

**STANDARD FORM PRIME CONTRACT BETWEEN
OWNER AND CONTRACTOR -- COST PLUS FEE WITH
AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

TABLE OF CONTENTS

	Page
ARTICLE 1. DEFINITIONS	2
ARTICLE 2. CONTRACT DOCUMENTS.....	3
ARTICLE 3. SITE INVESTIGATION	4
ARTICLE 4. DIFFERING SITE CONDITIONS.....	4
ARTICLE 5. SITE ACCESS AND RIGHTS OF WAY	5
ARTICLE 6. SURVEYS	5
ARTICLE 7. PROSECUTION OF THE WORK.....	5
ARTICLE 8. MATERIALS, EQUIPMENT AND APPLIANCES.....	6
ARTICLE 9. LABOR AND SUPERVISION	6
ARTICLE 10. ROYALTIES	6
ARTICLE 11. PERMITS, LICENSE AND REGULATIONS.....	6
ARTICLE 12. INSPECTION OF WORK	7
ARTICLE 13. WARRANTY	7
ARTICLE 14. PAYMENTS/COST OF WORK.....	7
ARTICLE 15. CHANGES.....	10
ARTICLE 16. EXTENSIONS OF TIME	10
ARTICLE 17. CLAIMS.....	11
ARTICLE 18. RIGHTS AND REMEDIES	11
ARTICLE 19. TERMINATION	11
ARTICLE 20. SUSPENSION OF WORK	12
ARTICLE 21. COMPLETION AND ACCEPTANCE	12
ARTICLE 22. SURETY BONDS.....	13
ARTICLE 23. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY	13
ARTICLE 24. INSURANCE.....	14
ARTICLE 25. ASSIGNMENT	16
ARTICLE 26. WORK BY OWNER OR BY SEPARATE CONTRACTORS	16
ARTICLE 27. SUBCONTRACTS	17
ARTICLE 28. ARCHITECT/ENGINEER'S AUTHORITY	17
ARTICLE 29. MEDIATION & ARBITRATION.....	17
ARTICLE 30. GOVERNING LAW	18
ARTICLE 31. NOTICE	18
ARTICLE 32. MISCELLANEOUS PROVISIONS.....	18



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**STANDARD FORM PRIME CONTRACT BETWEEN
OWNER AND CONTRACTOR – COST PLUS FEE WITH
AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

This agreement (the “Contract”) is entered into this _____ day of _____, 20____,

between _____
 (“Owner”)
 (Name and Address of Owner)

and _____
 (“Contractor”)
 (Name and Address of Contractor)

(California Contractor’s License No. _____) in connection with that work of improvement

known as _____ to be constructed for Owner
 located at _____

Assessor’s Parcel No. _____ (the _____
 “Project”).

The construction lender for the Project is _____
 Branch of _____

_____ located at _____; _____;
 (Name of Lender) (Branch Manager)

Loan No. _____

The architect/engineer for the Project is _____
 (Name)

 (Address)

The Owner wishes to engage the Contractor to perform the Work, as defined below, on the terms and conditions set forth in the Contract Documents, as defined below.

THEREFORE, the parties agree as follows:

A. The Contractor shall perform the work in compliance with the Contract Documents, which consist of this Contract (including the general conditions), the attached schedules, and any supplementary, special or other conditions, drawings, specifications, all addenda issued prior to the execution of this Contract, and all change orders, modifications, and amendments issued after execution of this Contract. The Contract Documents are specifically enumerated in the attached Schedule A.

B. The Contractor shall supply all labor, materials, equipment and supervision necessary to complete all of the work described in the attached Schedule B (the “Work”).

C. The Work shall be commenced and completed according to the Project Schedule attached as Schedule C, subject to extensions and modifications as are made pursuant to the Contract Documents.

D. The Contractor and Owner explicitly agree to cooperate fully with each other in carrying out their duties under this Contract, and recognize that this Contract establishes a duty of good faith and fair dealing toward each other.

E. The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions as provided in the Contract Documents, the Contract Price as defined and as more fully described in Article 14. The Contract Price shall be the Contractor’s fee as defined in Article 14 plus the cost of the Work as defined in Article 14, subject to any Guaranteed Maximum Price (“GMP”) established in Article 14 and any adjustment made in accordance with the Contract Documents. All provisions regarding retention, security in lieu of retention and/or liquidated damages, are fully set forth in Schedule D.

GENERAL CONDITIONS ARTICLE 1. – DEFINITIONS.

In this Contract, the following definitions shall apply:

1.1 Architect/Engineer – the person, partnership or corporation retained by the Owner for the design and observation of the Work and, unless otherwise stated in writing by the Owner, the authorized representative of the Owner on the site of the Work. If no Architect/Engineer is designated by this Contract, any reference to the Architect/Engineer shall be deemed a reference to the Owner.

1.2 Contract – the signed agreement between the Owner and the Contractor that is part of the Contract Documents.

1.3 Contract Documents – as defined in Paragraph 2.1

1.4 Contractor – the person, partnership, joint venture, limited liability company or corporation signatory to the Contract that is to perform the Work in accordance with the Contract Documents.

1.5 Contract Price – the total compensation to be paid to the Contractor for the performance of the Work, as provided for in Article 14, and as maybe amended during the course of performance of the Work.

1.6 Contract Time – the number of calendar days as set forth in the Contract, as may be amended by the Contract Documents, during which Substantial Completion of the Work much achieved.

1.7 Final Completion – the completion of the Work, including the submission of all final releases, documents and manuals required by the Contract Documents.

1.8 Owner – the person, partnership or corporation signatory to the Contact to whom the Contractor is responsible for the performance of the Work, or the authorized representative designed by the Owner in writing, on whose authority, acts, and instructions the Contractor may rely, unless otherwise limited in writing by the Owner.

1.9 Project – the facility or structure(s) to be constructed as part of the Work.

1.10 Subcontractor – any person, partnership, joint venture, limited liability company or corporation which has a contract with the Contractor to furnish labor, material, or equipment as part of the Work.

1.11 Sub-subcontractor – any person, partnership, joint venture, limited liability company or corporation which has a contract with a Subcontractor to furnish labor, material, or equipment as part of the Work.

1.12 Substantial Completion – the point in the progress of the Work when the Owner may use the Project for the purpose intended.

1.13 Work – the total of the Contractor’s responsibilities as set forth in the Contract Documents, including, but not limited to, the construction of the Project.

ARTICLE 2. – CONTRACT DOCUMENTS.

2.1 The Contract Documents shall consist of those documents set forth in Schedule A attached to this Contract, all change orders, modifications and amendments issued after execution of this Contract, and any documents incorporated herein or therein by reference.

2.2 The following rules, in addition to those generally applicable to contracts, shall govern the interpretation of the Contract:

2.2.1 The Contract Documents are complementary and what is required by any document shall be as binding as if required by all.

2.2.2 In case of conflict between drawings and specifications, specifications shall govern.

2.2.3 Materials or Work described in words which, so applied, have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.3 The responsibility for design, drawings, specifications and submittals shall be as follows:

2.3.1 The Owner shall be responsible for the adequacy of design and sufficiency of the drawings and specifications.

2.3.2 The Owner, through the Architect/Engineer, shall furnish drawings and specifications which adequately represent the requirements of the Work. All such drawings and specifications shall be consistent with each other, and shall be full, complete and accurate. The Contractor will be furnished free of charge all copies of drawings and specifications reasonably necessary for the execution of the Work.

2.3.3 All drawings and specifications furnished to the Contractor shall not be reused on other work. With the exception of one document set, all sets are to be returned to the Owner as requested at the completion of the Work. The parties may permit Subcontractors to retain plan sets, if reasonably necessary for a valid purpose.

2.3.4 If the Contractor in the course of the Work finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in drawings or in the layout as given by survey points and instructions, the Contractor shall promptly inform the Owner or Architect/Engineer, in writing, and the Owner or Architect/Engineer shall promptly verify the same.

2.3.5 All shop drawings, submittals and other documents furnished by the Contractor or its Subcontractors shall not be reused by the Architect/Engineer or the Owner on other work, and are to be returned to the Contractor at the completion of the Work. The Owner may retain one copy of the Contractor's and Subcontractors' shop drawings for reference purposes for this Work only.

2.3.6 The Contractor shall furnish to the Architect/Engineer all shop drawings, submittals and other documents required by the Contract Documents in sufficient time to permit review and approval by the Architect/Engineer. The Architect/Engineer shall return such documents to the Contractor within a reasonable time, and in no event later than required in order to avoid delays in the Work either approved or with such other notation, including correction and resubmittal, as may be required under the circumstances. Further resubmittals and subsequent reviews and approvals shall be made promptly.

ARTICLE 3. – SITE INVESTIGATION.

3.1 The Owner has made known to the Contractor, prior to the receipt of bids, all information of which it is aware as to the surface and subsurface conditions in the vicinity of the Work, including topographical maps, reports of exploratory tests, written opinions of technical advisors, and other information that might assist the Contractor in properly evaluating the extent and character of the Work that might be required. Such information is the best information obtainable by the Owner from its employees, agents and consultants, through the exercise of reasonable diligence.

3.2 The Contractor has satisfied itself as to the nature and location of the Work, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and other matters which can reasonably be expected to affect the Work under this Contract.

ARTICLE 4. – DIFFERING SITE CONDITIONS.

4.1 The Contractor shall promptly, before such conditions are disturbed, notify the Owner or Architect/Engineer in writing of:

4.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or

4.1.2 Previously unknown physical or other conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

4.2. The Owner shall promptly investigate the conditions and, if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment in the Contract Price and the Contract Time shall be made pursuant to Articles 15 and 16. Any claim of the Contractor for adjustment shall not be allowed unless Owner is given reasonably prompt notice of such claim; provided, however, that the Owner may, if it determines that the facts so justify, consider and adjust any such claims that are later asserted before the date of final settlement of the Contract.

4.3 The discovery of "Hazardous Material," not specifically identified in the Contract Documents with respect to its location and quantity, shall be deemed to be a differing site condition pursuant to this article. "Hazardous Material" includes, but is not limited to, PCBs, asbestos, lead or any other

material, which is defined as hazardous under California or Federal Law, or removal of which is governed by the doctrine of strict liability under Federal or California law. If hazardous material is discovered:

4.3.1 The Contractor shall immediately (a) given notice to the Owner of such discovery; (b) stop that portion of the Work affected by the Hazardous Material; and (c) sufficiently protect the Work to prevent exposure of any persons to that Hazardous Material.

4.3.2 The Contractor shall have no obligation to perform any corrective or remedial work that would require the handling of or exposure to Hazardous Material. However, if the Contractor agrees to perform such work: (a) the Owner agrees to indemnify, hold harmless and defend the Contractor from and against any claim, action or legal proceeding brought against the Contractor seeking to make the Contractor liable for the performance of such work; (b) the Owner shall provide specific instruction to the Contractor with respect to the handling, protection, removal and disposal of such Hazardous Material; and (c) an equitable adjustment in the Contract Price and the Contract Time shall be made pursuant to Articles 15 and 16 for such work.

4.4 The Owner shall have the sole responsibility of furnishing all written warnings, notices or postings required by State or Federal Law regarding the use of existence of hazardous or potentially hazardous substances or Hazardous Material.

ARTICLE 5. – SITE ACCESS AND RIGHTS OF WAY.

The Owner shall provide, no later than the date when needed by the Contractor, the lands upon which the Work is to be performed, including convenient access to the lands and any other lands designated in the Contract Documents for use by the Contractor. Any delay in the furnishing of these lands shall entitle the Contractor to an equitable adjustment in the Contract Price and Contract Time.

ARTICLE 6. – SURVEYS.

In addition to the information required to have been furnished by the Owner pursuant to Article 3, the Owner shall furnish for the Work all necessary surveys and reports describing the physical characteristics, soil, geological and subsurface conditions, legal limitations, utility locations and legal description. The Owner shall establish such land surveys and baselines so that the Contractor may locate the principal parts of the Work and perform such detailed surveys to perform the Work. The Contractor shall preserve all benchmarks and reference points established by the Owner and shall be responsible for any destruction of them caused by Contractor's operations.

ARTICLE 7. – PROSECUTION OF THE WORK.

7.1 Within a reasonable time after award of the Contract, the Contractor shall prepare and submit to the Owner an estimated progress schedule indicating the starting and completion dates for the various states of the Work and the sequence of construction. Thereafter, the Contractor shall submit, when reasonably requested by the Owner, updates of the schedule reflecting any changes and such dates or sequence.

7.2 Time is of the essence of this Contract. The Contractor shall diligently prosecute the Work in order to achieve Substantial Completion within the Contract Time, and the Owner shall do nothing to hinder Contractor in completing the Work as expeditiously as possible.

7.3 The Contractor shall achieve Final Completion as promptly as practical after Substantial

Completion.

7.4 The Contractor shall keep the site of the Work free from accumulation of rubbish and waste materials. Upon completion of the Work, Contractor shall remove from the site of the Work all rubbish, waste materials, temporary structures, equipment and surplus materials.

ARTICLE 8. – MATERIALS, EQUIPMENT AND APPLIANCES.

8.1 Unless otherwise provided by the Contract, the Owner shall pay the cost, including taxes, for all materials, labor, equipment, tools, water, utilities, transportation and all other services and facilities necessary for the execution and completion of the Work pursuant to Article 14.

8.2 Unless otherwise specified, all materials incorporated in the Work shall be new and both workmanship and material shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

ARTICLE 9. – LABOR AND SUPERVISION.

The Contractor shall at all times maintain good discipline and order among its employees. It shall provide competent, suitably-qualified personnel to perform the Work assigned to them. The Contractor shall employ on the site of the Work a competent superintendent and such necessary assistance to represent the Contractor and receive communications for the Contractor from the Owner. Important communications shall be confirmed by the Owner in writing; otherwise, written confirmation shall be made upon request.

ARTICLE 10. – ROYALTIES.

The Contractor shall pay all royalties and license fees, shall defend Owner against all suits and claims, and shall save harmless the Owner from all damages, arising from infringement of any patent rights connected with the Work. However, the Contractor shall not be responsible if infringement arises from the use of a particular process or product specified by the Owner unless the Owner identified such process or product as being patented.

ARTICLE 11. – PERMITS, LICENSE AND REGULATIONS.

11.1 Unless otherwise provided in the Contract Documents, permits, easements and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Owner. The Owner and Contractor shall, as may be necessary, assist the other in obtaining such permits and licenses. Unless otherwise provided, permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner.

11.2 The Contractor shall give all notices required by the Contract Documents and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. If the Contractor observes that the drawings and specifications are at variance with any laws, ordinances, rules and regulations, the Contractor shall promptly notify the Owner. Any changes in the Work as a result of such variance will entitle the Contractor to an equitable adjustment in the Contract Price and the Contract Time as set forth in Articles 15 and 16.

11.3 The Contractor is entitled to rely on the Owner's representations regarding the public/private nature of the Work and the applicability of "prevailing wage" rates. If the nature of the Work is other than as represented by Owner, Owner will defend, indemnify and hold Contractor harmless from any

claim or allegation, including penalties assessed, resulting from a failure by Contractor or Subcontractor to pay "prevailing wages."

ARTICLE 12. – INSPECTION OF WORK.

12.1 The Owner shall provide sufficient competent personnel to visit and inspect the site during the course of the Work to determine in general whether the Work is being performed in a manner which is consistent with the Contract Documents. Notwithstanding such inspection(s), the Contractor will be held responsible for the acceptability of the finished Work, and defective Work shall be corrected.

12.2 The Owner and its representatives shall at all times have access to the Work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection.

12.3 If the specifications, laws, ordinances, or any public authority require any work to be specifically tested or approved, the Contractor shall give the Architect/Engineer timely notice of its readiness for inspection and of the date fixed for such inspection. Inspections by the Architect/Engineer, or any applicable public authority, shall be made promptly, and, when practicable, at the source of supply. If any work should be covered up without approval or consent of the Architect/Engineer or applicable public authority, it must, if required by the Architect/Engineer, be uncovered for examination and properly restored at the Contractor's expense, unless the Architect/Engineer, or applicable public authority, has unreasonably delayed inspection.

12.4 If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to its being covered, the Architect/Engineer may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate change order pursuant to Article 15, be charged to the Owner. If such work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

ARTICLE 13. – WARRANTY.

13.1 The Contractor warrants to the Owner that the Work will be performed in accordance with the Contract Documents.

13.2 Prompt written notice of all defects shall be given to the Contractor within one year of Substantial Completion. The Contractor shall promptly make the necessary corrections, including the repair of any work damaged in such corrections. However, the Owner may accept any defective work and agree with the Contractor on an appropriate adjustment and payment. The parties will cooperate to avoid economic waste.

ARTICLE 14. – PAYMENTS/COST OF THE WORK.

14.1 **Contract Price.** The Owner shall pay the Contractor in accordance with Article 14 a contract price ("Contract Price") equal to the Contractor's Fee, as defined in Article 14.2 plus the cost of the Work, as defined in Article 14.3, subject to any GMP in this Article 14 and any adjustments made in accordance with the Contract Documents.

14.2 **Contractor's Fee.** The Contractor's fee shall be \$ _____; or ____ % of the cost of the Work. (If only one of these is filled in, it shall be the sole fee determinant. If both are filled in, the

Contractor shall be paid the greater amount.)

14.3 Cost of the Work. The Owner shall pay the Contractor for the cost of the Work, which is defined as all costs reasonably and properly incurred in performing the Work, including wages paid for direct labor; contributions applicable to the Contractor's payroll; fringe benefits; payroll taxes; contributions for unemployment; social security, disability, and similar payments and assessments; salaries of clerical, supervisory and other personnel at the job site or in the field and employed in the construction of the Project; travel and subsistence; materials, supplies, and equipment incorporated or consumed in the Work; the cost of subcontracts; temporary facilities and hand tools consumed in the Work; reasonable equipment rental charges whether the equipment is owned by or rented to Contractor; power, utility, and telephone charges; permit fees; sales and use taxes incurred about the Work; premiums for bonds and insurance the Contractor is required by the Contract Documents to maintain; demolition, clean-up and removal costs; professional fees of consultants, engineers, designers or schedulers that the Contractor is required by the Contract Documents to employ; and all other costs properly and reasonably incurred in the performance of the Work.

14.3.1 Non-reimbursable costs. The following shall be excluded from the cost of the Work:

14.3.1.1 Compensation for the Contractor's personnel stationed at the Contractor's principal or branch offices;

14.3.1.2 Overhead and general expenses, except as provided for in this Article 14 or which may be recoverable for changes to the Work;

14.3.1.3 The cost of the Contractor's capital used in the performance of the Work;

14.3.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded;

14.3.1.5 Discounts and rebates and the salvage value of tools and equipment consumed in the Work shall not be included in the cost of the Work.

14.4 The Guaranteed Maximum Price ("GMP"). The Contractor guarantees that it shall not exceed the GMP of \$ _____. The Contractor does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

14.5 Savings. If the sum of the actual cost of the Work and the Contractor's fee is less than the GMP, as such GMP may have been adjusted pursuant to the Contract Documents, the difference (savings) shall be shared as follows:

i) _____% to the Contractor and _____% to the Owner, ii) or the first \$ _____, of savings shall be provided to the Contractor, and the balance of savings, if any, shared _____% to the Contractor and _____% to the Owner.

If only one of the above is filled in, it shall control. If both are filled in, the one providing the greater amount to Contractor shall control. If all are blank, the Owner is assumed to be the sole recipient of all savings.

14.6 The Owner, shall, at the written request of the Contractor, prior to commencement of the Work or any time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have

been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

14.7 Before commencing the Work, the Contractor shall provide to the Owner a breakdown of the Contract Price according to the various items of Work to be performed, including reasonable sums for mobilization.

14.8 Periodically, but not less frequently than monthly, the Owner shall pay the Contractor for the value of the Work performed, as adjusted by the Contractor's fee, less the amount of previous payments and other amounts permitted to be withheld under this Contract. Payment shall be made within ten (10) working days after submission of a properly documented invoice containing the above breakdown and reflecting the quantity of the items which have been performed.

14.9 The Contractor agrees that all Work, materials and equipment covered by an application for payment will pass to the Owner free and clear of all liens, claims, security interest or encumbrances upon payment by the Owner. At the request of the Owner, the Contractor shall provide waivers and releases in accordance with California Civil Code §§ 8120-8138 from all persons who have served 20-day preliminary notices pursuant to California Civil Code §§ 8034, 8100 *et seq.*, and 8200 *et seq.* as a prerequisite to the Owner's obligation to disburse progress and final payments for Work, materials or equipment furnished by such persons.

14.10 When the Contractor has achieved Substantial Completion, the Owner shall pay to the Contractor the Contract Price, including retention and other amounts previously withheld, less the value of any Work remaining to be completed and other amounts permitted to be withheld under this Contract.

14.11 Upon Final Completion and acceptance of the Work, the Owner shall pay the Contractor all amounts remaining to be paid under the Contract, less any amounts the Owner is entitled to retain under the other provisions of this Contract.

14.12 The Owner, on the basis of reasonable and verifiable evidence, may withhold from any payment such amounts as maybe necessary for protection against loss caused by (a) defective work not remedied or (b) failure of the Contractor to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the Contractor). When these grounds are removed, or the Contractor provides a surety bond or other security to protect the Owner in the amount withheld, payment shall be made of the amount withheld.

ARTICLE 15. – CHANGES.

15.1 The Work shall be subject to change by addition, deletions or revisions by the Owner. The Contractor shall be notified of such changes upon receipt of additional and/or revised drawings, specifications, exhibits or written orders.

15.2 Whenever the Work is changed by addition, deletion, or revision by Owner, and an equitable adjustment in the Contract Price or the Contract Time is appropriate, the Contractor shall submit to the Owner within a reasonable time a detailed estimate with supporting calculations and pricing together with any adjustments in the schedule reflecting any changes in the Contract Price and the Contract Time. Pricing shall be in accordance with the pricing structure of this Contract. However, to the extent that such pricing is in applicable, the cost of the change or the amount of the adjustment shall be determined on the basis of cost to the Contractor (except in the case of Contractor-owned equipment rates) plus reasonable

amounts for overhead and profit.

15.3 The Contractor shall not perform changes in the Work in accordance with paragraph 15.1 and 15.2 until the Owner has approved in writing the changes in the Contract Price and Contract Time, except as set forth in paragraph 15.4 below. Upon receiving such written approval from the Owner, the Contractor shall diligently perform the changes in accordance with this Contract.

15.4 Notwithstanding paragraph 15.3, the Owner may expressly direct the Contractor in writing to perform the change prior to approval of price and schedule adjustments by the Owner. The Contractor shall not suspend performance of this Contract during the review and negotiation of any change except as may be directed by the Owner pursuant to Article 20, so long as the change is a reasonably foreseeable alteration to the Work originally contemplated by the Contract Documents. In the event the Owner and the Contractor are unable to reach agreement on changes in the Contract Price and the Contract Time, the matter shall be resolved in accordance with Article 17.

ARTICLE 16. – EXTENSIONS OF TIME.

16.1 The Contract Time shall be extended as necessary to accommodate delayed progress of the Work resulting from changes in the Work, suspension of the Work (in whole or in part) by the Owner, any other act or omission by the Owner or its employees, agents or representatives contrary to the provisions of the Contract, or any other cause which could not have been reasonably foreseen or which is beyond the control of the Contractor, its Subcontractors or suppliers, including, but not restricted to, acts of God, acts of any governmental authority, acts of a public enemy, fire, unusual delay in transportation, unusual delays in obtaining, or shortages of, materials or equipment, abnormal weather conditions, or labor disputes. The Contract Time will not be extended for delays that solely result from the Contractor's fault, negligence, or neglect.

16.2 The Contractor shall give to the Owner notice of any delay within a reasonable time after the occurrence or commencement of a cause of delay. Failure to give notice of any delay within a reasonable time shall constitute a waiver by the Contractor of any claim for extension of the Contract Time resulting from that cause of delay. The Contractor's notice shall include an estimate of the probable effect of the cause of delay or progress of the Work.

16.3 With respect to any delay resulting from act or neglect by the Owner or its employees, agents or representatives or by another Contractor employed by the Owner, and which delay is not otherwise specifically provided for in the Contract Documents, the Contractor may recover from the Owner any damages incurred as a result of such delay in accordance with Article 15.

16.4 With respect to any delay resulting from the fault or neglect of the Contractor, any Subcontractor, or those under the control of either, the Contractor shall pay to the Owner the sum specified in the attached Schedule D for such day of delay, not as a penalty, but as liquidated damages, since the actual damages for such delay are uncertain and would be impracticable or extremely difficult to ascertain.

ARTICLE 17. – CLAIMS.

17.1 The Contractor shall give to the Owner written notice within a reasonable time after the happening of any event, occurrence, or any direction, acts, or neglect by Owner or its employees, agents, or representatives, which the Contractor believes may give rise to a claim for an equitable adjustment in the Contract Price or the Contract Time ("Claim"). Within a reasonable time after becoming aware of such Claim, the Contractor shall supply the Owner with a statement supporting such claim, which statement shall include an estimate of the change in the Contract Price and the Contract Time, as circumstances

allow. If requested by the Owner in writing, the Contractor shall provide reasonable documentation to substantiate its claim. The Contractor agrees to continue performance of the Work during the time any claim is pending, so long as the Work requested is a reasonably foreseeable addition to the Work originally contemplated in the Contract Documents. No claim shall be allowed if asserted after final payment is made under this Contract.

17.2 Claims by either party for damages due to injury or damage to person or property or for delay, interference, suspension or interruption of work or for any other damage shall be made in writing to the other party within a reasonable time after the happening of such event or the first observance of such cause for damage.

17.3 Owner and Contractor will make every effort to timely document and resolve all Claims as expeditiously as possible. If the Owner agrees on any portion of a Claim, but not on the full amount of the adjustment in Contract Price or Contract Time requested, the Contract Time and Contract Price will be adjusted promptly in such amounts as the Owner acknowledges, and Contractor may submit the disputed portion as a Claim pursuant to paragraph 17.1. The parties agree to cooperate in good faith and to make every effort to resolve issues relating to Contract Time promptly as such issues arise, and not to reserve such issues until the end of the Project.

ARTICLE 18. – RIGHTS AND REMEDIES.

18.1 The duties, obligations, rights and remedies in these Contract Documents shall be cumulative, in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law, unless otherwise indicated.

18.2 No action or failure to act by the Owner, Architect/Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of, or acquiescence in, any breach, except as may be specifically agreed in writing or specified in the Contract.

ARTICLE 19. – TERMINATION.

19.1 Should the Owner become insolvent or commit a material breach or default under the Contract, including, but not limited to, failure to pay timely undisputed sums due to the Contractor, or failure to provide evidence (or material modification) of the financial arrangements referred to in Article 14.6 and fail to act in good faith to remedy the same within ten (10) days after notice from the Contractor, then the Contractor may terminate this Contract. The Contractor shall be entitled to all damages incurred as a result of such termination.

19.2 Should the Contractor become insolvent, or should the Contractor refuse or neglect to supply a sufficient number of properly skilled workmen, tools, or material within the Contractor's control, or should the Contractor commit a material breach of this Contract and should the Contractor fail to act in good faith to remedy the same within ten (10) days after written demand by the Owner, the Owner may terminate this Contract. Upon any such termination, the Contractor shall be compensated for all costs incurred for that portion of the Work then performed. The Contractor shall be liable for any costs incurred by the Owner in completing the Contract.

19.3 The Owner reserves the right to terminate the Work for its convenience upon notice in writing to the Contractor. In such event, the Contractor shall be paid its actual costs for that portion of the Work performed to the date of termination and for all costs of termination, including demobilization and any termination charges by vendors and Subcontractors, plus 15 percent of all such costs for overhead and

profit. If, for any reason, within six (6) months of the actual date of cessation of Work the Owner elects to resume the Work, using another contractor, the Contractor shall be entitled to payment of its actual profits for performance of all of the Work.

ARTICLE 20. – SUSPENSION OF WORK.

20.1 The Owner may at any time by notice to the Contractor suspend further performance of all or any portion of the Work by the Contractor. The notice shall specify the date and the estimated duration of the suspension. Any suspension shall not exceed forty-five (45) consecutive calendar days nor shall the total of all suspensions of all or any portion of the Work exceed ninety (90) calendar days. Upon receiving any such notice, the Contractor shall promptly suspend further performance of the Work to the extent specified in the notice, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies, and equipment that the Contractor has on hand for performance of the Work. The Owner may at any time withdraw the suspension of performance of the Work as to all or part of the suspended Work by notice to the Contractor specifying the effective date and scope of withdrawal, and the Contractor shall resume diligent performance of the Work for which the suspension is withdrawn, as soon thereafter as is reasonably possible.

20.2 Unless a suspension pursuant to this section is caused by the default of the Contractor, the Contractor shall be entitled to recover from the Owner any damages as a result of any suspension in accordance with Article 15.

20.3 If any suspension not caused by the default of the Contractor exceeds the time limits set forth in Paragraph 20.1, the Contractor may at its option terminate this Contract in accordance with Paragraph 19.3.

ARTICLE 21. – COMPLETION AND ACCEPTANCE.

21.1 The Contractor shall be responsible for the Work until Final Completion, except for any part of the Work partially accepted as set forth below in Paragraph 21.5.

21.2 The Contractor shall notify the Owner upon Substantial Completion of the Work. The Architect/Engineer shall promptly verify whether Substantial Completion has occurred and, if so, shall so certify to the Owner. If not, the Architect/Engineer shall promptly state in writing to the Contractor what must be done to achieve Substantial Completion. This procedure shall be repeated until Substantial Completion has been achieved. Payment to the Contractor for achieving Substantial Completion shall be made in accordance with Paragraph 14.4.

21.3 The Contractor shall notify the Owner upon Final Completion of the Work. The Architect/Engineer shall promptly verify whether Final Completion has occurred and, if so, shall so certify to the Owner. If not, the Architect/Engineer shall promptly state in writing to the Contractor what must be done to achieve Final Completion. This procedure shall be repeated until Final Completion has been achieved. Payment to the Contractor for achieving Final Completion shall be made in accordance with Paragraph 14.5.

21.4 If at any time prior to the issuance of the certificate of Substantial Completion, any portion of the permanent construction has been satisfactorily completed, and if the Architect/Engineer determines that such portion of the permanent construction is not required for the operations of the Contractor, the Architect/Engineer shall issue to the Contractor a certificate of partial completion, and the Owner may take over and use the portion of the permanent construction described in such certificate.

21.5 The issuance of a certificate of partial completion shall not operate to release the Contractor or its

sure- ties from any obligations under this Contract or the performance bond, but shall determine the beginning date of any warranties solely applicable to the completed portion. Upon such issuance the Owner shall be responsible for all maintenance, utilities, insurance and other similar expenses with respect to such use. If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to an increase in the Contract Price or the Contract Time, or both, as the Architect/Engineer may determine.

ARTICLE 22. – SURETY BONDS.

The Owner shall have the right, prior to the execution of the Contract, or any time thereafter to require the Contractor to furnish bonds executed by one or more financially responsible sureties, and in such form as the Owner may reasonably prescribe, covering the faithful performance of the Contract and payment of all obligations under the Contract.

ARTICLE 23. – PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY.

23.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

23.2 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

23.2.1. All employees on the Work and all other persons who may be affected;

23.2.2. All the Work and its materials and equipment;

23.2.3. Other property at or adjacent to the site of the Work.

23.3 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damages, injury or loss.

23.4 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss, and, if such emergency is not the fault of the Contractor, shall be entitled to an equitable adjustment in the Contract Price and the Contract Time.

ARTICLE 24. – INSURANCE.

24.1 Contractor's Insurance

24.1.1 The Contractor shall procure and maintain insurance as set forth in Paragraph 24.1.3 below which will protect the Contractor from claims arising out of the Contractor's operations under this Contract including claims against the Contractor arising out of operations performed for the Contractor by Subcontractors. Insurance shall be secured from an insurer currently authorized to do business in the state in which the Work is located. Insurance coverage shall be at limits specified in the Contract Documents. Insurance shall be maintained continuously from the commencement of the Work until final payment and thereafter to the extent coverage following final payment is required by the Contract Documents.

24.1.2 Certificates of insurance shall be filed with the Owner by the Contractor's insurance broker prior to commencement of the Work. The Certificate of Insurance shall provide that there will be no cancellation of coverage without thirty (30) days prior written notice to the Owner. If

any reduction of coverage occurs, the Contractor shall furnish the Owner with information regarding such reduction as soon as reasonably possible.

24.1.3 The Contractor shall maintain the following insurance:

24.1.3.1 Worker's Compensation and Employer's Liability Insurance;

24.1.3.2 Liability Insurance – Commercial General Liability policy form CG 00 01 providing insurance for Bodily Injury and Property Damage Liability and including coverage for:

- Personal Injury Liability; and
- Contractual Liability insuring the tort liability obligations assumed by the Contractor in this Contract;

24.1.3.3 Automobile Bodily Injury and Property Damage Liability Insurance including coverage for all owned, hired and non-owned automobiles.

24.2 Owner's Liability Insurance. The Owner shall secure and maintain liability insurance to protect the Owner. The Owner, at its option, may purchase and maintain additional liability insurance to protect the Owner against claims arising out of performance of the Work under the Contract. The Contractor shall not be responsible for purchasing liability insurance for the Owner.

24.3 Property Insurance

24.3.1 Unless otherwise provided by supplement or addendum to this Contract, the Owner shall, prior to commencement of the Work, secure and maintain property insurance (in the form of Builders Risk Insurance or other suitable cover) in the amount of the original contract price from an insurer authorized to do business in the state in which the Work is located. The amount of insurance shall be adjusted, from time to time, to reflect modifications in the Contract Price. This property insurance shall be maintained until the Work has been completed and accepted by the Owner and final payment has been made as provided in this Contract. Property insurance shall cover the Owner, Contractor, Subcontractors and Sub-subcontractors for their interest in the Work.

24.3.1.1 Property Insurance shall be provided on an all-risk policy form and shall insure against the perils of fire and extended coverage and for other physical loss or damage including coverage for theft, vandalism, malicious mischief, collapse, debris removal (including demolition occasioned by enforcement of any applicable legal requirements) and shall also cover reasonable compensation for Architect's services and expenses required because of such insured loss. The insurance will also cover offsite and transit exposures. Insurance for loss caused by flood, surface waters and earthquake shall not be required unless otherwise provided in the Contract and the Owner shall bear the responsibility for such loss.

24.3.1.2 If the Owner does not intend to purchase the required property insurance, the Owner shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then obtain insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is

damaged by the failure of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all costs attributable thereto.

24.3.1.3 If property insurance deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required deductibles above the amounts so identified, the Owner shall be responsible for payment of the additional costs not covered because of such increased deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

24.3.1.4 Prior to the first date on which any risk of an exposure to loss may occur, the Owner shall provide the Contractor with a complete copy of each policy that includes insurance coverages required by this Paragraph 24.3. The policy shall contain a provision that it will not be canceled unless thirty (30) days prior written notice has been given to the Contractor.

24.3.2 Loss of Use Insurance. At the Owner's option, the Owner may secure insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

24.3.3 Boiler and Machinery Insurance. Owner-procured Boiler and Machinery insurance (if required by the Contract Documents) shall specifically cover specified insured objects during installation and until final acceptance by the Owner. This insurance shall insure the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the specified Work.

24.3.4 If the Contractor makes a timely written request that insurance for risks and perils other than those required herein be included in the property insurance policy, the Owner shall use its best efforts to secure pricing for such insurance coverage. If the price is acceptable to the Contractor, the cost of such added coverage shall be charged to the Contractor by appropriate Change Order.

24.3.5 If the Owner insures other real or personal properties near the Work site, by property insurance under policies separate from those insuring the Project, or if after final payment, property insurance is provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 24.3.6 for damages caused by perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement.

24.3.6 Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their Subcontractors, Sub-subcontractors, agents and employees for damages caused by perils (and to the extent of insurance for such perils) covered by property insurance obtained pursuant to this Paragraph 24.3.

24.3.7 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause. Written notice of any proposed settlement or adjustment shall be timely sent to the Contractor. The Contractor shall

pay Subcontractors their just shares of insurance proceeds received by the Contractor, and shall require Subcontractors to make payments to their Sub-subcontractors in a similar manner.

24.3.8 The Owner shall have no right to partial occupancy or use and the same shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company and shall not take action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of the required property insurance.

ARTICLE 25. – ASSIGNMENT.

Neither party to the Contract shall assign the Contract, in whole or part, including an assignment by the Contractor of any monies due to become due, without the written consent of the other. This section shall not apply to the subcontracting by the Contractor of any portion of the Work.

ARTICLE 26. – WORK BY OWNER OR BY SEPARATE CONTRACTORS.

26.1 The Owner reserves the right to perform Work itself and to award separate contracts in connection with and contiguous to the Work. The Owner shall provide for the coordination of the Work of its own forces and of each separate contractor with the Work of the Contractor so as not to delay, hinder or interfere with the Contractor's performance of the Work. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of materials and the extension of Work.

26.2 If the proper execution of any part of the Work depends upon the Work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with its Work, promptly report to the Architect/Engineer any apparent defects in such other Work that render it unsuitable for such proper execution.

ARTICLE 27. – SUBCONTRACTS.

Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

ARTICLE 28. – ARCHITECT/ENGINEER'S AUTHORITY.

28.1 The Architect/Engineer shall be the representative of the Owner and, unless otherwise provided, shall have the full authority to act on behalf of the Owner in connection with the Owner's rights and obligations under this Contract. The responsibilities imposed upon the Architect/Engineer as set forth in this Agreement shall be specifically set forth in a written agreement between the Owner and the Architect/Engineer and the Owner represents that such responsibilities are so set forth in the Owner-Architect/Engineer Agreement.

28.2 The Architect/Engineer shall have authority to stop the Work whenever necessary to insure the proper execution of the Contract. The Architect/Engineer shall also have the authority to reject all work and materials which do not conform to the Contract.

28.3 The Architect/Engineer shall decide all questions which arise in the execution of the Work. Within a reasonable time after presentation, the Architect/Engineer shall provide written decisions on all claims of the Owner or the Contractor and on all matters relating to the execution and progress of the Work

or the interpretation of the Contract Documents.

ARTICLE 29. – MEDIATION AND ARBITRATION.

Any controversy or claim arising out of or related to this Contract shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. Notwithstanding the foregoing, either party may file an action or proceeding within seven (7) days of the expiration of any deadline or statute of limitations on any claim or cause of action, but such filing does not excuse the obligation to mediate pursuant to this section. The mediation shall be conducted in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association in effect as of the date of this Contract. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The condition precedent shall be satisfied if the parties have failed to conclude the mediation within sixty (60) days from the date of the request. The parties shall share the mediator's fee and filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon.

Any controversy or claim arising out of or relating to this Contract or its alleged breach which cannot be resolved by mutual agreement or mediation shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

Should any other party, including the Architect/Engineer, arbitrate a claim or dispute by or against the Owner involving similar issues of law or fact arising out of this Contract, the Owner and Contractor consent to consolidation of such arbitration with any arbitration brought under this Contract. The Owner agrees to include a similar clause in any contracts with such other parties so as to require consent to such consolidation from them.

ARTICLE 30. – GOVERNING LAW.

The Contract shall be governed by the law of California, including California law governing mediation and arbitration proceedings.

ARTICLE 31. –NOTICE.

Any notice required by this Contract to be given shall be in writing and shall be delivered during normal business hours in person or via facsimile or mailed first class postage prepaid. If notice is to be given to the Owner or the Contractor, it shall be sent to the postal address shown in the signature block at the end of this Contract, or to such other address as either party may designate for itself by notice to the other. Notice shall be effective upon personal or facsimile delivery, or five (5) calendar days after date of mailing.

ARTICLE 32. – MISCELLANEOUS PROVISIONS.

The following general provisions shall apply to this Contract:

32.1 This Contract contains the entire agreement between the parties, and supersedes all prior or contemporaneous written or oral communications.

32.2 This Contract may not be changed or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change or termination is sought. No breach of

any agreement, warranty or representation shall be deemed waived unless expressly waived in writing by the party who might assert such breach.

32.3 This Contract may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement.

32.4 Waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Contract, nor shall it be considered to be a waiver by such party of any other covenant, condition or promise contained herein. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other required to be performed at a later date.

32.5 Each person executing this Contract represents that the execution of this Contract has been duly authorized by the party on whose behalf the person is executing the Contract and that such person is authorized to execute the Contract on behalf of such party.

32.6 If any party hereto commences an action or arbitration proceeding to interpret or enforce this Contract or any provision hereof, the prevailing party shall be entitled to an award of costs, attorneys' fees, and expert witness fees, in addition to all other amounts awarded by the court or arbitrator.

32.7 The terms, covenants and conditions of this Contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the respective parties to this Contract.

32.8 If any provision of this Contract is determined to be illegal or unenforceable for any reason, the same shall be severed from the Contract and the remainder of the Contract shall be given full force and effect.

32.9 Time is of the essence of this Contract and each and every one of its provisions.

32.10 All exhibits attached to the Contract or referenced in the Contract are incorporated as if set forth in full.

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 (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 2600, Sacramento, California, 95826.

STATE LAW REQUIRES ANYONE WHO CONTRACTS TO DO CONSTRUCTION WORK TO BE LICENSED BY THE CONTRACTORS STATE LICENSE BOARD IN THE LICENSE CATEGORY IN WHICH THE CONTRACTOR IS GOING TO BE WORKING—IF THE TOTAL PRICE OF THE JOB IS \$500 OR MORE (INCLUDING LABOR AND MATERIALS).

LICENSED CONTRACTORS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC, IF YOU CONTRACT WITH SOMEONE WHO DOES NOT HAVE LICENSE, THE CONTRACTORS STATE LICENSE BOARD MAY BE UNABLE TO ASSIST YOU WITH A COMPLAINT. YOUR ONLY REMEDY AGAINST AN UNLICENSED CONTRACTOR MAY BE IN CIVIL COURT, AND YOU MAY BE LIABLE FOR DAMAGES ARISING OUT OF ANY INJURIES TO THE CONTRACTOR OR HIS OR HER EMPLOYEES.

YOU MAY CONTACT THE CONTRACTORS STATE LICENSE BOARD TO FIND OUT IF THIS

CONTRACTOR HAS A VALID LICENSE. THE BOARD HAS COMPLETE INFORMATION ON THE HISTORY OF LICENSED CONTRACTORS, INCLUDING ANY POSSIBLE SUSPENSIONS, REVOCATIONS, JUDGEMENTS, AND CITATIONS. THE BOARD HAS OFFICES THROUGHOUT CALIFORNIA. PLEASE CHECK THE GOVERNMENT PAGES OF THE WHITE PAGES FOR THE OFFICE NEAREST YOU OR CALL 1-800-321-CSLB FOR MORE INFORMATION.

Dated: _____

Dated: _____

OWNER:

CONTRACTOR:

By _____

By _____

(Name)

(Name)

Title _____

Title _____

(Address)

(Address)

Note: This document has important legal consequences. Consultation with an attorney is strongly encouraged with respect to its use or modification.

