

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, the County of San Mateo ("Owner") has entered into a Trade Contract with _____, ("Trade Contractor") for demolition and remediation ("Work") in connection with construction of the San Mateo County Replacement Jail.

WHEREAS, the Work to be performed by the Trade Contractor is more particularly set forth in the Contract Documents for the Project as defined in the Trade Contract, the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Trade Contractor is required under the terms of the Trade Contract to furnish a bond for the faithful performance of the Work in accordance with the Contract Documents as defined in the Trade Contract; and

WHEREAS, under the terms of the Trade Contract, the Owner has the right at its sole discretion to assign the Trade Contract to its Construction Manager.

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

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Trade Contractor, or its heirs, executors, administrators, successors, or assigns approved by the Owner, will promptly and faithfully perform the covenants, conditions and agreements set forth in the Trade Contract Document and any alteration made in the Work as provided by the Trade Contract Documents, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and will faithfully fulfill all obligations including the express warranty of all materials, equipment, and workmanship; and will indemnify and save harmless the Owner, County of San Mateo, its board of directors, officers and agents, partners, members, and affiliates as stipulated in the Contract Documents, then this obligation will become null and void; otherwise it will be and remain in full force and effect.

No extension of time, change, alteration, modification or addition to the Contract Documents or of the Work will release or exonerate the Surety on this bond or in any way affect the obligation of this bond; and surety waives notice of any extension of time, change, alteration, modification, or addition.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation will hold good for a period of 2 years after the acceptance of the Work by the Owner, during which time if Trade Contractor fails to make full, complete, and satisfactory repair and replacements and totally protect the Owner from loss or damage resulting from or caused by defective materials, equipment, or faulty workmanship. The obligations of Surety hereunder will continue so long as any obligation of Trade Contractor remains. Nothing herein will limit the Owner's rights or the Trade Contractor's or Surety's

obligations under the Contract Documents, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Trade Contractor will be, and is declared by the Owner to be, in default under the Contract Documents, the Surety will remedy the default pursuant to the Contract Documents, or will promptly do one of the following, at the Owner's option:

- (1) Undertake through its agents or independent contractors, reasonably acceptable to the Owner, to complete the Project in accordance with all terms and conditions in the Contract Documents, including without limitation, all obligations with respect to payments, warranties, guarantees, and liquidated damages; or
- (2) Permit the Owner to complete the Project in any manner consistent with California law and reimburse the Owner for all costs it incurs in completing the Project, and in correcting, repairing or replacing any defects in materials, equipment or workmanship, which do not conform to the Contract Documents.

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

Surety will not utilize Trade Contractor in completing the Project or accept a bid from Trade Contractor for completion of the Work if the Owner, when declaring the Trade Contractor in default, notifies Surety of the Owner's objection to Trade Contractor's further participation in the completion of the Project.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the construction work on this Project, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action will accrue on this bond to or for the use of any person or corporation other than the Owner's or its successors or assigns.

If a suit is brought upon this bond by the Owner, Surety will pay reasonable attorney's fees and costs incurred by the Owner in such suit.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 201____, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

Trade Contractor

By: _____
[name]

By: _____
[name]

SURETY:

By: _____

Attorney-In-Fact

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

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

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

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

State of California)
) ss.
County of)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

PAYMENT BOND

BOND NO. _____
AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____ hereinafter called the PRINCIPAL, and _____, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____ in the State of _____, and authorized to do business in the State of California, hereinafter called the SURETY, are held and firmly bound unto the County of San Mateo, Owner, hereinafter called the OBLIGEE, in the sum of _____ Dollars (\$ _____) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has entered into a Trade Contract with the OBLIGEE for the Work as defined in the Agreement between [trade contractor name] and the County of San Mateo dated May __, 2012 ("Work") in connection with the construction of the San Mateo County Replacement Correctional Facility ("Project") and said PRINCIPAL is required under the terms of the Trade Contract to furnish a bond securing payment of claims to which reference is made in Section 3248 of the Civil Code.

NOW, THEREFORE, if said PRINCIPAL or any of its subcontractors fails to pay any of the persons named in Section 3181 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Trade Contract, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Trade Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to Work and labor, the SURETY will pay for the same, in an amount not exceeding the sum specified in this bond, and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond will inure to the benefit of any of the persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

This bond is given to comply with Sections 3247 and 3248 of the Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein, including Section 3225 of the Civil Code.

The SURETY, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents, as defined in the Trade Contract, which is incorporated herein, or to the Work to be performed, or to the Construction Documents incorporated therein will impair or affect its obligations and its bond. The SURETY waives notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF the above-bound parties have executed this instrument this _____ day of _____, 201__ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

PRINCIPAL

BY: _____

SURETY

BY: _____

Note: Signature of person executing for SURETY must be notarized and evidence of corporate authority attached.

State of California)
) ss.
County of)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Trade Contract Agreement

Between Owner and Trade Contractor

This Trade Contract (“Trade Contract”) is entered into as of **[insert date]**, 2012 (“**Effective Date**”) by and between:

The Owner (“**Owner**”):
County of San Mateo
San Mateo County Sheriff’s Office
Jail Planning Unit
400 County Center, 3rd floor
Redwood City, CA94063

AND

Trade Contractor (“**Trade Contractor**”):
[Enter Legal Name of Trade Contractor]
[Enter Address]
[Enter City/State/Zip]
Lic. No. [EnterLicense No.]

The Project is the San Mateo County Replacement Correctional Facility (“**Project**”).

The Construction Manager (“**Construction Manager**”) is:
Sundt/Layton
2860 Gateway Oaks Drive, Suite 300
Sacramento, CA 95833

The Engineer (“**Engineer**”) is:
West Environmental Services & Technology
711 Grand Ave. Suite 220 San Rafael, CA 94901

The Owner and Trade Contractor agree as set forth below.

1. PROJECT DESCRIPTION

1.1 Project. The Project consists of the demolition of existing structures, removal of subsurface structures, removal of contaminated soil, and import and compaction of clean fill.

1.2 Project Delivery Method. The Owner contract will directly with multiple trade contractors performing construction work on the Project and upon entering into each Trade Contract, will assign each Trade Contract to the Construction Manager. The Project is being managed by the Construction Manager, who is in direct contract with the Owner.

1.3 Definitions. All defined terms will be capitalized throughout the Trade Contract. The definitions for this Trade Contract appear in alphabetical order in Exhibit 2 to this Agreement and may also be set forth in quotations the first time the term is used for convenience.

2. THE WORK

2.1 Work. The work to be done consists, in general, of providing all labor, materials, tools, appurtenances, and equipment required to The Project will be to provide all labor, materials, equipment, tools, transportation, insurance and services to excavate and dispose offsite of approximately 4,600 cubic yards of contaminated soil and replace with clean imported backfill, demolish aboveground structures, recycle salvageable materials, and the cutting, capping and removal of all above grade and below grade utilities. The work is to be conducted in two phases, with Phase 1 is limited to contaminated soil excavation and backfill with clean imported fill and aboveground structure demolition at 70 Chemical Way. Phase 2 includes removal of all remaining aboveground structures and the removal of all below ground utilities as well as any other items and details not mentioned above but required by the Contract Documents and as directed by the Owner as more fully described in Sections 2.1.1 through 2.1.3 (“Work”) in strict accordance with the “Contract Documents” as defined in Article 3 including exhibits A, B, C and D.

- 2.1.1 Contract Specifications – See Exhibit A.
- 2.1.2 Drawings – See Exhibit B.
- 2.1.3 Contract Information Package – See Exhibit C.
- 2.1.4 San Mateo County Documents – See Exhibit D, including:
 - 2.1.4.1 Project Directory
 - 2.1.4.2 Notice to Contractors
 - 2.1.4.3 Instructions to Bidders
 - 2.1.4.4 Ordinances
 - 2.1.4.5 Bid Documents
 - 2.1.4.6 Form of Performance Bond
 - 2.1.4.7 Form of Payment Bond

2.2 Performance of the Work. Trade Contractor shall furnish and pay for all: (1) labor; (2) materials; (3) equipment; (4) supplies; (5) tools; (6) taxes; (7) machinery; (8) utilities; (9) temporary facilities; (10) transportation; (11) dust suppression and abatement; (12) applicable permits, if any; any and all other services and items reasonably inferable from the Contract Documents that are required for the proper execution and completion of the Work. Trade Contractor shall perform the Work in accordance with the drawings, the specifications, and the approved Project Master Schedule as further addressed herein.

2.2.1 Trade Contractor will use commercially reasonable efforts to incorporate products and materials made in America into the Work.

2.3 Standard of Care. The Trade Contractor will supervise and direct the Work using the Trade Contractor's best skill and attention and all Work will be performed in a timely workman-like manner consistent with the degree of care and skill customarily exercised by California State licensed contractors experienced in hospital construction.

2.4 Means and Methods. The Trade Contractor is solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Work. The Trade Contractor expressly acknowledges that the Construction Manager is not responsible for the Trade Contractor's Work and does not have any control over or charge of the performance of the Work. The Trade Contractor is entirely responsible for the acts and omissions of its agents or employees, "**Subcontractors,**" suppliers, any of their agents or employees, or any other persons performing any of the Work on behalf of the Trade Contractor and agrees that the Owner, Construction Manager and Engineer are not responsible for its acts or omissions or the acts or omissions of those for whom it is responsible. The Trade Contractor acknowledges and agrees that neither Construction Manager nor the Engineer is responsible for any failure of Trade Contractor to carry out the Work in strict accordance with the Contract Documents.

2.5 Subcontracts and Purchase Orders. Those portions of the Work that Trade Contractor does not customarily perform with its own personnel will be performed by a Subcontractor under written Subcontract. The term Subcontractor includes subcontractors of any tier. All Subcontracts must include the Contract Documents and bind the Subcontractor to the Trade Contractor to the same extent as the Trade Contractor is bound to the Owner under this Trade Contract. Any Subcontractors used or employed by the Trade Contractor must possess the appropriate California state licenses and certifications required for performance of the Work and carry out their Work using the same degree of skill and care established in Section 2.2. The Subcontractor and its employees are obligated to carry out their Work in strict accordance with the Contract Documents. All purchase orders must be in writing.

2.5.1 Trade Contractor is responsible for the acts and omissions of its Subcontractors and of persons or entities either directly or indirectly employed by its Subcontractors. Nothing contained in this Trade Contract creates a contractual relationship between the Owner and Subcontractor.

2.5.2 **Subletting and Subcontracting Fair Practices Act.** Trade Contractor must comply with all requirements of the Subletting and Subcontracting Fair Practices Act commencing with Public Contract Code section 4100, et seq.

2.5.2.1 The Trade Contractor must include the name and location of business for each Subcontractor who will perform a portion of the Work, if the Subcontractor's portion of the Work is in excess of 1/2 of 1% of the Trade Contractor's bid or \$10,000, whichever is greater, at the time of bid or within 24 hours after the deadline for the bid in accordance with Public Contract Code section 4104.

2.5.2.2 The Trade Contractor will list only 1 Subcontractor for each portion of the Work.

2.5.2.3 If the Trade Contractor fails to specify a Subcontractor as required under Section 4100, et seq., the Trade Contractor agrees that it is fully qualified and capable of performing that portion of the Work itself and that Trade Contractor will perform that portion of the Work itself on this Project.

2.5.2.4 Trade Contractor may not substitute a Subcontractor in place of its listed Subcontractor unless it can demonstrate one of the conditions or situations set forth in Public Contract Code section 4107.

2.5.2.5 Violation of the Subletting and Subcontracting Fair Practice Act are grounds for cancellation of the Trade Contract or penalty under Public Contract Code section 4110 and disciplinary actions under Section 4111.

2.5.3 **Preliminary 20 Day Notice.** Trade Contractor will, within 5 business days of receipt, forward to Construction Manager and Owner, all 20 Day Preliminary Notices (Civil Code sections 3098, 3183 and 3252) served on it by any person or entity entitled to assert a payment bond or stop notice claim. Trade Contractor will maintain a written record of all 20 Day Preliminary Notices received by it including the manner of receipt, date of receipt, and name and address of person or entity serving the 20 Day Preliminary Notice.

3. CONTRACT DOCUMENTS

3.1 **Contract Documents.** The Trade Contractor's Contract Documents ("**Contract Documents**") include this Trade Contract, and all Exhibits, the "**Construction Documents**," and all subsequent contract modifications issued after execution of this Trade Contract such as amendments and "**Change Orders**." The Contract Documents referred to in this Trade Contract are incorporated by reference as though set forth in full.

3.2 **Precedence.** The Contract Documents are intended to be fully cooperative and complementary. Trade Contractor will promptly notify Construction Manager in writing through a request for clarification or information if it notices any conflict between or among Contract Documents. If there is a conflict between or among the various Contract Documents, the most stringent requirement or highest standard will govern unless the Engineer's and/or Construction Manager's response to the request for clarification or information dictates otherwise.

3.3 **Acknowledgement.** The Trade Contractor acknowledges it has carefully examined and understands this Trade Contract and the other Contract Documents; has investigated the nature, locality and site of the Project and the conditions and difficulties under which the Work is to be performed, and enters into this Trade Contract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, Construction Manager, Engineer, or any of their respective officers, agents, servants, or employees.

4. RELATIONSHIPS OF THE PARTIES

4.1 **Trade Contractor and Owner.** The Trade Contractor's relationship with the Owner is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with the Owner. The Trade Contractor agrees to cooperate and collaborate with the Owner, the Construction Manager and the Engineer, and to exercise the Trade Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in the most expeditious and economical manner consistent with the Owner's best interests. The Owner agrees to timely furnish and approve all information required by the Contract Documents and to make timely payments to the Trade Contractor in accordance with the requirements of the Contract Documents.

4.2 Assignment of Trade Contract to Construction Manager. Trade Contractor expressly acknowledges that Owner has the right in its sole discretion to assign this Trade Contract to Construction Manager, or any entity that might succeed or replace Construction Manager. Trade Contractor hereby consents to any such assignment of this Trade Contract.

4.2.1 In the event of such an assignment, all references in this Trade Contract to Owner shall be read to be references to the Construction Manager, References to Construction Manager shall continue to be read as references to Construction Manager even after assignment. Further, in the event of an assignment, Construction Manager will assume all of the powers, obligations, rights and privileges granted to Owner in this Trade Contract and will retain all of the powers, rights, obligations, and privileges granted to Construction Manager.

5. APPLICABLE LAWS.

5.1 The Trade Contractor agrees to comply with all federal, state, municipal and local laws, ordinances, rules, regulations, building codes and standards, orders, notices and requirements applicable to its Work on the Project.

6. TRADE CONTRACTOR QUALIFICATIONS.

6.1 Licensing. The Trade Contractor warrants that it is authorized to do business in the State of California and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Project for performance of the Work. Contractors are required by law to be licensed and regulated by the 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 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects shall be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

6.2 Site Investigation. The Trade Contractor represents that it has visited the Project site, has reviewed and analyzed the criteria design package, as well as any other documentation provided by the Owner such as geotechnical data, hazardous material surveys, and the Owner's existing drawings, and is familiar with the local conditions under which the Work is to be performed. The Trade Contractor will cooperate with the Construction Manager in conducting further investigation of the existing conditions, if required, with respect to all accessible space.

7. CONSTRUCTION WORK

7.1 Notice to Proceed. The Construction Manager will issue a Notice to Proceed stating the date of commencement of the construction. Upon receipt of the Notice to Proceed, the Trade Contractor will procure all required payment and performance bonds pursuant to Section 14.4.

7.2 Permits and Fees. Trade Contractor will secure and pay for all CalOSHA permits and fees necessary for execution of the Work.

7.3 Representative. If required by the Construction Manager, the Trade Contractor will provide a qualified, on-site, Project representative who is authorized to receive orders, and make decisions regarding the Work. The Project representative may not be changed without Owner and Construction Manager's written consent, which will not be unreasonably withheld.

7.3.1 The Trade Contractor's authorized representative is: **[name]**.

7.4 Field Supervision. If required by the Construction Manager, the Trade Contractor will provide a qualified superintendent or foreman at the site to receive orders and make day to day decisions regarding the Work and to properly supervise all employees, subcontractors and their agents and employees, and other persons performing any Work under the Trade Contract to ensure that the Work is carried out in accordance with the Contract Documents. Trade Contractor's superintendent may not be changed without Owner's and Construction Manager's written consent, which will not be unreasonably withheld.

7.4.1 The Trade Contractor's Field Supervisor is: **[name]**

7.5 Communications. The Construction Manager and Trade Contractor will communicate directly. All Trade Contractor communications to or from the Owner or Engineer will go through the Construction Manager. The Construction Manager will not communicate directly with Trade Contractor's subcontractors.

7.6 Collaboration. The Trade Contractor will work collaboratively with the Owner, Construction Manager, the Engineer and its consultants, and all permitting and regulatory agencies, and other trade contractors in an effort to inform the design process and deliver best value to the Owner.

7.7 Coordination of the Work. All Work must be coordinated through the Construction Manager. Before starting each portion of the Work, the Trade Contractor will: (i) review and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Construction Manager and other trade contractors' Submittals that may affect proper installation of the Trade Contractor's Work; (ii) field measure existing conditions related to that portion of the Work; and (iii) observe any conditions at the site directly affecting that portion of the Work, reporting any improper conditions and defects to the Construction Manager. Errors, inconsistencies or omissions in the Construction Documents discovered by the Trade Contractor will be promptly reported to the Construction Manager as a request for information or clarification. The Construction Manager will have a reasonable amount of time to review any errors, inconsistencies, omissions or improper conditions and defects and have any improperly installed work remedied by the appropriate trade contractor.

7.8 Field Measurements. Notwithstanding the dimensions on the Construction Documents, it is the responsibility of the Trade Contractor to take field measurements to ensure the proper matching and fitting of its Work with existing conditions and the work of other trade contractors.

7.9 Layout and Protection. Trade Contractor is responsible for its own layout. Trade Contractor will preserve and protect all line and grade benchmarks and will not cause damage to other trade contractors' benchmarks or lay-out points. Any additional surveying or layout caused as a result of Trade Contractor's failure to take the necessary precautions to protect the data will be performed at Trade Contractor's own cost and expense.

7.10 Project Meetings. The Trade Contractor will attend all Project meetings as more particularly described in the Contract Specifications to discuss preconstruction, jobsite procedures, progress and scheduling, and to resolve any pending design or construction issues.

7.11 Materials and Equipment. All materials and equipment required under the Contract Documents will be new and of good quality. No substitutions will be accepted on this

Project unless the specified materials or equipment have been discontinued or unless the Owner, after evaluation by the Construction Manager and Engineer, has approved the substitution through written Change Order. Materials will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Work. All materials will be properly stored and protected as required by the Contract Documents and any loss or damage due to improper storage or protection will be borne by the Trade Contractor.

7.12 Site Logistics. The Trade Contractor will schedule and coordinate delivery and storage of equipment and materials and the sequencing of its Work with the Construction Manager's site logistics plan set forth in the Contract Specifications.

7.13 Storage of Materials and Equipment. Storage of equipment and materials will be coordinated through the Construction Manager and in accordance with the Contract Specifications. Trade Contractor will maintain its storage area and will keep its storage areas clean, safe and secure. Any materials or equipment stored offsite will be insured or stored in a bonded warehouse. The risk of loss will remain on the Trade Contractor for all materials and equipment stored off-site per Section 7.14.

7.14 Risk of Loss. All Work at the Project site, or in preparing or delivering materials or equipment to the Project site, is performed exclusively at the risk of the Trade Contractor until the completed Work is accepted by the Construction Manager and the Owner. Trade Contractor will be named as an additional insured on the Builder's Risk policy and, subject to the terms and conditions of that policy, may be insured for some or all of the risk of loss under this provision. Owner and Construction Manager make no representations or warranties regarding the scope or adequacy of the Builder's Risk coverage.

7.15 Submittals. The Trade Contractor will submit to the Engineer through Construction Manager all "**Shop Drawings**," "**Product Data**," "**Samples**" and similar submittals (collectively referred to as "**Submittals**") required by the Contract Documents Division 01330 with reasonable promptness and in such sequence to avoid delays in the Work or in the activities of the Owner, Construction Manager, or other trade contractors. The Trade Contractor will not submit any Submittal that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the Trade Contractor, a Subcontractor, or supplier of the Trade Contractor and will be submitted according to the Project specifications. Any Submittals that are not required by the Construction Documents may be returned by the Engineer or Construction Manager without action.

7.15.1 The Trade Contractor's submission of a Shop Drawing to the Engineer through Construction Manager constitutes the Trade Contractor's representation, upon which the Owner, Engineer, and Construction Manager may rely, that the Trade Contractor has reviewed the submission for accuracy and compliance with all Contract Documents, and that all original engineering, if required, has been performed by a qualified California State licensed professional engineer. Review of Shop Drawings by the Engineer will not constitute an undertaking by the Engineer to identify deficiencies in the Submittal.

7.16 Lean Requirements. The Construction Manager will develop, oversee and facilitate a lean construction management and communications plan in accordance with the techniques developed by the Lean Construction Institute. The principles and techniques will be referred to as "**Lean Construction**," "**Lean Design**" or "**Lean**." The Trade Contractor represents that it will cooperate with the Owner, Construction Manager, Engineer and other trade contractors in applying Lean Construction principles to its Work and the Project.

7.17 Safety. The Trade Contractor will comply with ~~Construction Manager's Safety Manual / Injury and Illness Prevention Program, Code of Safe Practices, Floor Hole Cover Procedures, Mold Prevention Handbook, Quality Management Program, and Drug and Alcohol Prevention Program. Copies of these documents are available from Contractor.~~ all provisions of Contract Documents regarding safety. Trade Contractor's failure to familiarize itself with the applicable requirements of law, regulations, and the documents cited in this Section will not relieve Trade Contractor from fully complying with their contents. The Trade Contractor is required to attend all weekly safety meetings conducted by the Construction Manager. The Trade Contractor is solely responsible for safety at the Project site. The Construction Manager's management and coordination of the safety requirements does not extend to direct control over or charge of the acts or omissions of the Trade Contractor, its Subcontractors, agents or employees or any other person performing portions of the Work.

7.17.1 Removal of Unit Workers. Owner has the right, which right will not be unreasonably exercised, to require Trade Contractor to remove from the Work any person employed by Trade Contractor, including persons employed by its Subcontractors, who by misconduct, by failure to properly perform their duties, by failure to comply with site safety procedures, by failure to operate construction equipment in a safe manner or by failing to comply with Construction Manager's Drug and Alcohol Prevention Program are considered by Construction Manager or Owner to be unfit for further service on the Work.

7.17.2 Unsafe or Hazardous Conditions. The Trade Contractor will stop any part of the Work that the Construction Manager deems unsafe until corrective measures satisfactory to the Construction Manager as required in the Contract Specifications, and the Trade Contractor agrees that it will not have or make any claim for damages growing out of Work stoppages arising from unsafe conditions. If the Trade Contractor fails to take corrective measures, the Construction Manager may do so at Trade Contractor's cost and expense, and the Owner may deduct the cost of the corrective measures from any payments due or to become due to the Trade Contractor. Failure on the part of the Construction Manager to stop unsafe practices does not relieve or diminish the Trade Contractor's safety responsibilities.

7.17.3 Safety Laws. The Trade Contractor will give notice and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

7.17.4 Signs. The Trade Contractor will erect and maintain, as required by existing conditions and performance of the Trade Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

7.17.5 Emergency Action Plan. Prior to mobilization, Trade Contractor shall provide Construction Manager with a site-specific Emergency Action Plan ("EAP")/Health and Safety Plan. The EAP shall include a list of Trade Contractor's key personnel. This list must provide after hours telephone numbers for all key personnel who may be contacted in an emergency. Trade Contractor shall keep its EAP current during performance of the Work.

7.18 Quality Control. Throughout the construction process, the Trade Contractor will comply with the Quality Assurance and Quality Control the requirements of the Contract Documents.

7.19 Cutting and Patching. Trade Contractor will be responsible for all cutting and patching required in the prosecution of the Work as further specified in the Contract

Specifications. Trade Contractor will not damage or endanger a portion of the Work or partially or completed construction of other trade contractors' work by excavating, cutting, patching or otherwise altering the construction. The Trade Contractor will promptly notify the Construction Manager before cutting, patching or modifying any construction work.

7.20 Cleaning Up. Trade Contractor will perform its Work so as to maintain the site in a clean, safe and orderly condition. Trade Contractor will protect material, equipment, filters, ducts, plenums or other systems to avoid contamination with dust, moisture, solvents or construction debris. All clean-up will be in accordance with the Contract Specification. Upon Completion of the Work, Trade Contractor will remove from the Project site all materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, and equipment used in the performance of its Work.

7.21 Test and Inspections. Tests, inspections and approvals of portions of the Work required by the Trade Contract, the Contract Documents, or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction over the Project will be coordinated by the Trade Contractor with the Construction Manager. ~~When portions of the Work are ready for inspection, the Trade Contractor will notify the Construction Manager by submitting an inspection request.~~ The Trade Contractor will coordinate with the Construction Manager and make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority.

7.21.1 Payment. The Trade Contractor will pay for all testing and inspection including the structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents, unless otherwise specified.

7.21.2 Covered Work Prior to Inspection. If a portion of the Work is covered contrary to the Construction Manager's request, or prior to inspection by the proper authorities specifically expressed in the Contract Documents, it will be uncovered for inspection and examination by the Construction Manager, Owner, Engineer or other proper authorities and be replaced at the Trade Contractor's expense without change in the Trade Contractor's Contract Time.

7.21.3 Final Inspections. The Trade Contractor will coordinate the correction and Completion of the Work with the Construction Manager. Following issuance of a "**Certificate of Substantial Completion**" for the entire Project, or a designated portion of construction work, the Construction Manager will evaluate the Completion of the Work with the Trade Contractor and make recommendations to the Owner and Engineer when Trade Contractor's Work is ready for final inspection. The Construction Manager will conduct final inspections with Owner, Trade Contractor, and Engineer.

7.22 Non-Conforming Work and Correction. Within 24 hours' notice, the Trade Contractor will commence correction of the Work that is rejected by the Construction Manager, and/or Engineer for failing to conform to the requirements of the Contract Documents, including Work destroyed or damaged construction (whether completed or partially completed) caused by the Trade Contractor's correction or removal of the non-conforming Work, whether discovered before or after Substantial Completion of the Project and whether or not fabricated, installed or completed. The Trade Contractor will bear all costs associated with correction of non-conforming Work.

7.23 Punchlist. When the Trade Contractor considers its Work substantially complete it will notify the Construction Manager and the Construction Manager, in conjunction with the Engineer and Trade Contractor, will prepare a list of incomplete or unsatisfactory items and a schedule for their completion. All punchlist work will be corrected in accordance with the Contract Specifications. The Construction Manager will schedule and monitor the progress of all punchlist Work and conduct inspections with the Owner and Engineer to determine whether the Work is substantially complete.

7.23.1 Final Punchlist. The Construction Manager, in conjunction with the Engineer and Owner will prepare a final punchlist upon Substantial Completion for the entire Project. Any non-conforming Work will be corrected by the Trade Contractor and its responsible Subcontractors.

7.24 Close-Out. Before Completion of the Work and in accordance with the Contract Documents, the Trade Contractor will transmit to the Construction Manager all required as-built drawings, operation and maintenance manuals, references, warranties, attic stock, keying schedule, or other needed documents as required by the Construction Manager, for review and transmission to the Owner as required by the Contract Specifications.

8. OWNER

8.1 Information and Documents. The Owner will provide full information regarding requirements for the Project, including the Contract Documents, surveys and other information describing the Project site.

8.2 Development Fees. The Owner will secure and pay for all approvals, easements, assessments and fees required for the development, construction, use or occupancy of the Project, except as specified in Contract Document.

8.3 Owner's Representative. The Owner's designated representative is **Lt. Deborah Bazan, Project Executive**, or other person designated by the County.

8.4 Engineer. The Owner has retained **West Environmental Services** for engineering design for the Work. The Engineer will directly retain consultants for other design services.

8.4.1 The Engineer's representative for this Project is **Peter Krasnoff, P.E.**

8.5 Construction Manager. The Owner has retained **Sundt Layton, A Joint Venture**, as the Construction Manager of this Project. The Construction Manager will collaborate with the Engineer, Owner and trade contractors to achieve completion of the Project in an efficient, economical and timely manner.

8.5.1 The Construction Manager's Representative for this Project is **Steve Blaylock**.

8.6 Legal Accounting and Insurance Services. The Owner will furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Trade Contractor's applications for payment, or to ascertain how or for what purposes the Trade Contractor has used the money paid by or on behalf of the Owner.

8.7 Stop Notice. The Owner will provide the Trade Contractor with the necessary information to record a stop notice for non-payment in accordance with California law governing public work projects.

8.8 Timeliness. Information or services under the Owner's control will be timely furnished to the Trade Contractor through the Construction Manager by the Owner, or other third parties who have contracted directly with the Owner, to avoid delay in design and the orderly progress of the Trade Contractor's Work.

9. COMPENSATION

9.1 Payment of Price. ~~From payments received from the Owner, Construction Manager~~The Owner will pay Trade Contractor ~~the Trade Contract price of _____ dollars (\$ _____) based on the prices set forth in the Bid Schedule and Bid Form agreed to by~~ Owner ("Trade Contract Price") as provided for in this Trade Contract. The Trade Contract Price will be adjusted for changes agreed upon pursuant to the procedures set forth in this Trade Contract. Unit priced work is subject to adjustments of quantities as specified in the Contract Documents. Trade Contractor warrants that the Trade Contract Price includes all costs to complete all the Work, including payment of all taxes that may be assessed against Trade Contractor in performing the Work.

9.2 Schedule of Values. Before the first payment can be made, Trade Contractor shall prepare and submit a Schedule of Values to Construction Manager for approval. The Schedule of Values shall be submitted not later than 10 Days after the Trade Contract Date. The Schedule of Values shall allocate the Trade Contract Price to the various portions of the Work as identified by Construction Manager. In addition, the Schedule of Values shall be accompanied by a separate document that lists the names and contract values of Trade Contractor's lower-tier subcontractors. Construction Manager will review the Schedule of Values to assure that the level of detail is adequate to accurately determine the value of work in place. Once Construction Manager has approved the Schedule of Values, it becomes the basis for Trade Contractor's progress payments. Construction Manager approval of the Schedule of Values is a condition of payment.

9.3 Progress Payments. ~~Construction Manager~~Owner will make monthly progress payments, based on the Schedule of Values, from funds received from Owner as the Work proceeds. Trade Contractor shall submit a proper application for payment to ~~Trade Contractor~~ on or before the day of each month. A proper application for payment is made using the Textura™ Construction Payment Management System (Textura™ Construction Payment Management System), ~~except as authorized by Owner.~~ Applications for payment shall include: (1) An itemization of the amounts requested, related to the various elements of work required by the Trade Contract covered by the requested payment; (2) The total amount of the current Trade Contract Price; and (3) The total of amounts previously paid ~~under the Subcontract.~~

9.3.1 Timely submission of an application for payment is a condition of payment. Progress payments are subject to Owner's approval ~~and are paid when Construction Manager receives payment.~~ Progress payments do not constitute approval or acceptance of any Work.

9.3.2 **Lien Releases.** Trade Contractor's applications for payment shall be accompanied by appropriate lien releases. Lien Waivers and releases are administered through the Textura™ Construction Payment Management system.

9.4 Retention. The Owner will withhold 5% retention on the entire amount of the monthly application for payment under Public Contract Code section 7107 and 9203. Retention will be withheld until the Project achieves Final Completion unless the Owner, in its sole discretion, agrees to release the Trade Contractor's retention earlier and provided that the Trade Contractor's Work has been accepted by the Owner, Engineer, Construction Manager and other necessary agencies with jurisdiction over the Project.

9.4.1 Substitution of Securities. To the extent required by law, Owner will consider and approve reasonable and appropriate requests under Public Contract Code section 22300 for substitution of securities or establishment of an escrow account for retention. Nothing contained in this Section prevent Owner from withholding payment when grounds exist for doing so under the Contract Documents.

9.5 Owner Payment to Subcontractors and Suppliers. The Owner will not have an obligation to pay a Subcontractor for Work performed unless required by law. However, if the Owner receives a stop notice or has reason to believe that the Trade Contractor is not paying its Subcontractors and suppliers, the Owner may make payment of sums due to Trade Contractor through joint check or pay Subcontractors and suppliers directly and withhold those payments from Trade Contractor.

9.6 Stop Notices and Claims. Upon submission of an application for payment, the Trade Contractor warrants that all Work included in the application for payment has been performed in accordance with the Contract Documents and that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment and to the best of the Trade Contractor's knowledge, information and belief, will pass to the Owner free and clear of all stop notices, claims, security interests or encumbrances. Trade Contractor will provide executed conditional waivers and release of claims for all amounts included in the application for payment. Waivers must comply with the requirements of California Civil Code section 3262 and will be submitted on the forms provided in the Billing Procedures set forth in the Contract Documents.

9.7 Final Payment. Upon Completion of the Work, the Trade Contractor will submit a final payment application. All prior progress estimates will be subject to correction in the final application for payment. If items remain to be completed at that time, then the Trade Contractor in conjunction with the Construction Manager and Engineer will create a punchlist pursuant to Section 7.23. The Owner may withhold from the final payment due to the Trade Contractor the estimated cost to complete the Work, plus 5% retention until Final Completion of the Project unless the Owner agrees to early release of retention. The amount retained by the Owner for punchlist items will be released to the Trade Contractor as each punchlist item is completed minus 10% retention. Upon Final Completion of the Project, final payment of the retention, if unencumbered, will be paid no later than 30 Days after Final Completion of the entire Project but in no event later than the time prescribed under Section 7107 of the Public Contract Code. Final payment and lien releases will be administered using the Textura™ Construction Payment Management System.

9.8 No Diversion of Payments. Trade Contractor agrees that it will not divert funds received as payments under this Trade Contract but shall only apply such funds to the Work. Upon Construction Manager's request, Trade Contractor shall provide, within a reasonable time, written proof of its compliance with this subsection.

9.9 Evaluation of Application for Payment. Before submitting the Trade Contractor's application for payment to the Engineer for certification, the Construction Manager

will review and make recommendations for payment based on the approved Trade Contractor's schedule of values, the Construction Manager's observations and evaluation of the Work, and on the data and documentation substantiating the Trade Contractor's application for payment. Based on that review, the Construction Manager will forward the application for payment to the Engineer for certification with a recommendation that the Owner pay all undisputed items. An approval of an application for payment is subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to Completion of the Work and to specific qualifications expressed by Engineer, Construction Manager, or Owner. The Construction Manager, Engineer, and Owner are entitled to rely on the accuracy and completeness of the information furnished by the Trade Contractor and approval will not be deemed to represent that a detailed examination, audit, or arithmetic verification of the documentation submitted with the Trade Contractor's application for payment has been made or that exhaustive or continuous on-site inspections have been made to verify that the Work is in accordance with the Contract Documents. A recommendation for payment by the Construction Manager and certification by the Engineer does not represent that the Construction Manager or Engineer has ascertained how or for what purpose the Trade Contractor has used money previously paid.

9.10 Declining an Application for Payment. Construction Manager may decline to approve all or any part of an application for payment for any of the following reasons: (1) unsatisfactory job progress, (2) unacceptable or unauthorized work, (3) disputed work, (4) Trade Contractor failure to comply with any material provision of this Trade Contract, (4) third party claims filed against Construction Manager, the Owner, Construction Manager's bonds or the Project arising from Trade Contractor's performance of this Trade Contract, (5) Trade Contractor failure to make timely payments for labor, materials or equipment, or (6) any part of an Application for Payment or part of an Application for Payment not approved by the Owner.

9.11 Set-off. ~~Construction Manager~~Owner may deduct or set-off from any amounts due or to become due to Trade Contractor, any sums owing by Trade Contractor to ~~Construction Manager~~Owner under this Trade Contract, or as may be necessary to protect ~~Construction Manager~~Owner from any sums owing by Trade Contractor for labor, materials, equipment, or from claims asserted against ~~Construction Manager, Owner~~, its bonds or the Project.

9.12 Evidence. Before issuance of final payment, Owner may request satisfactory evidence that: (i) all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied; (ii) insurance required by the Contract Documents will remain in force after final payment and will not be canceled or allowed to expire until at least 30 Days prior written notice has been given to the Owner; (iii) the Trade Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (iv) surety, if any, has consented to final payment, (v) building commissioning has occurred and the Owner has received all close-out documents required; and (vi) other data establishing payment or satisfaction of obligations, such as releases and waivers of liens, claims, security interests or encumbrances arising out of this Trade Contract have been received. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Trade Contractor will furnish a bond to indemnify the Owner against stop notices under Section 9.13, provided that the Subcontractor's work is Work that the Trade Contractor has been paid for by the Owner.

9.13 Stop Notice. If any claim or stop notice is made or filed against the Owner, ~~Construction Manager~~, or the Project funds by any person claiming that the Trade Contractor or any of its Subcontractors or suppliers has failed to make payment for any labor, services,

materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there is evidence of nonpayment or of any claim or stop notice for which, if established, the Owner might become liable and that is chargeable to the Trade Contractor, the Owner may, in its discretion, allow the Trade Contractor to file a bond with the Owner in an amount equal to 125% of the claim stated in the stop notice pursuant to Civil Code section 3196 and the Owner will release the funds to the Trade Contractor. If the Owner does not permit the Trade Contractor to post a bond under Civil Code section 3196, the Owner will have the right to retain from any payment then due or thereafter to become due an amount that it deems sufficient to: (1) satisfy, discharge and/or defend against any claim or stop notice action that may be brought or judgment, which may be recovered; (2) make good any nonpayment, damage, failure or default; or (3) compensate the Owner for the claim. The Trade Contractor will indemnify and hold ~~Construction Manager and~~ the Owner harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection with the Trade Contractor's failure to timely and properly make payments to its Subcontractors and suppliers. The Owner will have the right to withhold from Trade Contractor a reasonable amount for the foregoing purposes. If the amount is insufficient to cover the amount of the claim, the Trade Contractor will be liable for the difference and will make payment to the Owner upon 30-Day's written notice.

9.14 Payment Not Acceptance of Work. Approval of an application for payment (final or otherwise) or partial or entire use or occupancy of the Project by the Owner will not be used as conclusive evidence that the Work was properly performed or constitute acceptance of Work that is not in accordance with the Contract Documents.

9.15 Payments Withheld. In addition to the Trade Contractor's 5% retention, the Owner may withhold payments due to the Trade Contractor as may be necessary to cover: (i) stop notice claims; (ii) defective work not remedied; (iii) failure of Trade Contractor to make proper payments to its Subcontractors or suppliers; (iv) completion of the Trade Contract if there exists a reasonable doubt that the Work cannot be completed for the balance then unpaid; (v) damage to another trade contractor or third party caused by Trade Contractor; (vi) amounts that may be due to the Owner for claims against Trade Contractor; (vii) failure to provide ~~Construction Manager~~Owner with timely updates required by this Trade Contract; (viii) site clean-up; (ix) failure of the Trade Contractor to comply with requirements of the Contract Documents; (x) disputed amounts in the application for payment; and (xi) legally permitted penalties.

9.16 Waiver of Claims. Acceptance of final payment by the Trade Contractor will constitute a waiver of claims by Trade Contractor and its Subcontractors and suppliers except for those previously made in writing and identified by the Trade Contractor as unsettled at the time of final application for payment.

9.17 TEXTURA™ CONSTRUCTION PAYMENT MANAGEMENT SYSTEM. Unless otherwise directed or authorized, in writing, by Construction Manager, all applications for payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Trade Contractor and its lower-tier subcontractors and suppliers, shall be in electronic format and shall be submitted to Construction Manager using the Textura™ CPM payment management system. Trade Contractor shall be responsible for the fees and costs owed associated with Trade Contractor's use of the Textura™ CPM payment management system. Trade Contractor shall include a similar provision in its lower-tier subcontracts and purchase orders. Fees to trade contractors are calculated as 0.15% (15 basis points) of contract value, with a minimum fee of \$50 and a maximum fee of \$1,450. Fees to

Trade Contractor's lower-tier subcontractors and suppliers are a fixed fee of \$50 per lower-tier subcontractor or supplier contract.

10. CONTRACT TIME AND SCHEDULING

10.1 Contract Time. The “**Contract Time**” is the time allotted in the Contract Specifications for the Work. Time is of the essence.

10.2 Scheduling. The Trade Contractor will participate and cooperate with the ~~Construction Manager~~ **Owner** in the development of schedules and other efforts to achieve timely Completion of the Work. Trade Contractor shall keep itself informed of the overall progress of Project construction and shall faithfully prosecute the Work so as to avoid delaying completion of the Project construction as a whole. Trade Contractor shall prosecute the Work at the times and in the order as Construction Manager and Trade Contractor agree, subject to modification as may be necessary for the expeditious completion of the Work.

If requested, Trade Contractor shall provide a written schedule. Trade Contractor's written schedule must show in detail the procurement, submittal review, fabrication, delivery, and installation activities for all major components of the Work. Trade Contractor agrees to meet its written schedule and apprise Construction Manager each month or more frequently, if required by Owner, of Trade Contractor's progress against its schedule.

10.3 Prosecution of the Work. The Trade Contractor will commence the Work when notified to do so by the ~~Construction Manager~~ **Owner** and will diligently prosecute and complete its Work pursuant to the most current Master Project Schedule. The Trade Contractor will coordinate its Work with other trade contractor work being performed on the Project so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the construction work on the Project, and in accordance with the Contract Time and Project Master Schedule.

10.3.1 Schedule Slippage. The Trade Contractor will notify the Construction Manager within 48 hours of any slippage in the ~~Master~~ Project Schedule as a result of its Work and must submit a detailed recovery plan for evaluation and approval by the Construction Manager. All costs associated with the recovery will be the responsibility of the Trade Contractor.

10.3.2 Acceleration. The Owner, through the Construction Manager, may direct the Trade Contractor to work overtime. If the Trade Contractor is not in default under any of the terms or provisions of this Trade Contract or of any of the other Contract Documents, the Owner will pay the Trade Contractor for actual additional wages paid, if any, as established in **Exhibit 2**.

10.4 Permitted Delays. If the Trade Contractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or Completion of the Work by: (i) any negligent act or omission of the Owner, Construction Manager, or Engineer; (ii) “**Owner Elected Changes;**” (iii) [intentionally blank], (iv) damage caused by a “**Force Majeure Event;**” (v) “**Unforeseen and Differing Site Conditions;**” and/or (vi) “**Owner’s Suspension of the Work,**” and the critical path of the Project Master Schedule is impacted extending the Substantial Completion Date, then the Trade Contractor will be entitled to an extension of the Contract Time for the same period of time that the Substantial Completion Date was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Trade Contractor, its employees,

Subcontractors or suppliers. Notwithstanding the above, the Trade Contractor will not be entitled to any such extension of time unless the Trade Contractor (1) notifies the Owner and Construction Manager in writing of the cause or causes of the delay, obstruction, hindrance or interference within 48 hours of the commencement of the delay and (2) demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance or interference and has used all available means to minimize the consequences of the delay.

~~10.5 **Delays Caused by Trade Contractor.** If the progress of the Work or the Project is delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect, or act or failure to act by the Trade Contractor or any of its employees, Subcontractors or suppliers and the delay causes any additional cost, expense, liability or damage to the Owner, Construction Manager, or Engineer, (including legal fees and disbursements incurred by the Owner, Construction Manager, or the Engineer, whether incurred in defending claims arising from the delay or in seeking reimbursement and indemnity from the Trade Contractor and its surety), or any damages or additional costs or expenses for which the Owner, Construction Manager, or the Engineer may or will become liable, then the Trade Contractor and its surety will compensate the Owner, Construction Manager, and/or Engineer for, and indemnify them against, all such costs, expenses, damages and liability.~~

11. CHANGES IN THE WORK

11.1 Change Orders. A Change Order is a mutually agreed written order adjusting either the Trade Contractor's Trade Contract Price and Contract Time or both. All changes in the Work will only be authorized by a Owner executed Change Order and performed under the applicable conditions of the Contract Documents. A Change Order signed by the Trade Contractor indicates the Trade Contractor's agreement to adjustment in the Trade Contract Price and/or Contract Time and that adjustment fully and completely resolves any claim by Trade Contractor and any of its Subcontractors and suppliers for additional compensation or time arising from or related to the subject of the Change Order. Change Orders for additional Work are limited to the following circumstances:

- 11.1.1 Owner Elected Changes;
- 11.1.2 Force Majeure Events;
- 11.1.3 Unforeseen and Differing Site Conditions
- 11.1.4 Owner's Suspension of the Work as defined in Section 19.3.

11.2 Owner Initiated Changes. The Trade Contractor must submit a rough order of magnitude of the change to the Construction Manager within 3 business days receipt of the scope of a proposed change order and a complete cost proposal, including any change in Contract Time under Section 10.4, within 10 business days of receipt.

11.3 Trade Contractor Initiated Changes. The Trade Contractor must give the Construction Manager written notice of a proposed change within 3 business days of discovery of the facts or circumstances giving rise to the proposed change order.

11.4 Submission. All claims for additional compensation to the Trade Contractor will be presented in writing to Construction Manager and approved by the Owner before the expense is incurred. The Construction Manager will review all proposed change orders within

10 business days of receipt and make a recommendation to the Owner to prevent delays to the Project.

11.5 Pricing. If any change under this Section causes an increase or decrease in Trade Contractor's cost of, or the time required for, the performance of any part of the Work, Construction Manager will modify the Subcontract in writing.

11.5.1 Payment and Performance Bonds. All Trade Contractor proposals for any and all potential change orders will include payment and performance bond costs.

11.6 Continued Performance. No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed, even if a dispute arises.

11.7 Failure to Reach Agreement. If the Owner and Trade Contractor cannot agree on the value of the proposed change order, or if the Owner fails to approve or disapprove of the proposed change within 10 business days, the Trade Contractor will proceed with the Work promptly under a written "**Construction Work Directive**" of the Owner and will perform the Work on a time and material basis. If the Work is performed under a Construction Work Directive, the Trade Contractor must submit all required data under Section 11.4 within 10 Days of completion of the Work covered by the Construction Work Directive in order to perfect its claim. Failure of the Trade Contractor to provide the Owner with notice of its disputed claim and to submit the written claim within 10 Days of completion of the Work in dispute constitutes an agreement on the part of the Trade Contractor that it will not be paid for its Work. No claim will be considered after the Work in question has been performed unless a written Change Order has been executed or timely written notice of claim has been made by the Trade Contractor. Trade Contractor will not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of an omission of any item or portion of Work covered by the executed Change Order.

11.8 Omitted Work. If the Trade Contractor omits Work that is included in the Contract Documents, the Owner will have the right to withhold from payments due or to become due to the Trade Contractor in an amount which, in the Owner's or Construction Manager's opinion, is equal to the value of Work that was omitted until the Work is performed.

11.9 Contract Time Impacts and Extended Costs. The Trade Contractor will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Section 10.4 and claimed in a proposed change order. No claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Trade Contractor in violation of Civil Code section 2782 or Public Contract Code section 7102. If this provision is determined to conflict with Public Contract Code section 7102 or Civil Code section 2782, this provision will be reformed to provide the greatest protection to the Owner and Construction Manager under the law.

11.10 Surety. All changes, additions or omissions in the Work ordered in writing by the Owner or Construction Manager are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of this Trade Contract and the other Contract Documents. The Trade Contractor will keep its surety informed of all modifications to this Trade Contract. The obligations of Trade Contractor's surety are not to be reduced, waived or adversely affected by the issuance of Change Orders even if the Owner or Construction

Manager fails to inform the surety of the Change Order(s) and the Owner or Construction Manager will not be required to obtain consent of the surety to any Trade Contract modifications.

12. LIQUIDATED DAMAGES; GIVING NOTICE OF DELAYS

12.1 The Agreement between Owner and Construction Manager for the Project includes a liquidated damages clause providing that in the event the construction time requirements set forth in the [Project Master Schedule Contract Documents](#) are exceeded without an approved amendment to that Agreement, then [Construction Manager Trade Contractor](#) is liable for liquidated damages of up to ~~\$35,000~~[\\$500](#) per calendar day for each day that such time requirements are exceeded.

12.2 If Trade Contractor defaults in the proper performance of the Work, which default delays any part of or the entire Project and results in the assessment of liquidated damages against Construction Manager, then Trade Contractor agrees that Construction Manager may assess all or a share of such liquidated damages against Trade Contractor, but only in proportion to Trade Contractor's reasonably proven actual responsibility for such damages.

12.3 Trade Contractor is not liable under this Section 12 where its failure is caused by a strike not involving Trade Contractor's workers, by lockout, by acts of God, or by other causes beyond Trade Contractor's reasonable control of, which causes were not within the reasonable contemplation of the Parties at the time of contract formation, but only to the extent that any of these causes are valid excuses for delay under the Agreement between Owner and Construction Manager.

12.4 **Trade Contractor shall give Construction Manager not less than 2 working days written notice of an occurrence that will or that Trade Contractor reasonably believes is likely to cause delay.** Trade Contractor agrees that failure to provide this written notice shall be an irrevocable waiver of any right to a time extension or additional costs.

12.5 This Section 12 limits the remedy for delay described in Section 12.2 to the assessment of liquidated damages. It does not limit Trade Contractor's liability to Construction Manager for actual damages caused by Trade Contractor's default in the proper performance of its work or its unexcused failure to perform, where such default or failure does not cause Project delay.

13. HAZARDOUS MATERIALS.

13.1 **Hazardous Materials and Substances.** Trade Contractor represents and warrants that it has and will exercise the degree of care, skill, efficiency, and judgment of California State licensed contractors with special expertise in the proper removal, transportation, and disposal of "**Hazardous Substances.**"

The Trade Contractor shall bear full and exclusive responsibility for (i) any release of Hazardous Substances that it brings onto the property during the course of performance of this Contract and (ii) for any release of Hazardous Substances caused by the Trade Contractor's negligence or willful misconduct, regardless of whether the Trade Contractor has brought the Hazardous Substances onto the property. The Trade Contractor shall also be responsible to the extent its negligent act or omission results in a release that exacerbates an existing environmental condition of the property. (Each event described in the foregoing sentences of this Section 13.1 for which Trade Contractor is responsible is referred to as a "Release"). The Trade Contractor

shall immediately report any Release to the Owner, and shall also report any release of Hazardous Substance that [Trade Contractor](#) contends is not a Release.

The Trade Contractor shall be solely responsible for all claims resulting from a Release (whether first-party or third party claims), including claims respecting response to, removal and remediation of the above described Release and associated property and groundwater, and the payment of any fines or penalties levied against Owner by any governmental or regulatory agency as a result of a Release. Trade Contractor shall hold harmless, indemnify and defend Owner from any claims resulting from a Release.

For purposes of this Section only, the term "claims" shall include (i) all claims, notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, administrative or judicial proceeding brought against the Owner, the Construction Manager, their directors, or agents, or any cost (including reasonable attorney's fees), damage or liability sustained or suffered by any person or entity, including Owner, Construction Manager, and their agents.

13.2 All Hazardous Substances disposed of under the Work shall be properly disposed of according to federal, state, and local laws, at the expense of Trade Contractor. The Trade Contractor shall dispose Hazardous Substances under the Owner's EPA Generator Number. The Trade Contractor shall notify the Owner of any such Hazardous Substances and the Owner reserves the right to a copy of the results of any tests conducted on the Hazardous Substances and, at its cost, to perform additional tests or examine those Hazardous Substances, prior to their disposition.

13.3 Hazardous Materials and Substances. If Hazardous Substances or materials (of a type legally requiring an employer to notify its employees) are being used or stored on the Project site by the Trade Contractor, its Subcontractor or anyone directly or indirectly employed or retained by them, the Trade Contractor will immediately provide written notice of the chemical composition to the Construction Manager and Owner in sufficient time to permit compliance with the law by the Owner, Construction Manager, and other trade contractors at the Project site. If the Trade Contractor encounters an unforeseen material reasonably believed to be a Hazardous Substance on site, the Trade Contractor will immediately stop Work in the affected area and report the condition to the Construction Manager and Owner in writing. Work will resume in the affected area once the Hazardous Substance is rendered harmless or removed, as determined by a licensed laboratory retained by the Owner.

13.4 Material Safety Data Sheets ("MSDS"). The Hazardous Communications Standard (Title 29, Code of Federal Regulations, Part 1910, as amended) specifies a list of compounds. The Trade Contractor will identify and report any compound that appears on the list in the following manner: MSDS must be kept on file by the Trade Contractor at the Project site, with a regularly updated list of MSDS's copied to the Construction Manager. The MSDS must contain all information required by Title 29; all hazardous compounds must be clearly labeled as to content, with appropriate warnings noted, and name and address of the manufacturer listed; and all employees using these compounds must be trained in protective handling and potential hazards.

13.5 Indemnification. To the fullest extent permitted by law, Trade Contractor agrees to indemnify and hold harmless the Owner, the Construction Manager, the Engineer and other trade contractors from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused by the negligent mishandling by Trade Contractor or its Subcontractors and suppliers of any

Hazardous Substances . The Owner will indemnify and hold harmless the Trade Contractor and their subcontractors and suppliers from and against any and all demonstrated and proven loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses arising out of, or resulting from, any Hazardous Substances existing at the site before commencement of construction of the Project provided that the Trade Contractor or its Subcontractors or suppliers did not negligently exacerbate the pre-existing hazardous condition.

13.6 The provisions of Section 13 are intended to be binding upon and inure to the benefit of the parties and their successors and assigns and shall survive the termination of the Contract. The indemnity in Section 13.5 shall inure to the benefit of both Owner and Construction Manager even if the Trade Contract is assigned to the Construction Manager.

14. INSURANCE AND BONDS

14.1 Insurance Requirements. The Trade Contractor will procure separate insurance coverage in the amounts set forth in the Insurance Requirements ([Exhibit 4](#)) as set forth in the [March 30, 2012 prequalification requirements](#). Trade Contractor's insurance includes Commercial General Liability, Automobile Liability, Workers' Compensation and Trade Contractor's equipment insurance. The Owner and Construction Manager will be a named additional insured under all additional separate insurance policies. The Trade Contractor will provide certificates of insurance and endorsements to Construction Manager before commencing Work as evidence of insurance and Owner's and Construction Manager's additional insured status under those policies.

14.2 Waiver of Subrogation. Trade Contractor waives all rights against Owner, Construction Manager, Engineer, and all other trade contractors and subcontractors for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the Work, except such rights as Trade Contractor may have to the proceeds of the insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to be endorsed or obtain consent.

14.3 Builder's Risk. The Construction Manager will obtain and maintain in force during the construction phase of the Project a Builder's Risk Insurance policy or policies that will insure against physical loss and/or damage on an "all risks" basis, excluding earthquake and normal policy exclusions, to all buildings, structures, materials and real property on site, which are intended to be, or have already been incorporated into and forming part of the Project, whether or not the buildings, structures, materials or real property will have been supplied or made available to Trade Contractor or Subcontractors by Trade Contractor or Owner. The Builder's Risk policy will be endorsed to add Construction Manager and all trade contractors and subcontractors as additional named insureds, as their interests may appear and to waive the carrier's right of recovery under subrogation against Construction Manager and all trade contractors whose interests are insured under the policy.

14.4 Required Trade Contractor Bonds. In addition to the bid bond requirement as required under the Public Contract Code, prior to commencement of construction, the Trade Contractor will furnish a payment and a performance bond to the Owner, each in the amount equal to 100% of the Contract Price, in a form acceptable to the Owner, within 2 business days after the notice to proceed with construction and prior to commencement of the Work. The surety supplying the bonds must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as a surety in the State of California and satisfactory to the Owner. Failure to timely furnish the required payment and performance

bonds constitutes a default under this Trade Contract and the Owner will have all of the rights and remedies provided under this Trade Contract and afforded by law including, but not limited to, damages for material breach of contract and the Owner may award this Trade Contract to the next lowest responsive and responsible Bidder, or may call for new bids. Full compensation for furnishing the payment and performance bonds are included in the Trade Contractor's not to exceed amount for the Cost of the Work.

14.4.1 **Payment of Subcontractors.** Without limiting the responsibilities of Trade Contractor and its surety under the terms of this Trade Contract, Trade Contractor and its surety agree to promptly pay all lawful claims of Subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used, or consumed in connection with the prosecution of the Work including Change Orders, and will indemnify and save harmless the Owner and Construction Manager from and against all liability loss, damage and expense, including interest, costs and attorneys' fees, which the Owner and Construction Manager and/or its surety may sustain by reason of Trade Contractor's or its surety's failure to do so.

15. INDEMNIFICATION

15.1 **Trade Contractor's Performance.** To the fullest extent permitted by law and public policy of the State of California, Trade Contractor will indemnify, protect, defend and hold harmless Owner and its Board of Supervisors, Construction Manager, and Engineer, including each of their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever arising out of or in any way relating to: (i) this Trade Contract; (ii) actual or alleged acts or omissions by Trade Contractor or any of its Subcontractors, vendors, suppliers, employees, or persons for whom it is responsible, regardless of whether the acts or omissions are negligent; or (iii) the Work including, but not limited to claims for:

15.1.1 Personal injury, including bodily injury, sickness or disease, or death to any persons, employees or agents of Trade Contractor, Owner, Construction Manager, Engineer or any other trade contractor and/or damage to property of anyone (including loss of use) caused or alleged to be caused in whole, or in part, by any actual or alleged negligent act or omission of Trade Contractor or anyone directly or indirectly employed by Trade Contractor or anyone for whose acts Trade Contractor may be liable regardless of whether the personal injury or property damage is caused, in part, by an indemnified party.

15.1.2 Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the act or omission of the Trade Contractor.

15.1.3 Infringement of any patent rights, which may be brought against Owner, Construction Manager or Engineer arising out of the Work.

15.1.4 Project Claims or stop notices for labor performed or materials used or furnished to be used on the Project, including all incidental or consequential damages resulting to Owner, Construction Manager or Engineer from stop notices.

15.1.5 Failure of Trade Contractor or any of its Subcontractors to comply with the Insurance provisions set forth in Section 14 and Exhibit 4.

15.1.6 Claims by third parties, including other trade contractors, alleging or arising, in whole or in part, out of actual or alleged acts or omissions by Trade Contractor, any of its Subcontractors or suppliers (regardless of tier), and/or any of its or their respective directors, officers, employees, agents, partners, affiliates, subsidiaries, parents, successors and assigns (including without limitation, claims regarding alleged or actual delays, failure to cooperate or coordinate, damage to work performed by others, interferences, disruption, etc.).

15.1.7 Any violation or infraction by Trade Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees including, but not limited to, the use of Owner's or others' equipment, hoists, elevators, or scaffolds.

15.2 The specific listing in subsections 15.1.1 through 15.1.7 will not in any way limit Trade Contractor's agreement to indemnify any indemnified person for all acts and omissions of the Trade Contractor, and anyone for whom Trade Contractor is responsible in the performance of the Work and other obligations under this Trade Contract. The obligation to defend and indemnify will apply notwithstanding that Trade Contractor is actively involved in the events that give rise to the claims for which a defense or indemnity is sought. The indemnity, defense, and other obligations under this Section 15 will apply even if the Trade Contractor was only partially negligent.

15.3 The indemnification provisions in subsections 15.1.1 through 15.1.7 will extend to claims occurring after this Trade Contract is terminated as well as while it is in force. Such indemnity provisions apply regardless of any negligent act or omission of the Owner, Construction Manager, and Engineer or of any other person to be indemnified hereunder. Trade Contractor, however, will not be obligated under this Trade Contract to indemnify Owner, Construction Manager or Engineer from claims arising from the sole negligence or willful misconduct of the person to be indemnified hereunder, or for defects in design furnished by an indemnified party. Trade Contractor will not be required to provide a defense or to indemnify Owner, Construction Manager or Engineer against their own respective active negligence. If Owner, Construction Manager or Engineer are actively negligent, however, Trade Contractor will continue to indemnify each of those parties and provide a defense but only to the extent and in proportion to the degree that the Owner, Construction Manager, or Engineer were not actively negligent. Nothing herein will be construed to impose any obligation in conflict with the provisions of Civil Code section 2782 and/or Insurance Code section 11580.04. In the event of a conflict, the provision conflicting with Civil Code section 2782 and/or Insurance Code section 11580.04 will be modified to limit Trade Contractor's obligations to the greatest extent permitted by law.

15.4 Duty to Defend. The Trade Contractor will:

15.4.1 At Trade Contractor's own cost, expense and risk, defend all claims as defined in Section 15.1 that may be brought or instituted by third persons including, but not limited to, government agencies or employees of Trade Contractor, against Owner, Construction Manager, Engineer, or any other person to be indemnified by Trade Contractor;

15.4.2 Pay and satisfy any judgment or decree that may be rendered against Owner, Construction Manager, Engineer, or any other person to be indemnified by Trade Contractor arising out of a claim; and/or

15.4.3 Reimburse Owner, Construction Manager, Engineer or any other person to be indemnified by Trade Contractor for any and all legal expense incurred by any of them in connection with the claim or in enforcing the indemnity granted in this section.

15.4.4 The duty to defend will apply, and Trade Contractor will be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of the Trade Contractor or any person to be indemnified, or as to whether an exception to provide a defense or indemnity may apply.

15.5 Survival. The duty to indemnify and defend the Owner, Construction Manager and Engineer will survive Final Completion of the Project or termination of this Trade Contract.

16. WARRANTY AND GUARANTEES

16.1 Warranty. Trade Contractor warrants all Work for a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Construction Documents for certain equipment manufacturers or suppliers. The Trade Contractor will repair or replace any and all deficient or defective Work, provided that the Work was properly maintained and/or used, together with any other Work that is displaced during repair or replacement without expense to Owner. Trade Contractor's warranty excludes improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. Trade Contractor will procure all Subcontractor and manufacturer express warranties required under the Construction Documents on the Owner's behalf and will transmit the warranties to Owner before Completion of the Work and Project close-out. Establishment of the 1 year express warranty period for correction of Work relates only to the specific obligation of the Trade Contractor to correct defective or non-conforming Work, and has no relationship to statute of limitations periods for legal claims arising from this Trade Contract. This provision will survive Final Completion of Project and/or termination of this Trade Contract.

17. DOCUMENT RETENTION & EXAMINATION

17.1 Audit. In accordance with Government Code section 8546.7, records of both the Owner and the Trade Contractor will be subject to examination and audit by the State Auditor General for a period of 3 years after final payment. Trade Contractor will make available to the Owner any of the Trade Contractor's other documents related to the Work immediately upon request of the Owner as set forth in Section 17.2.

17.2 Records. The Trade Contractor will keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Trade Contract. In addition to the State Auditor rights above, the Owner will have the right during normal business hours to audit and copy the Trade Contractor's documents related to this Project including, but not limited to, records, books, estimates, correspondence, instructions, drawings, receipts and invoices for materials, supplies and equipment, temporary facilities, etc., contracts, purchase orders, vouchers, memorandums, Change Orders and all substantiating documentation, certified payroll, bid documents, and other data relating to the Cost of Work and the Contract Price in order to evaluate accuracy and completeness of Trade Contractor's billing. Should the audit disclose a material discrepancy from the payment applications or requirements of the Contract Documents, then in addition to repaying Owner all sums due and owing, Trade Contractor will pay 7% interest computed monthly from the date of the overpayment. Trade Contractor agrees to remit payment of all monies due and owing no later than 90 Day's after receipt of notice or, at Owner election, Owner may deduct the sums against any monies due to

Trade Contractor. The Trade Contractor will preserve all Project records for a period of at least 3 years after Final Completion of the Project, or for such longer period as may be required by law. The Trade Contractor will incorporate Article 17 auditing provisions into all Subcontracts and require Subcontractors to keep detailed and accurate accounting records for their portion of the Work for a period of at least 3 years.

18. DISPUTE RESOLUTION PROCEDURE

18.1 MEDIATION

18.1.1 Except for Claims relating to a mechanic's lien, unless delay in initiating or prosecuting a Claim in litigation would invariably prejudice the Owner or the Trade Contractor, any Claim arising out of or related to the Trade Contract, except relating to aesthetic effect and except those waived by Owner, 30 days after submission of the Claim to the other party hereto, be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

18.1.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect or such other rules as the parties may agree upon provided that the parties shall use good faith efforts to agree upon a mediator of their own selection, and, if such mediator is not agreed upon within 30 days after the request for mediation is given by a party, the mediator shall be selected as provided in such Rules. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

18.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

18.1.4 The parties agree to conduct and conclude mediation proceedings under this Section 18.3 within 60 days after the designation of a mediator. In the event mediation proceedings do not resolve the Claim within such period, either party may initiate litigation as provided in Section 18.4 hereof.

18.2 LEGAL PROCEEDINGS

Any Claim arising out of or related to the Trade Contract, except Claims relating to the aesthetic effect and except those waived by Owner, that are not resolved by mediations as provided in Section 15.3 shall be resolved by litigation in the Superior Court of San Mateo County.

18.3 Continuation of Work. Trade Contractor must diligently continue to prosecute its Work, including Work that is disputed between Owner and Trade Contractor, and Owner must continue to make all undisputed payments to Trade Contractor, regardless of the existence of a dispute or the pendency of arbitration proceedings between Trade Contractor and Owner.

19. TERMINATION, SUSPENSION, ABANDONMENT

19.1 Owner for Cause. The Owner may terminate this Trade Contract upon not less than 7 Days written notice and an additional 7 Days to commence curing if the Trade Contractor is in material breach of any term or provision of this Trade Contract. The notice will set forth the reason for termination and the effective date of termination. If the Owner terminates this Trade Contract for cause, the Trade Contractor will not be entitled to any further payments until Final Completion of the Project. The Trade Contractor will be entitled to payment for Work rendered through the effective date of termination upon Final Completion of the Project provided that the Work is completed within the Trade Contract Price and Contract Time, subject to adjustment through Change Order, if applicable, and the Owner did not have to expend any additional money for the performance of the Work set forth in this Trade Contract or under other contracts as a result of the Trade Contractor's breach. Nothing stated in this paragraph will prevent the Owner from pursuing and recovering any damages allowed by law from Trade Contractor arising out of the breach of this Trade Contract. If a court of competent jurisdiction deems that termination of the Trade Contractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 19.2.

19.2 Termination By Owner For Convenience. The Owner may terminate this Trade Contract for convenience upon 30 Days written notice at any time before completion of the Work. The notice will state the extent and effective date of termination. The Trade Contractor will be entitled to receive payment for all Work performed based on a percentage of Work performed under the compensation provisions set forth in Section 9 through the effective date of termination, if construction has commenced and Trade Contractor is onsite performing Work, to cease operations and secure the Work. All disputes over termination will be resolved under Section 18.

19.3 Suspension. If the Project is suspended by the Owner and all labor has ceased for 30 consecutive Days or more, the Trade Contractor will be compensated for Work performed before receipt of notice of the suspension. The notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Trade Contractor, then the Trade Contractor's compensation will be equitably adjusted through Change Order.

19.4 Trade Contractor's Termination for Cause. The Trade Contractor may terminate this Trade Contract upon 15 Days written notice and an additional 15 Days opportunity to cure, if the Owner fails to make payment to the Trade Contractor in accordance with this Agreement, and cannot provide evidence substantiating that financial arrangement has been made to make payment, or if the Project is suspended and all labor is ceased for more than 30 Days and provided that the Work of Improvement as defined under the Civil Code has been deemed completed under Civil Code section 3086. The Trade Contractor will be compensated for Work performed through the effective date of termination.

20. MISCELLANEOUS PROVISIONS

20.1 Governing Law. This Trade Contract will be governed and construed in accordance with the laws of the State of California without regard to the principles of the conflict of laws. Both parties agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law in San Mateo County.

20.2 Severability. The terms and conditions of this Trade Contract will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of

construction or interpretation to the contrary will be of no force or effect with respect to this Trade Contract. If a court of competent jurisdiction finds any term or provision of this Trade Contract to be void or unenforceable for any reason such term or provision will be deemed severed, and the remainder of the Trade Contract will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

20.3 Commencement of Statute of Limitations. Causes of action between the parties to this Trade Contract pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than either the date of Substantial Completion for the Project, or the date of a recorded Notice of Completion, whichever is later. The statute of repose applicable to any cause of action for a latent deficiency will commence upon the same date. However, nothing in this Paragraph shall effect the accrual of a cause of action, by discovery, of a latent deficiency.

20.4 Waiver. No action or failure to act by the Owner, Construction Manager, or Trade Contractor waives any right or duty afforded them under this Trade Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Trade Contract, unless specifically agreed to in writing.

20.5 Assignment of Contract. The Owner and Trade Contractor, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Trade Contract and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this Trade Contract. The Trade Contractor may not assign this Trade Contract without the written consent of the Owner. The Owner may assign this Trade Contract to Construction Manager without the consent of Trade Contractor. Trade Contract explicitly consents to any such assignment.

20.6 Modifications. All modifications to the terms and conditions set forth in this Trade Contract must be in writing and signed by an authorized representative of both parties.

20.7 Attorneys' Fees. If the Trade Contractor defaults, the Owner will be entitled to recover all attorneys' fees and costs incurred as a result of Trade Contractor's default.

20.8 Counterparts. This Trade Contract may be executed in Counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument.

20.9 Section Headings. The section headings contained in this Trade Contract are for reference purposes only and will not in any way affect the meaning or interpretation of this Trade Contract.

20.10 Time is of the Essence. Time is of the essence with respect to each and every provision of this Trade Contract.

20.11 Ineligible Subcontractors. Trade Contractor is prohibited from subcontracting with a Subcontractor who is ineligible to perform construction work on a public works project pursuant to Public Contract Code sections 1771.1 and 1777.7.

20.12 Legal Citations. Legal citations to statutory requirements are included in the Trade Contract are for convenience and an omission of any statutory requirement or incorrect citation will not relieve the Trade Contractor or its Subcontractors from compliance with the law.

20.13 Exhibits. The Exhibits referred to in this Agreement and listed below are incorporated into this Agreement by reference as though set forth in full:

- Exhibit A - Contract Specifications
- Exhibit B - Drawings
- Exhibit C – Contractor Information Package
- Exhibit D - San Mateo County Documents, including:

- Project Directory
- Notice to Contractors
- Instructions to Bidders
- Ordinances
- Bid Documents
- Form of Performance Bond
- Form of Payment Bond

- Exhibit 1 not used
- Exhibit 2 Definitions and General Conditions

20.14 CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE 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 YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

20.15 Entire Agreement. The Trade Contract and Contract Documents constitute the entire agreement between the Owner and the Trade Contractor and supersede any and all contemporaneous or prior oral and written negotiations, representations, or agreements by the parties with respect to the subject matter.

This Trade Contract is entered into as of the Effective Date first written above.

Owner
COUNTY OF SAN MATEO

Trade Contractor
COMPANY NAME

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Trade Contractor License No. _____

Exhibit 2 Definitions and General Conditions

1. DEFINITIONS

1.1 **“Engineer”** means West Environmental Services & Technology, 711 Grand Ave. Suite 220 San Rafael, CA 94901, which is the Engineer.

1.2 **“BIM”** means building information model or model. A model is a parametric, computable representation of the Project design developed by the Engineer, and its design consultants and includes construction details developed by certain trade contractors and their respective subcontractors. References to BIM or the model include the primary design model or models and all linked, related, affiliated or subsidiary models developed for design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The portions of the model prepared by the Engineer, its design consultants and those portions prepared by a design-assist Trade Contractor under the responsible control of a licensed design professional, are Construction Documents. The portions of the model prepared by the Trade Contractor or design-assist subcontractors to illustrate means and methods for constructing, fabricating or installing portions of the construction Work are Submittals, which are not Construction Documents. The Model will include more construction details than shown in the Plans.

1.3 **“Certificate of Substantial Completion”** is a certificate prepared by the Engineer that documents the date of Substantial Completion for the Completion of the Work, the responsibilities of the Owner and Trade Contractors for security, maintenance, heat, utilities, damage to the Work and insurance, and will fix the time within which the Trade Contractors will finish all items on their respective punchlist accompanying the Certificate. The Certificate of Substantial Completion will be submitted to the Owner, Construction Manager, and Trade Contractors for their written acceptance of responsibilities assigned to them in the Certificate.

1.4 **“Change Order”** is a mutually agreed written order adjusting either the Trade Contractor Price and/or Contract Time for completing the Work in accordance with the Trade Contract. All Change Orders will be executed by the Trade Contractor and Owner.

1.5 **“Completion of the Work”** means completion of the Trade Contractor’s Work under the Trade Contract.

1.6 **“Construction Work Directive”** means a written directive prepared by the Construction Manager and executed by the Owner authorizing the Trade Contractor to proceed with a modification to the scope of Work. The Construction Work Directive is not a Change Order and will only be assembled and issued when there is not adequate time to process a Change Order prior to proceeding with revisions to the scope of the Work or if the Owner and Trade Contractor cannot agree on the value of the proposed change order.

1.7 **“Construction Documents”** include the 2D plans and specifications prepared by the Engineer and its design consultants and any subsequent modifications, responses to requests for clarification and information. These documents are complementary and what is required by one is required by all.

1.8 **“Construction Manager”** means Sundt/Layton.

1.9 “Contract Documents” are set forth in Article 3 of the Trade Contract and include the Trade Contract, all of the Exhibits set forth in the Agreement, and all subsequent contract modifications issued after execution of the Trade Contract such as amendments and Change Orders.

1.10 “Contract Time” is the time allotted under the Project Schedule set forth in Contract Specifications that the Trade Contractor has to achieve Substantial Completion of its Work, subject to the Milestone Date for erection of the structural steel.

1.11 “Day” or “day” means calendar day unless specifically described as a work day or business day or unless statutorily defined.

1.12 “Effective Date” means the date the Trade Contractor and Owner entered into the Trade Contract, which is set forth on page 1 of the Trade Contract.

1.13 “Final Completion” occurs on the date when all trade contractors have completed their respective work in accordance with the Contract Documents; all final punchlist items have been completed and accepted by the Engineer, Construction Manager and Owner; the building has been commissioned; all close-out documentation required under the Project specifications have been transmitted to the Owner; and a certificate of occupancy has been issued by the public agency having jurisdiction over construction of the Project. Final Completion does not include approval from agencies having jurisdiction over licensing for patient care that are unrelated to construction.

1.14 “Final Completion Date” is the date established in the Project Schedule as the Final Completion Date, which may be adjusted upon Final Completion to reflect the actual date that Final Completion occurred.

1.15 “Force Majeure Event” means an Act of God as defined under Public Contract Code section 7105, civil disobedience, an act of terror, or unavoidable casualties beyond the Trade Contractor’s control, and not due to any act or omission of the Trade Contractor, that necessarily extends the Substantial Completion Date.

1.16 “Hazardous Substances” means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following Environmental Laws: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other federal or state law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.

1.17 “Lean Construction,” “Lean Design” and “Lean” refer to principles and techniques for designing and constructing a project in the most efficient and cost effective manner that were developed by the Lean Construction Institute.

1.18 “Material Safety Data Sheets” or “MSDS” are a compilation of information required by OSHA on the identity of hazardous chemicals, health, and physical hazards, exposure limits and precautions.

1.19 “Owner” means the County of San Mateo.

1.20 “Owner Elected Changes” are changes in the Work directed by the Owner that impact Completion of the Work and are not: (i) reasonably inferable from a comprehensive review of the Construction Documents; or (ii) required as a result of a design error and omission.

1.21 “Owner’s Suspension of the Work” is when the Owner elects to suspend progress during the construction phase of the Project under the Trade Contract.

1.22 “Product Data” includes illustrations, standard schedules; performance charts, instructions, brochures, diagrams and other information furnished by the Trade Contractor to illustrate materials or equipment for some portion of the Work.

1.23 “Project Master Schedule” means the schedule included in the Trade Contract.

1.24 “Record Documents” are drawings or the model updated daily to reflect the as-built conditions of the Work. The Record Documents will be used to generate the final as-built documents as part of the Trade Contractor’s close-out requirements.

1.25 “Samples” means physical examples of materials, equipment or workmanship required by the Construction Documents that are used to establish standards by which the Work will be judged.

1.1 “Shop Drawings” means drawings, diagrams, and other data specially prepared by the Trade Contractors or its Subcontractor, manufacturer, supplier or distributor to demonstrate the way that the Trade Contractor proposes to perform its Work in accordance with the design illustrated in the Construction Documents.

1.26 “Subcontractor” means a person or entity in direct contract with the Trade Contractor to perform portions of Work for the Project, and includes all tier-subcontractors.

1.27 “Submittals” includes Shop Drawings, Product Data, Samples and similar documentation required by the Project specifications or other Construction Documents.

1.28 “Substantial Completion Date” is the date when the construction work for the entire Project has been substantially completed and the Project has received governmental approval for beneficial occupancy for staffing and stocking. Substantial Completion does not include patient care licensing, which is solely the Owner’s responsibility for operation as a healthcare facility.

1.29 “Trade Contract Price” includes all costs to complete all the Work, including payment of all taxes that may be assessed against Trade Contractor in performing the Work..

1.30 “Trade Contractor” is the licensed contractor identified on page 1 of the Trade Contract that is performing certain construction Work at the Project on behalf of the Owner. Other trade contractors performing work on the Project on behalf of the Owner are referred to as “other trade contractors” or “trade contractors.”

1.31 “Trade Contract” is the written construction agreement between the Owner and the Trade Contractor for performance of the Work on this Project.

1.32 “Unforeseen and Differing Site Conditions” means discovery of an unknown, unforeseen or differing site conditions as defined in Public Contract Code section 7104 and also includes discovery of an unknown, existing hazardous substance that requires removal or remediation.

1.33 “Work” includes all labor, materials, equipment and appurtenances provided by the Trade Contractor necessary for all preconstruction services and complete construction of its portion of the Project in strict accordance with the Contract Documents.

2. WORKERS AND WORKERS COMPENSATION

2.1 Trade Contractor will at all times enforce strict discipline and good order among its employees. Trade Contractor will not employ on the Project any unfit person or any one not skilled in the Work assigned.

2.2 Any person in the employ of the Trade Contractor whom Construction Manager or the Owner believes may be incompetent or unfit will be dismissed from the Project and will not be re-employed on this Project except with the written approval of the Owner and the Construction Manager.

2.3 Trade Contractor and its Subcontractors are required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Before commencing the Work, each Trade Contractor and Subcontractor will sign and file a certification with the Owner under Labor Code section 1861 stating the following:

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

3. RESPONSIBILITY FOR REMOVAL, RELOCATION, OR PROTECTION OF EXISTING UTILITIES.

3.1 Consistent with Government Code section 4215, and notwithstanding any other provision of the Contract Documents, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if the utilities are not identified in the Construction Documents made a part of the invitation for bid. Trade Contractor will be reasonably compensated for the cost of locating, repairing damage, not due to the failure of the Trade Contractor to exercise reasonable care, and removing or relocating the utility facilities not indicated in the Construction Documents with reasonable accuracy. Notwithstanding the above, the Owner will not be required to indicate the presence of existing service laterals or appurtenances whenever the presence of utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Project site. If Trade Contractor discovers utility facilities not identified by Owner in the Construction Documents, it will immediately notify the Construction Manager and Owner in writing. The Construction Manager will notify the utility company. The public utility, where they are the owner, will have the sole discretion to perform repairs or relocation work or permit the Trade Contractor to do repairs or relocation work at a reasonable price.

4. INSPECTION FEES FOR PERMANENT UTILITIES

4.1 ALL INSPECTION FEES AND OTHER MUNICIPAL CHARGES FOR PERMANENT UTILITIES INCLUDING, BUT NOT LIMITED TO, SEWER, ELECTRICAL, PHONE, GAS, WATER, AND IRRIGATION WILL BE PAID FOR BY THE TRADE CONTRACTOR.

5. MOCK-UPS

5.1 Trade Contractor will provide all mock-ups as required by the Construction Documents. Mock-ups will be installed in a location on-site or at such other locations to be designated by the Construction Manager. Approved mock-ups will remain as standard of acceptance of the Work and, where practical and approved, may be incorporated in the Work. If not so incorporated, they will be demolished and removed by the Trade Contractor when directed by the Construction Manager to do so.

6. SOILS INVESTIGATIONS

6.1 Trade Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Trade Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

7. TRENCHING, SHORING AND DIFFERING SITE CONDITIONS

7.1 Trade Contractor will comply with Labor Code sections 6500, 6705, and 6707, and Public Contract Code section 7104 regarding trenching and shoring.

7.1.1 **Permit Requirements for Trenches 5'-0" or More in Depth.** Trade Contractor agrees to comply in full with section 6500 of the Labor Code and to provide the required permits prior to the initiation of any work, method, operation or process that involves: (i) construction of trenches or excavations that are 5'-0" or deeper and into which a person is required to descend; (ii) the construction of any building, structure, falsework, or scaffolding more than 3 stories high or the equivalent height; (iii) the demolition of any building, structure, falsework, or scaffold more than 3 stories high or the equivalent height; or (iv) the underground use of diesel engines in work in mines and tunnels.

7.1.1.1 **Detailed Plans for Trenches 5'-0" or More in Depth.** In compliance with Labor Code section 6705, the Trade Contractor will submit to the Construction Manager, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 5'-0" or more in depth. If the plan varies from shoring system standards, the plan will be prepared by a registered civil or structural engineer. The plan will 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.

7.2 **Excavations Deeper than 4'-0".** If Work under this Trade Contract involves digging trenches or other excavation that extends deeper than 4'-0" below the surface, Trade Contractor will promptly, and before the following conditions are disturbed, notify the Construction Manager, in writing, in accordance with Public Contract Code section 7104, of any:

7.2.1 Material that the Trade Contractor 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.

7.2.2 Subsurface or latent physical conditions at the site differing from those indicated.

7.2.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in this Trade Contract.

7.3 The Construction Manager in conjunction with the Owner and Engineer will promptly investigate the conditions, and if they find that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in the Trade Contract Price, or Contract Time for any part of the Work, the Construction Manager will recommend that the Owner issue a Change Order under the Trade Contract.

7.4 If the Owner determines that physical conditions at the site are not latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, the Owner will notify Trade Contractor in writing, stating reasons Trade Contractor will not be entitled to an adjustment in the Trade Contract Price or Contract Time regarding claimed latent or materially different site conditions (whether above or below grade) if:

7.4.1 Trade Contractor knew of the existence of the conditions at the time Trade Contractor submitted its bid; or

7.4.2 Trade Contractor should have known of the existence of the conditions as a result of having complied with the requirements of Contract Documents; or

7.4.3 The information or conditions claimed by Trade Contractor to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that precludes reliance upon; or

7.4.4 Trade Contractor was required to give written notice of differing site conditions under the Contract Documents and failed to do so within the time required.

7.5 In the event of a dispute, the Trade Contractor will not be excused from the Contract Time to complete its Work and will proceed with all Work to be performed under the Trade Contract.

8. REGULATORY REQUIREMENTS

8.1 Trade Contractor represents and warrants: (a) that it is familiar with State of California, fire marshal, and other regulatory requirements in connection with the Project; (b) that it is aware that State of California, fire marshal, and other regulatory requirements, including without limitation, design review, approval processes, and inspection, can be time-consuming, involve long lead times, be subject to significant delays, and be subject to uncertainties and difficulties with respect to availability of resources and budgetary problems in connection with such governmental agencies; and (c) that notwithstanding (a) and (b), the Contract Time and Trade Contract Price are sufficient, and that no additional time or compensation will be required or authorized for such matters.

9. AIR POLLUTION CONTROL

9.1 Trade Contractor will comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt will be labeled to indicate that the contents fully comply with the applicable material requirements. Dust control will be provided for all demolition operations and Trade Contractor will provide dust control as required for its operations.

10. FIRE PROTECTION

10.1 Trade Contractor will provide fire watch and be responsible for all fire prevention in connection with the Work. Open fires will not be permitted on or about the Project site.

10.2 The Trade Contractor will make chemical fire extinguishers available at the location where the Trade Contractor performs any torch cutting or welding operations. Trade Contractor will provide the Construction Manager with notice prior to undertaking any torch cutting and welding operations. Trade Contractor, if performing cutting or welding operations, will undertake all appropriate safety measures including but not limited to a fire watch, fire extinguishers, fire blankets and will be responsible for any damage caused by its operations.

11. PROTECTION OF WORK AND PROPERTY

11.1 Trade Contractor will be responsible for providing a safe place for the performance of its Work and for the physical conditions and safety of areas affected by its Work. Trade Contractor will take all necessary precautions to provide for the safety and protection of all persons who may come in contact with the Work and for all property within or adjacent to the Project site including adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures. Trade Contractor will repair any damage caused by its operations at its own expense and will provide protection to prevent damage, injury or loss to:

11.1.1 employees and other persons at the Project site;

11.1.2 equipment, materials, and vehicles stored at the site or off-site if under the care, custody, or control of the Trade Contractor or its Subcontractor;

11.1.3 Existing structures, property and the work of other trade contractors when carrying out Trade Contractor's Work.

11.2 Trade Contractor will:

11.2.1 Enclose the working area with a substantial barricade, and arrange Work to cause minimum amount of inconvenience and danger to the public.

11.2.2 Provide substantial barricades around any shrubs or trees indicated to be preserved.

11.2.3 Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Construction Manager and the Owner.

11.2.4 Preserve and protect from injury all buildings, pole lines and all direction, warning, and mileage signs that have been placed within the right-of-way.

11.3 All Trade Contractor field offices will be constructed of fire resistant materials. The Construction Manager will allocate space for storage and field offices as Project conditions permit. Construction details of the Trade Contractor's field office and their location on the site will be subject to the approval of the Construction Manager and will contain adequate fire protection equipment. Field office relocation, if required, will be at the Trade Contractor's expense.

11.4 The Construction Manager will require Trade Contractor to provide barricades (lighted, if required), fences, and protection necessary for general safety as related to its Work. Trade Contractor will notify the Construction Manager 24 hours prior to removing any safety installation. Any Trade Contractor damaging or removing any safety or protective work during the performance of its Work will be responsible for the immediate restoration of the safety or protective installations to ensure continuous compliance with all applicable safety regulations and any safety requirements.

11.5 Trade Contractor is responsible to notify the Construction Manager of any water damaged or wet materials that have been installed and, if responsible, to repair these damaged materials to the satisfaction of the Construction Manager immediately.

11.6 These precautionary measures will apply continuously and not be limited to normal working hours.

11.7 If damage to persons or property occur as a result of the Work, Trade Contractor will be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Owner and Construction Manager will be entitled to inspect and copy any documentation, video, or photographs.

12. PAYROLL RECORDS

12.1 Pursuant to Labor Code section 1776, the Trade Contractor and each Subcontractor will maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee performing labor in connection with the Work. Trade Contractor will certify under penalty of perjury that records maintained and submitted by Trade Contractor are true and accurate and that the employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any Work performed on the Project. Trade Contractor will also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

12.2 The payroll records will be certified and submitted by the Trade Contractor on a monthly basis with its application for payment or at other times that may be designated by the Owner. The Trade Contractor will also provide the following:

12.2.1 A certified copy of the employee's payroll records will be made available for inspection or furnished to the employee or his or her authorized representative on request.

12.2.2 A certified copy of all payroll records described will be made available for inspection or furnished upon request of the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards, or the Department of Industrial Relations ("DIR").

12.3 The certified payroll records will be on forms provided by the Division of Labor Standards Enforcement (“DLSE”) of the DIR or will contain the same information as the forms provided by the DLSE.

12.4 Any copy of records made available for inspection and furnished upon request to the public will 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 the Trade Contractor or any Subcontractor will not be marked or obliterated.

12.5 In the event of noncompliance with the requirements of this Section, the Trade Contractor will have 10 days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. If non-compliance is evident after the 10 day period, the Trade Contractor will, as a penalty to the Owner, forfeit Twenty-five Dollars (\$25.00) 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 Division of Labor Standards Enforcement, the penalties will be withheld from progress payments due.

13. PREVAILING RATES OF WAGES

13.1 This Project is subject to California State prevailing wages. Trade Contractor will comply with any applicable California prevailing wage laws. The Trade Contractor acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws commencing with Labor Code section 1720 et seq. Trade Contractor agrees that the Contract Price includes full compensation for all labor in compliance with California Labor Code and that no additional compensation will be owed to Trade Contractor in the event that Trade Contractor is required to pay higher wages or incur additional costs that Trade Contractor contends it did not anticipate.

13.2 The Trade Contractor 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. Because this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and because the total compensation is \$1,000 or more, Trade Contractor agrees to fully comply with the Prevailing Wage Laws. The Trade Contractor will obtain a copy of the prevailing rates of per diem wages at the commencement of this Trade Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. Trade Contractor will make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform Work on the Project available to interested parties upon request, and will post copies at the Trade Contractor’s principal place of business and at the Project site. Trade Contractor will defend, indemnify and hold the Construction Manager and the Owner, its elected officials, officers, employees and agents 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.

13.3 Under Labor Code section 1775, the Trade Contractor and each Subcontractor will forfeit as a penalty to the Owner not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any Work done by Trade Contractor, or by any Subcontract, in violation of the provisions of the Labor Code. The difference between the stipulated 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

stipulated prevailing wage rate, will be paid to each worker by the Trade Contractor or Subcontractor.

13.4 Trade Contractor will include a copy of the provisions of Section 1771, 1776, 1777.5, 1813 and 1815 in each Subcontract. The Trade Contractor will monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor. Upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing wage rate, the Trade Contractor will diligently take corrective action to halt or rectify the failure including, but not limited to, retaining sufficient funds due the Subcontractor for Work performed on the Project. Prior to making final payment to the Subcontractor for any portion of the Work, the Trade Contractor will obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to its employees and any amounts due under Section 1813.

13.4.1 The Trade Contractor or Subcontractor will, as a penalty to the state or political division on whose behalf the Trade Contract is made, forfeit \$25 for each worker employed in the execution of the Work for each calendar day that the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Section 1813. Notwithstanding the provisions of sections 1810 to 1814, inclusive, of this Labor Code, or any stipulation inserted in the Trade Contract, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, will be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

13.5 Trade Contractor will post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

13.6 The Division of Labor Standards Enforcement will notify the Trade Contractor within 15 days of receipt of a complaint of the failure of a Subcontractor on the Project to pay workers the general prevailing rate of per diem wages.

14. EMPLOYMENT OF APPRENTICES

14.1 The Trade Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Trade Contractor or any Subcontractor. The Trade Contractor will obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

15. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

15.1 Pursuant to Labor Code section 1735 and other applicable provisions of law, the Trade Contractor and its Subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, national origin, age, political affiliation, marital status, or disability on this Project. The Trade Contractor will take affirmative action to insure that employees are treated during employment or training without

regard to their race, color, religion, sex, gender identity, national origin, age, political affiliation, marital status, or disability and will comply with the following requirements:

15.1.1 During the performance of this Trade Contract, Trade Contractor and its Subcontractors will not deny the Trade Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, gender identity, age, physical or mental disability, nor will they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), sex or gender identity. Trade Contractor will insure that the evaluation and treatment of employees and applicants for employment are free of discrimination.

15.1.2 Trade Contractor will comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

15.1.3 Trade Contractor will permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to its books, records, accounts, other sources of information and its facilities as the Department or Agency requires to ascertain compliance with this clause.

15.1.4 Trade Contractor and its Subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

15.1.5 The Trade Contractor will include the nondiscrimination and compliance provisions of this clause in all Subcontracts.

16. LABOR/EMPLOYMENT SAFETY

16.1 The Trade Contractor will maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

16.2 Employers on a construction project are responsible for the health and safety for their workers as regulated by municipal, State, and Federal acts and regulations. In addition to the Safety Manual, Trade Contractor is obligated to comply with all laws, regulations, and codes concerning safety as will be applicable to the Work and to the safety standards established during the progress of the Work.

17. OCCUPANCY

17.1 The Owner and the Construction Manager reserve the right to occupy or utilize any portion of the Work at any time before Final Completion of the Project, and such occupancy or use will not constitute acceptance of any part of Work covered by this Trade Contract.

18. NOTICE OF THIRD PARTY CLAIMS

18.1 Pursuant to Public Contract Code section 9201, the Owner will provide Trade Contractor with timely notification of the receipt of any third-party claim relating to the Trade Contract.

19. CHANGE IN NAME AND NATURE OF TRADE CONTRACTOR'S LEGAL ENTITY

19.1 If a change in name or nature of the Trade Contractor's legal entity is anticipated, the Trade Contractor will notify the Owner and the Construction Manager to ensure that the change will be properly reflected on the Trade Contract.

20. ASSIGNMENT OF ANTITRUST ACTIONS

20.1 Pursuant to Public Contract Code section 7103.5 and Government Code sections 4554 and 4553, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Trade Contractor or Subcontractor offers and agrees to assign to the Owner 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. section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Trade Contract or any Subcontract. This assignment will be made and become effective at the time the Owner makes final payment to the Trade Contractor, without further acknowledgment by the parties.

21. PROHIBITED INTERESTS

21.1 No public official or representative of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, supervise, make, accept, 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, will be or become directly or indirectly interested financially in this Trade Contract.

22. LAWS AND REGULATIONS

22.1 Trade Contractor will give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of Work. If Trade Contractor observes that the Construction Documents are at variance with any laws, ordinances, etc., Trade Contractor will promptly notify the Owner and Construction Manager, in writing, and any necessary changes will be adjusted as provided for in this Trade Contract for changes in Work. If Trade Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without notice to the Owner and Construction Manager, it will bear all costs associated with any required corrections or repairs.

22.2 Trade Contractor will be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

23. DRUG FREE WORKPLACE CERTIFICATION.

23.1 Trade Contractor certifies that it has complied with Government Code section 8355 relating to a drug free workplace and will comply with the requirements included in the Construction Manager's Safety and Quality Programs. Trade Contractor will submit a certificate under penalty of perjury stating that Trade Contractor will:

23.1.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

23.1.2 Establish a drug-free awareness program to inform employees about: (i) the dangers of drug abuse in the workplace; (ii) the person's or organization's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations.

23.1.3 Trade Contractor will require that each employee performing Work on the Project be given a copy of the statement required by Section 23.1.1 and that the employee agrees to abide by the terms of the statement as a condition of employment.

24. OWNERSHIP OF CONSTRUCTION DOCUMENTS

24.1 The Engineer and its design consultants retain all rights, title, and interests under common law, statutory and copyright Federal or State law in the Construction Documents prepared and sealed by them, as well as any other documents prepared by the Engineer and any of the Engineer's design consultants for construction of the Project. The Trade Contractor may retain 1 record set of the Construction Documents for the limited purpose of defense of any subsequent claims involving this Project. The Trade Contractor will not own or claim a copyright in the Construction Documents and other documents prepared by the Engineer or other design consultants. All copies of the Construction Documents will be returned, or suitably accounted for, to the Owner upon completion of the Project. The Construction Documents and other documents prepared by the Engineer are furnished to the Trade Contractor for use solely with respect to this Project. They are not to be used by the Trade Contractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Trade Contractor is granted a limited, non-exclusive, license to use and reproduce applicable portions of the Construction Documents and other documents prepared by the Engineer for use in the performance of the Work under the Trade Contract. Notwithstanding the above, the Trade Contractor retains all rights, title and interest to its construction and fabrication details input into any model to illustrate means and methods for constructing, fabricating or installing portions of the construction Work

24.2 Copies. All copies made under this license will bear the statutory copyright notice, if any, shown on the Construction Documents and any other documents prepared by the Engineer and its design consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights and interests.

25. NOTICE OF TAXABLE POSSESSORY INTEREST

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 Trade Contractor will be responsible.