activity revisions that are proposed to be added to the accepted CPM Schedule that is current at the time the change or delay is encountered. OC SAN shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its reasonable judgment, the facts justify such an extension. Design-Builder shall not be entitled to an adjustment of Contract Time for delays within the control of Design-Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design-Builder. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
2. Concurrent Delay. In the event of Concurrent Delay, the Contract Time may be extended, as determined by OC SAN, however, such delay is non-compensable and the GMP shall not be adjusted.
3. Inclement Weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the Critical Path of the applicable CPM Schedule.
4. Utility-Related Delays. If a delay to the Critical Path results from acts of public utilities or delays caused by failure of a public agency or owner of a utility to provide for removal or relocation of existing main or trunkline utility facilities or other known utility facilities, Design-Builder will be entitled to a time extension, but will not receive an adjustment to the GMP or any other compensation. Notwithstanding the foregoing, Design-Builder shall be entitled to price escalation as allowed for in a GMP Amendment.
5. Force Majeure. If a delay to the Critical Path results from a Force Majeure Event, Design-Builder will be entitled to a time extension, but will not receive an adjustment to the GMP or any other compensation. Such a non-compensable adjustment shall be Design-Builder's sole and exclusive remedy for a Force Majeure Event.

C. Damages for Delay

1. OC SAN's liability to Design-Builder for delays for which OC SAN is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall OC SAN be liable for any costs which are borne by Design-Builder in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.

2. Damages caused by unreasonable OC SAN delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages. This includes the following allowable costs:
 - a. Those actual necessary costs of idle time of construction equipment, idle time of workers, moving of construction equipment, and hauling of materials and equipment which are incurred solely by reason of the delay and which could not have been avoided by the judicious handling of forces and construction equipment;
 - b. General Conditions Cost that are incurred solely by reason of the delay and extension of the Critical Path; and
 - c. Design-Builder's Fee, on the costs allowed above.
3. Notwithstanding the foregoing, Design-Builder shall be entitled to price escalation as allowed for in a GMP Amendment.

10.3 Liquidated Damages

- A. Liquidated Damages. Time is of the essence. If the Work is not completed within the Contract Time, it is understood that OC SAN will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Design-Builder shall pay to OC SAN as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract or the GMP Amendment for each calendar day of delay until the Work is fully completed. Design-Builder and its Surety shall be liable for any liquidated damages. Any money due or to become due Design-Builder may be retained to cover liquidated damages.
- B. Final Completion Date. Design-Builder agrees that it shall be liable to OC SAN for liquidated damages in an amount determined in the Contract or the GMP Amendment for each and every calendar day beyond the Final Completion Date that Final Completion has not been achieved for the Project.
- C. Milestone Date. Design-Builder agrees that it shall be liable to OC SAN for liquidated damages in an amount determined in the Contract or the GMP Amendment for each and every calendar day beyond a Milestone Date where Final Completion has not been achieved.

10.4 Schedules

- A. General Requirements. Except as otherwise specifically stated in the Contract Documents, this Article will apply to a CPM Schedule for the Work. The CPM Schedule shall be prepared in an electronic scheduling program acceptable to OC SAN and as specified in the Contract Documents. Design-Builder shall deliver the CPM Schedule and all updates to OC SAN in both paper and electronic form. The electronic versions shall be in the format, and include all data used, to prepare the CPM Schedule.

- B. Schedule. The receipt or approval of any CPM Schedule by OC SAN shall not in any way relieve Design-Builder of its obligations under the Contract Documents. Design-Builder is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Design-Builder's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the CPM Schedule shall not excuse Design-Builder from performing Work required within the specified Contract Time. If the required CPM Schedule is not received by the time the first payment under the Contract is due, Design-Builder shall not be paid until the CPM Schedule is received, reviewed, and accepted by OC SAN.
- C. Schedule Contents. The CPM Schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The CPM Schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up, and performance tests. All float shall be owned by the Project. CPM Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by OC SAN.
- D. Schedule Updates. Design-Builder shall continuously update its CPM Schedule. Design-Builder shall submit an updated and accurate CPM Schedule to OC SAN: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by OC SAN. OC SAN may withhold progress payments or other amounts due under the Contract Documents if Design-Builder fails to submit an updated and accurate CPM Schedule. Upon OC SAN's request, Design-Builder shall submit any schedules or updates to OC SAN in the native electronic format of the software used to create the CPM Schedule.
- E. Three-Week Look-Ahead Schedules. Design-Builder shall submit a three-week detailed look-ahead schedule at weekly meetings conducted with OC SAN. The three-week look-ahead schedule shall clearly identify all staffing and other resources which in Design-Builder's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.
- F. Acceptance. Acceptance of the CPM Schedule by OC SAN will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Builder from Design-Builder's full responsibility therefor.

ARTICLE 11 -CHANGE IN CONTRACT PRICE, TIME

11.1 Phase 1 Changes

- A. Additional Phase 1 Services. OC SAN may direct Design-Builder to perform additional Phase 1 Services that OC SAN determines to be necessary for the proper completion

of Phase 1, which the Parties did not reasonably anticipate would be necessary at execution of the Contract. Additional Phase 1 Services will be compensated at the rates set forth in Design-Builder's RFP Pricing, subject to adjustment as allowed by the Contract Documents. Design-Builder shall not be entitled to a mark-up on the rates set forth in Design-Builder's RFP Pricing for additional Phase 1 Services. If rates (i.e., hourly or unit rates) for additional Phase 1 Services are not identified in Design-Builder's RFP Pricing, OC SAN will pay for additional Phase 1 Services at a mutually agreeable rate between the Parties based on current market rates.

- B. Excusable Delay. Design-Builder may request additional time to complete a task or submittal milestone only in the event of an excusable delay. For purposes of this Article, an excusable delay is a delay only to the completion of a Phase 1 Service and caused by the following: (i) the actions of OC SAN or its employees; (ii) the actions of those in direct contractual relationship with OC SAN, except for Design-Builder; (iii) the actions of any Governmental Body having jurisdiction over the Project acting in their role as an authority having jurisdiction that Design-Builder had no control over; (iv) the actions of any parties not within the reasonable control of Design-Builder; or (v) a Force Majeure Event. Design-Builder shall not be entitled to any damages or costs resulting from an excusable delay.

C. Change Order Procedures

1. An increase to the Phase 1 Fee and/or extensions of time for the performance of Phase 1 Services must be approved through a Change Order. If Design-Builder thinks it is entitled to a Change Order, Design-Builder must request a Change Order within five (5) Days of a directive from OC SAN to perform additional Phase 1 Services or of the event otherwise giving rise to the change.
2. To increase the Phase 1 Fee, Design-Builder's request for a Change Order shall include documentation supporting the need for the request and a cost proposal for the additional Phase 1 that shows the applicable rates and provides a fair estimate of the amount of work needed to complete the additional Phase 1 Services. OC SAN may request that Design-Builder propose other options or efficiencies, including de-scoping a portion of the additional Phase 1 Services.
3. To receive an extension of time for the performance of Phase 1 Services, Design-Builder's request shall include documentation supporting the need for the request, and a time impact analysis showing the impact of the extension on completion of the Phase 1 Services, as well as the impact on potential Work and on the Work as a whole. The time impact analysis shall include options to mitigate the impact to the Critical Path of the Phase 1 Services, including the commencement of Phase 2. The request shall be limited to only the amount of time that is reasonably necessary for Design-Builder to complete the additional Phase 1 Services. An extension of time shall be a last resort, and shall only be granted if, and to the extent that, Design-Builder cannot reasonably complete the Phase 1 Services on time, including by expediting the Phase 1 Services, at no additional cost to OC SAN.

4. If additional Phase 1 Services also result in an excusable delay, Design-Builder shall request an increase to the Phase 1 Fee and an extension of time concurrently.
- D. Exclusions from Additional Phase 1 Services. Additional Phase 1 Services shall not include work or services necessary because of negligent errors, omissions, or conflicts of any type in Design-Builder's performance of Phase 1 Services. This includes, but is not limited to, any redesign or revisions to Plans, Specifications, or other documents required to complete the original scope of Work that are: (i) an ordinary part of the design development and review process, including constructability and value engineering review, or (ii) necessary in order to bring such documents into compliance with Applicable Law of which Design-Builder was aware or should have been aware. All such work or services shall constitute Phase 1 Services and shall be performed at no cost to OC SAN.
- E. Reduction of Phase 1 Services. OC SAN shall have the right to reduce the scope of Phase 1 Services at any time by written notice to Design-Builder. Changes to Phase 1 Services that reduce the scope of Phase 1 Services shall be effective upon the delivery of the written notice by OC SAN pursuant to this Article. Any reduction in the scope of Phase 1 Services shall result in an appropriate reduction in the Phase 1 Fee, which shall be reflected in a Change Order.

11.2 Phase 2 Changes

A. Change Orders Generally

1. All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. OC SAN, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or other revisions, and Design-Builder's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Design-Builder shall not be entitled to a claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the Parties to reach agreement on the terms of the Change Order shall relieve Design-Builder from the obligation to proceed with performance of the Work, including Extra Work, promptly and expeditiously. Any alterations, extensions of time, Extra Work, or any other changes may be made without securing consent of Design-Builder's Surety or Sureties.
2. Design-Builder agrees that one of the purposes of progressive design-build services is to minimize the risk for Change Orders and Change Orders shall be strictly limited. Requests for Change shall be kept to a minimum. This Article shall continue to apply regardless of whether the Parties continue to utilize a GMP for Construction Work or agree to convert the GMP to a Lump Sum Price.

3. Subject to OC SAN approval, the GMP shall not be modified except in the event of the following circumstances: (a) OC SAN directs and authorizes a change which is related solely to discretionary changes by OC SAN (the foregoing excludes changes resulting from the acts, omissions, or other conduct of Design-Builder); (b) Differing Site Conditions; (c) changes directed by a Governmental Body with jurisdiction over the Project, or portions thereof, which could not be reasonably foreseen or anticipated by Design-Builder at the execution of the GMP Amendment; (d) changes necessitated by amendment(s) to or enactment(s) of Applicable Laws which could not be reasonably anticipated or foreseen by Design-Builder at the execution of the GMP Amendment; (e) changes resulting from emergencies not caused, in whole or in part, by the acts, omissions, or other conduct of Design-Builder or its Subcontractors, employees, agents, or representatives; or (f) where expressly allowed by the Contract Documents.
4. Design-Builder has no right to a Change Order for a time extension, extra work, or other costs of any kind whatsoever (including, without limitation, direct and indirect costs, delay and disruption damages, overhead, profit, or mark-up) resulting from issues related to, among other things, the following: (a) costs that result from defective Phase 1 Services; (b) design defects or ambiguities; (c) Site conditions which are not Differing Site Conditions ; or (d) constructability issues, including, but not limited to, construction feasibility, schedule, or cost.
5. Design-Builder shall not be entitled to an increase to the GMP if it contains any contingency or allowances for the costs, which must be utilized and exhausted prior to requesting a Change Order. Design-Builder may only increase the GMP through a duly requested and approved Change Order.

B. Contract Change Order Procedures

1. OC SAN Written Directive. OC SAN may direct changes in the Work by delivering a written directive. To the extent the written directive results in a change to compensation or time, Design-Builder must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a written directive, Design-Builder's failure to timely request a Change Order shall constitute a waiver by Design-Builder of any adjustment to compensation or time extension for Work performed under the directive. OC SAN shall not be liable to Design-Builder for Work performed or omitted by Design-Builder in reliance on verbal orders. OC SAN shall have the right to order changes in the Work by a unilateral Change Order setting forth OC SAN's determination of the reasonable additions or savings in the GMP or Contract Time.
2. Design-Builder's Notice of Change or Delay
 - a. If Design-Builder intends to initiate a Request for Change, Design-Builder shall provide OC SAN with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

- (i) If due to Differing Site Conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.
 - (ii) If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date Design-Builder discovers that the Force Majeure Event gives rise to a change, unless the conditions are such that notice within three (3) Days is not possible or practicable.
 - (iii) If due to any other matter that may involve an adjustment to the GMP or Contract Time, within seven (7) Days from the earlier of the discovery date of the matter or when the matter should have been discovered.
- b. To be considered valid and complete, the notice of change or delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs or time. If the circumstances give rise to both a cost adjustment and time extension, Design-Builder shall submit the notice of change and notice of delay concurrently.

3. Request for Change

- a. Design-Builder shall submit a Request for Change for any adjustment to a GMP or Contract Time. The Request for Change shall be made prior to incurring any expense and within fifteen (15) Days from either Design-Builder's notice of change or delay or OC SAN's written directive ordering the change. For any costs or information that cannot be determined at the time Design-Builder submits a Request for Change, Design-Builder shall submit to OC SAN notice of the costs or information and all supporting documentation within fifteen (15) Days of when the costs or other information become subject to determination.
- b. All Requests for Change shall be dated, numbered sequentially, and shall describe the action or event which Design-Builder believes may require equitable adjustment. Design-Builder shall also provide a description of possible Design-Builder actions or solutions to minimize the cost of the Request for Change; it shall provide a cost and schedule proposal for said Work based upon an estimate of the cost for the anticipated changed Work; and shall submit said price and time impact to OC SAN's Representative whose approval shall be secured before Extra Work is started.
- c. The Request for Change shall include all of the following information (unless inapplicable to the change or delay):
 - (i) A detailed description of the circumstances giving rise to the request;
 - (ii) A complete itemized cost proposal, including itemized pricing for Subcontractors;
 - (iii) Supporting documentation for all costs;

- (iv) If Design-Builder's pricing is within 10% of OC SAN's independent cost estimate, Design-Builder will be allowed to proceed with the Work;
- (v) If Design-Builder's pricing for the Work is more than 10% higher than OC SAN's independent cost estimate, the Parties shall meet and confer to compare pricing and attempt to reconcile any differences. If necessary, Design-Builder will submit revised pricing and an updated cost proposal following the meet and confer process;
- (vi) A time impact analysis showing the impact of the delay to the Critical Path of the Work;
- (vii) If any costs or information cannot be determined at the time of the Request for Change, a rough order of magnitude of the Change Order costs and the reason the costs or information cannot be determined at the time; and
- (viii) Certification to the accuracy of the Request for Change under penalty of perjury with the following language:

"I certify that (1) the Request for Change is made in good faith, (2) I have reviewed all supporting documentation and data, which is included herewith, and it is accurate and complete, (3) I have determined from my independent review of the Request for Change that the same is meritorious, and that the amount and/or Contract Time requested accurately reflects the Contract adjustment for which I believe OC SAN is liable; and (4) I am duly authorized to certify the Request for Change on behalf of Design-Builder."

- d. The time impact analysis shall be in the Critical Path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. OC SAN may demand, and Design-Builder shall provide, any additional information supporting the Request for Change, including, but not limited to, native electronic format version of schedules and time impact analyses. Design-Builder shall provide the requested additional information within fifteen (15) Days of the request.
4. OC SAN's Final Decision on Change Order; Ordered Changes. If OC SAN denies the Request for Change or disagrees with the proposal submitted by Design-Builder, it will notify Design-Builder, and OC SAN will provide its opinion of the appropriate price or time extension. If no agreement can be reached, OC SAN shall have the right, in its sole discretion, to order the Work performed, to the extent permitted by law, on a time and materials basis or to issue a unilateral Change Order setting forth OC SAN's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. OC SAN's determination shall become final and binding if Design-Builder fails to submit a claim in writing in accordance with the General Conditions to OC SAN within fifteen (15) Days of denying the Request for Change, or for the issuance of a unilateral Change Order,

disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as OC SAN may reasonably require.

5. Design-Builder's Waiver of Further Relief

a. Design-Builder recognizes and acknowledges that timely submission of a formal written notice of change or delay and Request for Change, whether or not the circumstances of the change may be known to OC SAN or available to OC SAN through other means, is not a mere formality but is of crucial importance to the ability of OC SAN to promptly identify, prioritize, evaluate, and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in submittals, statements at any job meeting or entries on monthly reports, daily logs, or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

b. **DESIGN-BUILDER'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE OR DELAY, REQUEST FOR CHANGE, NOTICE DISPUTING A UNILATERAL CHANGE ORDER, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY DESIGN-BUILDER OF THE RIGHT TO A GMP ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

C. Change Order Format. A Change Order signed by Design-Builder indicates Design-Builder's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect, and overhead) related to the Work authorized by the Change Order. OC SAN may designate the forms and methods to be used for notices, requests, and Change Orders. If so designated, Design-Builder may only use such forms and methods. Design-Builder shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration, and/or actual acceleration beyond what is stated in the Change Order. No claims shall be allowed for impact, extended job site costs, extended overhead costs, constructive acceleration, and/or actual acceleration due to a multiplicity of changes and/or clarifications. Design-Builder may not change or modify OC SAN's Change Order form in an attempt to reserve additional rights.

D. Determining Adjustments to Compensation

1. Pricing Generally. Design-Builder shall not be entitled to any compensation for Construction Work subject to a Change Order except as expressly set forth in this Article.
2. Unit Pricing. For the increasing or decreasing of Construction Work within a GMP that is paid for on a unit price basis, the Extra Work shall be paid for according to

the unit price established for such Construction Work and the GMP will be adjusted accordingly. An adjustment in compensation will be made for changes which require increases or decreases in the quantity of any unit price item in such a manner as to materially increase or decrease its unit cost, as reasonably determined by OC SAN, or which for any other reason cannot in the reasonable judgment of OC SAN be equitably paid for at the unit price. Unit prices shall be subject to adjustment when the actual quantities vary by more than twenty-five percent (25%) above or below the estimated quantities. Design-Builder's Fee shall not be applied to the unit price if the unit price includes such fees.

3. Lump Sum Pricing. Compensation for lump sum Change Orders shall be limited to expenditures necessitated specifically by the Extra Work. A lump sum Change Order shall be determined on an Open Book Basis and by the same method as establishing a GMP. If the Extra Work is performed by a Subcontractor providing Subcontracted Construction Work, the Subcontractor's pricing for a lump sum Change Order shall be determined on an Open Book Basis and by the same method for determining pricing from Design-Builder when establishing a GMP. Subcontractors will be entitled to a markup for home office overhead and profit on Subcontractor's Cost of Work in an amount not to exceed ten percent (10%).
4. T&M Pricing
 - a. T&M Pricing Generally
 - (i) OC SAN may direct Design-Builder to proceed with Extra Work with payment to be made on the basis of the actual verified Cost of Work in the proper performance of the Extra Work, with Design-Builder's Fee applied to the Cost of Work. Design-Builder will be entitled to any verified increased costs for insurance and bonds, which will not be subject to Design-Builder's Fee.
 - (ii) If the Extra Work is performed by Subcontractors, payment will be made on the basis of the actual verified Subcontractor's Cost of Work in the proper performance of the Extra Work, with Design-Builder's Fee applied to the Cost of Work. Subcontractors will be entitled to a markup for home office overhead and profit on Subcontractor's Cost of Work in an amount not to exceed ten percent (10%). Design-Builder and Subcontractor will be entitled to any verified increased costs for insurance and bonds, which will not be subject to Design-Builder's Fee or Subcontractor's markup for home office overhead and profit.
 - b. T&M Daily Sheets. Design-Builder must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to OC SAN's for an approval signature each day that Construction Work is performed on a time-and-material basis. OC SAN's Representative's signature on time sheets only serves as verification that the Construction Work was performed and is not indicative of OC SAN's agreement to Design-Builder's entitlement to the cost.

- c. T&M Summary Sheet. Design-Builder shall submit a T&M summary sheet, which shall include total actual costs, within five (5) Days following completion of Extra Work on a time-and-material basis. Design-Builder's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Design-Builder's failure to submit the T&M summary sheet within five (5) Days of completion of the Extra Work will result in Design-Builder's waiver for any reimbursement of any costs associated with the Extra Work.

11.3 Procedure for Resolving Claims

- A. Prerequisites. Design-Builder shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to a GMP or Contract Time, including, but not limited to, all requirements for a Change Order, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Design-Builder's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all Applicable Law, including, but not limited to, these statutes.
- C. Claims
 1. For purposes of this Article, "Claim" means a separate demand by Design-Builder sent by registered mail or certified mail with return receipt requested for:
 - a. An adjustment to the Contract Time including, without limitation, for relief from damages or penalties for delay assessed by OC SAN;
 - b. Payment by OC SAN of money or damages arising from Services done by or on behalf of Design-Builder pursuant to the Contract, payment for which is not otherwise expressly provided or to which Design-Builder is not otherwise entitled; or
 - c. An amount the payment of which is disputed by OC SAN.
 2. A "Claim" does not include any demand for payment for which Design-Builder has failed to provide notice, submit a Request for Change, or otherwise failed to follow any procedures contained in the Contract Documents.

- D. Filing Claims. Claims governed by this Article may not be filed unless and until Design-Builder completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to a GMP or Contract Time, and Design-Builder's Request for Change has been denied in whole or in part. Claims governed by this Article must be filed no later than twenty (20) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim, or prior to Final Completion, whichever occurs first. The Claim shall be submitted in writing to OC SAN and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include all information and documents necessary to substantiate the Claim, including, but not limited to, those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. Design-Builder shall submit all Claims in the following format:
1. Summary description of Claim including basis of entitlement, merit, and amount of time or money requested, with specific reference to the Contract Documents provisions pursuant to which the Claim is made
 2. List of documents relating to Claim:
 - a. Specifications
 - b. Plans
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of Contract Time is requested
- F. OC SAN's Response. Upon receipt of a Claim pursuant to this Article, OC SAN shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide Design-Builder a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after OC SAN issues its written statement.

1. If OC SAN needs approval from the Board of Directors to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Board of Directors does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, OC SAN shall have up to three (3) Days following the next duly publicly noticed meeting of the Board of Directors after the 45-Day period, or extension, expires to provide Design-Builder a written statement identifying the disputed portion and the undisputed portion.
 2. Within 30 Days of receipt of a Claim, OC SAN may request, in writing, additional documentation supporting the Claim or relating to defenses or claims OC SAN may have against Design-Builder. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of OC SAN and Design-Builder. Design-Builder shall provide the requested documentation or information within 30 Days of the written request by OC SAN. OC SAN's written response to the Claim, as further documented, shall be submitted to Design-Builder within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by Design-Builder in producing the additional information or requested documentation, whichever is greater.
- G. Meet and Confer. If Design-Builder disputes OC SAN's written response, or OC SAN fails to respond within the time prescribed, Design-Builder may so notify OC SAN, in writing, either within 15 Days of receipt of OC SAN's response or within 15 Days of OC SAN's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, OC SAN shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- H. Mediation
1. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, OC SAN shall provide Design-Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after OC SAN issues its written statement. Any disputed portion of the Claim, as identified by Design-Builder in writing, shall be submitted to nonbinding mediation, with OC SAN and Design-Builder sharing the associated costs equally. OC SAN and Design-Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the Parties agree to select a mediator at a later time.
 2. 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.

3. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
 4. Unless otherwise agreed to by OC SAN and Design-Builder in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 5. The mediation shall be held no earlier than the date Design-Builder completes the applicable GMP Work Package or the date that Design-Builder last performs Work on the Project, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, Design-Builder must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time Design-Builder submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with California Public Contract Code section 9204 and the terms of the Contract. The mediation process shall provide for the selection within 15 Days by both Parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the California Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the California Code of Civil Procedure, (a) arbitrators shall, when possible, be experienced in construction law, and (b) any Party appealing an arbitration award who does not obtain a more favorable

judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other Party.

K. Government Code Claim Procedures

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code.
 2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, GMP, or compensation or payment for Extra Work, disputed Work, construction claims, and/or changed conditions, Design-Builder must comply with the claim procedures set forth in California Government Code section 900, *et seq.* prior to filing any lawsuit against OC SAN.
 3. Such California Government Code claims and any subsequent lawsuit based upon the California Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or GMP for Extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Design-Builder. If Design-Builder does not comply with the California Government Code claim procedure or the prerequisite contractual requirements, Design-Builder may not file any action against OC SAN.
 4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date Design-Builder last performs Work on the Project, whichever occurs first. A California Government Code claim shall be inclusive of all unresolved Claims known to Design-Builder or that should have been reasonably known to Design-Builder excepting only new unrelated Claims that arise after the California Government Code claim is submitted.**
- L. Non-Waiver. OC SAN's failure to respond to a Claim from Design-Builder within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.
- M. Litigation. Any claims, disputes, or controversies between the Parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.
- N. Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform Work, pending the final resolution of any dispute or disagreement between Design-Builder and OC SAN.

ARTICLE 12 -MEASUREMENT; PAYMENT

12.1 Payment of Compensation for Phase 1 Services.

- A. Phase 1 Fee. OC SAN shall pay Design-Builder the Phase 1 Fee in the manner and subject to the terms and conditions set forth in the Contract. Design-Builder agrees that the Phase 1 Fee, when earned, shall be Design-Builder's entire compensation and reimbursement for the performance of Phase 1 Services, inclusive of all costs, expenses, and disbursements paid or incurred by Design-Builder, as well as all overhead, administration, risk, and profit, subject to adjustment in the Contract Documents.
- B. Invoicing
 - 1. Design-Builder shall submit a monthly itemized statement of Phase 1 Services charges and expenses to OC SAN. The itemized statement shall reflect the hours spent, or scope of work performed, by Design-Builder in performing its Phase 1 Services, and, if applicable, the statements shall reflect expenses and materials, and the hourly charges shall not exceed the rates set forth in the Contract Documents.
 - 2. Design-Builder shall include in its monthly invoice, a detailed breakdown of costs associated with the performance of any corrections or revisions of the Work for that invoicing period. Design-Builder shall warrant and certify the accuracy of these costs and understand that submitted costs are subject to audit.
- C. Payment. Payment for the Phase 1 Services shall be made for all undisputed amounts in monthly installment payments after Design-Builder submits an itemized statement to OC SAN for Phase 1 Services actually completed and after OC SAN's written approval of Phase 1 Services, or the portion of the Phase 1 Services for which payment is to be made. Payment shall not constitute acceptance of any Phase 1 Services completed by Design-Builder.
- D. Payment Disputes. Nothing contained in the Contract shall require OC SAN to pay for any Phase 1 Services which are not performed in accordance with the terms and conditions of the Contract. If OC SAN disputes in good faith any payment request for Phase 1 Services, OC SAN shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide Design-Builder with a written objection indicating the amount being disputed and the reasons then known to OC SAN for the dispute. If Design-Builder is unable to reach agreement with OC SAN as to the payment dispute, Design-Builder may elect to initiate dispute resolution ladder procedures in accordance with Article 11.2 of these General Conditions.

12.2 Payment of Compensation for Phase 2 Work

- A. Payment. Based on applications for payment from Design-Builder in accordance with the requirements of Section 12.2 of these General Conditions, OC SAN will make monthly progress payments for the actual Work completed plus a like percentage of the value of the material suitably stored at the Site or approved storage yards under

the control of OC SAN. Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to OC SAN no later than the time of payment free and clear of all Liens.

- B. Materials on Hand. Only those stored materials that will become an integral part of the final completed Work may be included in monthly progress payments. Cost of materials stored will be based on Supplier's invoices. A complete list of invoices shall be presented to OC SAN's Representative by the Design-Builder prior to completion of each estimate. Design-Builder must present to OC SAN's Representative written evidence substantiating that said purchase price has been paid in full.
- C. Cash Flow Report. Each month, Design-Builder shall provide a cash flow report listing each actual payment and a projection of estimated payments for each remaining month of the Contract period of performance. The total actual/projected amount will be equal to the total Phase 2 Price. The cash flow report shall be submitted as follows:
 - 1. One paper copy showing the total amount paid and projected by month.
 - 2. One electronic copy (Excel format) breaking down the total monthly paid and projected amounts into the Work categories as shown on the Schedule of Values.
- D. Waiver and Releases. Each application for payment shall show each Subcontractor and Supplier participating in the Work completed during the previous progress period and the dollar amount of such participation. If Design-Builder disputes a Subcontractor's or Supplier's entitlement to a portion of the previous progress payment, Design-Builder shall submit copies of all communications between the Design-Builder and the Subcontractor or Supplier explaining Design-Builder's determination not to render payment to such Subcontractor or Supplier. Each progress payment application shall be accompanied by:
 - 1. A conditional waiver and release upon progress payment pursuant to Civil Code section 8132 for each Subcontractor and Supplier participating in the Work completed during the previous progress period which shall be in an amount no less than the dollar amount of such participation; and
 - 2. A conditional waiver and release upon progress payment pursuant to Civil Code section 8132 on behalf of Design-Builder which shall be in an amount no less than the dollar amount of the total requested in the payment application.
 - 3. Completed progress payment form, supplied by OC SAN, which includes a payment certification by the Design-Builder certifying that the Work for which payment is requested has been accomplished.

Design-Builder shall thereafter, within twenty (20) Days of receipt of the payment from OC SAN, complete an unconditional waiver and release upon progress payment pursuant to Civil Code section 8134 for each Subcontractor and Supplier participating in the Work completed during the previous progress period and an unconditional waiver and release upon progress payment pursuant to Civil Code

section 8134 on behalf of Design-Builder in an amount no less than the amount received from OC SAN, and submit the same with Design-Builder's subsequent application for payment.

- E. Certified Payroll. Design-Builder shall file a certified copy of any requested payroll records with the entity that requested such records within ten (10) Days of the date a written request for certified payroll records has been received. The following are guidelines that have been prepared to assist Design-Builder and OC SAN in meeting the requirements for certified payrolls records.
1. Design-Builder and each Subcontractor are to make available to OC SAN, upon request, weekly certified payrolls on California Department of Industrial Relations Form A-1-131 (New 2-80) or shall contain the same information as Form A-1-131 (New 2-80). If requested by OC SAN, the certified payrolls must be submitted electronically on a compact disk (CD).
 2. Each certified payroll shall include a signed and completed "Statement of Compliance".
 3. If it is found that certified payrolls are not in compliance with 1. and 2. above, the processing of progress payments may be delayed.
- F. Security for Money Withheld. Pursuant to Section 22300 of the California Public Contract Code, Design-Builder may request OC SAN to make retention payments directly to an escrow agent or may substitute securities for any money withheld by OC SAN to ensure performance under the Contract. At the request and expense of Design-Builder, securities equivalent to the amount withheld shall be deposited with OC SAN or with a state or federally chartered bank as the escrow agent who shall return such securities to Design-Builder upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in Section 22300 of the California Public Contract Code.

12.3 Application for Payment of Compensation for Phase 2 Work

A. Cost Breakdown

1. Design-Builder shall furnish on forms approved by OC SAN within ten (10) Days of the Notice to Proceed for Phase 2, a Schedule of Values allocating the entire GMP to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as OC SAN's Representative may require. This Schedule of Values, unless objected to by OC SAN's Representative, shall be used as a basis for reviewing Design-Builder's applications for payment. Design-Builder shall submit the Schedule of Values prior to submitting its first application for payment, and OC SAN will not issue any payment until it receives and approves the Schedule of Values. The initial Schedule of Values shall be the one submitted and agreed to as part of the GMP Amendment, subject to revisions when required by OC SAN.

2. The cost breakdown shall consist of breaking the Work into each major structure or process system with an itemized breakdown for each structure or process system as follows: dewatering, excavation, foundation material, backfill, concrete, reinforcing steel, underground piping, process equipment, mechanical equipment, piping and valves, electrical, instrumentation, miscellaneous building items and metals, and painting or other finishes. Cost breakdown is subject to OC SAN's Representative's review. Quantities must be included for each item.
 3. If Design-Builder fails or refuses to comply with the requirements set forth in this section, Design-Builder shall not be deemed to have provided the required data and shall not be entitled to progress payments unless and until it has provided the required information and data set forth herein.
- B. Application for Payment Submittal. OC SAN will not accept payment applications from Design-Builder more frequently than once every four weeks. Design-Builder shall submit payment applications to OC SAN using OC SAN's applicable Project Control Management System. The payment application shall include such supporting data as OC SAN may request, which shall set forth in detail the value of the Work done for the period for which the payment request is prepared. Design-Builder shall include any amount earned for authorized Change Orders. Design-Builder shall certify, under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Construction Work performed pursuant to the Contract Documents.
- C. Application for Payment Contents. Design-Builder shall submit with each application for payment:
1. Clear reference to OC SAN's Project or Contract number, as well as OC SAN's Project title and project manager, to which the payment application applies;
 2. Design-Builder's payment application number, payment application date, as well as the Contract payment number the invoice represents; for example, Design-Builder's submittal of its first payment application is payment number 1, its second payment application submittal is payment number 2, and so on. Any Design-Builder re-submittal/revision to a submitted payment application shall have a letter suffix (a, b, c, etc.) added to the payment number, signifying the payment application revision; for example, Design-Builder's first re-submittal of its first payment application shall be designated as payment for number "1a";
 3. An invoice that includes, without limitation, the total GMP, total of additive and deductive Change Orders, total retention, and total Phase 2 Price;
 4. Clear reference to the payment schedule item(s) being invoiced and the appropriate milestone description of activities and/or Work related to the billing;
 5. The itemized and total amount being invoiced (in U.S. dollars), less the amount of all contractual retention and deductions applicable for the invoiced amount (in U.S. dollars), and the resulting total net payment due;

6. The time period during which the Work was performed and for which the payment application is submitted;
 7. An updated Schedule of Values;
 8. Clear reference to Design-Builder's Taxpayer ID Number;
 9. An updated Phase 2 CPM Schedule for the Work; and
 10. Conditional and unconditional release of liens from Design-Builder, Subcontractors, and Suppliers.
- D. Wire Transfer. Design-Builder shall set-up a secured wire transfer account with OC SAN in advance of any payment applications in excess of One Million Dollars (\$1,000,000). Payment applications in excess of this amount will not be processed for payment by OC SAN until a secured wire transfer account is set-up, verified, and approved by OC SAN.
- E. Schedule of Values. Each application for payment shall be based on the most recent Schedule of Values submitted by Design-Builder in accordance with the Contract Documents. The Schedule of Values shall allocate the entire GMP among the various portions of the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as OC SAN may require. This schedule, unless objected to by OC SAN, shall be used as a basis for reviewing Design-Builder's applications for payment. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the percentage of that portion of the Work which Design-Builder has actually completed.
- F. Open Book Basis. Design-Builder acknowledges that the GMP is to be administered on an Open Book Basis relative to the costs of the Construction Work. The payment request shall be supported by such data substantiating Design-Builder's right to payment as OC SAN may require, including, but not limited to, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, Subcontractor payment requests submitted to Design-Builder, documentation supporting the Subcontractor's payment requests, and any other evidence or documentation required by OC SAN.
- G. Review of Payment Request. Upon receipt, OC SAN's Representative shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Design-Builder as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. OC SAN will make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Design-Builder, provided that a release of liens and claims has been received from Design-Builder pursuant to Civil Code section 8132. OC SAN shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

- H. Retention. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where OC SAN has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Special Conditions. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of Design-Builder's payment request.
- I. Withholdings. OC SAN may withhold a sufficient amount or amounts of any payment or payments otherwise due to Design-Builder, as in its judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against Design-Builder or any Subcontractors for labor or materials furnished in and about the performance of Work on the Project under the Contract.
 2. Defective Work not remedied.
 3. Failure of Design-Builder to make proper payments to Subcontractors, Suppliers, or for labor.
 4. Completion of the Work if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 5. Damage to another contractor or a third party caused by Design-Builder.
 6. Amounts which may be due OC SAN for claims against Design-Builder.
 7. Failure of Design-Builder to keep the As-Built Drawings up to date.
 8. Failure to provide an updated CPM Schedule as required herein.
 9. Site cleanup.
 10. Failure to comply with Contract Documents.
 11. Liquidated damages.
 12. Legally permitted penalties.

OC SAN may apply such withheld amount or amounts to payment of such claims or obligations at its discretion except as required by Applicable Law and if disputed by Design-Builder is subject to dispute resolution pursuant to the Contract Documents.

- J. Stop Payment Notices. OC SAN will, at its option and at any time, retain out of any amounts due Design-Builder, sums sufficient to cover claims plus twenty-five percent (25%) filed pursuant to Section 9350 *et seq.* of the Civil Code of the State of California. Design-Builder shall pay to OC SAN, or OC SAN may deduct from any such payments made by OC SAN to the Design-Builder, all costs and expenses, including, but not limited to, administrative and legal expenses incurred by OC SAN in processing and/or

defending against stop payment notices. Design-Builder will use OC SAN's current forms for release of stop payment notices.

12.4 Payments to Subcontractors

- A. Design-Builder shall develop and implement procedures for submittal of applications for progress payments to Design-Builder by Subcontractors in accordance with these General Conditions and the review, processing, and disbursement of progress payments to Subcontractors, along with associated forms and reporting systems. Design-Builder shall disburse progress payments due each Subcontractor within ten (10) Days of Design-Builder's receipt of payment from OC SAN, except to the extent that Design-Builder's payment of such amount or any portion thereof is subject to withholdings for a stop payment notice, prevailing wage rate violations, or other withholdings of payment(s) due Subcontractors under the terms of the subcontracts or by operation of law. Design-Builder shall indemnify OC SAN against any and all claims arising from or related to the failure of Design-Builder to comply with the prompt payment requirements under the Public Contract Code.

12.5 Final Payment

- A. Design-Builder shall, prior to Final Acceptance, prepare and submit an application for final payment to OC SAN. This should include a detailed Project accounting setting forth all additive Change Orders approved by OC SAN, and, if applicable, all savings generated by Design-Builder during the Project. OC SAN shall, within a reasonable amount of time after receipt, review the Project accounting to determine its accuracy and reconcile any potential savings and approved and unapproved Change Orders to determine the final cost to complete Phase 2. If OC SAN determines that there are savings due to either Party, or if OC SAN determines that the GMP needs to be adjusted upward because of unapproved Change Orders, OC SAN may issue a unilateral additive or deductive Change Order (as applicable). Design-Builder's compliance with this Article is a material term of the Contract necessary for Final Acceptance of the Project, and Design-Builder acknowledges that OC SAN shall not be obligated to release retention until Design-Builder complies with this Article.
- B. Unless Design-Builder advises OC SAN, in writing, prior to acceptance of the final five percent (5%) or the percentage specified in the Contract Documents where OC SAN has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to OC SAN of all claims and all liability to Design-Builder for all things done or furnished in connection with the Work and for every act of negligence of OC SAN and for all other claims relating to or arising out of the Work. If Design-Builder advises OC SAN, in writing, prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due Design-Builder, OC SAN may pay the undisputed amount contingent upon Design-Builder furnishing a release of all undisputed claims against OC SAN with the disputed claims in stated amounts being specifically excluded by Design-Builder from the operation of the release. No payments, however, final or otherwise, shall operate to release Design-Builder or its Sureties from the faithful Performance Bond, Payment Bond, or from any other obligation under the Contract.

- C. In case of termination of the Contract, any unpaid balance shall be and become the sole and absolute property of OC SAN to the extent necessary to repay OC SAN any excess in the cost of the Work above the GMP.
- D. If Design-Builder fails to complete the Work as specified in the Contract Documents and if the unpaid balance of the Phase 2 Price exceeds the direct and indirect costs of completing the Project, including, but not limited to, all costs generated to insure or bond the Work of substituted contractors or Subcontractors utilized to complete the Work, such excess shall be paid to Design-Builder. If such costs exceed the unpaid balance, Design-Builder shall pay the difference to OC SAN promptly upon demand. On failure of Design-Builder to pay, the Surety shall pay on demand by OC SAN. Any portion of such difference not paid by Design-Builder or Surety within thirty (30) Days following the mailing of a demand for such costs by OC SAN shall earn interest at the maximum rate authorized by California law.
- E. Final payment of the five percent (5%) retention shall be made no later than 60 Days after the date of Final Acceptance, unless otherwise required by law, provided that a release of liens and claims has been received from Design-Builder pursuant to Civil Code section 8136 and the Contract. In the event of a dispute between OC SAN and Design-Builder, OC SAN may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Design-Builder, Design-Builder shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Design-Builder is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.
- G. The making and acceptance of final payment will constitute a waiver of all claims by Design-Builder against OC SAN other than those previously made in accordance with the requirements herein and expressly acknowledged by OC SAN in writing as still unsettled. Design-Builder further agrees that the payment of the final amount due, under the Contract, and the adjustments and payments for any Work done in accordance with any alterations of the same, shall release OC SAN, the Board of Directors, and OC SAN's Representative, and each of their directors, officers, employees, and agents, from any and all claims or liability on account of Work performed under the Contract or any alteration thereof.

12.6 Audit Access to Records

- A. Design-Builder shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work under the Contract in accordance with generally accepted accounting principles and practices consistently applied, consistent with those principles set forth in Part 31 of Federal Acquisition Regulation, Contract Cost Principles and Procedures. Design-Builder shall also maintain all financial information and data used by Design-Builder in the preparation or support of any cost submissions required for the Contract, or any Change Order, claim, or other

request for equitable adjustment, and a copy of the cost summary or information submitted to OC SAN. OC SAN's authorized representatives shall have access, upon twenty four (24) hours advanced, written notice at all times during normal business hours, to all such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. Design-Builder shall, at no cost to OC SAN, provide proper facilities for such access, inspection, and copying purposes. In the event it is determined, by way of an audit or other means, that Design-Builder has been previously overpaid, OC SAN shall have the right to deduct any such overpayment from the Design-Builder's next progress payment or the final payment, or the Design-Builder shall within 10 Days after receiving notice from OC SAN of any such overpayment reimburse OC SAN in an amount equal to the overpayment, plus any applicable interest to which OC SAN is entitled.

- B. Design-Builder shall maintain cost accounting records, cost and pricing data, and any other accounting evidence sufficient to properly reflect all costs of whatever nature pertaining to what Design-Builder has incurred, claims to have incurred, or anticipates it will incur in connection with the Work and any and all GMP Amendments, Change Orders, Requests for Change, or Claims, including, but not limited to, costs of a GMP.
- C. Design-Builder agrees this Article is applicable to the Contract and all GMP Amendments, Change Orders, claims, or other requests for equitable adjustments affecting the period of performance or price. Design-Builder agrees to include this Article in all of the associated subcontracts and make these items applicable to all Subcontractors, at any Tier, in excess of \$10,000.
- D. Audits conducted under this Article shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- E. Design-Builder agrees to the disclosure of all information and reports resulting from access to records under this Article, to OC SAN and other affected agencies. Records under this Article shall be maintained and made available during the performance of the Work under the Contract until three (3) years past final payment, and until final settlement of all disputes, claims, or litigation, whichever occurs later.
- F. This right of access Article applies to all financial records pertaining to the Contract and all Change Orders and GMP Amendments. In addition, this right of access applies to all financial records pertaining to all contracts, Change Orders, and GMP Amendments consistent with those principles set forth in Part 31 of Federal Acquisition Regulation, Contract Cost Principles and Procedures:
 - 1. To the extent the records pertain directly to Contract performance;
 - 2. If there is any indication that fraud, gross abuse, or corrupt practices may be involved; or
 - 3. If Design-Builder's performance under the Contract is terminated for default or convenience.

- G. Access to records is not limited to the required retention periods. The authorized representatives of OC SAN shall have access to records at any reasonable time for as long as the records are maintained.

12.7 California False Claims Act

- A. Pursuant to the California False Claims Act (Government Code sections 12650-12655), if Design-Builder knowingly submits a false claim to OC SAN for compensation under the terms of the Contract, it may be held liable for treble damages and up to a ten thousand dollars (\$10,000) civil penalty for each false claim submitted. This Article shall also be binding on all Subcontractors.
- B. Design-Builder or Subcontractor shall be deemed to have submitted a false claim when Design-Builder or Subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of OC SAN a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by OC SAN; (3) conspires to defraud OC SAN by getting a false claim allowed or paid by OC SAN; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to OC SAN; or (e) is a beneficiary of an inadvertent submission of a false claim to OC SAN, and fails to disclose the false claim to OC SAN within a reasonable time after discovery of the false claim.

ARTICLE 13 -TERMINATION; SUSPENSION

13.1 Termination of Phase 1 Services

A. Termination Without Cause

1. OC SAN may, at any time, with or without reason, terminate the Contract during Phase 1 and compensate Design-Builder only for the Phase 1 Services satisfactorily rendered, even if not completed, to the date of termination. Written notice by OC SAN shall be sufficient to stop further performance of Phase 1 Services by Design-Builder. Notice shall be deemed given when received by Design-Builder or no later than ten (10) Days after the day the notice was mailed or provided by electronic telecommunication, whichever is sooner. Design-Builder cannot terminate the Contract without cause.
2. All deliverables, including, without limitation, Construction Documents, Early Purchase Items, Work Product, drawings, documents, engineering, budget costs, preliminary design, schedule, and data developed by Design-Builder or Subcontractors during the Phase 1 shall become the exclusive property of OC SAN and shall be provided to OC SAN within ten (10) Days of OC SAN's notice of termination to Design-Builder.

B. Termination for Cause by OC SAN

1. OC SAN may terminate the Contract during the Phase 1 upon giving of written notice of intention to terminate for cause. Cause shall include, without limitation, the following:
 - a. Material violation of the Contract by Design-Builder;
 - b. Any grossly negligent or intentional act by Design-Builder exposing OC SAN to liability to others for personal injury or property damage; or
 - c. Design-Builder is adjudged to be bankrupt, Design-Builder makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Design-Builder's insolvency.
2. Written notice by OC SAN shall contain the reasons for such intention to terminate and unless within ten (10) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, the Contract shall upon the expiration of the ten (10) Days cease and terminate. In the event of this termination, OC SAN may secure Phase 1 Services from another contractor. If the expense, fees, and/or costs to OC SAN exceeds the cost of providing Phase 1 Services pursuant to the Contract, Design-Builder shall immediately pay the excess expense, fees, and/or costs to OC SAN upon the receipt of OC SAN's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to OC SAN.

13.2 Suspension of Phase 1 Services by OC SAN

- A. OC SAN may, for any reason through a written notice to Design-Builder, order Design-Builder to suspend performance of Phase 1 Services. Prior to any resumption of Phase 1 Services, at OC SAN's direction, Design-Builder shall notify OC SAN of any additional costs Design-Builder believes it is entitled to within thirty (30) Days of its receipt of the request to resume suspended Phase 1 Services, or such claim shall conclusively be deemed to have been waived. OC SAN shall not be liable for any additional costs, damages, or anticipated profits incurred by Design-Builder or its Subcontractors and the Phase 1 Fee shall not be increased during the period of suspension, except the actual costs incurred by Design-Builder for reasonable and unavoidable costs of suspending Phase 1 Services. If Design-Builder establishes that the suspension of Phase 1 Services had a material and adverse effect on Design-Builder's costs for the performance of Phase 1 Services, Design-Builder shall be entitled to cost relief, as appropriate and determined by OC SAN acting reasonably and subject to Design-Builder's duty to mitigate damages.

13.3 Suspension of Phase 2 Work by OC SAN

- A. OC SAN, in its sole and absolute discretion, may, at any time, with or without cause, suspend performance of all or any part of the Work by giving not less than five (5) Days written notice to Design-Builder unless the circumstances dictate a shorter

timeframe such as in an emergency or unsuitable weather. Such notice of suspension of Work will designate the amount and type of labor, material, and equipment to be committed to the Project during the period of suspension. Design-Builder shall use its best efforts to utilize its labor, material, and equipment in such a manner as to minimize costs and/or Project schedule impacts associated with suspension.

- B. Upon receipt of any such notice, Design-Builder shall, unless the notice requires otherwise: (1) immediately discontinue Work on the date and to the extent specified in the notice; (2) place no further orders or subcontracts for material, services, equipment, or facilities with respect to suspended Work other than to the extent required in the notice; (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to OC SAN of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and (4) continue to protect and maintain the Project including those portions on which Work has been suspended.
- C. OC SAN shall not be liable for any additional costs, damages, or anticipated profits incurred by Design-Builder or its Subcontractors and the GMP shall not be increased during the period of suspension, except the actual costs incurred by Design-Builder, for (1) the purpose of safeguarding the Project and material and equipment in transit or at the Site during the period of suspension, (2) Design-Builder's or its Subcontractor's rented equipment which must be maintained at the Site and to the extent costs cannot be mitigated by Design-Builder, or (3) other reasonable and unavoidable costs of shutting down the Project, or restarting the suspended Work. Design-Builder shall be granted an extension of the Contract Time equal to the number of days performance of Work are suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from Design-Builder's non-compliance with the requirements of the Contract.
- D. The suspended Work shall be resumed when ordered in writing by OC SAN.

13.4 Termination of Phase 2 Work for Cause by OC SAN

- A. If Design-Builder refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the time specified herein, or any authorized extension thereof, or fails to perform the Work in a manner required by the Contract Documents and/or industry standards, or fails to complete such Work within such time as required under the Contract Documents or, if Design-Builder should be adjudged as bankrupt, or is otherwise deemed insolvent by OC SAN based on good cause and is unable to proceed with the Work, or if Design-Builder should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Design-Builder files a petition to take advantage of any debtor's act, or should any Subcontractor violate any of the provisions of the Contract, or if Design-Builder should persistently or repeatedly refuse or fail, except in cases for which an authorized extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if Design-Builder should fail to make prompt payment to Subcontractors for material or labor, or if Design-Builder should persistently disregard laws, or instructions given by OC SAN, or if Design-Builder otherwise substantially fails to fulfill its obligations under the Contract Documents, OC SAN may, without prejudice to any

other right or remedy, serve written notice upon Design-Builder and Sureties of OC SAN's intention to terminate Design-Builder's performance under the Contract. Said notice shall contain the reasons for such intention to terminate Design-Builder's performance under the Contract, and, unless, within ten (10) Days after the service of such notice, such violations cease and/or satisfactory arrangements for the corrections thereof have been made, OC SAN may terminate Design-Builder's performance under the Contract and Design-Builder shall not be entitled to receive any further payment until the Work is finished.

- B. In the event of any such termination, OC SAN shall serve written notice thereof upon the Surety and Design-Builder, and the Surety shall have the right to take over and perform the Contract. However, if the Surety, within five (5) Days after the service of a notice of termination, does not give OC SAN written notice of its intention to take over and perform the Contract, and if it serves such notice of its intent to take over and perform the Contract and does not begin performance thereof within fifteen (15) Days from the date of serving said notice, OC SAN may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of Design-Builder, and the Sureties and/or Design-Builder shall be liable to OC SAN for any excess cost or other damage incurred by OC SAN thereby. In such an event, OC SAN may, without liability for so doing, take possession of and utilize such materials, tools, equipment, supplies, and other property at the Site which are intended to be incorporated into the permanent Work, belonging to Design-Builder and/or assume assignment of any and all subcontracts for Subcontractors and/or Suppliers that may be on the Site and be necessary to complete the Work. For any portion of such Work that OC SAN elects to complete by furnishing its own employees, materials, tools, and equipment, OC SAN shall be compensated in accordance with the schedule of compensation for force account work as stated in the General Conditions.
- C. If the Surety assumes Design-Builder's terminated Work, it shall take Design-Builder's place in all respects for that part and shall be paid by OC SAN for all Work performed by it in accordance with the terms of the Contract Documents. If the Surety assumes the entire Contract, all money due Design-Builder at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.
- D. Design-Builder hereby consents to assigning to OC SAN and/or OC SAN's replacement contractor all subcontracts and other agreements of any and all Subcontractors and/or Suppliers that may be on the worksite and/or may be necessary to complete the Work in the event of Termination for Default or Termination for Convenience, as set forth below. Design-Builder agrees to obtain, by way of a subcontract provision, the consent of each and every Subcontractor and/or Supplier for such assignment prior to the commencement of each such Subcontractor's and/or Supplier's Work on the Project.
- E. In the event of such termination, Design-Builder will be paid the actual amount due based on the quantity of Work completed at the time of termination, less damages caused to OC SAN by acts of Design-Builder causing the termination, including, but not limited to, cost to complete the Work, all costs to OC SAN arising from professional services and attorneys' fees, reasonable overhead, profit, and all costs generated to

insure or bond the Work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to the Design-Builder. If such costs exceed the unpaid balance, Design-Builder shall pay the difference to OC SAN promptly upon demand. On failure of Design-Builder to pay, the Surety shall pay on demand by OC SAN. Any portion of such difference not paid by Design-Builder or Surety within thirty (30) Days following the mailing of a demand for such costs shall earn interest at the maximum rate authorized by California law. This payment obligation shall survive completion of the Project and termination or expiration of the Contract.

- F. Design-Builder and OC SAN agree that nothing in this Article is intended to be or is a prevailing party clause as it pertains to attorney's fees.
- G. The foregoing provisions are in addition to and not in limitation of any other rights or remedies under law or in equity available to OC SAN.
- H. If it is later determined by OC SAN that Design-Builder had an excusable reason for not performing, such as a fire, flood, or other event which was not the fault of or was beyond the control of Design-Builder, OC SAN, after setting up a new performance schedule, may allow Design-Builder to continue Work, or treat the termination as a termination for convenience, and the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of OC SAN.

13.5 Termination of Phase 2 Work for Convenience by OC SAN

- A. OC SAN may terminate Design-Builder's performance of Work under the Contract, either in whole or in part, at its own discretion, or when conditions encountered during the Work make it impossible or impracticable to proceed, or when OC SAN is prevented from proceeding with the Contract by Act of God, by law, or by official action of a public authority, or upon a determination that such termination is in the best interest and convenience of OC SAN, or whenever OC SAN is prohibited from completing the Work for any reason. OC SAN shall provide no less than ten (10) Days written notice of its intent to terminate the Contract for convenience, and shall provide Design-Builder with consultation with OC SAN prior to termination.
- B. Upon receipt of such written notice of termination, Design-Builder shall:
 - 1. Stop Work as specified in the written notice;
 - 2. Terminate all orders and Subcontractors, except as necessary to complete Work which is not terminated;
 - 3. If directed in writing by OC SAN to do so, assign all right, title, and interest in subcontracts and materials in progress, in which case OC SAN will have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such Subcontractors, but in no event shall recovery by any Subcontractor or Design-Builder include lost profits for uncompleted portions of Work;

4. Deliver or otherwise make available to OC SAN all Construction Documents, Plans, Specifications, Work Product, and such other information and material as may have been accumulated by Design-Builder in performing the Contract whether completed or in process;
 5. Settle outstanding liabilities and claims with the approval of OC SAN;
 6. Complete performance of such part of the Work as has not been terminated; and
 7. Take such other actions as may be necessary, or as may be directed by OC SAN, for the protection and preservation of the Project and/or property related to the Contract.
- C. Upon receipt of OC SAN's written notice of termination for convenience, and within a period of thirty (30) to sixty (60) Days, as determined by OC SAN's Representative at the time of termination, Design-Builder shall submit to OC SAN's Representative a Termination Proposal which shall include, but is not limited to, Design-Builder's estimated costs to be incurred by Design-Builder as a result of the termination for convenience, and as allowed by the Contract Documents, including all documentation to support such costs; the status of the Work at time of termination; the status of termination of Design-Builder's Subcontractor(s) and Supplier(s) agreement(s), including the amount of each said agreement, amount paid under each agreement up to the date of termination, and the amount that currently remains due and owing under each agreement for Work completed as of the date of termination, if any; a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by OC SAN's Representative; and any other information and/or documentation as required by OC SAN.
- D. Upon receipt of OC SAN's written notice of termination for convenience, Design-Builder shall submit to OC SAN's Representative a request for final payment, pursuant to the requirements set forth in the Contract Documents. Such request shall be submitted promptly, but no later than sixty (60) Days from the effective date of termination.
- E. The final payment to Design-Builder after termination for convenience shall be limited to amounts due and owing under the Contract at time of termination, including the following:
1. Any actual costs incurred by the Design-Builder for restocking charges;
 2. The agreed upon price of protecting the Work in any manner, if any, as directed by OC SAN;
 3. The cost of settling and paying claims arising out of the termination of the Work under subcontract agreements or orders with OC SAN's approval, as specified above, exclusive of the amounts paid or payable on account of goods delivered or Work furnished by Subcontractor prior to the effective date of the termination; and

4. The Phase 2 Price allocable to the portion of the Work properly performed, even if not completed, or goods supplied by Design-Builder as of the date of termination, as determined in accordance with the Contract Documents, reduced by any sums previously paid to Design-Builder.
- F. OC SAN shall have the right to withhold, among other things, any portion or the whole of the final payment under this provision in the event there are any outstanding claims for compensation asserted by OC SAN against Design-Builder, or by any third party against OC SAN which arises out of Design-Builder's Work.
- G. Design-Builder shall be entitled to receive only the amounts payable under this Article, and Design-Builder specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to OC SAN.
- H. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
- I. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, OC SAN may immediately order Design-Builder to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of OC SAN or the Contract is terminated.
- J. If OC SAN terminates Design-Builder for cause, and it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Builder shall be entitled to receive only the amounts payable under this Article, and Design-Builder specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 14 -MISCELLANEOUS CONTRACT PROVISIONS

14.1 Governing Law

- A. The Contract Documents have been negotiated between OC SAN and Design-Builder and shall be subject to and interpreted under the laws of the State of California.
- B. By entering into the Contract, the Design-Builder consents and submits to the jurisdiction of the Courts of the State of California, County of Orange, over any action at law, suit in equity, and/or other proceeding that may arise out of the Contract Documents.

14.2 Notice

- A. Any notice required or given under the Contract shall be in writing, be dated and signed by the party giving such notice or its duly authorized representative, and be served as follows:

1. If to OC SAN, by personal delivery or by deposit in the United States mail, or by electronic telecommunication.
 2. If to Design-Builder, by personal delivery to Design-Builder or to its authorized representative at the worksite or by deposit in the United States mail, or by electronic telecommunication.
 3. If to the Surety or any other person, by personal delivery to the Surety or other person or by deposit in the United States mail or by electronic telecommunication.
- B. All mailed notices shall be in sealed envelopes; shall be sent by certified mail with postage prepaid, return receipt requested; shall be addressed to the addresses and addressees contained in the Contract Documents, or such substitute addresses which a party designates in writing; and shall be served as set forth herein.
- C. All electronic telecommunication, to be effective, shall have a date and time receipt acknowledgment, and shall be clearly identified as a contractual notice under this, and any other applicable, provision of the Contract.

14.3 Partial Invalidity

- A. In the event any article, section, paragraph, sentence, clause, or phrase (collectively referred to hereinafter as "Contract Elements" or singularly as "Contract Element") contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other Contract Elements, which shall remain in full force and effect as if the Contract Element declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract Documents.

14.4 Waiver of Rights

- A. Except as otherwise specifically provided in the Contract Documents, no action or failure to act by OC SAN, OC SAN's Representative, or Design-Builder shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such actions or failure to act constitute an approval of or acquiescence in any breach thereunder.

14.5 Separate Contracts

- A. Design-Builder understands that this is not an exclusive contract and that OC SAN shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Design-Builder as OC SAN desires.

14.6 Notice of Third Party Claims

- A. Pursuant to Public Contract Code section 9201, OC SAN shall provide Design-Builder with timely notification of the receipt of any third-party claims relating to the Contract. OC SAN is entitled to recover reasonable costs incurred in providing such notification.

14.7 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the Parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

14.8 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of Design-Builder.

14.9 Prohibited Interests

- A. No OC SAN official or representative who is authorized in such capacity and on behalf of OC SAN to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting, or approving any engineering, inspection, construction, or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Contract. Design-Builder warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining the Contract.

14.10 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

14.11 State License Board Notice

- A. Contractors are required by law to be licensed and regulated by Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation.

Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

14.12 Change In Name Or Nature of Design-Builder's Legal Entity

- A. Should a change be contemplated in the name or nature of Design-Builder's legal entity, Design-Builder shall first notify OC SAN in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of Design-Builder's name or nature will affect OC SAN's rights under the Contract Documents, including but not limited to the bonds and insurance.

14.13 Other Legal Provisions

- A. Notices. Design-Builder shall give all notices and comply with Applicable Laws bearing on conduct of Work as indicated and specified by their terms. References to specific laws, rules, or regulations in the Contract or these General Conditions are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Builder observes that Design Documents are at variance therewith, Design-Builder shall promptly notify OC SAN, in writing, and any necessary changes shall be made as provided for in the Contract or these General Conditions for changes in Work. If Design-Builder performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to OC SAN, Design-Builder shall bear all costs arising therefrom.
- B. ADA. Design-Builder shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. section 12101 *et seq.*). The Work shall be performed in compliance with ADA laws, rules, and regulations. Design-Builder shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. Mined Material. Design-Builder acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for the Contract.
- D. Other Laws. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either Party, the Contract or Contract Documents shall be changed by OC SAN, at no increase in the GMP or extension of Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either Party hereunder.

END OF GENERAL CONDITIONS