



**Request for Proposals for
Design-Build (Turnkey) - 2 MW GENERATING
Plant for the Cabazon Tribal Utility Authority**

RFP Issued: November 16th 2020

**Non mandatory Job Walk December 2nd
10:00am (Covid-19 related protocols apply)**

Proposals Due: December 21, 2020 at 4:30p.m.

Proposals must be submitted to:

**Cabazon Tribal Utility Authority
Attn: Tribal Administration
84-245 Indio Springs Parkway, Indio, CA**

Hard copy proposals only - Faxed or emailed proposals will not be accepted

To Prospective Respondents:

The Cabazon Tribal Utility Authority (“CTUA”) is soliciting proposals from qualified design/build contractors to provide engineering design and construction services to construct the Generating Plant facility (“Project”).

Proposals are solicited for the Project in accordance with the terms, conditions, and instructions set forth in this Request for Proposals (“RFP”). Every party responding to this RFP (each a “Respondent”) shall have appropriate licenses for the scope of work required for the Project.

The CTUA shall not be obligated, whether expressly or impliedly, to reimburse Respondents for any expenses incurred in preparing proposals in response to this RFP, or for attending any meetings or conferences in connection with same.

The CTUA intends to engage the most qualified Respondent that demonstrates the ability to meet the objectives of the CTUA as described in this RFP. The following criteria shall be used in evaluation of a Respondent’s offer of services:

1. Respondent’s technical compliance with the Project requirements;
2. Respondent’s references and reputation in the industry;
3. The perceived reliability of the products proposed by Respondent;
4. The qualifications and experience of Respondent’s personnel with respect to similar projects;
5. Respondent’s proposed pricing for the Project; and
6. Respondent’s ability to complete the Project in a timely manner.

The CTUA looks forward to reviewing your proposal and we thank you for your participation.

Additional information or questions must be submitted in writing to:

Cabazon Tribal Utility Authority
Attn: Jacquelyn Barnum - General Manager
84-245 Indio Springs Parkway Indio, CA 92203
760-342-5000 (office)
jbarnum@cabazonindians-nsn.gov

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SECTION 1.0 GENERAL INFORMATION AND SCOPE OF WORK

1.0 INTRODUCTION

The Cabazon Tribal Utility Authority (“CTUA”) invites your organization to submit a written proposal to provide engineering design, procurement and construction (EPC) services to construct a Generating Plant facility (“Project”). Proposals are solicited for the Project in accordance with the terms, conditions, and instructions as set forth in this Request for Proposals (“RFP”).

Each Respondent shall have appropriate licenses for the scope of work required for the Project. Each Respondent represents that it has the necessary knowledge, abilities, and resources to provide a quality Project in accordance with the applicable industry’s professional standards and practices. Each Respondent also represents that it is familiar with the scope and nature of this RFP, has visited the site, and understands the conditions that will affect the Project. **A ten percent (10%) proposal bond shall be required of each Respondent.** Bonds must be submitted on the form provided, without modification.

The CTUA intends to select one Respondent to provide the specified services for the Project. The successful Respondent will work directly with the CTUA’s authorized designee(s) for all activities involved with this Project. It is intended that work on the Project shall commence **10 working days** after the CTUA gives a notice to proceed and **shall continue until completed; but in no case later than fourteen months unless approved by CTUA.**

This RFP includes a price proposal sheet, which must be completed and submitted with the proposal. **The amount stated on the price proposal sheet constitutes a firm offer to the CTUA to enter into the attached Design-Build Contract and to complete the entire Project at the stated price.** The offer cannot be withdrawn for 45 days or until a contract is fully executed with one of the Respondents. The CTUA will award the contract on the basis of the Evaluation Criteria of the CTUA. The CTUA reserves the right to negotiate the final contract price and terms or to award the contract based on the proposal price and the terms contained in the attached Design-Build Contract.

1.1 EVALUATION CRITERIA

Proposals will be awarded based on the best value to the CTUA and evaluated according to the following criteria:

- Technical Compliance: Respondent’s technical compliance with the Project requirements (20%)
- Reputation: Respondent’s references and reputation in the industry (20%)
- Reliability: The perceived reliability of the products proposed by Respondent (20%)
- Experience: The professional qualifications and experience of Respondent’s personnel with respect to similar projects (20%)
- Price: Respondent’s proposed pricing for the Project (20%)

The CTUA reserves the right to waive any and all requirements for this proposal process and/or accept or reject any or all proposals. The CTUA reserves the right to make an award based solely on the proposals received or to negotiate further with one or more Respondents. The Respondent selected

for award will be chosen not solely on price but also on the basis of best value and of greatest benefit to the CTUA.

1.2 QUESTIONS REGARDING REQUEST FOR PROPOSALS

All questions concerning this RFP may be directed to Jacquelyn Barnum at jbarnum@cabazonindians-nsn.gov.

SECTION 2.0 PURPOSE / OVERVIEW / SCOPE / SUBMITTAL REQUIREMENTS

2.1 PURPOSE

The intent of this RFP is to obtain proposals from qualified design/build firms to construct the Project. Respondents to this RFP should have extensive experience, a knowledgeable background, and excellent qualifications in design/build projects of a substantially similar nature as the Project. The selected Respondent shall enter into a contract with the CTUA to construct the Project.

Upon 60% design completion, the selected Design Build Entity (“DBE”) will submit a proposed guaranteed maximum price (GMP) and Project Schedule, both of which shall be subject to the CTUA’s approval, with updates at each design stage. Design-build services will include preconstruction (design) phase, bidding phase, construction and post-construction phases. The CTUA intends to have all facilities substantially completed and operational no later than fourteen months unless approved by CTUA. Respondents to this RFP must be able and willing to commit the necessary resources to complete the Project within this timeframe.

2.2 OVERVIEW

The Cabazon Tribal Utility Authority (CTUA) is issuing this Request for Proposals (RFP) from qualified contractors (Suppliers) for the Engineering, Procurement and Construction (EPC) of a nominal 2MW power plant, on a Turnkey basis, to be located on Tribal land in the vicinity of Indio, California. The plan for the facility is two (2) 1-MW units. The CTUA intends for the generator prime movers be natural gas fueled turbine generators. Multiple units for ease of load following are desired. The plant will initially operate as a generating facility but will be designed and constructed for conversion to a cogeneration (combined heat and power or CHP) facility at a future date to be determined by the CTUA. The plant will be designed and constructed to facilitate increased generating capability to nominally 15MW in an expeditious and economic manner as determined by the CTUA. The plant shall be designed and constructed such that it is capable of operating in parallel with the Imperial Irrigation District (IID) electrical grid. At such time as determined by the CTUA the facility will be operated in parallel with the CTUA’s electrical distribution system.

CTUA is an authority of the Cabazon Band of Mission Indians, a federally recognized tribe of Cahuilla Indians having jurisdiction over the federally recognized Cabazon Reservation, where the Project is located. The DBE shall comply with all applicable Cabazon and federal laws, including ordinances, orders, rules, and regulations thereunder. In executing all project tasks, the DBE and its subcontractors shall comply with California laws and standards to the extent that these laws and standards are not inconsistent with applicable Cabazon or federal laws, except that the State of California, including California courts and agencies, shall have no authority or jurisdiction over the administration or enforcement of these laws and standards unless expressly and lawfully granted by CTUA.

2.2.1 SITE CONDITIONS

The project site is located on land owned by the CTUA, in the vicinity of Indio, California. The site is subject to wind, rain, hail, blowing dust and sand, and high/extreme temperatures. Specific conditions are:

Elevation: -13ft Elevation
Temperature Range: 41° to 120°
Relative Humidity Range: 8% to 48%
Average Wind Speeds: 7.7 mph
Average Rainfall per Year: 4.5-inches

2.2.2 EXISTING SYSTEM AND LOAD

A portion of the existing system PDS-W1 is fed from one of the overhead to underground source poles (refer to the single line diagram(s) included with this RFP). It is serving the following connected load:

1. One 750 KVA 12.47kV/480 Volt transformer serving Parking. Prior to final electrical design, determine the status of a proposed emergency generator for the Parking Structure.
2. Three 2500 KVA, 12.47 kV/480 Volt pad mount transformers serving Central Plant containing chillers.
3. One small transformer not indicating any ratings serving existing Marquee and Parking lot west.
4. One small transformer not indicating any ratings serving existing Street Lighting.
5. One small transformer not indicating any ratings serving existing Admin Bldg.
6. Two 2500 KVA 12.47 KV/480 Volt pad mount transformers serving Casino. They are tied thru ATS from Emergency Generators with two step-up 2500 KVA 480V/12.47KV transformers. (There are three 2500 KA 480V/12.47 KV step up transformers shown on E92.03-CP connected to Emergency Generators but single indicates only two transformers; one is missing.)
7. Two 2500 KVA 12.47 KV/480 Volt pad mount transformers serving Hotel.
8. One 2000 KVA 12 KV/480 Volt pad mount transformers serving Special Events Center.
9. One 200 KVA 12 KV/480 Volt pad mount transformers serving Water Reservoir.
10. There are three more transformers which have no rating indicated serving existing (A.) Child Care and (B.) Design Center and Parking Lot East.

The other portion of the existing system PDS-E1 is served via the second overhead to underground source pole (refer to the single line diagram(s) included with this RFP). It is serving the following connected load:

1. One 750 KVA 12.47kV/480 Volt transformer serving Parking.
2. Three 2500 KVA, 12.47 kV/480 Volt pad mount transformers serving Central Plant containing chillers. It seems that Central Plant is not connected because there are no TMS switchgears on the drawings, or they are missing and need as-builts.
3. There is one 3000 KVA transformer connected and serving tribal admin, event center and golf course.

In a meeting with IID engineering staff, it was asserted that both overhead to underground sources are coming from the same substation's 12kV circuit, with a limited capacity of 5 MW and no provision for a future capacity increase. The 2019 non-coincident peak system demand for this customer service was 4.6 MW.

Three (3) 2-MW Diesel Emergency Generators are located at the site in case of an outage or failure of either transformer. These Emergency Generators are run once every month to maintain their availability. The capacity of the fuel tank is not greater than three days' operations, which is not adequate for a long-term outage.

There are four priorities categorized to run Emergency Generators.

1. Priority #1 is to pick-up A.) Parking Emergency, B.) CP ATS-1B, C.) Hotel Emergency, D.) Special Events Center Emergency, and E.) Casino Emergency.
2. Priority #2 is to pick-up all load on PDS-W1.
3. Priority #3 is to pick-up two (2) Central Plant Standby.
4. Priority #4 is to pick-up Special Events Center Standby.

2.3 SCOPE OF WORK

All proposals must either meet or exceed the requirements contained herein. The Respondent shall be responsible for performing the following tasks necessary to complete the design, construction and delivery of the Project.

The work includes, but is not limited to:

1. Prepare all necessary design documents, drawings and specifications as well as all documents and procedures needed for the installation and commissioning of the Generating Plant. All drawings and specifications and other critical design documents shall be stamped by a registered Professional Engineer currently licensed to practice in the relevant discipline.
2. Provide all necessary documentation needed for successful operation of the Generating Plant.
3. Prepare a Grading Plan to ensure that storm water runoff exits the plant site in an appropriate manner.
4. Provide and install NG Turbine Generators with all interconnecting piping and wiring necessary for future accommodation of Combined Heat and Power (CHP) operations.
5. Provide and install an exhaust emissions control system for each generating unit that represents the Respondent's Best Available Control Technology.
6. Provide and install the gas fuel system complete to the point of interconnection identified on the Site Map. The gas fuel system shall include an emergency shutoff valve located outside the Generating Plant perimeter in case of a fire in the Generating Plant.
7. Provide and install the water supply system complete to the point of interconnection identified on the Site Map.
8. Provide and install the sump and drain system, including an oil/water separation or equivalent approved device, complete to the point of interconnection identified on the Site Map.
9. Provide and install all shelters, enclosures and sunshades contemplated in the design.
10. Provide and install all ladders, platforms and walkways to provide appropriate access to each feature of the Generating Plant in order to safely and efficiently operate and maintain the facility.
11. Provide and install foundations as needed for all Generating Plant equipment.
12. Provide and install all interior and exterior lighting such that work during periods of darkness may safely be performed.
13. Provide and install Generating Plant physical security including, but not limited to, fencing, gates, doors, access monitoring and surveillance from CTUA facility offsite from the facility. Coordinate with local first responders to ensure that emergency access is provided.
14. Provide and install the complete control system including SCADA, designed to ensure successful operation of the Generating Plant with minimum human participation.
15. Provide and install all necessary telecommunications facilities needed to support the control and

SCADA systems including telephone handsets at appropriate locations. Coordinate with the local telecommunications provider to complete all external connections.

16. Provide and install a Remote Asset Monitoring system including: Remotely access information about the entire system including metering; Asset health and performance with easy-to-use web interface; Standard features to include View generator set's ready to run status & location; status updates on engine & electrical parameters; Visualization of asset's historical performance; Events and Diagnostics to support remote trouble shooting; Customize alerts by text or email to be sent real time; Geo-fencing; and Unlimited number of users.
17. Provide and install a cathodic protection system to protect all buried metallic piping from corrosion.
18. Provide and install a grounding system based on a study to be prepared by the Respondent to ensure step-touch potentials are within IEEE limits.
19. Provide to the CTUA all relevant documents and engineering necessary to comply with IID Rule 21 standard.
20. Provide all design details and physical features to allow the Generating Plant to be converted to future CHP operation and future increase in generation capacity as contemplated in this RFP. Such design details and physical features shall be shown on the design documents labelled as "FUTURE".
21. Provide and implement a plan for Startup and Commissioning of the entire turnkey generating facility, such that it has achieved commercial operation (as that term is commonly used in the power industry) not later than fourteen months unless approved by CTUA.

2.3.1 REQUIRED MINIMUM TECHNICAL SPECIFICATIONS

1. EQUIPMENT PLACEMENT / GENERAL ARRANGEMENT
2. GRADING PLAN
3. GENERATING EQUIPMENT
4. ELECTRICAL APPARATUS AND SWITCHGEAR
5. INTERCONNECTION TO IID
6. GROUNDING FOR ENTIRE FACILITY
7. CONTROL SYSTEM INCLUDING TELECOM
8. SITE SECURITY SYSTEM
9. GAS TURBINE INLET AIR COOLING SYSTEM
10. WATER SUPPLY SYSTEM
11. LIQUID WASTE SYSTEM
12. FUEL SYSTEM
13. EMISSIONS CONTROL SYSTEM
14. ENCLOSURE AND NOISE SUPPRESSION
15. FOUNDATIONS
16. LADDERS, PLATFORMS AND WALKWAYS
17. DESIGN FOR FUTURE EXPANSION
18. DESIGN FOR FUTURE CONVERSION TO COGENERATION (CHP)
19. INITIAL OPERATION O&M
20. STORM WATER GRADING PLAN
21. STARTUP AND COMMISSIONING
22. EQUIPMENT LIST (MAJOR COMPONENTS)

2.3.2 STANDARDS AND APPLICABLE CODES

The DBE and subcontractors shall comply with all other applicable laws and standards, including but not limited to:

1. Americans with Disabilities Act (ADA)
2. American National Standards Institute (ANSI)
3. American Society for Testing and Materials (ASTM)
4. California Building Code (CBC)
5. California Electrical Code
6. California Fire Code
7. California Geological Survey (CGS)
8. California Labor Code
9. California Title 20 and 24
10. Federal Communications Commission (FCC)
11. Institute of Electrical and Electronics Engineers (IEEE) 1547: Standard for Interconnecting Distributed Resources with Electric Power Systems, and IEEE 2030.7-2017: Standard for Specification of Microgrid Controllers
12. International Electrotechnical Commission (IEC) Technical Committee 82 (TC82)
13. National Fire Protection Association (NFPA), National Electric Code (NEC), Including NFPA 70 and NEC Article 690
14. National Electrical Manufacturers Association (NEMA)
15. Federal Occupational Safety and Health Administration (OSHA)
16. California Occupational Safety and Health Administration (CAL-OSHA)
17. Local Utility requirements including Net Energy Metering Rules, Interconnection Requirements and Tariffs
18. Storm Water Pollution Prevention Plan (SWPPP)

CTUA reserves the right to waive or modify any requirement or standard under California law. Such waivers or modifications shall only be valid if expressed in writing by an authorized CTUA official.

All equipment to be furnished under these Specifications shall be shipped completely assembled, except as otherwise provided herein.

Material and equipment furnished under these Specifications shall conform to all applicable American standards. All threaded bolts, studs, nuts, and tapped holes used in assembly of the equipment shall conform to the standards generally in use in the United States of America.

All products and components outlined herein must conform to all applicable codes, standards, and rating methodologies, including but not limited to, the following:

Structural Steel	ASTM A7
Bolts & Nuts	ASTM A307
Finishes	ASTM B117
Structural Aluminum	ASTM B308-68
Primary Unit Substations	ANSI C37.121

Power Circuit Breakers	NEMA SG-4 and ANSI C37
Copper Bus	ASTM B187
Copper Conductors	ASTM B8
Porcelain Insulators	NEMA HV1 and ANSI C29
Power Connectors	NEMA SG-1
Power Switchgear Assemblies	NEMA SG-5 and ANSI
C37 Power Switchgear Equipment	NEMA SG-6
Piping	ASME/ANSI B31.1
Pressure Vessels	ASME B&PV Section 8
Gas Turbine Performance	ASME PTC - 22

Whenever a standard is referred to in these Specifications, it shall be understood to be the Standard in effect as of the date of award of the Contract.

The design-build contract will require the DBE and subcontractors to follow detailed procedures to exempt from local or State sales taxes the purchase of materials, equipment, and fixtures for the Project.

2.3.3 SEISMIC DESIGN

The equipment furnished hereunder shall be designed and certified to withstand the stresses caused by a vibratory ground motion with maximum accelerations of 1.1g (g is the acceleration due to gravity) in any horizontal direction, and vertical accelerations of 80 percent of the horizontal acceleration, and acting simultaneously with the horizontal acceleration in a direction which produces the most severe equipment stresses. The equipment shall continue to perform its intended function after the equipment has endured such maximum seismic stresses.

2.3.4 PAINTING

All surfaces of electrical apparatus requiring paint shall be properly cleaned of dust, dirt, rust, oil or grease, weld spatter, or any foreign material prior to painting. Surface cleaning shall be in accordance with Steel Structures Painting Council Specification No. 8, Pickling, or with Steel Structures Painting Council Specification No. 6, Commercial Blast Cleaning.

1. The finish coat color shall be ANSI No. 70 Sky Gray per ANSI Z55.1, also defined as Munsell No. 5BG 7.0/0.4.
2. The coating process shall be an electrostatically applied polyester powder with a final baked on average thickness of 1.5 mils or better.
3. The finish shall pass the ASTM B117 salt spray test for a minimum of 200 hours.
4. Coating test reports shall be made available upon request.
5. Comply with California State Code and provide MSDS.

All mechanical equipment, such as pumps, etc., shall be painted in accordance with the manufacturer's standard practice. All structures shall be properly cleaned of dust, dirt, rust, oil or grease, weld spatter, or any foreign material prior to painting. Surface cleaning shall be in accordance with Steel Structures Painting Council Specification No. 6, Commercial Blast Cleaning. Paint shall comprise of Zinc Rich Primer followed by finish coat to provide a Dry Film Thickness (DFT) of 3 to 4 mils total. Piping and related components shall be properly cleaned of

dust, dirt, rust, oil or grease, weld spatter, or any foreign material prior to painting.

Surface cleaning shall be in accordance with Steel Structures Painting Council Specification No. 14, Industrial Cleaning. Finish coating shall provide a Dry Film Thickness (DFT) of 3 to 4 mils total. Respondent shall provide its applicable painting specifications, including color scheme, for each class of equipment with its proposal.

2.3.5 SPECIFIC REQUIREMENTS

1. **Engine:** The prime mover (engine) shall be NG Turbine Generator-type fueled by pipeline quality natural gas. Gas turbine shall be equipped with inlet air cooling to provide design basis output at maximum ambient air temperature.
2. **Generator:** each Generator Continuous Power Operating in Parallel with IID Utility Rated 1000KW, 1250 KVA, 12.47/7.2 KV Y-Connection, 95 BIL & .8 PF. NEMA 3 (outdoor) with Typical Generator Protection Scheme including Hybrid High Resistance Grounding Scheme and Reverse power protection (Device 32) to prevent the generator from being motored.
3. **Switch Gear:** 15 KV METAL CLAD SWITCHGEAR: 12.47/7.2 KV, 1,200 A Bus, 95 KV BIL, 15 KV Multiple Generators Operating in Parallel with Utility System, Outdoor NEMA 3 WITH a total of Three (3) generators, one (1) on standby and a utility source which is IID feeding a switchgear lineup feeding multiple loads (a. PDS-W1; 2. PDS-E1 and Future Load). Switchgear shall have proper sized Station Transformer for station load. This system will require a complete and complex protection and control scheme as required by IID utility and may have very stringent protection requirements for the system. IEEE Standard 1547 describes the interconnection requirements for paralleling with the utility.
4. **Component Cooling System and Water Supply:** The component cooling system may be comprised of individual heat exchangers at each unit or manifolded to a common cooling tower. The cooling system shall include the water supply facilities connecting to a central point to be designated by the CTUA.
5. **Sump and Drain System:** The Sump and Drain system will be designed to collect liquid waste, including spills, storm water, etc. The system shall include an approved device to separate oil or other petroleum products from drain water. The system shall include facilities connecting to a central point to be designated by the CTUA
 - a. **Fuel System:** The fuel system shall be connected to the existing gas delivery system piping at a point to be designated by the CTUA. The fuel system shall include all piping, valves, metering compressors and/or pressure reducing equipment to provide safe and economical operation of the units. The fuel system shall include an Emergency Shutoff Valve located outside of the Generating Plant perimeter.
6. **Control System:** The control system shall provide for safe, economical and reliable operation of the generating units and auxiliary systems. It shall provide for separate and parallel operation of each unit with minimal human intervention. An operating station shall be provided for the control system. It is preferred that the enclosure for the indoor operating station be a modular building complete with lighting and HVAC.
7. **Interconnection:** Respondent to provide all technical information required by IID Rule 21, attached herewith, which includes the provision of single line, relay protection, metering, grounding, ATS for paralleling and fault current at the interconnection bus in switchgear, stamped by their PE. Respondent also to complete and submit the form on page 7 & 8 of 11 of IID's Rule 21.
8. **Enclosures and Noise Suppression:** The Generating Plant and/or each unit shall be provided with an enclosure and sunshade designed to protect the equipment from the weather. It shall also be designed to minimize the intrusion of sand and dust. It shall be designed to limit noise

to comply with applicable CAL-OSHA requirements.

9. Emissions Control System: The emissions control system shall be the Respondent's Best Available Control Technology.

10. Startup and Commissioning: The Respondent shall provide complete start-up and test procedures pursuant to commissioning the facility for information and review prior to commencement of the commissioning process. Such procedures will provide a complete program designed to render the turnkey generating facility ready to commence Commercial Operation, as that term is commonly used in the power industry. Commissioning shall include a performance test in accordance with ASME PTC – 22 (latest revision) on each unit. The test procedure shall be submitted in advance and include all correction tools required to adjust test results to guarantee conditions.

2.3.5 OPERATION AND MAINTENANCE

The Respondent shall provide all operations and maintenance personnel needed to provide safe and economical operation and maintenance of the Generating Plant for a period of not less than two (2) years following Commissioning and Turnover of the Generating Plant from Respondent to the CTUA. The CTUA reserves the right to extend. The Respondent shall also provide all consumables and spare parts needed to operate the Generating Plant, with the express exception of fuel, gas and water.

2.4 CTUA FURNISHED MATERIALS/EQUIPMENT None

2.5 SUBMITTAL REQUIREMENTS

To be considered responsive, proposals should address all items identified in this section. Failure to provide a complete response may be grounds for rejection of a proposal. Responses shall be limited to fifteen (15) pages - elaborate or unnecessarily lengthy documents are discouraged and may be rejected.

In order to facilitate evaluation and comparison, proposals should be submitted in the format described in this section. Format instructions must be adhered to, all requirements and requests for information in the proposal must be responded to, and all requested data must be supplied. Failure to comply with these requirements may be cause for rejection.

Responses shall be submitted on standard 8 1/2" X 11" sheets. Present your proposal response in the order that the items are listed below. Submit one (1) original and six (6) hard copies of your proposal, in addition to a .pdf copy via email. Respondents shall submit the following information as a part of their proposal package:

1. Provide design narrative of all Generating Plant and site work systems showing quality and aesthetics of work included in proposal.
2. Provide schedule and fast delivery capacity of finished project. Time to complete is an important selection criterion.
3. Provide gas turbine-generator performance data including, but not limited to, Guaranteed Heat Rate, as well as heat rate output versus ambient air conditions (thermal kit).
4. All Generating Plant and site items that are excluded from proposal and are to be provided by CTUA.
5. Provide design images or diagrams that show design intent, function and form of proposed project for each item listed in Section 2.3.1 of this RFP.
6. Provide specific list all milestone deliverables that are included in proposal for the project

- including design, permits, construction and close out activities.
7. Provide specific list of all activities and cost items that are expected to be completed by CTUA. Include FF&E, permits, utilities, low voltage systems, inspection and material testing, etc.
 8. **Provide narrative as to why your proposal adds best value.** Include specifics. How will the CTUA, project stakeholders and community benefit by exceeding what other competitors are offering.
 9. **Provide a list of similar projects completed in the State of California and Tribal Reservations, if any.**
 10. Identify key executives and/or staff who would be assigned to this Project, as well as their professional experience (including recent California projects that are similar in nature to the Project), qualifications, responsibilities and functions
 11. Name and curriculum vitae for each professional engineer on Respondent's Project team acting as Discipline Lead.
 12. Name and curriculum vitae for at least one ASBA-certified builder employed by Respondent.
 13. Proof of required insurance coverages.
 14. Ten percent (10%) proposal bond.
 15. List of all subcontractors and suppliers to be used by Respondent on the Project.
 16. Any other related and recommended services not specified in this RFP which may be considered essential or beneficial by the Respondent, including their qualifications and project expertise.
 17. Signed and completed "Proposal Attachment" form located at end of this RFP.

The following documents must also be submitted with your proposal response:

1. Cost Proposal
 Respondents are to include a detailed cost proposal inclusive of all anticipated travel, per-diem, and other incidental costs and charges. Costs shall be broken down by task where applicable. Respondents shall submit their cost proposal on the Cost Proposal Form, hereto attached as Attachment "1". The Cost Proposal shall consist of the following three (3) components:
 - a. A lump sum fixed fee for the DBE's completion of the Pre-Construction Phase of the design-build services ("the Pre-Construction Price");
 - b. Generating Plant
 - c. Switchyard and Interconnection
 - d. Initial 24-month Operation & Maintenance
 - e. The DBE's fixed percentage fee mark-up on the cost to construct the Project ("DBE Fee"); and
 - f. A not-to-exceed amount for the DBE's General Conditions costs for construction of the Project ("the General Conditions Price").
2. Proposal Bond. The Proposal Bond, attached hereto as Attachment "5", must be submitted in the amount of Respondent's cost proposal. The bond shall be in the form set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

2.6 EVALUATION OF PROPOSALS

Respondents should carefully examine the entire RFP, any addenda thereto, and all related materials and data referenced herein or otherwise available to Respondent. Respondents shall be presumed to be familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve Respondents from any obligation with respect to this proposal.

2.7 SUBMITTAL OF DOCUMENTS

Respondents shall submit one (1) original Electronic copy in .pdf format and (6) hard copies of the sealed Proposal to the CTUA Office, see Site Plan for Tribal Administration location, no later than 4:30 p.m. on December 21, 2020.

It is the responsibility of the Respondent to ensure that all pages are included. Proposals must be signed in ink by an officer or employee having authority to bind the Respondent. Failure to follow these instructions shall be cause for rejection of Proposal.

Time is of the essence and any proposal received after 4:30 p.m. on **December 21, 2020**, whether by mail or otherwise, may be returned unopened. The CTUA shall in no way be responsible for any delays. Proposals by telephone, telegram, or facsimile shall not be accepted.

The CTUA may issue written addenda to all recipients to clarify, comment, correct, or as otherwise required to facilitate the selection process. Should any questions require revisions to the specifications as originally published, such revision will be by formal written addendum only.

REQUEST FOR INFORMATION (RFI). During the Proposal Period, prospective respondents may submit RFIs seeking clarification or further detail regarding the terms and specifications of this RFP. RFIs may be submitted to CTUA as hard copy via U.S. Mail or electronically via email file attachment. Upon receipt, each RFI will be logged in and identified by a time stamp. CTUA will respond to each RFI within five (5) working days of its receipt. The text of each RFI and CTUA's response will be made known to all prospective respondents.

For information concerning the RFP, please contact:

Cabazon Tribal Utility Authority
Attn: Jacquelyn Barnum - General Manager
Tribal Administration Office
84-245 Indio Springs Parkway Indio, CA 92203
Office: 760-342-5000
jbarnum@cabazonindians-nsn.gov

2.8 SUBMITTALS AFTER AWARD

All engineering correspondence, drawings, instruction books, Start-up and Test Procedures, and other technical information shall be submitted to the CTUA General Manager for information and review.

In the case of later discovery of error, omissions or inconsistencies in such drawings or correspondence, the Respondent shall immediately rectify the same and submit corrected drawings or correspondence to the CTUA General Manager for information and review.

All drawings shall be accompanied by a letter of transmittal. Each drawing shall be identified by a number, descriptive title.

Information to be provided shall include, but not be limited to, the following:

Schematics and complete point to point wiring diagrams, one-line diagrams, three-line diagrams, elevations and sections showing equipment arrangements, instructional material containing a clear description of all equipment operation, maintenance and repair procedures, and complete parts lists including manufacturer's name and catalog number for all components.

The drawings shall fully demonstrate that the equipment to be furnished will comply with the provisions of these Specifications and shall furnish a true and complete record of the equipment as manufactured and delivered.

After completion, the Respondent shall promptly furnish the CTUA General Manager with reproducible mylars of all the drawings and CDs or diskettes containing the electronic Auto-CAD 2000 version of all drawings documenting the As-Built condition of the facility.

2.9 INSTRUCTION BOOKS

Upon completion of the work, the Respondent shall furnish six (6) complete, identical sets of detailed instruction books for each item furnished under pursuant to this RFP. These books shall be accompanied by a letter of transmittal and shall contain all illustrations, detailed drawings, wiring diagrams, and instructions necessary for installing, operating, and maintaining the equipment. The illustrated parts shall be numbered for identification. All information contained therein shall apply specifically to the equipment furnished and shall not include instructions not applicable. Photographs, photocopies, and similar types of reproductions shall be incorporated within the printing of the page to form a durable and permanent reference book.

3.0 PROJECT SCHEDULE:

Request for Proposals Issued	November 16 th , 2020
Proposals Due	December 21 st , 2020
Non mandatory Preproposal Job Walk Protocols will be required)	December 2 nd , 2020 10:00 am (COVID-19)
Expected Award	February 8 th , 2021

SECTION 3.0 SPECIAL TERMS AND CONDITIONS

3.1 RIGHTS AND PRIVILEGES

Rights and privileges granted by the CTUA shall not be assigned or transferred in any manner whatsoever without written approval of the CTUA or authorized authority. At all times during the term of the contract, the Respondent shall act as an independent contractor and at no time shall the Respondent be considered an agent or partner of the CTUA. The Respondent shall obtain and pay for all permits and licenses, tribal, federal, state and local taxes chargeable to its operation. Note that

Respondent shall be responsible for completing and submitting all paperwork that will enable exemption from state and local sales tax the purchase of any and all materials to be used in the completion of the Project.

3.2 DISCLOSURE AND DISCLAIMER

Any action taken by the CTUA in response to proposals made pursuant to this RFP or in making any award or failure or refusal to make any award pursuant to such proposals, or in any cancellation of award, or in any withdrawal or cancellation of this RFP, either before or after issuance of an award shall be without any liability or obligation on the part of the CTUA or its advisors.

In its sole discretion, the CTUA may withdraw this RFP either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the RFP. In its sole discretion, the CTUA may determine the qualifications and acceptability of any party or parties submitting proposals in response to this RFP.

Following submission of a proposal, the Respondent agrees to promptly deliver such further details, information, and assurances, including, but not limited to, financial and disclosure data, relating to the proposal and/or the Respondent, including the Respondent's affiliates, officers, directors, shareholders, partners, and employees, as requested by the CTUA.

The information contained herein is provided solely for the convenience of Respondents. It is the responsibility of a Respondent to assure itself that information contained herein is accurate and complete. Neither the CTUA nor its advisors provide any assurances as to the accuracy of any information in this RFP. Any reliance on the contents of this RFP, or on any communications with CTUA representatives or advisors, shall be at each Respondent's own risk. Respondents should rely exclusively on their own investigations, interpretations, and analyses in connection with this matter. This RFP is being provided by the CTUA without any warranty or representation, expressed or implied, as to its content, accuracy, or completeness. No Respondent or other party shall have recourse against the CTUA if any information herein contained is inaccurate or incomplete. No warranty or representation is made by the CTUA that any proposal conforming to these requirements will be selected for consideration, negotiation, or approval.

This RFP is made subject to correction of errors, omissions, or withdrawal without notice. Information contained in the RFP is for guidance only and each recipient hereof is cautioned and advised to independently verify all of such information. In the event of any differences between this disclosure and disclaimer and the balance of the RFP, the provisions of this disclosure and disclaimer shall govern.

The CTUA reserves the right to select the proposal in the best interest of and/or most advantageous to the CTUA in the opinion and sole discretion of the CTUA. The CTUA reserves the right to waive any irregularities and technicalities and may, at its discretion, reject all proposals or request re-submittal of proposals. All expenses in preparing the proposal and any re-submittals shall be borne by the Respondent.

The CTUA and the selected Respondent will be bound only if and when a proposal, as it may be modified, is approved and accepted by the CTUA, and the applicable agreements pertaining thereto, are approved, executed, and delivered by the selected Respondent and the CTUA, and then only pursuant to the terms of agreement executed by the selected Respondent and the CTUA. All or any responses to this RFP may be accepted or rejected by the CTUA for any reason or for no reason, without any resultant

liability of the CTUA.

All material submitted in response to this RFP shall become the property of the CTUA. The CTUA has the right to use any or all ideas presented in any reply to this RFP. Selection or rejection of a proposal does not affect this right.

3.3 AMENDMENTS

If it becomes evident that this RFP has to be amended, a formal amendment will be issued to all Respondents. If necessary, a new proposal due date will be established. Oral communications from the CTUA or any of its representatives concerning this RFP shall not bind the CTUA and shall in no way excuse the successful Respondent of obligations set forth in this RFP.

It is the responsibility of the respondent to verify with CTUA of any amendments, 48 hours prior to the due date.

3.4 CONFIDENTIAL AND PROPRIETARY DATA

All materials received relative to this RFP will be kept confidential until such time that an award is made or the RFP is canceled, at which time all materials received will be made available to the public (except for materials submitted in response to the Request for Pre-Qualification that are identified as confidential). Respondents should mark information they consider proprietary or confidential in the event it is exempt from the requirements of the Freedom of Information Act.

3.5 COMMITMENTS, WARRANTIES, AND REPRESENTATIONS

The proposal submitted in response to this RFP will be included as part of the final contract. Respondents are cautioned that if a contract is awarded as a result of this procurement process, any written commitment by a Respondent within the scope of this procurement shall be binding upon the Respondent whether or not incorporated into a contract document.

3.6 ADDITIONAL INFORMATION

If, during the evaluation process, the CTUA is unable to determine a Respondent's ability to perform, the CTUA has the option, in its sole discretion, of requesting any additional information which the CTUA deems necessary to determine the Respondent's ability. The Respondent will be notified and permitted five (5) working days to comply with any such request. The CTUA's decision not to request additional information shall not be grounds to protest an award.

3.7 ERRORS/DEFECTS IN PROPOSALS

If discrepancies between sections or other errors are found in a proposal, the CTUA may, at its option, reject the proposal. The CTUA may waive any immaterial deviation or defect in a proposal or correct any arithmetical errors in price. The CTUA's waiver of an immaterial deviation or defect shall in no way modify the RFP documents or excuse the Respondent from full compliance with the RFP requirements, if awarded a contract.

3.8 AWARD

The CTUA shall be the sole judge of the successful proposals hereunder. The CTUA reserves the right to award a contract to other than the Respondent submitting the lowest total price and to negotiate with any or all Respondents. Respondents are advised that it is possible that an award may be made without discussion or any contact concerning the proposals received. Accordingly, proposals should contain the most favorable terms from a price and technical standpoint, which the Respondent can submit to the CTUA. **DO NOT ASSUME** that you will be contacted or afforded an opportunity to clarify, discuss, or revise your proposal.

3.9 PROTEST PROCEDURES

To be considered, protests must be made in writing, signed by Respondent's authorized representative, and delivered to the Cabazon Tribal Utility Authority, Attn: Jacquelyn Barnum, 84-245 Indio Springs Parkway, Indio, CA 92203. The following conditions apply to proposal protests:

- **Before Proposal Submittal Deadline.** Protests of specifications, terms, conditions, or any other aspects of the solicitation must be made before the Proposal Submittal Deadline.
- **After Proposal Submittal Deadline. Protests of award must be made no later than five (5) calendar days after the aggrieved party knows or should have known the facts giving rise to the protest or (5) calendar days after the award, whichever is earlier.**
- **All protests must include the following information:**
 - (a) The name, address, and telephone number of the protestor;
 - (b) The signature of the protestor, or protestor's authorized representative;
 - (c) The solicitation or contract number;
 - (d) A detailed statement of the legal and/or factual grounds for the protest; and
 - (e) The form of relief requested.

The CTUA reserves the right to refuse to consider/hear protests who have not followed the above procedures. Failure to timely submit a protest constitutes a waiver of any relief.

SECTION 4.0 ADHERENCE TO FEDERAL, STATE, LOCAL AND TRIBAL LAWS

The successful Respondent will be required to comply with any equal opportunity/non-discrimination policies, as well as comply with all federal, state, and local laws and regulations that are not inconsistent with the applicable laws and Code of the Cabazon Band.

SECTION 5.0 INSURANCE

The successful Respondent will be required to acquire and maintain, and shall require all of its subcontractors, consultants, and other agents to acquire and maintain, the insurance required under the design-build contract. The basic scope and coverage limits are provided below. For full requirements, refer to Article 11 of the General Conditions.

Workers' Compensation

Workers' Compensation insurance with at least minimum statutory limits as required by the Labor Code of the State of California, and Employers Liability limits of one million dollars (\$1,000,000) per accident, one million dollars (\$1,000,000) per employee, and One million dollars (\$1,000,000) per policy.

General Liability

- Commercial General Liability Insurance no less broad than ISO form CG 00 01.
- Minimum Limits: Two million dollars (\$2,000,000) per Occurrence; Four million dollars (\$4,000,000) General Aggregate; and Four million dollars (\$4,000,000) Products/Completed Operations Aggregate.
- The Cabazon Band of Mission Indians and CTUA must be included as an additional named insured on commercial general liability and automobile liability insurance policies for liability arising out of ongoing and completed operations by or on behalf of the Respondent.

Automobile Liability

- Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).
- One million dollars (\$1,000,000) combined single limit per accident. Coverage must apply to all owned, hired, and non-owned vehicles.

Professional Liability

- One million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in Project-specific professional excess coverage.

Performance Bond

- Respondent will be required to obtain a performance bond to ensure satisfactory completion of the Project. The performance bond shall be obtained from a reputable financial institution approved by the CTUA, such approval not to be unreasonably withheld.

Payment Bond

- Respondent shall be required to obtain a payment bond to ensure that the CTUA/Tribe is made whole for any damages to CTUA/Tribal property as a result of Respondent's activities related to the performance of the contract or upon completion/abandonment of the Project. The payment bond shall be acquired from a reputable financial institution and subject to CTUA approval, such approval not to be unreasonably withheld.

**ATTACHMENT 1
COST PROPOSAL FORM**
(Please complete this form and submit with proposal.)

Respondent Company Name:	
Capital Cost _\$_____ per KW	Combined \$_____ per KWH
Performance Criteria	
Fuel Cost _____ per kWH	
Operations and Maintenance _____ per kWH	
TOTAL COSTS	
Generating Plant	\$ _____
Switchyard and Interconnection	\$ _____
Initial 24 month Operation & Maintenance	\$ _____
DBE Fee¹ Must be stated as a percentage fee as mark-up for DBE overhead and profit and then applied to the Assumed Construction Cost for the basis of comparison.	_____ % \$ _____ (applied amount based on Assumed Construction Cost)
General Conditions Price A not-to-exceed amount for the DBE's monthly cost of general conditions at the Site during the Construction Phase of the Project (e.g., temporary facilities including fencing, site clean-up, security, etc.). List all line items on separate attached sheet, a sample of which is included in Attachment "2".	\$ _____ (\$ _____/month x [#] months)
TOTAL BASIS FOR COMPARISON: The sum of the components listed above.	\$ _____
OPTIONAL: Provide a detailed Financing Plan for the Project. The Financing Plan should outline the expected loan capital of the project, giving full details of the amount of loan, the interest rates and details of other charges, if any.	(Attach to Proposal for CTUA Consideration)

¹If the successful respondent chooses to self-perform any of the trade work, not to exceed 25% of the total work, the value of that work will not be subject to the DBE Fee mark-up.

ATTACHMENT 2
SAMPLE GENERAL CONDITIONS PRICE BREAKDOWN

<u>General Conditions Costs</u>	<u>\$</u> / <u>month</u>
Senior Project Manager (incl. auto.)	\$
Project Manager (incl. auto)	\$
Project Scheduler	\$
General Superintendent (incl. auto)	\$
Field Superintendent (incl. auto)	\$
Assistant Superintendent	\$
Project Administrator	\$
Mobilize/Demobilize Field Office	\$
Field Office Rental and Furnishings	\$
Field Office Equipment and Supplies	\$
Chemical Toilets	\$
Temporary Phones, including cell phones	\$
Postage/ UPS/ Fed Ex	\$
Temporary Power (including distribution)	\$
Temporary Heat/Building	\$
Temporary Roads and Staging areas	\$
Temporary Water	\$
Safety and First Aid Supplies	\$
Construction Photos	\$
Dust Control – Water Trucks	\$
Storm Water Control – SWPPP	\$
Temporary Fencing – Site	\$
Misc. Equipment	\$
Clean-up	\$
Dumpsters	\$
Janitorial/Final	\$
Weather Protection	\$
On-Site Survey and Layout	\$
Hard Hats	\$
Project Signs	\$
Liability Insurance	\$
Builders Risk Insurance	\$
CM Construction Contingency	\$

**ATTACHMENT 3
PROPOSAL BOND**

KNOW ALL PERSONS 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 call the SURETY, are held and firmly bound unto the Cabazon Tribal Utility Authority, hereinafter called the OBLIGEE, on order, in the sum of _____ Dollars (\$ _____) (being at least ten percent (10%) of the total amount of PRINCIPAL'S proposal price) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the PRINCIPAL has submitted its Proposal for the project entitled _____ to the OBLIGEE, the Proposal, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if the Proposal is rejected or, in the alternate, if the Proposal is accepted and the PRINCIPAL signs and delivers a Contract and furnishes evidence of insurance and a Performance Bond and Payment Bond, all in the form and within the time required by the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the PRINCIPAL shall be forfeited to the OBLIGEE, it being expressly understood and agreed that the liability of the SURETY for any and all default of the PRINCIPAL shall be the entire amount of this obligation as herein stated, as liquidated damages.

The SURETY, for value received, hereby agrees that the obligations of SURETY and its bond shall not be impaired or affected by any extension of the time within which the OBLIGEE may accept the Proposal, and the SURETY hereby waives notice of any such extension.

In the event suit is brought upon this bond by the OBLIGEE and judgment is recovered, the SURETY shall pay, in addition to the sum set forth above, all costs incurred by the OBLIGEE in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court, in addition to the penal sum of the Bond.

Signed this _____ day of _____, 20____

PRINCIPAL

BY _____

SURETY

BY _____

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

THE FOLLOWING INFORMATION IS REQUIRED

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)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me,

(insert name and title of the officer)

personally appeared _____,

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

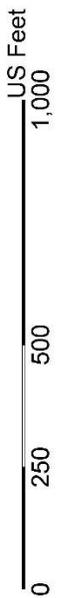
WITNESS my hand and official seal.

SITE PLAN

CTUA - Proposed Cogeneration System



- Transformer
- Switch
- Water Line
- Electrical East Circuit
- Electrical West Circuit
- GasLine
- Proposed Cogeneration Site



Cabazon Tribal Utility Authority
 Cartographer: Kenneth Ready
 January 2020



CONCEPTUAL LAYOUT OF PROPOSED GEN-SETS



DRAFT DESIGN BUILT CONTRACT

SEE ATTACHED



CABAZON TRIBAL UTILITY AUTHORITY

2MW GENERATION PLANT DESIGN-BUILD CONTRACT

CONTRACT FOR DESIGN AND CONSTRUCTION

This Design-Build Contract is effective as of the _____ day of _____, 2020, by and between Cabazon Tribal Utility Authority (“CTUA”), and _____, a _____ Corporation (“**Design-Build Entity**”).

The parties agree as follows:

- A. Design-Build Entity, for and in consideration of the payment to be made to Design-Build Entity as hereinafter provided, shall furnish all plant, labor, technical and professional design services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by CTUA, and perform all operations necessary to complete the Work in strict conformance with the Design-Build Documents (defined below) for the work of improvement titled:

2MW GENERATION PLANT

Design-Build Entity is an independent contractor and not an agent of CTUA. Design-Build Entity and its surety shall be liable to CTUA for any damages arising as a result of the Design-Build Entity’s failure to comply with this obligation.

- B. Design-Build Entity is made up of _____ (License No. XXXXX, which shall function as the designer and Architect/Engineer of Record for the Project and provide all architectural/engineering design services, and _____ (License No. XXXXX), which shall function as the Design Builders for the Project and provide all construction services for the Project together with its chosen subcontractors. For purposes of this Contract, _____ shall execute the Contract on behalf of the Design-Build Entity and shall have the authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, CTUA may accept bonds naming the Design-Build Entity as principal and professional liability insurance naming the member of the Design-Build Entity designated for design/architectural services as named insured.

Design-Build Entity shall perform all services required under the Design-Build Documents in a skillful and competent manner, consistent with the standards generally recognized as being

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

employed by professionals qualified to perform such services in the same discipline in the State of California.

- C. The Design-Build Entity shall provide and perform the Work as set forth herein. The Design-Build Entity Services shall be performed and completed in a series of sequential Phases generally described as: Design/Pre-Construction, Construction, and Post-Construction. The scope of the Design-Build Entity's Services and obligations during each phase of the Design-Build Entity Services shall be as set forth herein. All of the Design-Build Entity Services during the Construction Phase shall be performed or provided by or under the control of an individual employed by the Design-Build Entity and who is (a) properly qualified and licensed under applicable California law, and (b) acceptable to CTUA.
- D. Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in CTUA's Notice to Proceed with construction. The Design-Build Entity shall complete all Work required by the Design-Build Documents within ____ **calendar days** from the commencement date stated in the Notice to Proceed to a Project Completion (the "Guaranteed Design and Construction Duration").

By its signature hereunder, Design-Build Entity agrees the Guaranteed Design and Construction Duration is reasonable to complete the Work. The Work shall also be timely completed for the following three milestone completion dates:

1. The Design/Pre-Construction Phase shall be completed no later than ____ Calendar Days from Contract Execution and issuance of the Notice To Proceed.
2. The Design/Pre-Construction Phase and Construction Phase shall be completed no later than ____ Calendar Days from the Notice to Proceed.
3. The Post-Construction Phase shall be completed no later than 30 Calendar Days after construction completion.
4. Substantial Completion shall be no later than [date].
5. Guaranteed Completion shall be no later than [date].

Completion of Work by the Guaranteed Completion Date (excluding punchlist items) shall be the "**Contract Time**".

The Design-Build Entity agrees that it shall be liable to CTUA for liquidated damages in an amount of \$_____ per day for (a) each and every calendar day beyond the Guaranteed Design and Construction Duration and (b) each milestone date set forth above that completion of the

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

milestone has not been achieved. If Work is not completed by the milestone dates or Guaranteed Design and Construction Duration, it is understood that CTUA will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which CTUA will sustain in the event of and by reason of the Design-Build Entity's failure to complete the Work, and therefore the Design-Build Entity shall pay to CTUA the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the Design-Build Entity may be retained and set off against liquidated damages.

- E. CTUA shall pay to the Design-Build Entity as full compensation for the performance of Design/Preconstruction Phase of the project the sum of \$_____ (“GMP 1”). Payment shall be made as set forth in the General Conditions and special conditions. Unless otherwise stated in the Design-Build Documents, the GMP1 shall pay for all costs and expenses required to perform design and provide preconstruction services of the Project including CTUA Contingency/Allowances for survey, geotechnical report, hazardous material survey, FF&E design or other services as approved by CTUA.

Design-Build Entity shall immediately upon Notice to Proceed enter into a request for proposals to procure Design-Build Subcontractors for the following trades: Mechanical, Electrical, Fire Protection, Plumbing and Landscaping.

Design-Build Entity shall propose a GMP for the Project Construction Phase/Post-Construction (“GMP 2”) on or about _____, subject to the approval of CTUA.

As included in established GMP's, CTUA will establish an CTUA's Contingency/Allowance (“the CTUA Owned Contingency/Allowance”). The CTUA Owned Contingency/Allowance shall be for the exclusive use of CTUA as needed to pay for unforeseen conditions and/or CTUA added scope of work for the Project. CTUA must authorize any use of these contingency funds in writing before the Design-Build Entity shall be entitled to any compensation from the CTUA Owned Contingency/Allowance. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of the CTUA Owned Contingency/Allowance. Any CTUA Owned Contingency remaining at Project completion shall remain the sole property of CTUA. Other than the CTUA Owned Contingency/Allowance, the rest of each GMP is the sum payable to the Design-Build Entity to design and construct the Project. The Design-Build Entity is not entitled to mark up and apply general conditions, fees and profits to the CTUA Contingency/Allowance authorization.

Design-Build Entity shall provide to CTUA, in the case of each of GMP1 and GMP2, an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

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DESIGN-BUILD CONTRACT

- F. Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.
- G. No oral agreement or conversation with any representative or employee of CTUA, either before or after the execution of the Contract shall affect or modify any of the terms or obligations herein contained.
- H. The “**Design-Build Documents**” include only the following documents, each of which is incorporated into this Contract by reference:
- Request for Proposal (“**RFP**”) and all addenda, attachments and appendices
 - Design-Build Contract and all addenda
 - General Conditions
 - Special Conditions General Requirements
 - Scope of Work
 - Clarification Statement
 - CTUA approved Change Orders
 - Attachment 1 to this Contract – Design-Build Entity Proposal in response to RFP
 - Attachment 2 to this Contract - Design Professional Rate Schedule for Extra Work
 - Attachment 3 to this Contract - Performance Bond
 - Attachment 4 to this Contract - Payment Bond
 - Attachment 5 to this Contract - Escrow Agreement for Security (optional)
 - Completed and approved Design-Build Documents in accordance with the General Conditions

The Design-Build Entity shall complete the Work in strict accordance with all of the Design-Build Documents.

All of the Design-Build Documents are intended to be complementary. Work required by one of the Design-Build Documents and not by others shall be done as if required by all. In the event of a conflict, the various Design-Build Documents will be given effect in the order set forth in the General Conditions.

- I. Each and every provision of law required to be included in these Design-Build Documents shall be deemed to be included in these Design-Build Documents. The Design-Build Entity shall comply with all requirements of applicable Cabazon, federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the *California Labor Code* and *California Public Contract Code* which CTUA makes applicable to this Work.
- J. Design-Build Entity certifies that it is aware of the provisions of Section 3700 of the *California Labor Code* which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of that code,

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

and that it will comply with such provisions throughout the performance of the work of this Contract.

- K. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the it hereunder without prior written CTUA consent.
- L. Applicable Laws and Standards. CUTA is an agency of the Cabazon Band of Mission Indians, a federally recognized tribe of Cahuilla Indians having jurisdiction over the federally recognized Cabazon Mission Indian Reservation, where the Project is located. The Design Build Entity shall comply with all applicable Cabazon and federal laws, including ordinances, orders, rules, and regulations thereunder. In executing all project tasks, the Design Build Entity and its subcontractors shall comply with California laws and standards to the extent that these laws and standards are not inconsistent with applicable Cabazon or federal laws, except that the State of California, including California courts and agencies, shall have no authority or jurisdiction over the administration or enforcement of these laws and standards unless expressly and lawfully granted by CUTA. In particular, CTUA requires that the Design Build Entity shall comply with the most recent California Electrical Code, California Building Code, and California Fire Code. The Design Build Entity and subcontractors shall comply with all other applicable laws and standards, including but not limited to:
1. Americans with Disabilities Act (ADA)
 2. American National Standards Institute (ANSI)
 3. American Society for Testing and Materials (ASTM)
 4. California Building Code (CBC)
 5. California Electrical Code
 6. California Fire Code
 7. California Geological Survey (CGS)
 8. California Labor Code
 9. California Title 20 and 24
 10. Federal Communications Commission (FCC)
 11. Institute of Electrical and Electronics Engineers (IEEE) 1547: Standard for Interconnecting Distributed Resources with Electric Power Systems, and IEEE 2030.7-2017: Standard for Specification of Microgrid Controllers
 12. International Electrotechnical Commission (IEC) Technical Committee 82 (TC82)
 13. National Fire Protection Association (NFPA), National Electric Code (NEC), Including NFPA 70 and NEC Article 690
 14. National Electrical Manufacturers Association (NEMA)
 15. Federal Occupational Safety and Health Administration (OSHA)

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

- 16. California Occupational Safety and Health Administration (CAL-OSHA)
- 17. Local Utility requirements including Net Energy Metering Rules, Interconnection Requirements and Tariffs
- 18. Storm Water Pollution Prevention Plan (SWPPP)

CUTA reserves the right to waive or modify any requirement or standard under California law. Such waivers or modifications shall only be valid if expressed in writing by an authorized CUTA official.

M. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CTUA:
Cabazon Tribal Utility Authority
Atten: Jacquelyn Barnum
84-245 Indio Springs Parkway
Indio, CA 92203

DESIGN-BUILD ENTITY:
{NAME}
Atten: _____
{STREET ADDRESS}
{CTUA,STATE ZIP}

Any notice so given shall be considered received by the other party seven (7) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address, upon delivery (signature required) by an overnight or express document/package delivery service. or upon delivery by personal service. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

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

This Contract constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and no changes, alterations or modifications hereof shall be effective unless in writing and signed by each of CUTA and Design-Build Entity.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CABAZON TRIBAL
UTILITY AUTHORITY

Title:

Dated: _____

By: _____
Printed Name:

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

DESIGN-BUILD ENTITY

Printed Name:
Title:

By: _____

Dated: _____
License No. _____

END OF CONTRACT

DRAFT

ATTACHMENT 1
DESIGN-BUILD ENTITY PROPOSAL IN RESPONSE TO RFP

DRAFT

ATTACHMENT 2

**DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA
WORK [TO BE NEGOTIATED WITH THE DESIGN-BUILD
ENTITY]**

**Design-Build entity shall only apply mark-ups as allowed in the
General Conditions for Overhead and Profit on design change
directives.**

DRAFT

**END OF DESIGN PROFESSIONAL RATE SCHEDULE FOR
EXTRA WORK**

**ATTACHMENT 3
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Cabazon Tribal Utility Authority (hereinafter referred to as "CTUA") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Design-Build Entity is more particularly set forth in the Design-Build Documents for the Project dated _____, (hereinafter referred to as "Design-Build Documents"; the work to be performed, as defined in the Design-Build Documents, the "Work"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Design-Build Entity is required by the Design-Build Documents to perform the the Work pursuant to the terms thereof and to furnish a bond for the faithful performance of the Design-Build Documents Work.

NOW, THEREFORE, we, _____, the undersigned Design-Build Entity 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 CTUA in the sum of _____ DOLLARS, (\$ _____), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

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

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Design-Build Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by CTUA, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect CTUA from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit CTUA's rights or the Design-Build Entity or Surety's obligations under the

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

Contract, law or equity, including, but not limited to, *California Code of Civil Procedure* section 337.15.

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

Whenever Design-Build Entity shall be, and is declared by CTUA to be, in default under the Design-Build Documents, the Surety shall remedy the default pursuant to the Design-Build Documents, or shall promptly, at CTUA's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Design-Build Documents; or
2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Design-Build Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and CTUA, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by CTUA under the Design-Build Documents and any modification thereto, less any amount previously paid by CTUA to the Design-Build Entity and any other set offs pursuant to the Design-Build Documents; or
3. Permit CTUA to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Design-Build Entity by CTUA under the Design-Build Documents and any modification thereto, less any amount previously paid by CTUA to the Design- Build Entity and any other set offs pursuant to the Design-Build Documents.

Surety expressly agrees that CTUA may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Design-Build Entity.

Surety shall not utilize Design-Build Entity in completing the Project nor shall Surety accept a bid from Design-Build Entity for completion of the Project if CTUA, when declaring the

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

Design- Build Entity in default, notifies Surety of CTUA's objection to Design-Build Entity's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Design-Build Documents to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract.

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

DESIGN-BUILD ENTITY/PRINCIPAL

Name

By

SURETY:

By:

Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

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)

END OF PERFORMANCE BOND

ATTACHMENT 4
PAYMENT (MATERIAL & LABOR) BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Cabazon Tribal Utility Authority (hereinafter referred to as “CTUA”) has awarded to _____, (hereinafter referred to as “**Design-Build Entity**”) _____ an agreement for _____ (hereinafter referred to as the “**Project**”).

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

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

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

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

This bond shall inure to the benefit of any of the persons named in Section 9100 of the *California*

Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between CTUA and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the *California Civil Code*, and has not been paid the full amount of his claim.

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by Design-Build Entity and Surety above named, on the _____ day of _____ 20____ the name _____ and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Design-Build Entity,

if corporation)

Design-Build Entity/Principal
By _____

(Signature of Design-Build Entity)

(Seal of Surety)

Surety
By _____
Attorney in Fact

Signatures of those signing for Design-Build Entity and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of Surety to do so must be attached hereto.

END OF PAYMENT (LABOR AND MATERIALS) BOND

DRAFT

ATTACHMENT 5
ESCROW AGREEMENT FOR SECURITY

This Escrow Contract is made and entered into by and between the Cabazon Tribal Utility Authority, whose address is 84-245 Indio Springs Parkway, Indio, CA 92203 (hereinafter called the “CTUA”), and _____, whose address is _____ (hereinafter called “Design-Build Entity”). and _____ whose address is _____ (hereinafter called “Escrow Agent”).

For the consideration hereinafter set forth, CTUA, the Design-Build Entity, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by CTUA pursuant to the Design-Build Contract entered into between CTUA and Design-Build Entity for the **2MW GENERATION PLANT** in the amount of \$**[INSERT AMOUNT]** dated **[INSERT DATE]** (hereinafter referred to as the “Contract”). Alternatively, on written request of Design-Build Entity, CTUA shall make payments of the retention earnings directly to Escrow Agent. When the Design-Build Entity deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify CTUA within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between CTUA and Design-Build Entity. Securities shall be held in the name of CTUA, and shall designate Design-Build Entity as the beneficial owner.

(2) CTUA shall make progress payments to Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.

(3) When CTUA makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Design-Build Entity until the time that the escrow created under this Escrow Contract is terminated. Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Contract and the rights and responsibilities of the parties shall be equally applicable and binding when CTUA pays Escrow Agent directly.

(4) Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of CTUA. These expenses and payment terms shall be determined by CTUA, Design-Build Entity and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Design- Build

Entity and shall be subject to withdrawal by Design-Build Entity at any time and from time to time without notice to CTUA.

(6) Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from CTUA to Escrow Agent that CTUA consents to the withdrawal of the amount sought to be withdrawn by Design-Build Entity.

(7) CTUA shall have a right to draw upon the securities in the event of default by Design-Build Entity. Upon seven days' written notice to Escrow Agent from CTUA of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by CTUA.

(8) Upon receipt of written notification from CTUA certifying that the Contract is final and complete, and that Design-Build Entity has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design-Build Entity all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from CTUA and Design-Build Entity pursuant to Sections (5) to (8), inclusive, of this Escrow Contract and CTUA and Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of CTUA and on behalf of Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF THE DESIGN-BUILD ENTITY:

By: _____

Name: _____

Its: _____

ON BEHALF OF CTUA:

By: _____

Name: _____

Its: _____

ON BEHALF OF ESCROW AGENT:

By: _____

Name: _____

Its: _____

Address: _____

At the time the Escrow Account is opened, CTUA and Design-Build Entity shall deliver to Escrow Agent a fully executed counterpart of this Escrow Contract.

IN WITNESS WHEREOF, the parties have executed this Escrow Contract by their proper officers on the date first set forth above.

ON BEHALF OF THE DESIGN-BUILD ENTITY:

ON BEHALF OF CABAZON TRIBAL UTILITY AUTHORITY:

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

END OF ESCROW AGREEMENT FOR SECURITY

GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

- a. Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of CTUA.
- b. Act of God means an overwhelming event caused exclusively by natural phenomena or forces whose effects could not possibly be prevented by the exercise of reasonable care and foresight, such as flood, earthquake, tornado, epidemic, pandemic or volcanic eruption.
- c. Approval means written authorization by CTUA.
- d. Architect of Record or Engineer of Record ("A/E") means the individual, partnership, corporation, joint venture or joint venturer, or other legal entity named as such in the Contract or any succeeding entity designated by CTUA.
- e. Applicable Code Requirements means
- f. Basis of Design Documents means documents specifying products and performance criteria based on durability + maintenance requirements, availability, and energy + water efficiency, and specification of the principles, assumptions, rationale, criteria, and considerations used for calculations and decisions required during design. The Basis of Design Documents present the basic rationale and assumptions, criteria, logic, and considerations developed in evaluation of MEPFP systems design.
- g. CTUA is the contracting party stated in the Contract.
- h. CTUA Representative shall mean the CTUA Manager, or his or her designee, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "CTUA's Representative" or "Representative" in the Design-Build Documents.
- i. CTUA Review Times shall mean that CTUA shall review and comment in a timely manner on all design submittals, shop drawings, color boards and other documents submitted by Design-Build Entity.
- j. CTUA Owned Contingency/Allowance shall be a fund for the exclusive use of CTUA as needed to pay for allowance for services, unforeseen conditions and/or CTUA added scope of work for the Project. CTUA must authorize any use of these contingency/allowance funds in writing before Design-Build Entity shall be entitled to any compensation from CTUA Owned Contingency/Allowance. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of CTUA Owned Contingency/Allowance. Any CTUA Owned Contingency/Allowance remaining at Project completion shall remain the sole property of CTUA. Design-Build Entity is not

entitled to mark up or apply general conditions, fees and profits to CTUA's Contingency/Allowance-funded services or products without CTUA approval.

- k. Construction Documents are the subset of Design-Build Documents consisting of construction terms and conditions as well as Drawings and Specifications to be prepared or assembled by Design-Build Entity during the Design/Pre-Construction Phase, approved by the CTUA and consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both CTUA and Design-Builder, as part of the design review process, other documents listed in this Contract, and modifications issued after execution of this Contract which form the basis for the physical construction of the Work of the Design-Build Entity.
- l. Construction Phase shall mean the second and third phase of the Scope of Work as identified in the Design-Build Documents.
- m. Day or Days shall mean calendar days unless otherwise noted in the Design-Build Documents.
- n. Design-Build Documents are the documents, consisting of this Contract, Design Builder's Proposal, Drawings and Specifications to be prepared or assembled by the Design-Build Entity, approved by CTUA and consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the CTUA and Design-Build Entity as part of the design review process, other documents listed in this Contract, and modifications issued after execution of this Contract.
- o. Design-Build Entity is the contracting party stated in the Contract.
- p. Design/Pre-Construction Phase shall mean the first phase of the Scope of Work.
- q. Design Consultant shall mean a person or entity providing professional design services for all or a portion of the Work who is qualified and licensed as a design professional independent of, and employed by, Design-Build Entity.
- r. Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of CTUA.
- s. Final Completion is the date on which all Work is complete in accordance with the

GENERAL CONDITIONS

CABAZON TRIBAL UTILITY AUTHORITY
2MW GENERATION PLANT
DESIGN-BUILD CONTRACT

Design-Build Documents, including but not limited to, any items identified in the punch list under Article 57B.

- t. Guaranteed Maximum GMP (GMP) is the guaranteed maximum price (also known as GMP) where the contractor is compensated for agreed and actual costs incurred for the approved scope of work. GMP's will be executed with a Notice To Proceed and Council Approvals. The GMP may be separated into discrete maximum amounts payable for discrete phases of the Work; those being identified as GMP-1, GMP-2, etc,
- u. Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of CTUA is intended, unless stated otherwise.
- v. Install means the complete installation of any item, equipment or material.
- w. Legal Requirements means applicable Cabazon and federal laws, including ordinances, orders, rules, and regulations thereunder.
- x. Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.
- y. Modification is (1) a written amendment to the Contract signed by both parties, or (2) a Change Order, or (3) a Change Directive.
- z. Perform shall mean that the Design-Build Entity, at Design-Build Entity's expense, shall take all actions necessary to complete the Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.
- aa. Post-Construction Phase shall mean the third phase of the Scope of Work.
- bb. Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by CTUA and by separate contractors.
- cc. Provide shall include provide complete in place, that is furnish, install, test and make ready for use.

GENERAL CONDITIONS

- dd. Required and words of similar meaning when used shall mean “as required to properly complete the work” as required by CTUA, unless otherwise stated.
- ee. Recyclable Waste Materials means materials which can be converted from waste materials into new materials and objects through the reacquisition of properties the material had in its virgin or original state; such materials include many kinds of glass, paper, cardboard, metal, plastic, tires, textiles, batteries, and electronics.
- ff. Specifications means that portion of the Design-Build Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work.
- gg. Site or Project Site shall mean the lands and facilities upon which the Work is to be performed, including such access to other lands and facilities designated in the Design-Build Documents.
- hh. Subcontractor as used herein includes those having a direct contract with the Design-Build Entity and those who furnish materials worked to a special design according to plans, drawings, and specifications of this Work, but does not include one who merely furnishes materials not so worked.
- ii. Submittal shall mean any submission to CTUA for review and approval demonstrating how Design-Build Entity proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.
- jj. Substantial Completion or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Design-Build Documents so that CTUACTUA can occupy and use the Project or a portion thereof for its intended purposes, and testing and commissioning can be accomplished.
- kk. Surety is the person, firm, or corporation, admitted as a California admitted surety, that executes as surety the Design-Build Entity’s Performance Bond and Payment Bond for Public Works. Surety must be an admitted surety insurer pursuant to *California Code of Civil Procedure* Section 995.120.
- ll. Work is comprised of the design, construction and related services required to fulfill Design-Build Entity’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and

GENERAL CONDITIONS

services provided or to be provided by the Design-Build Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Design-Build Documents. The Work may constitute the whole or a part of the Project.

mm. Worker includes laborer, worker, or mechanic, and any supervisors thereto.

ARTICLE 2. CONTRACT DOCUMENTS

- a. **Design-Build Documents.** The Design-Build Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of the Design-Build Documents is to provide CTUA with complete and fully operational facilities as indicated and specified, including all labor and materials, equipment and transportation necessary for the proper execution of the Work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** The Design-Build Documents are intended to be fully cooperative and to be complementary. If the Design-Build Entity observes that any documents are in conflict, the Design-Build Entity shall promptly notify CTUA in writing by submission of a Request For Information. The Request For Information procedure may not be used to request any changes which shall be adjusted as provided in the Design-Build Documents for changes in work. In case of conflicts between the Design-Build Documents, the order of precedence shall be as follows:
 - i. Change Orders or Work Change Directives
 - ii. Addenda
 - iii. Special Provisions (or Special Conditions)
 - iv. Scope of Work
 - v. Contract
 - vi. General Conditions
 - vii. Request for Proposals
 - viii. Design-Build Entity's Proposal
 - ix. Criteria Documents

With reference to the Drawings, the order of precedence shall be as follows:

- i. Figures govern over scaled dimensions
- ii. Detail drawings govern over general drawings
- iii. Addenda or Change Order drawings govern over Contract Drawings
- iv. Contract Drawings govern over Standard Drawings

GENERAL CONDITIONS

- v. Contract Drawings govern over Shop Drawings
- c. **Conflicts in Design-Build Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.
- d. **Compliance with Applicable Laws.** Drawings and specifications are intended to comply with all laws, ordinances, rules and regulations of authorities having jurisdiction, and where referred to in the Design-Build Documents, said laws, ordinances, rules and regulations shall be considered as part of said Design-Build Documents within the limits specified.
- e. **Addenda and Deferred Approvals.** Addenda shall govern over all other Design-Build Documents. Subsequent addenda issued shall govern over prior addenda only to the extent specified.
- f. **Organization of Design-Build Documents.** Organization of the Design-Build Documents into divisions, sections, and articles, and arrangement of drawings shall not control Design-Build Entity in dividing Work among subcontractors or in establishing the extent of Work to be performed by any trade.

**ARTICLE 3. DESIGN-BUILD ENTITY RESPONSIBILITY;
INDEPENDENT CONTRACTOR**

- a. CTUA retains Design-Build Entity on an independent contractor basis. Design-Build Entity is not an employee, agent or representative of CTUA.
- b. Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform work on the Project.
- c. Design-Build Entity shall be responsible to CTUA for acts and omissions of the Design-Build Entity's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with Design-Build Entity or any of its subcontractors.
- d. Design-Build Entity shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law.
- e. Design-Build Entity shall perform the Work in accordance with the Design-Build

Documents. The Design-Build Entity shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of CTUA.

- f. Design-Build Entity shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If Design-Build Entity performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, Design-Build Entity shall assume responsibility for such Work and shall bear the costs attributable to correction. Design-Build Entity shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If Design-Build Entity determines that implementation of any instruction received from CTUA would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Design-Build Entity shall notify CTUA in writing. Upon verification by CTUA that a change to the Design-Build Documents is required to remedy the violation, CTUA and Design-Build Entity shall execute a Modification in accordance with Article 59.
- g. If Design-Build Entity changes any of the personnel, Contractors or suppliers identified in the Construction Documents, Design-Build Entity shall notify CTUA and provide the name and qualifications of the new personnel, Contractor or supplier. CTUA may reply within 14 days to Design-Build Entity in writing, stating (1) whether CTUA has reasonable objection to the proposed personnel, Contractor or supplier or (2) that CTUA requires additional time to review. Failure of CTUA to reply within the 14-day period shall constitute notice of no reasonable objection.
- h. Except for those persons or entities already identified or required in the Construction Documents, Design-Build Entity, as soon as practicable after execution of the Construction Documents, shall furnish in writing to CTUA the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. CTUA may reply within 14 days to Design-Build Entity in writing stating (1) whether CTUA has reasonable objection to any such proposed person or entity or (2) that CTUA requires additional time for review. Failure of CTUA to reply within the 14-day period shall constitute notice of no reasonable objection.
- i. If CTUA has reasonable objection to a person or entity proposed by Design-Build Entity, Design-Build Entity shall propose another to whom CTUA has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any,

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occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless Design-Build Entity has acted promptly and responsively in submitting names as required.

- j. Design-Build Entity shall schedule and conduct periodic meetings with CTUA to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Build Entity shall keep CTUA informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by CTUA and Design-Build Entity, the Design-Build Entity shall submit written progress reports to CTUA, showing estimated percentages of completion and other information identified below:
 - i. Work completed for the period;
 - ii. Project schedule status;
 - iii. Submittal schedule and status report, including a summary of outstanding Submittals;
 - iv. Responses to requests for information to be provided by CTUA;
 - v. Approved Change Orders and Change Directives;
 - vi. Pending Change Order and Change Directive status reports;
 - vii. Tests and inspection reports;
 - viii. Status report of Work rejected by CTUA;
 - ix. Status of Claims previously submitted in accordance with Article 53.
 - x. Cumulative total of the Cost of the Work to date;
 - xi. Current Project cash-flow and forecast reports; and
 - xii. Additional information as agreed to by CTUA and Design-Build Entity.
- k. Design-Build Entity shall be responsible for all reports and obligations respecting its personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

ARTICLE 4. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE DESIGN-BUILD ENTITY; SINGLE POINT RESPONSIBILITY OF THE DESIGN-BUILD ENTITY

- a. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations as set forth herein, Design-Build Entity shall carefully study and compare each of the Design-Build Documents provided by CTUA with the others and with information furnished by CTUA, and shall promptly report in writing to CTUA's Representative any errors, inconsistencies, or omissions in the Design-Build Documents provided by CTUA or inconsistencies with Applicable Code Requirements observed by Design-Build Entity. Design-Build Entity shall be solely responsible for any errors,

inconsistencies or omissions in the Design-Build Documents if Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to CTUA in writing.

- b. Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design, engineering and construction standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Design-Build Documents. Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Design-Build Documents, such field measurements, conditions, and other information known to Design-Build Entity before commencing work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to CTUA's Representative.
- c. If Design-Build Entity performs any design and/or construction activity which it knows, or reasonably should have known, involves an error, inconsistency, or omission referred to in this Article 4, without notifying and obtaining the written consent of CTUA's Representative, Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.
- d. CTUA does not assume any obligation to employ Design-Build Entity's services or pay Design-Build Entity royalties of any type as to future programs that may result from work performed under this Contract. Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.
- e. Design-Build Entity agrees that, in light of the high degree of confidence and trust that CTUA has reposed in Design-Build Entity, Design-Build Entity shall act in CTUA's best interests at all times throughout the course and performance of this Contract..

ARTICLE 5. DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES

- a. Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using Design-Build Entity's best skill and attention. Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems. In no case shall Design-Build Entity's means, methods, techniques, sequences, procedures, and attention to the Work deviate from commonly used industry

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standards.

- b. Design-Build Entity shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Build Entity, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Build Entity to complete the Work consistent with the Design-Build Documents. Nothing in the Design-Build Documents is intended or deemed to create any legal or contractual relationship between CTUA and any Design Consultant.
- c. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.
- d. Design-Build Entity shall submit to CTUA interim design submissions as the parties may agree upon to support the overall project schedule. On or about the time of the scheduled submissions, Design-Build Entity and CTUA shall meet and confer about the submissions, with Design-Build Entity identifying during the meeting, among other things, the evolution of the design and any significant changes or deviations that have taken place from previous design submissions. Minutes of the meeting will be maintained by the Design-Build Entity and provided to all attendees for review. Following the design review meeting, CTUA shall review and provide its response to the interim submissions in a time that is consistent with the turnaround times set forth in Design-Build Entity's schedule.
- e. Design-Build Entity shall at all times maintain good discipline and order among its employees and subcontractors. Design-Build Entity shall provide competent, fully qualified personnel to perform all work on the Project and shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
- f. Design-Build Entity shall be responsible to CTUA for acts and omissions of Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.
- g. Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Design-Build Documents either by acts or omissions of CTUA or CTUA's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than Design-Build Entity.

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- h. Design-Build Entity shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Design-Build Documents and are ready to receive subsequent work.
- i. Design-Build Entity shall perform all geotechnical services required for the Scope of Work. In the performance of the geotechnical services required under this Contract, Design-Build Entity shall utilize appropriately licensed professionals.
- j. Design-Build Entity is not required to produce the entire Construction Documents package in the local office; however, Design-Build Entity shall provide the appropriate management and design staff to provide CTUA with the current status of, and the capability to properly update, the design documents.
- k. Design-Build Entity is required to deliver to CTUA, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- l. Design-Build Entity shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project. [***CTUA is utilizing the [General Plan] and intends to issue a Notice Of Exemption (NOE), which will be provided to Design Build Entity***].
- m. Design-Build Entity is responsible for preparation of the Design-Build Documents for the entire Project.
- n. Design-Build Entity is responsible for construction of the entire Project as required by the Design-Build Documents.
- o. Design-Build Entity shall submit to CTUA Design-Build Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Design-Build Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and CTUA shall review and approve, the Design-Build Documents. Design-Build Entity shall proceed with construction in accordance with approved Design-

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Build Documents and shall submit one set of approved Construction Documents in paper and electronic version to CTUA prior to commencement of construction.

- p. CTUA's review and approval of interim design submissions, meeting minutes, and the Design-Build Documents is for the purpose of mutually establishing a conformed set of Design-Build Documents compatible with the requirements of the Work. Neither CTUA's review nor approval of any interim design submissions, meeting minutes, and Design-Build Documents shall be deemed to transfer any design liability from Design-Build Entity to CTUA.
- q. To the extent not prohibited by the Design-Build Documents or Legal Requirements, Design-Build Entity may prepare interim design submissions and Design-Build Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Design-Build Documents for the entire Work.
- q. Design-Build Entity and CTUA shall, consistent with any applicable provision of the Design-Build Documents, agree upon any interim design submissions that CTUA may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design documents may have changed through the design process. On or about the time of the scheduled submissions, Design-Build Entity and CTUA shall meet and confer about the submissions, with Design-Build Entity identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes, shall be processed. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Build Entity and provided to all attendees for review. Following the design review meetings, CTUA shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Build Entity's schedule.
- r. **Design-Build Entity's Construction Phase Services**
 - i. Unless otherwise provided in the Design-Build Documents to be the responsibility of CTUA or a separate contractor, Design-Build Entity shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Build Entity to complete construction of the Project consistent with the Design-Build Documents.

- ii. Design-Build Entity shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Design-Build Documents.
 - iii. Design-Build Entity shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Design-Build Documents. CTUA may reasonably object to Design-Build Entity's selection of any Subcontractor, provided that the Contract GMP and/or Contract Time(s) shall be adjusted to the extent that CTUA's decision impacts Design-Build Entity's cost and/or time of performance.
 - iv. Design-Build Entity assumes responsibility to CTUA for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Design-Build Documents is intended or deemed to create any legal or contractual relationship between CTUA and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
 - v. Design-Build Entity shall coordinate the activities of all Subcontractors. If CTUA performs other work on the Project or at the Site with separate contractors under CTUA's control, Design-Build Entity agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
 - vi. Design-Build Entity shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Build Entity to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit CTUA to occupy the Project or a portion of the Project for its intended use.
- s. Design-Build Entity's Responsibility for Project Safety
- i. Design-Build Entity recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Build Entity assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-

Build Entity shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Design-Build Documents, Design-Build Entity's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Build Entity's personnel, Subcontractors and others as applicable.

- ii. Design-Build Entity and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any CTUA-specific safety requirements set forth in the Design-Build Documents, provided that such CTUA-specific safety requirements do not violate any applicable Legal Requirement. Design-Build Entity will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to CTUA's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- iii. Design-Build Entity's responsibility for safety under this section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

ARTICLE 6. LABOR AND MATERIALS

Unless otherwise provided in the Design-Build Documents, the Design-Build Entity shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

When a material or system is specified in the Design-Build Documents, Design-Build Entity may make substitutions only in accordance with Article 19.b.v.

ARTICLE 7. EXISTENCE OF UTILITIES AT THE WORK SITE

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- a. CTUA has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.
- b. No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the plans. It shall be the responsibility of Design-Build Entity to determine the exact location of all service connections. Design-Build Entity shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. Design-Build Entity shall immediately notify CTUA in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- c. All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by Design-Build Entity. Locations of existing utilities shown on the Plans are approximate and may not be complete. Design-Build Entity shall be responsible for coordinating its activities with all utility companies during the construction of Work.
- d. Other Utilities. In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with Work, the work on the utility shall be performed and paid for as follows:
 - i. When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Design-Build Entity shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Design-Build Entity.
 - ii. When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Design-Build Entity shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Design-Build Entity.
 - iii. When it is necessary to remove, relocate, or temporarily maintain a utility which is not

shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained, and the cost of which is not required to be borne by the owner thereof, CTUA will make arrangements with the owner of the utility for such work to be done at no cost to the Design-Build Entity, or will require the Design-Build Entity to do such work in accordance with the provisions herein or will make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with the provisions herein.

- iv. No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Design-Build Entity to investigate to find out whether or not said cost is required to be borne by the owner of the utility.
- v. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

ARTICLE 8. PROJECT SCHEDULE

- a. **Estimated Schedule.** Within ten (20) days after the issuance of the Notice To Proceed with Design, the Design-Build Entity shall prepare a Contract Schedule using computerized Critical Path Method (CPM) scheduling and shall submit this to CTUA for Approval. The receipt or Approval of any schedules by CTUA shall not in any way relieve the Design-Build Entity of its obligations under the Design-Build Documents. The Design-Build Entity is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. The Design-Build Entity's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Design-Build Entity from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, the Design-Build Entity shall not be paid until the schedule is received, reviewed and accepted by CTUA.
- b. **Schedule Contents.** The Contract Schedule shall allow enough time for normal inclement weather, based on the total time period during which The Work will be ongoing and local climatological averages for the Project Site during that entire time period. CTUA may specify in the Special Conditions the minimum number of inclement weather days which

must be included in the Contract Schedule. The Contract Schedule shall indicate the beginning and completion dates of all phases of design and construction; critical path for all critical, sequential time related activities; and “float time” for all “slack” or “gaps” in the non-critical activities. Schedule Duration shall match the GCD. If the Work fails to meet the Guaranteed Completion Date (“GCD”) or milestones stated in the Contract Schedule, at any time, Design-Build Entity shall submit to CTUA within forty-eight (48) hours, an explanation in writing as to why the Schedule is not being maintained as well as a recovery schedule indicating how Design-Build Entity will make up the delay and get the Project back on Schedule. Schedules indicating early or late completion shall not modify or have any effect on the GCD or milestones, regardless of whether the schedules are received and/or accepted by CTUA. For purposes of determining damages for delay, the GCD and milestones shall control and may only be altered by a duly authorized Change Order.

- c. **Schedule Updates.** Design-Build Entity shall continuously update its construction schedule. Design-Build Entity shall submit an updated and accurate construction schedule to CTUA whenever requested to do so by CTUA and with each progress payment request. CTUA may withhold progress payments or other amounts due under the Design-Build Documents if Design-Build Entity fails to submit an updated and accurate construction schedule (including failure to provide a recovery schedule when required).
- d. Design-Build Entity shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities achieve completion by the GCD and milestones. Design-Build Entity shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. Design-Build Entity shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. Design-Build Entity shall act as the expediter of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Design-Build Entity shall cooperate with CTUA’s Representative in the development of all Contract Schedules and updated Contract Schedules. Failure of CTUA’s Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design-Build Entity that Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve Design-Build Entity from its sole responsibility to perform and complete all work on the Project within the Guaranteed Completion Date and shall not be a cause for an adjustment of the Guaranteed Completion Date or the GMP.

- e. Design-Build Entity shall perform all work on the Project in accordance with the current accepted Contract Schedule.

ARTICLE 9. MATERIALS

- a. Except as otherwise specifically stated in the Design-Build Documents, Design-Build Entity shall provide and pay for all materials, labor, tools, equipment, water, lights, power (including temporary utilities), transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Design-Build Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project to CTUA free from any claims, liens, or charges.
- e. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of CTUA or any other third party or any other contractor performing work at the Site. On-Site storage space is limited. Storage requirements must be reviewed and approved by CTUA's Representative. Materials may be stored only in those areas designated as storage areas by CTUA's Representative. Material stored on-Site without the approval of CTUA's Representative, or stored outside of designated areas, will be removed from Site and warehoused at Design-Build Entity's expense. Design-Build Entity shall obtain a Professional Engineer's approval for loading limitations of stored material as required. Design-Build Entity will cooperate and move materials as may be required by CTUA's Representative, at no additional cost.
- f. Design-Build Entity shall maintain its storage area and shall keep its storage areas clean, safe and secure. All materials will be palletized and/or stored upon appropriate dunnage.
- g. Design-Build Entity shall be responsible for providing off-Site storage facilities for its

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own materials at its cost. The storage of materials and equipment at the Site shall be permitted only to the extent approved in advance by CTUA's Representative. CTUA's Representative shall approve location of Design-Build Entity's items of plant and tools such as hoists, mixers, cutters, etc. in advance. Deliveries must be made during normal working hours, 7:00 a.m. to 6:00 p.m., Monday through Friday. CTUA's Representative will not accept or unload any deliveries for Design-Build Entity. Design-Build Entity shall be responsible for any and all costs resulting from deliveries made, or attempted to be made, during non-working or overtime hours.

- h. **Recyclable Waste Materials.** As required by applicable local waste reduction and recycling requirements, Design-Build Entity shall divert all recyclable waste materials to appropriate recycling centers. Design-Build Entity will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Design-Build Entity shall complete and execute any certification forms required by CTUA or other applicable agencies to document Design-Build Entity's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of Design-Build Entity. Design-Build Entity shall make reasonable efforts to identify other waste materials which are recyclable or saleable but which are not subject to mandatory diversion prior to disposal, recycling, sale or other disposition, shall communicate the value thereof to CTUA's Representative and request CTUA's instruction regarding disposition. In the event Design-Build Entity receives any income from the sale or recycling of such waste materials, CTUA may deduct payment in the actual amount of income from contract payments.

ARTICLE 10. APPLICABLE CODE REQUIREMENTS

- a. Design-Build Entity shall perform all Work on the Project in accordance with all code requirements required by law including but not limited to the following:
 - i. All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over CTUA, Design-Build Entity, any Subcontractor, the Project, the Project Site, the work on the Project, or the prosecution of the work on the Project.
 - ii. All requirements of any insurance company issuing insurance required hereunder.
 - iii. Applicable sections in the State of California Labor Code.
 - iv. All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

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- v. All products and components outlined herein must conform to all applicable codes, standards, and rating methodologies, including but not limited to, the following:
 - vi. UL certification.
 - vii. National Electrical Code - most current version.
 - viii. All Occupational Health and Safety Administration (OSHA) directives. All applicable Building Codes and Fire Codes.
- b. Design-Build Entity shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. Design-Build Entity shall promptly notify CTUA's Representative in writing if Design-Build Entity becomes aware during the performance of work on the Project that the Design-Build Documents are at variance with Applicable Code Requirements.
- c. If Design-Build Entity performs work which it knows or should have reasonably known is contrary to Applicable Code Requirements, without prior notice to CTUA and CTUA's Representative, Design-Build Entity shall be responsible for such work and any directly-resulting damages including, without limitation, the costs of correcting Defective Work.

ARTICLE 11 CONTRACTOR'S SUPERVISION

Design-Build Entity shall continuously keep at the Project site, a competent and experienced full-time Project superintendent approved by CTUA. Superintendent must be able to proficiently speak, read and write in English and shall be onsite whenever workers are present. The Project superintendent shall represent the Design-Build Entity and all directions given to the Project superintendent shall be as binding as given to Design-Build Entity. Design-Build Entity shall continuously provide efficient supervision of the Project. Any changes to the assignment of the superintendent shall receive prior written approval from CTUA.

ARTICLE 12. WORKERS

- a. Design-Build Entity shall at all times enforce strict discipline and good order among its employees. Design-Build Entity shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- b. Any person in the employ of Design-Build Entity whom CTUA may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project except

with the written Approval of CTUA.

ARTICLE 13. CONTRACT SECURITY; BONDS

Unless otherwise specified in Special Conditions, Design-Build Entity shall furnish a surety bond in an amount equal to one hundred percent (100%) of the GMP as security for the faithful performance of this Contract and shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the GMP as security for payment of persons performing labor and furnishing materials in connection with this Contract. Both the Payment and Performance Bonds must be executed by an admitted Surety, as defined in *California Code of Civil Procedure* Section 995.120. The Payment and Performance Bonds must be accompanied by the original or a certified copy of the unrevoked power of attorney or other appropriate instrument entitling or authorizing the person who executed the bond to do so. In addition, to the extent required by law, the Payment and Performance Bonds must be accompanied by a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California, a certificate from the Clerk of the County of Riverside that the certificate of authority of the insurer has not been surrendered, revoked, cancelled, annulled, or suspended or, if it has, that it has been renewed, and four copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance of the State of California. Aforesaid bonds shall be in form set forth in these Design-Build Documents. Upon request of Design-Build Entity, CTUA will consider and accepting multiple sureties on such bonds. Design-Build Entity shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 14. SUBCONTRACTORS

- a. Design-Build Entity agrees to bind every subcontractor to the terms of the Design-Build Documents as far as such terms are applicable to subcontractor's portion of The Work. Design-Build Entity shall be as fully responsible to CTUA for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Design-Build Entity is for acts and omissions of persons directly employed by Design-Build Entity. Nothing contained in these Design-Build Documents shall create any contractual relationship between any Subcontractor and CTUA. CTUA shall be deemed to be the third-party beneficiary of each contract between Design-Build Entity and its Subcontractors.
- b. CTUA reserves the right to Approve all Subcontractors. CTUA's Approval of any Subcontractor under this Contract shall not in any way relieve the Design-Build Entity of its obligations in the Design-Build Documents. Substitution or addition of Subcontractors shall be permitted only as authorized by the *Subletting and Subcontracting Fair Practices*

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Act pursuant to California Public Contract Code section 4100 et seq.

- c. Pursuant to *California Labor Code* sections 1725.5 and 1771.1, all Subcontractors, of any tier, that perform public work must be registered with the Department of Industrial Relations (“DIR”). Design-Build Entity shall be required to ensure compliance with the DIR by all of its Subcontractors of all tiers. Design-Build Entity shall keep and maintain records documenting the DIR registration information for all such Subcontractors and shall make such information available to CTUA upon request.

ARTICLE 15. PERMITS AND LICENSES

- a. Plan Check, Development Fees, Utility Connection Fees and Building Permits as necessary for prosecution of the Work shall be secured and paid for by CTUA, unless otherwise specified in the Design-Build Documents.
- b. Design-Build Entity shall obtain and pay for all other permits and licenses necessary for proper execution of the Work and Substantial Completion of the Project, including excavation permits and permits for plumbing, mechanical and electrical work, and for operations in or over public streets or right of way under jurisdiction of public agencies other than CTUA, all applicable environmental permits, approvals, and certifications, including but not limited to certifications required by the United States Environmental Protection Agency’s Lead Renovation, Repair, and Painting rule set forth at Title 40, Part 745 of the Code of Federal Regulations.
- c. Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as CTUA’s responsibility pursuant to the Design-Build Documents.
- d. Before Acceptance of the Project, Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to CTUA.
- e. Design-Build Entity shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

ARTICLE 16. CONSTRUCTION DOCUMENTS

- a. **Design-Build Documents.**

- i. Upon receipt of the Notice to Proceed, Design-Build Entity shall instruct the Design Professional to commence the design and the preparation of the Design-Build Documents utilizing the Criteria Documents to assist in scoping the Project, though responsibility for the Design-Build Documents shall rest solely with Design-Build Entity. The Design-Build Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Design-Build Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. CTUA's review of the Design-Build Documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth herein relating to Schedule. Such review shall not relieve Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by CTUA of any deviation from, or of Design-Build Entity's failure to comply with, any provision or requirement of the Design-Build Documents, unless such deviation or failure has been identified as such in writing in the document submitted by Design-Build Entity and approved by CTUA.
- ii. Prior to proceeding with any construction, Design-Build Entity shall submit to CTUA for approval the proposed Design-Build Documents at 100% completion. The Contract Schedule shall indicate the time for CTUA to review the proposed Design-Build Documents and shall provide a reasonable time of not less than ten (10) days for review of the same. Design-Build Entity shall not be entitled to an extension of time for any changes that CTUA requires to the proposed Design-Build Documents, unless the change is unreasonable under the circumstances. CTUA- required changes to the proposed Design-Build Documents at 100% will only be considered unreasonable if all of the following are true: (1) the design element at issue was apparent in earlier design documents formally submitted to CTUA and CTUA did not request the change, (2) the change is not necessary to comply with the specifications set forth in the Request for Proposal, and (3) the change is only aesthetic and is not the result of a defective design or a failure to adhere to the standard of care.
- iii. Design-Build Entity may, at its option, submit any or all of the following on a regular basis for CTUA's review and comment: _____. These documents shall be reviewed by CTUA for conformance to the basis of design and the Criteria Documents, schematic design, proposed Design-Build Documents at 50% or proposed Design-Build Documents at 90%. If Design-Build Entity elects to submit any design documents prior to 100% completion, Design-Build Entity shall not be entitled to any adjustment to the Guaranteed Completion Date as a result of such submittals or any responses or comments from CTUA. Except as authorized herein

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or as otherwise allowed by CTUA, Design-Build Entity shall not submit any other design documents to CTUA for review or approval.

- iv. The Design-Build Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to CTUA for review.
- v. Design-Build Entity shall maintain at the site for CTUA one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. Design-Build Entity shall deliver these items to CTUA as a record of the Work as constructed.

b. Shop Drawings, Product Data, Samples, Materials, and Equipment

- i. Shop drawings means drawings, submitted to Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
- ii. Design-Build Entity shall check and verify all field measurements and shall submit the same with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, Subcontractor, or worker on the Project. Design-Build Entity shall sign all shop drawing submittals affirming that submittals have been reviewed and approved by Design-Build Entity prior to electronic submission to CTUA. Each signed submittal shall affirm that the submittal meets all the requirements of the Design-Build Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- iii. Design-Build Entity shall make any corrections required by CTUA on shop drawings, and file with CTUA copies of each corrected shop drawing, and furnish electronically such other copies as may be needed for completion of the Work. CTUA's approval of shop drawings shall not relieve Design-Build Entity from responsibility for deviations from the Design-Build Documents unless Design-Build Entity has, in writing, called CTUA's attention to such deviations at the time of submission and has secured CTUA's written Approval. CTUA's Approval of shop drawings shall not relieve Design-Build Entity from responsibility for errors in shop drawings.
- iv. Design-Build Entity shall coordinate all submittals and review them for accuracy,

completeness, and compliance with the requirements of the Design-Build Documents and Design-Build Entity's Design-Build Documents and shall indicate its approval thereon as evidence of such coordination and review.

- v. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Design-Build Documents.
- vi. Design-Build Entity shall submit shop drawings approved by the Design Professional and samples of submittals that relate to finish materials and products.
- vii. Wherever the name or brand of manufacturer or an article is listed in the Design-Build Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by CTUA.

c. Submittals

- i. Design-Build Entity shall coordinate all Submittals and review them for accuracy, completeness, and compliance with the requirements of Design-Build Entity's Design-Build Documents and shall indicate its approval thereon as evidence of such coordination and review.
- ii. All professional design services or certifications to be provided by Design-Build Entity, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. CTUA and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- iii. Design-Build Entity shall submit samples of submittals that relate to finish materials and products. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Design-Build Documents.
- iv. Wherever the name or brand of manufacturer or an article is listed in the Design-Build Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by CTUA.

- v. Prior to submission of any Submittals, Design-Build Entity shall prepare a Submittal schedule, and shall submit the schedule for CTUA's approval. CTUA's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with Design-Build Entity's schedule provided in Article 8, (2) allow CTUA reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If Design-Build Entity fails to submit a Submittal schedule, Design-Build Entity shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.
- vi. By providing Submittals Design-Build Entity represents to CTUA that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.
- vii. The Design-Build Entity shall perform no portion of the Work for which the Design-Build Documents require Submittals until CTUA has approved the respective Submittal.
- viii. The Work shall be in accordance with approved Submittals except that Design-Build Entity shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if Design-Build Entity has notified CTUA in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Build Entity shall not be relieved of responsibility for errors or omissions in Submittals by CTUA's approval of the Submittals.
- ix. Design-Build Entity will provide samples and submittals, together with catalogs and supporting data required by CTUA, to CTUA within a reasonable time period to provide for adequate review and avoid delays in the Work.
- x. These requirements shall not authorize any extension of time for performance of this Contract. CTUA will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Design-Build Documents. The Work shall be in accordance with approved samples and submittals. If CTUA's response results in a change in the Project, then such change shall be effected by a written change order.

d. Geotechnical and Survey

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- i. The Design Work shall be consistent with the findings and recommendations of the geotechnical report, legal description and project survey. Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
- ii. Any additional tests, borings, etc. necessary to support the Design-Build Documents shall be the responsibility of Design-Build Entity.

ARTICLE 16. MONTHLY REPORT

Design-Build Entity shall prepare and submit to CTUA, during all phases, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by CTUA. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth Design-Build Entity's projected progress for the forthcoming month. The monthly report shall also be accompanied by an updated Contract Schedule.

ARTICLE 17. OTHER REPORTS

If applicable, Design-Build Entity will cooperate with CTUA in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

ARTICLE 18. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity. Design-Build Entity shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems.
- b. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project. All permanent meters Installed shall be listed in Design-Build Entity's name until Project Acceptance.
- c. If the Contract is for construction in existing facilities, Design-Build Entity may, with prior written Approval of CTUA, use CTUA's existing utilities by compensating CTUA for utilities used by Design-Build Entity.

ARTICLE 19. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by CTUA. Design-Build Entity shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by CTUA. Design-Build Entity may either request reimbursement from CTUA for such fees, or shall be responsible for arranging and coordination with CTUA for the payment of such fees.

ARTICLE 20. TRENCHES

- a. Trenches Five Feet or More in Depth. Design-Build Entity shall submit to CTUA, 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 five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.
- b. Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Design-Build Entity shall promptly, and before the following conditions are disturbed, notify CTUA, in writing, of any:
 - i. Material that Design-Build Entity believes may be material that is hazardous waste, as defined in Section 25117 of the *California Health and Safety Code*, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - ii. Subsurface or latent physical conditions at the site differing from those indicated.
 - iii. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- c. CTUA shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Design-Build Entity's cost of, or the time required for, performance of any part of the

Work, shall issue a change order under the procedures described in the Design-Build Documents. In the event that a dispute arises between CTUA and Design-Build Entity as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Design-Build Entity's cost of, or time required for, performance of any part of The Work, Design-Build Entity shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Design-Build Entity shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 21. CONSTRUCTION BY CTUA OR BY SEPARATE CONTRACTORS

- a. CTUA reserves the right to perform construction or operations related to the Project with CTUA's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, or not, including those terms and conditions related to insurance and waiver of subrogation. CTUA shall notify Design-Build Entity promptly after execution of any separate contract. If Design-Build Entity claims that delay or additional cost is involved because of such action by CTUA, Design-Build Entity shall make a Claim as provided in Article 53.
- b. When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Build Entity" in Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with CTUA.
- c. CTUA shall provide for coordination of the activities of CTUA's own forces, and of each separate contractor, with the Work of Design-Build Entity, who shall cooperate with them. Design-Build Entity shall participate with other separate contractors and CTUA in reviewing their construction schedules. Design-Build Entity shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by Design-Build Entity, separate contractors and CTUA until subsequently revised.
- d. Unless otherwise provided in the Design-Build Documents, when CTUA performs construction or operations related to the Project with CTUA's own forces or separate contractors, CTUA shall be deemed to be subject to the same obligations, and to have the same rights, that apply to Design-Build Entity under this Contract.

ARTICLE 22. REMOVAL OF HAZARDOUS MATERIALS

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Should Design-Build Entity encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, Design-Build Entity shall immediately stop work at the affected Project site and shall report the condition to CTUA in writing. The CTUA shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require Design-Build Entity to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of CTUA and Design-Build Entity.

ARTICLE 23. SANITARY FACILITIES

Design-Build Entity shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper, hand sanitizers, and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in the Work under construction shall not be permitted. Any other Sanitary Facilities required by CAL-OSHA shall be the responsibility of Design-Build Entity.

ARTICLE 24. AIR POLLUTION CONTROL

Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

ARTICLE 25. COMPLIANCE WITH STATE STORM WATER PERMIT

- a. In lieu of compliance with tribal law and regulations on the matter, Design-Build Entity shall be required to comply with all aspects of the California State Water Resources Control Board (State Water Board) Water Quality Order No. 2009-0009- DWQ, as amended, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development. Design-Build Entity shall be responsible for filing the Notice of Intent (NOI) and for obtaining coverage under the Permit. This includes preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) for the Project site. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Water Board or implemented on the Project site it must first be reviewed and

approved by CTUA. Design-Build Entity shall include all costs of compliance with specified requirements in the Contract amount.

- b. CTUA retains the right to procure coverage under the Permit for the Project site if Design-Build Entity fails to draft a satisfactory NOI or SWPPP or proceed in a manner that is satisfactory to CTUA. Any costs incurred by CTUA in procuring coverage under the Permit, or drafting an NOI or SWPPP shall be paid by Design-Build Entity.
- c. Design-Build Entity shall be responsible for maintaining compliance with all aspects of the Permit during the course of the Project. Design-Build Entity shall provide copies of all reports and monitoring information to CTUA's Representative. If Design-Build Entity has failed or is unable to maintain compliance with the Permit, CTUA reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Design-Build Entity has adequately maintained compliance with the Permit shall be CTUA's sole determination. Any costs incurred by CTUA in drafting and implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by Design-Build Entity.
- d. In submitting a Proposal for this Project, it shall be Design-Build Entity's responsibility to evaluate and include in the contract amount the cost of procuring coverage under the Permit, preparing a SWPPP that is acceptable to CTUA, and complying with the SWPPP and any revisions to the SWPPP that become necessary during the course of construction.
- e. In addition to compliance with the Permit, Design-Build Entity shall comply with the lawful requirements of any applicable municipality, CTUA, drainage district, and other local agencies regarding discharges of storm water to the storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- f. CTUA may seek damages from Design-Build Entity for delay in completing the Contract in accordance with the Design-Build Documents, caused by Design-Build Entity's failure to comply with the Permit.
- g. Failure to comply with the Permit is a violation of federal and state law. Design-Build Entity hereby agrees to indemnify and hold harmless CTUA, its officials, officers, agents, employees and representatives from and against any and all claims, demands, losses or liabilities of any kind or nature which CTUA, its officials, officers, agents, employees and representatives may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of CTUA, its officials, officers,

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agents, employees or representatives. CTUA may seek damages from Design-Build Entity for delay in completing the Work in accordance with the Design-Build Documents caused by Design-Build Entity's failure to comply with the Permit.

ARTICLE 26. CLEANING UP

- a. Design-Build Entity at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Design-Build Entity shall not store debris under, in, or about the premises. Upon completion of the Work, Design-Build Entity shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Design-Build Entity shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and Design-Build Entity shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Design-Build Entity shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Design-Build Entity operations or equipment.
- b. Design-Build Entity shall fully clean up the site at the completion of the Work. If Design-Build Entity after being given adequate notice, fails to immediately clean up at the completion of the Work, CTUA may do so and the cost of such clean up shall be charged back to Design-Build Entity.

ARTICLE 27. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by Design-Build Entity at its expense. Layout shall be done by a registered civil engineer Approved by the Engineer of Record. Any required "as-built" drawings of the Work shall be prepared and stamped by the registered civil engineer.

ARTICLE 28. EXCESSIVE NOISE

- a. Design-Build Entity shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- b. Design-Build Entity shall comply with local sound control and noise level rules, regulations and ordinances. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any

muffler or other control device sustain damage or be determined to be ineffective or defective, Design-Build Entity shall promptly remove the equipment and shall not return said equipment to the Project Site until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the Site or related to the Site, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by Design-Build Entity.

ARTICLE 29. TESTS AND INSPECTIONS

- a. If the Design-Build Documents, CTUA, or any instructions, laws, ordinances, or public authority require any part of the Work to be tested or Approved, Design-Build Entity shall provide CTUA at least two (2) working days' notice of its readiness for observation or inspection. Unless otherwise provided, Design-Build Entity shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to CTUA, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work. Design-Build Entity shall give CTUA timely notice of when and where tests and inspections are to be made so that CTUA may be present for such procedures. CTUA shall bear costs of (1) any tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit CTUA from delegating their cost to Design-Build Entity.
- b. If CTUA determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, CTUA will instruct Design-Build Entity to make arrangements for such additional testing, inspection or approval by an entity acceptable to CTUA, and Design-Build Entity shall give timely notice to CTUA of when and where tests and inspections are to be made so that CTUA may be present for such procedures. Such costs shall be at CTUA's expense.
- c. Required certificates of any testing or inspection shall, unless otherwise required by the Design-Build Documents, be secured by Design-Build Entity and promptly delivered to CTUA.
- d. If such testing, inspection or approval reveal failure of the tested portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at Design-Build Entity's expense.
- e. CTUA may request to examine a portion of the Work that Design-Build Entity has

covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, CTUA and Design-Build Entity shall execute a Change Order to adjust the Contract Time and GMP, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at Design-Build Entity's expense and Design-Build Entity shall not be entitled to a change in the Contract Time unless the condition was caused by CTUA or a separate contractor in which event CTUA shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

ARTICLE 30. CORRECTION OF NONCONFORMING WORK

- a. **Before or After Substantial Completion.** Design-Build Entity shall promptly correct Work rejected by CTUA or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by CTUA whose expenses and compensation were made necessary thereby, shall be at Design-Build Entity's expense.
- b. **After Substantial Completion.** If, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, Design-Build Entity shall correct it promptly after receipt of written notice from CTUA to do so unless CTUA has previously given Design-Build Entity a written acceptance of such condition. CTUA shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if CTUA fails to notify Design-Build Entity and give Design-Build Entity an opportunity to make the correction, CTUA waives the rights to require correction by Design-Build Entity and to make a claim for breach of warranty. If Design-Build Entity fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from CTUA, CTUA may correct it.
- c. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- d. The Design-Build Entity shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither

corrected by Design-Build Entity nor accepted by CTUA.

- e. The Design-Build Entity shall bear the cost of correcting destroyed or damaged construction of CTUA or separate contractors, whether completed or partially completed, caused by Design-Build Entity's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.
- f. Nothing contained in this Article 30 shall be construed to establish a period of limitation with respect to other obligations Design-Build Entity has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 30.b relates only to the specific obligation of Design-Build Entity to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Design-Build Entity's liability with respect to Design-Build Entity's obligations other than specifically to correct the Work.
- g. Acceptance of Nonconforming Work. If CTUA prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, CTUA may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.
- h. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by CTUA, and not by Design-Build Entity. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- i. In advance of manufacture of materials to be supplied by Design-Build Entity which must be tested or inspected, Design-Build Entity shall notify CTUA so that CTUA may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- j. If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of CTUA, Design-Build Entity shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

ARTICLE 31. PROTECTION OF WORK AND PROPERTY

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- a. Design-Build Entity shall be responsible for all damages to persons or property that occur as a result of the Work. Design-Build Entity shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by CTUA. All Work shall be solely at Design-Build Entity's risk. Design-Build Entity shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Design-Build Entity shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where the Work is being performed. Design-Build Entity shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- b. In an emergency affecting safety of life or of work or of adjoining property, Design-Build Entity, without special instruction or authorization from CTUA, is hereby permitted to act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if so authorized or instructed by CTUA. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined by and agreed upon by CTUA and Design-Build Entity.
- c. Design-Build Entity shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Design-Build Entity shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Design-Build Entity shall repair any damage thereto caused by the Work operations. Design-Build Entity shall:
 - i. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 - ii. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 - iii. Deliver materials to the Project site over a route designated by CTUA.
 - iv. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If Design-Build Entity does not comply, CTUA shall have the immediate authority to provide dust control and deduct the cost from payments to Design-Build Entity.

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- v. Confine Design-Build Entity's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of CTUA. Design-Build Entity shall not unreasonably encumber the Project site with its materials.
- vi. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to CTUA.
- vii. 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 CTUA.
- viii. 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. At the completion of work each day, leave the Project site in a clean, safe condition.
- ix. Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.

These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

- e. Should damage to persons or property occur as a result of the Work, Design-Build Entity shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. CTUA shall be entitled to inspect and copy any such documentation, video, or photographs.

ARTICLE 32. CONCEALED OR UNKNOWN CONDITIONS

- a. If Design-Build Entity encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, Design-Build Entity shall promptly provide notice to CTUA before conditions are

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disturbed and in no event later than 21 days after first observance of the conditions. CTUA shall promptly investigate such conditions and, if CTUA determines that they differ materially and cause an increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If CTUA determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, CTUA shall promptly notify Design-Build Entity in writing, stating the reasons. If Design-Build Entity disputes CTUA's determination or recommendation, Design-Build Entity may proceed as provided in Article 53.

- b. If, in the course of the Work, Design-Build Entity encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, Design-Build Entity shall immediately suspend any operations that would affect them and shall notify CTUA. Upon receipt of such notice, CTUA shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Build Entity shall continue to suspend such operations until otherwise instructed by CTUA but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the GMP and Contract Time arising from the existence of such remains or features may be made as provided in Article 53.

ARTICLE 33. LIABILITY FOR AND REPAIR OF DAMAGED WORK

Except as otherwise provided in the Design-Build Documents, Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to CTUA's acceptance of the Project as fully completed. Notwithstanding the preceding, Design-Build Entity shall not be liable for damages and losses to the Project caused by CTUA's negligence or willful misconduct.

ARTICLE 34. AUTHORIZED REPRESENTATIVES

CTUA shall designate representatives, who shall have the right to be present at the Project site at all times. CTUA may designate an inspector who shall have the right to observe all of Design-Build Entity's Work. The inspector is not authorized to make changes in the Design-Build Documents. The inspector shall not be responsible for Design-Build Entity's failure to carry out the Work in accordance with the Design-Build Documents. Design-Build Entity shall provide safe and proper facilities for such access.

ARTICLE 35. PROHIBITION ON HARASSMENT

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CTUA is committed to providing a workplace free of sexual harassment and harassment based on factors such as race, color, religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs, ethnic jokes, posting of offensive statements, posters or cartoons or similar conduct.

Design-Build Entity shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Design-Build Entity shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Design-Build Entity shall require that any Subcontractor performing any portion of the Work on the Project to adopt and implement policies in conformity with this Article.

Design-Build Entity shall not permit any person, whether employed by Design-Build Entity, a Subcontractor, sub-subcontractor, or any other person or entity, performing any Work on the Project at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work on the Project.

ARTICLE 36. HOURS OF WORK

- a. Eight (8) hours of work shall constitute a legal day's work. Work may however be performed by employees of Design-Build Entity and its Subcontractors in excess of eight hours per day at a rate of pay as provided in *California Labor Code* Section 1815.
- b. Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Saturday, between the hours of 7:00 a.m. and 7:00 p.m., and Saturday between 8:00 a.m. and 5:00 p.m., unless specifically approved in writing by CTUA's Representative.
- c. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the

following at the Project site, other than between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, with no Work allowed on CTUA-observed holidays, unless otherwise specifically approved in writing by CTUA's Representative:

- i. Powered Vehicles
- ii. Construction Equipment
- iii. Loading and Unloading Vehicles
- iv. Domestic Power Tools.

ARTICLE 37. PAYROLL RECORDS

Design-Build Entity and each Subcontractor shall 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 employed in connection with the Work. Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by Design-Build Entity are true and accurate. Design-Build Entity shall also require Subcontractor(s) to similarly certify weekly payroll records under penalty of perjury.

ARTICLE 38. PREVAILING RATES OF WAGES

- a. Design-Build Entity is aware of the requirements of *California Labor Code* Sections 1720 et seq. and 1770 et seq., as well as *California Code of Regulations*, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. Design-Build Entity shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. Design-Build Entity shall 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 shall post copies at Design-Build Entity's principal place of business and at the Project site. Design-Build Entity shall defend, indemnify and hold CTUA, the Cabazon Tribal Council, and its and their officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or

interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

- b. Design-Build Entity and each Subcontractor shall forfeit as a penalty to CTUA not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such 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 shall be paid to each worker by Design-Build Entity.
- c. Design-Build Entity shall 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.
- d. As a further material part of this Contract, Design-Build Entity agrees to hold harmless and indemnify CTUA, the Cabazon Tribal Council and each member of the Cabazon Tribal Council, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Design-Build Entity or its Subcontractors to comply with the foregoing prevailing wage laws. If CTUA or any of the indemnified parties are named as a party in any dispute arising from the failure of Design-Build Entity or its Subcontractors to pay prevailing wages, Design-Build Entity agrees that CTUA and the other indemnified parties may appoint their own independent counsel, and Design-Build Entity agrees to pay all attorneys' fees and defense costs of CTUA and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by CTUA and the other indemnified parties as a result of the action.

ARTICLE 39. LABOR COMPLIANCE

This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Design-Build Entity's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. This includes, but is not necessarily limited to the submission of certified payroll records electronically or otherwise as required by the Department of Industrial Relations.

ARTICLE 40. EMPLOYMENT OF APPRENTICES

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Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the *California Labor Code* concerning employment of apprentices by Design-Build Entity or any Subcontractor. Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the *California 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. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

ARTICLE 41. NONDISCRIMINATION/EQUAL OPPORTUNITY

Pursuant to *California Labor Code* Section 1735 and other applicable provisions of law, Design-Build Entity and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

ARTICLE 42. LABOR/EMPLOYMENT SAFETY

Design-Build Entity shall 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.

ARTICLE 43. INSURANCE

- a. **Workers' Compensation.** Design-Build Entity shall provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case any of sublet Work, Design-Build Entity shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Design-Build Entity's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, Design-Build Entity shall provide or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise

protected. Design-Build Entity is required to secure payment of compensation to its employees in accordance with the provisions of Section 3700 of the *California Labor Code*. Design-Build Entity shall file with CTUA certificates of its insurance protecting workers. The company or companies providing insurance coverage shall be acceptable to CTUA, if in the form and coverage as set forth in the Design-Build Documents.

- b. **Employer's Liability.** Design-Build Entity shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars (\$1,000,000.00) per person per accident. Design-Build Entity shall provide CTUA with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Design-Build Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of CTUA.
- c. **Commercial General Liability Insurance.**
 - i. Design-Build Entity shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Design-Build Entity's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - ii. Such policy shall comply with all the requirements of the Design-Build Documents. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve Design-Build Entity from liability in excess of such coverage, nor shall it limit Design-Build Entity's indemnification obligations to CTUA, and shall not preclude CTUA from taking such other actions available to CTUA under other provisions of the Design-Build Documents or law.
 - iii. Design-Build Entity shall make certain that any and all Subcontractors hired by Design-Build Entity are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Design-

Build Entity shall indemnify and hold CTUA harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by CTUA as a result thereof.

- iv. Company or companies providing insurance coverage shall be acceptable to CTUA and authorized to conduct business in the State of California.
 - v. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Design-Build Documents.
 - vi. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Design-Build Entity of that part of the indemnification contained in these General Conditions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, CTUA may require additional coverage to be purchased by Design-Build Entity to restore the required limits. Design-Build Entity may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Design-Build Documents.
- d. **Automobile Liability.** Design-Build Entity shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, One Million Dollars (\$1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to CTUA.
- e. **Professional Liability.** Design-Build Entity shall take out and maintain at all times during the term of this Contract Professional Liability Insurance in the amount of, at least, Two Million Dollars (\$2,000,000) per claim. Such insurance shall insure Design-Build Entity, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts Design-Build Entity may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to CTUA by the insurer, for a period of three (3) years

after the termination of this Contract and the completion of all of Design-Build Entity's services hereunder.

- f. **Builder's Risk (All Risk).** It is Design-Build Entity's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. CTUA accepts no responsibility until the Contract is formally accepted by the Governing Board for the work. Design-Build Entity is required to file with CTUA a certificate evidencing fire insurance coverage.

Provided insurance coverage shall be on completed value form, all-risk or special causes of loss coverage.

- i. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
- ii. Coverage shall include all materials stored on site and in transit.
- iii. Coverage shall include Design-Build Entity's tools and equipment.
- iv. Insurance shall include boiler, machinery and material hoist coverage.

Such insurance shall comply with all provisions of the Design-Build Documents.

- g. **Form and Proof of Insurance.**

- i. Any insurance carrier providing insurance coverage required by the Design-Build Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by CTUA Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by Design-Build Entity, and such deductibles and retentions shall have the prior written consent from CTUA. At the election of CTUA, Design-Build Entity shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- ii. Design-Build Entity shall cause its insurance carrier(s) to furnish CTUA with either a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in

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writing by CTUA Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. CTUA, its directors and officers, employees, agents or representatives shall be named as Additional Insureds on all policies of Commercial General Liability and Automobile Liability Insurance. Design-Build Entity shall provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to CTUA prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, CTUA may terminate or Stop Work pursuant to the Design-Build Documents, unless CTUA receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Design-Build Entity shall not take possession, or use the Project site, or commence operations under this Agreement until CTUA has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

- iii. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be primary, and CTUA's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be contributory.
- iv. CTUA reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract, including any extension thereof, if in CTUA's reasonable judgment, the amount or type of insurance carried by Design-Build Entity becomes inadequate. Design-Build Entity shall pass down the insurance obligations contained herein to all tiers of Subcontractors working under this Contract.

ARTICLE 44. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Contract, Design-Build Entity confirms that the Contract Time is a reasonable period for performing the Work.

Design-Build Entity shall not, except by agreement of CTUA in writing, commence the

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Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of Design-Build Entity's failure to obtain insurance required under this Contract.

Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

If Design-Build Entity is delayed at any time in the commencement or progress of the Work by an act or neglect of CTUA or of a consultant or separate contractor employed by CTUA; or by changes ordered in the Work by CTUA; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Design-Build Entity's control; or by delay authorized by CTUA pending mediation and binding dispute resolution or by other causes that CTUA determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as CTUA may determine.

Claims relating to time shall be made in accordance with applicable provisions of Article 53.

This Section 44.a. does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

- b. Time for Completion/Liquidated Damages.** Work shall be commenced within ten (10) days of the date stated in CTUA's Notice to Proceed and shall be completed by Design-Build Entity in the time specified in the Design-Build Documents. CTUA is under no obligation to consider early completion of the Project; and the Guaranteed Completion Date shall not be amended by CTUA's receipt or acceptance of Design-Build Entity's proposed earlier completion date. Furthermore, Design-Build Entity shall not, under any circumstances, receive additional compensation from CTUA (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by Design-Build Entity and the Guaranteed Completion Date. If the Work is not completed as stated in the Design-Build Documents, it is understood that CTUA will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Design-Build Entity shall pay to CTUA as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until the Work is fully completed. Design-Build Entity and its surety shall be liable for any liquidated damages. Any money due or to become due Design-Build Entity may be retained to cover liquidated damages.
- c. Delay.** There are only two kinds of delay, Excusable Delay and Inexcusable Delay. Only

Excusable Delay that meets the requirements specified herein may result in the adjustment of the Guaranteed Completion Date, and/or the GMP and may be compensated as Extra Work as described below. All other delay(s) are Inexcusable Delay and, except and only to the extent provided otherwise herein, by signing the Contract, the Design-Build Entity agrees:

- i. To bear the risk of Inexcusable Delays to completion of the Work on the Project; and
- ii. That this Contract was made with full knowledge of this risk.

In agreeing to bear the risk of Inexcusable Delays to completion of the Work on the Project, Design-Build Entity understands that, except and only to the extent provided otherwise in Sections 44 (d) and (e), the occurrence of events that result in any delay in completion of the work on the Project shall not excuse Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Guaranteed Completion Date, and shall not entitle Design-Build Entity to an adjustment of the GMP.

- d. **Adjustment of the Guaranteed Completion Date for Excusable Delay.** The Guaranteed Completion Date will be extended for an Excusable Delay, if and only if, Design-Build Entity demonstrates that all of the following six conditions are met:
 - i. Condition Number One: When the event causing the delay commences, Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.
 - ii. Condition Number Two: The delay is to the critical path. A delay is to the critical path if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the contractually specified date for full completion of the Work on the Project as stated in the Notice to Proceed, or as amended by Change Order. Under this Article:
 - a. If the Contract Schedule shows completion of the entire Project before the contractually specified date for full completion of the Work on the Project, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the contractually specified date for full completion of the Project.
 - b. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining

whether and to what extent the Guaranteed Completion Date should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

- iii. Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to herein. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to Design-Build Entity's failure to timely submit an acceptable Proposed Contract Schedule.
- iv. Condition Number Four: Within five (5) days of the date Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing a delay, (even if Design-Build Entity has not been delayed when Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) Design-Build Entity submits a timely Change Order Request that meets the requirements set forth herein.
- v. Condition Number Five: The delay is not caused by:
 - a. A naturally occurring unforeseen site condition not anticipated in the Design-Build Documents (e.g., unanticipated naturally-occurring rock or sand); or
 - b. The financial inability, misconduct or default of Design-Build Entity, a Subcontractor or supplier; or
 - c. The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity; or
 - d. An error or omission in the Design-Build Documents caused by Design-Build Entity or Design-Build Entity's Design Consultants.
- vi. Condition Number Six: The delay is caused by:
 - a. Fire; or

- b. Strikes, boycotts, or like obstructive actions by employees or labor organizations, or restrictive government action; or
 - c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
 - d. A man-made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or
 - e. An error or omission in the Design-Build Documents caused by CTUA; or
 - f. CTUA's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of Design-Build Entity; or
 - g. CTUA's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of Design-Build Entity; or
 - h. The failure of CTUA or CTUA's representative to timely perform any Contract obligation unless such failure is due to Design-Build Entity's default or misconduct.
- vii. If and only if a delay meets all six conditions prescribed in Section 44.d, then the Guaranteed Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Guaranteed Completion Date for full completion of the Work on the Project.
- viii. If for any reason one or more of the six conditions prescribed in Section 44.d is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Guaranteed Completion Date.
- e. Compensation for Excusable Delay.**
- i. CTUA's liability to Design-Build Entity for delays for which CTUA is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall CTUA be liable for any costs which are borne by Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable CTUA delay, including delays caused by items that are the responsibility of CTUA shall be based on actual costs only; no proportions or formulas shall be used to calculate

any delay damages. Design-Build Entity shall be deemed to waive any right to delay damages unless: (i) Design-Build Entity complies with all requirements of the Contract for providing timely notice to CTUA and timely requests for adjustments to the Guaranteed Completion Date and GMP, and (ii) Design-Build Entity meets all conditions of Section 44.d and is granted an extension of the Guaranteed Completion Date.

- ii. By signing the Contract, the parties agree that CTUA has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - a. To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:
 - 1. Changes to correct errors or omissions caused by CTUA, if any, in the Design-Build Documents.
 - 2. Changes resulting from CTUA's decision to change the Scope of Work subsequent to execution of the Contract.
 - 3. Changes due to unforeseen conditions.
 - a. To suspend Work on the Project or any part thereof.
 - b. To delay Work on the Project, including without limitation, delays resulting from the failure of CTUA or CTUA's Representative to timely perform any Contract obligation and delays for CTUA's convenience.

ARTICLE 45. COST BREAKDOWN AND PERIODIC ESTIMATES

Design-Build Entity shall furnish on forms Approved by CTUA a monthly itemized estimate of Work done for the purpose of making progress payments. In order for CTUA to consider and evaluate each progress payment application, Design-Build Entity shall submit a detailed Schedule of Values estimate of Work performed. Design-Build Entity shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

CTUA shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

ARTICLE 46. MOBILIZATION COSTS

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- a. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate (“Initial Mobilization”). When no bid item is provided for “Initial Mobilization,” payment for such costs will be deemed to be included in the other items of the Work.
- b. Payment for Initial Mobilization based on the lump sum provided in the Bid Form shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of CTUA. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
 - i. Obtaining and paying for all bonds, insurance, and permits.
 - ii. Moving onto the Project site of all Design-Build Entity’s plant and equipment required for first month’s operations.
 - iii. Installing temporary construction power, wiring, and lighting facilities.
 - iv. Developing and installing a construction water supply.
 - v. Providing and maintaining the field office trailers for Design-Build Entity complete with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.
 - vi. Providing on-site communication facilities, including telephones, radio pagers, and fax machines.
 - vii. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Design-Build Documents.
 - viii. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer’s specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
 - ix. Arranging for and erection of Design-Build Entity’s work and storage yard.

- x. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
- xi. Full-time presence of Design-Build Entity's superintendent at the job site as required herein.
- xii. Submittal of Construction Schedule as required by the Design-Build Documents.

ARTICLE 47. PAYMENTS

- a. CTUA shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Design-Build Entity shall be paid a sum equal to ninety-five percent (95%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments. Notwithstanding the foregoing, Design-Build Entity shall not be entitled to payment for work so long as any lawful or proper direction concerning the Work or any portion thereof given by CTUA or CTUA's Representative shall remain not complied with.
- b. **Contract Sum.** The Contract Sum is stated in the Agreement and reflected as GMP1 and GMP2.
- c. **Schedule of Values.** Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, Design-Build Entity, prior to the first Application for Payment after execution of the Construction Documents, shall submit to CTUA a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as CTUA may require. This schedule, unless objected to by CTUA, shall be used as a basis for reviewing Design-Build Entity's Applications for Payment.
- d. **Applications for Payment.** At least ten days before the date established for each progress payment, Design-Build Entity shall submit to CTUA an itemized Application for Payment for completed portions of the Work. Each Application for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Build Entity on account of that portion of the Work for which the Design-Build Entity has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the

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Work in the schedule of values. The application shall be notarized, if required, and supported by data substantiating Design-Build Entity's right to payment as CTUA may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

- i. As provided herein, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of CTUA, but not yet included in Change Orders.
 - ii. Applications for Payment shall not include requests for payment for portions of the Work for which Design-Build Entity does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for Design-Build Entity, unless such Work has been performed by others whom Design-Build Entity intends to pay.
 - iii. Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by CTUA, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Design-Build Entity with procedures satisfactory to CTUA to establish CTUA's title to such materials and equipment or otherwise protect CTUA's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
 - iv. Design-Build Entity warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to CTUA no later than the time of payment. Design-Build Entity further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from CTUA shall, to the best of Design-Build Entity's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Design-Build Entity, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.
- e. **Certificates for Payment.** CTUA shall, within seven days after receipt of Design-Build Entity's Application for Payment, issue to Design-Build Entity a Certificate for Payment

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indicating the amount CTUA determines is properly due, and notify Design-Build Entity in writing of CTUA's reasons for withholding certification in whole or in part as provided in Section 47.f.

- f. **Decisions to Withhold Certification.** CTUA may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect CTUA due to CTUA's determination that the Work has not progressed to the point indicated in Design-Build Entity's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If CTUA is unable to certify payment in the amount of the Application, CTUA will notify Design-Build Entity. If Design-Build Entity and Owner cannot agree on a revised amount, CTUA will promptly issue a Certificate for Payment for the amount that CTUA deems to be due and owing. CTUA may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect CTUA from loss for which Design-Build Entity is responsible because of
- i. defective Work, including design and construction, not remedied;
 - ii. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to CTUA is provided by Design-Build Entity;
 - iii. failure of Design-Build Entity to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
 - iv. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - v. damage to CTUA or a separate contractor;
 - vi. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - vii. repeated failure to carry out the Work in accordance with the Design-Build Documents.

When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

If CTUA withholds certification for payment under this Section 47.f, CTUA may, at its sole option, issue joint checks to Design-Build Entity and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for Design-Build Entity to whom Design-Build Entity failed to make payment for Work properly performed or material or equipment suitably delivered.

- g. **Progress Payments.** After CTUA has issued a Certificate for Payment, CTUA shall make

payment in the manner and within the time provided in the Design-Build Documents.

- i. Design-Build Entity shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for Design-Build Entity no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from CTUA the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for Design-Build Entity is entitled, reflecting percentages actually retained from payments to Design-Build Entity on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. Design-Build Entity shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for Design-Build Entity, require each Architect, Consultant, Contractor, and other person or entity providing services or work for Design-Build Entity to make payments to subconsultants and subcontractors in a similar manner.
- ii. CTUA will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for Design-Build Entity, information regarding percentages of completion or amounts applied for by Design-Build Entity and action taken thereon by CTUA on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for Design-Build Entity.
- iii. CTUA has the right to request written evidence from Design-Build Entity that Design-Build Entity has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for Design-Build Entity, amounts paid by CTUA to Design-Build Entity for the Work. If Design-Build Entity fails to furnish such evidence within seven days, CTUA shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. CTUA shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.
- iv. Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 47.g.i, 47.g.ii and 47.g.iii.
- v. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by CTUA shall not constitute acceptance of Work not in accordance with the Design-Build Documents.
- vi. Design-Build Entity shall submit with each payment request Design-Build Entity's conditional waiver of lien for the entire amount covered by such payment request, as

well as a valid unconditional waiver of lien from Design-Build Entity and all Subcontractors and materialmen for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by *California Civil Code* Section 8134. Prior to final payment by CTUA, Design-Build Entity shall submit a final waiver of lien for Design-Build Entity's work, together with releases of lien from any Subcontractor or materialmen.

- vii. Unless Design-Build Entity provides CTUA with a payment bond in the full penal sum of the Contract Sum, payments received by Design-Build Entity for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for Design-Build Entity, shall be held by Design-Build Entity for the Architect and those Consultants, Contractors, or other person or entity providing services or work for Design-Build Entity, for which payment was made by CTUA. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of Design-Build Entity, shall create any fiduciary liability or tort liability on the part of Design-Build Entity for breach of trust or shall entitle any person or entity to an award of punitive damages against Design-Build Entity for breach of the requirements of this provision.
- h. **Failure of Payment.** If CTUA does not issue a Certificate for Payment, through no fault of Design-Build Entity, within the time required by the Design-Build Documents, then Design-Build Entity may, upon seven additional days' written notice to CTUA, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of Design-Build Entity's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents. Design-Build Entity shall, after the full completion of the Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.
- i. **Final Completion Acceptance and Final Payment.**
 - i. Upon receipt of Design-Build Entity's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, CTUA will promptly make such inspection. When CTUA finds the Work acceptable under the Design-Build Documents and the Contract fully performed, CTUA formally Accept the Work and will, subject to Section 47.i.ii, promptly issue a final Certificate for Payment.
 - ii. Neither final payment nor any remaining retained percentage shall become due until Design-Build Entity submits to CTUA (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which CTUA or

- CTUA's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that Design-Build Entity knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by CTUA, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by CTUA. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for Design-Build Entity, refuses to furnish a release or waiver required by CTUA, Design-Build Entity may furnish a bond satisfactory to CTUA to indemnify CTUA against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, Design-Build Entity shall refund to CTUA all money that CTUA may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.
- iii. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Design-Build Entity or by issuance of Change Orders affecting final completion, CTUA shall, upon application by Design-Build Entity, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Build Entity to CTUA prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- iv. The making of final payment shall constitute a waiver of Claims by CTUA except those arising from
- a. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
 - b. failure of the Work to comply with the requirements of the Design-Build

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Documents; or

- c. terms of special warranties required by the Design-Build Documents.
- v. Acceptance of final payment by Design-Build Entity shall constitute a waiver of claims by Design-Build Entity except those previously made in writing and identified by Design-Build Entity as unsettled at the time of final Application for Payment.
- vi. Unless otherwise required by law, the final payment of five percent (5%) of the value of the Work, if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of a Notice of Completion.
- vii. Acceptance by Design-Build Entity of the final payment shall constitute a waiver of all claims against CTUA arising from this Contract.
- viii. Payments to Design-Build Entity shall not be construed to be an acceptance of any defective work or improper materials, or to relieve Design-Build Entity of its obligations under the Design-Build Documents.
- j. Unless otherwise required by law, the final payment is expressly conditioned, in the event of a dispute between CTUA and Design-Build Entity, CTUA being able to withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. "Completion" means any of the following as provided by *California Public Contract Code* Section 7107:
 - i. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
 - ii. The acceptance by the public agency, or its agent, or the work of improvement.
 - iii. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 calendar days or more, due to factors beyond the control of the Design-Build Entity.
 - iv. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 calendar days or more, if the public agency files for record a notice of cessation or a notice of completion.
- k. Prior to final payment, Design-Build Entity shall submit a final waiver of lien for Design-

Build Entity's Work together with releases of lien from any of its Subcontractors or materialmen, pursuant to *California Civil Code* Section 8138.

- l No payment (final or otherwise) made under or in connection with this Agreement shall be conclusive evidence of the performance of the Work or of this Agreement, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper Work or materials nor shall it release the Design-Build Entity from any of its obligations under this Agreement; nor shall entrance and use by CTUA constitute acceptance of the Work or any part thereof.
- m For purposes of this Contract, the acceptance by CTUA means acceptance made only by an action of the governing body of CTUA in session. At any time after fifty percent (50%) of the work has been completed, if CTUA, by action of its governing body, finds that satisfactory progress is being made, CTUA may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as CTUA may find appropriate based on the Design-Build Entity's progress.
- n **Payments Withheld and Back Charges.** In addition to amounts which CTUA may retain under other provisions of the Design-Build Documents CTUA may withhold payments due to Design-Build Entity as may be necessary to cover:
 - i Stop Payment Notice Claims.
 - ii Defective work not remedied.
 - iii Failure of Design-Build Entity to make proper payments to its Subcontractors or suppliers.
 - iv Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the balance then unpaid.
 - v Damage to another contractor or third party attributable to Design-Build Entity's actions or failures to act with respect to the Project.
 - vi Amounts which may be due CTUA for claims against Design-Build Entity.
 - vii Failure of Design-Build Entity to keep the record ("as-built") drawings up to date.
 - viii Failure of Design-Build Entity to provide updates on the construction schedule and/or a recovery schedule if required.

- ix. Failure of Design-Build Entity to comply with requirements for Site clean up.
- x. Failure of Design-Build Entity to comply with requirements of the Design-Build Documents, including but not limited to Design-Build Entity's failure to provide approved complete as-builts prior to the recording of a Notice of Completion.
- xi. Liquidated damages.
- xii. Legally permitted penalties.

CTUA may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (a), (c) and (e) of this Article, which must be retained or applied in accordance with applicable law. In so doing, CTUA shall be deemed the agent of Design-Build Entity and any payment so made by Design-Build Entity shall be considered as a payment made under contract by CTUA to Design-Build Entity, and CTUA shall not be liable to Design-Build Entity for such payments made in good faith. Such payments may be made without prior judicial determination of the claim or obligations. CTUA will render Design-Build Entity a proper accounting of such funds disbursed on behalf of Design-Build Entity.

Upon completion of the Contract, CTUA will reduce the final Contract amount to be paid to Design-Build Entity to reflect costs charged to Design-Build Entity, back charges or payments withheld pursuant to the Design-Build Documents.

ARTICLE 48. CHANGES AND EXTRA WORK

- a. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.
- b. A Change Order shall be based upon agreement between CTUA and Design-Builder. CTUA may issue a Change Directive without agreement by Design-Build Entity.
- c. Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and Design-Build Entity shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.
- d. **Change Orders.** A Change Order is a written instrument signed by CTUA and Design-Builder stating their agreement upon all of the following:

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- i. The change in the Work;
 - ii. The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Construction Documents, the adjustment in Design-Build Entity's compensation; and
 - iii. The extent of the adjustment, if any, in the Contract Time.
- e. **Change Directives.** A Change Directive is a written order signed by CTUA directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Construction Documents, the adjustment in Design-Build Entity's compensation, or Contract Time. CTUA may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Construction Documents, the adjustment in Design-Build Entity's compensation, and Contract Time being adjusted accordingly.
- f. A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- g. If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Construction Documents, an adjustment in Design-Build Entity's compensation, the adjustment shall be based on one of the following methods:
 - i. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - ii. Unit prices stated in the Design-Build Documents or subsequently agreed upon;
 - iii. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - iv. As provided in Section 48.k.
- h. If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to CTUA or Design-Builder, the applicable unit prices shall be equitably adjusted.
- i. Upon receipt of a Change Directive, Design-Build Entity shall promptly proceed with the change in the Work involved and advise CTUA of Design-Build Entity's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Construction

Documents, the adjustment in Design-Build Entity's compensation, or Contract Time.

- j. A Change Directive signed by Design-Build Entity indicates Design-Build Entity's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Construction Documents, the adjustment in Design-Build Entity's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- k. If Design-Build Entity does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Construction Documents, the method for adjustment in Design-Build Entity's compensation, CTUA shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, Design-Build Entity shall keep and present, in such form as CTUA may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 48.k shall be limited to the following:
 - i. Additional costs of professional services;
 - ii. Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - iii. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - iv. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from Design-Build Entity or others;
 - v. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - vi. Additional costs of supervision and field office personnel directly attributable to the change.
- l. The amount of credit to be allowed by Design-Build Entity to CTUA for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Construction Documents, in Design-Build Entity's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- m. Pending final determination of the total cost of a Change Directive to CTUA, Design-Build Entity may request payment for Work completed under the Change Directive in

Applications for Payment. CTUA will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. CTUA's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Construction Documents, Design-Build Entity's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 53.

- n. When CTUA and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Construction Documents, the adjustment in Design-Build Entity's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and CTUA and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.
- o. **Contract GMP Adjustment.** All claims for additional compensation to the Design-Build Entity shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No Work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the Work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by the Design-Build Entity. The Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.
- p. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Design-Build Entity and CTUA.
- q. All price quotations submitted by the Design-Build Entity shall be accompanied by sufficiently detailed supporting documentation to permit verification by CTUA.
- r. Cost Estimates. Estimates for lump sum quotations and accounting for cost-plus-percentage Work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:
 - i. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as

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assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the Design-Build Entity establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

- ii. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then CTUA's Representative shall determine the materials cost, at its sole discretion.
- iii. Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of \$1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.
- iv. Design-Build Entity shall pay sales, consumer, use and similar taxes, for the Work provided by Design-Build Entity, that are legally enacted when the Construction Documents is executed, whether or not yet effective or merely scheduled to go into effect.
- v. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on Work added to the Contract shall be according to the following:
 - a. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and subcontractors at cost only, without mark-up.
 - b. For Work performed by the Design-Build Entity's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
 - c. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work to which the Design-Build Entity may add five (5%) percent of the subcontractor's Net Cost.

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- d. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost for Work to which the subcontractor and general Design-Build Entity may each add an additional five (5%) percent of the Net Cost of the lower tier subcontractor.
- e. No additional mark up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by CTUA exceed twenty-five (25%) percent of the Net Cost as defined herein.
- vi. For added or deducted Work by subcontractors, the Design-Build Entity shall furnish to CTUA the subcontractor's signed detailed estimate of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.
- vii. For added or deducted Work furnished by a vendor or supplier, the Design-Build Entity shall furnish to CTUA a detailed estimate or quotation of the cost to the Design-Build Entity, signed by such vendor or supplier.
- viii. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an extra; overhead and profit allowances shall not be applied if the net total cost is a credit. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.
- ix. The Design-Build Entity shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Design-Build Entity may not change or modify CTUA's change order form in an attempt to reserve additional rights.
- s. Agreement as to Change in GMP/ Time. If CTUA disagrees with the proposal submitted by the Design-Build Entity, it will notify the Design-Build Entity and CTUA will provide its opinion of the appropriate price and/or time extension. If the Design- Build Entity agrees with CTUA, a Change Order will be issued by CTUA. If no agreement can be reached, CTUA shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Design-Build Entity fails

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to submit a claim in writing to CTUA within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.

- t. No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve the Design-Build Entity from the obligation to proceed with performance of the Work, including extra work, promptly and expeditiously.
- u. Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Design-Build Entity's surety or sureties.

ARTICLE 49. SUBSTANTIAL COMPLETION; OCCUPANCY

- a. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that CTUA can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by CTUA in accordance with this Article 49.
- b. Design-Build Entity shall notify CTUA when it believes the Work, or to the extent permitted in the Design-Build Documents, a portion of the Work, is Substantially Complete. At the same time, Design-Build Entity shall prepare and submit to CTUA a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Design-Build Entity to complete all Work in accordance with the Design-Build Documents.
- c. Within five days of CTUA's receipt of Design-Build Entity's notice, CTUA and Design-Build Entity will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Design-Build Documents. If CTUA's inspection discloses any item, whether or not included on Design-Build Entity's list, which is not sufficiently complete in accordance with the Design-Build Documents so that CTUA can occupy or utilize the Work or designated portion thereof for its intended use, Design-Build Entity shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by CTUA. In such case, Design-Build Entity shall then submit a request for another inspection by CTUA to determine Substantial Completion.
- d. Prior to issuance of the Certificate of Substantial Completion under Section 49.e, CTUA and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.
- e. When the Work or designated portion thereof is substantially complete, Design-Build

Entity will prepare for CTUA's signature a Certificate of Substantial Completion that shall, upon CTUA's signature, establish the date of Substantial Completion; establish responsibilities of CTUA and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which Design-Build Entity shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

- f. The Certificate of Substantial Completion shall be submitted by Design-Build Entity to CTUA for written acceptance of responsibilities assigned to it in the Certificate. Upon CTUA's acceptance, and consent of surety, if any, CTUA shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.
- g. CTUA may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Design-Build Entity, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided CTUA and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When Design-Build Entity considers a portion substantially complete, Design-Build Entity shall prepare and submit a list to CTUA as provided under Section 49.b. Consent of Design-Build Entity to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between CTUA and Design-Builder.
- h. Immediately prior to such partial occupancy or use, CTUA and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- i. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

ARTICLE 50. INDEMNIFICATION

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- a. The CTUA, CTUA's Representative, CTUA Council, its members, directors, officers, employees, agents and authorized volunteers shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either workers, employees of the Design-Build Entity or its subcontractors or the public, or for damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Design-Build Entity shall be responsible for any damage to adjoining or other property, from any cause whatsoever arising out of or in connection with the performance of the Work. The Design-Build Entity shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever arising out of or in connection with the performance of the Work; provided, however, that the Design-Build Entity shall not be liable for the sole established negligence, willful misconduct or active negligence of CTUA, CTUA's Representative, CTUA Council, its members, directors, officers, employees, agents and authorized volunteers who are directly responsible to CTUA.
- b. The Design-Build Entity shall indemnify and hold CTUA, its officials, officers, agents, including but not limited to CTUA's Representative, employees, representatives and authorized volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, arising out of or incident to any acts, omissions or willful misconduct of the Design-Build Entity, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of CTUA's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against CTUA, its officials, officers, agents, employees and representatives. To the extent of its liability, the Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against CTUA, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse CTUA, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by *California Civil Code* Section 2782. The CTUA may retain, to the extent it deems necessary, the money due to the Design-Build Entity

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under and by virtue of the Design-Build Documents until disposition has been made of such actions or claims for damages as specified hereinabove. The indemnification obligation under this Article 50 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

- c. Consistent with the paragraph immediately above, Design-Build Entity shall defend suits or claims for infringement of copyrights and patent rights and shall hold CTUA and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by CTUA, or where the copyright violations are required in CTUA's Criteria. However, if Design-Build Entity has reason to believe that the design, process or product required in CTUA's Criteria is an infringement of a copyright or a patent, Design-Build Entity shall be responsible for such loss unless such information is promptly furnished to CTUA. If CTUA receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to Design-Build Entity, CTUA shall give prompt written notice to Design-Build Entity.

ARTICLE 51. PERSONAL LIABILITY

Neither CTUA, CTUA Council, CTUA's Representative, nor any other director, officer or authorized assistant or agent of CTUA, CTUA Council, nor CTUA's Representative shall be personally responsible for any liability arising under the Contract.

ARTICLE 52. RECORD ("AS BUILT") DRAWINGS

- a. The Design-Build Entity shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing. The Design-Build Entity shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. The Design-Build Entity shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, the Design-Build Entity must record a cross-reference at the corresponding location on the contract drawings. The Design-Build Entity shall give particular attention to concealed elements that would be difficult to measure and record at a later date. The Design-Build Entity shall use colors to distinguish variations in separate categories of The Work.
- b. The Design-Build Entity shall note related change order numbers where applicable. The

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Design-Build Entity shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. Prior to recording a Notice of Completion, complete as-builts for the Project shall be turned over CTUA's Representative. The Design-Build Entity shall also provide an electronic version of the as-builts. The suitability of the as-builts will be determined by CTUA's Representative. Final as-builts shall be signed off by CTUA upon determination of suitability.

ARTICLE 53 CLAIMS AND DISPUTE RESOLUTION

- a. **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between CTUA and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.
- b. **Time Limits on Claims.** CTUA and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in this Article 53, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. CTUA and Design-Builder waive all claims and causes of action not commenced in accordance with this Article 53. The Design-Build Entity shall promptly comply with the Design-Build Documents in the performance of Work and/or the request of CTUA even though a written claim has been filed. The Design-Build Entity and CTUA shall make good faith efforts to resolve any and all claims that may arise during performance of the Work covered by this Contract
- c. **Notice of Claims.** All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the Design-Build Documents. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by CTUA. The Design-Build Entity shall promptly comply with the Design-Build Documents in the performance of Work and/or the request of CTUA even though a written claim has been filed. The Design-Build Entity and CTUA shall make good faith efforts to resolve any and all claims that may arise during performance of the Work covered by this Contract.

- i. The Design-Build Entity will submit the claim justification in the following format:
 - a. Summary of claim merit and price, and the Contract clause pursuant to which the claim is made.
 - b. List of documents relating to claim
 - c. Specifications
 - d. Drawings
 - e. Clarifications (Requests for Information)
 - f. Schedules
 - g. Other
 - h. Chronology of events and correspondence
 - i. Analysis of claim merit
 - j. Analysis of claim cost
 - k. Analysis of time impact analysis in CPM format
 - l. Cover letter and certification of validity of the claim
- ii. If the claimant disputes CTUA's response, or if CTUA fails to respond within the statutory time period(s), the claimant may so notify CTUA within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, CTUA shall schedule a meet and confer conference within 30 Days.
- iii. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

- iv. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by CTUA, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by the Design-Build Entity.
- d. **Prior To Final Payment.** Prior to Final Payment, Claims by either CTUA or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
- e. **Claims Arising After Final Payment.** After Final Payment, Claims by either CTUA or Design-Builder that have not otherwise been waived pursuant to Sections 47.i.iv or 47.i.v, must be initiated by prompt written notice to the other party. The notice requirement in 53.d and the Initial Decision requirement as a condition precedent to mediation in Section 53.j shall not apply.
- f. **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 47.h and Article 54, Design-Build Entity shall proceed diligently with performance of the Contract and CTUA shall continue to make payments in accordance with the Design-Build Documents.
- g. **Claims for Additional Cost.** If Design-Build Entity intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property pursuant to Section 31.b.
- h. **Claims for Additional Time.** If Design-Build Entity intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. Design-Build Entity's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.
- i. **Claims for Consequential Damages.** Design-Build Entity and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes (i) damages incurred by CTUA for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or

employee productivity or of the services of such persons; and (ii) damages incurred by Design-Build Entity for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 54. Nothing contained in this Section 53.i shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

- j. **Initial Decision.** An initial decision shall be required as a condition precedent to mediation of all Claims between CTUA and Design-Build Entity initiated prior to the date final payment is due, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, CTUA shall render the initial decision on Claims.
- k. **Procedure.**
 - i. **Claims Initiated by CTUA.** If CTUA initiates a Claim, Design-Build Entity shall provide a written response to Owner within ten days after receipt of the notice required under Section 53.c. Thereafter, CTUA shall render an initial decision within ten days of receiving Design-Build Entity's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.
 - ii. **Claims Initiated by Design-Build Entity.** If Design-Build Entity initiates a Claim, CTUA will take one or more of the following actions within ten days after receipt of the notice required under Section 53.c: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because CTUA lacks sufficient information to evaluate the merits of the Claim.
- l. In evaluating Claims, CTUA may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist CTUA in rendering a decision. The retention of such persons shall be at CTUA's expense.
- m. If CTUA requests Design-Build Entity to provide a response to a Claim or to furnish additional supporting data, Design-Build Entity shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise CTUA when the response or supporting data will be furnished or (3) advise CTUA that no supporting data will be furnished. Upon receipt of the response or supporting

data, if any, CTUA will either reject or approve the Claim in whole or in part.

- n. CTUA's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.
- o. Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.
- p. In the event of a Claim against Design-Build Entity, CTUA may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, CTUA may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- q. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.
- r. **Mediation.** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 47.i.iv, 47.i.v, and 53.i, shall be subject to mediation as a condition precedent to binding dispute resolution.
 - i. The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution 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. If an arbitration proceeding is stayed pursuant to this Section 53, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
 - ii. The parties shall share the mediator's fee and any filing fees equally. The mediation

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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.

- s. **Arbitration.** If the parties have selected arbitration as the method for binding dispute resolution, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
- i. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
 - ii. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The prevailing party shall be awarded costs and reasonable expenses and fees, including reasonable attorney's fees incurred in the arbitration or any appeal or enforcement thereof.
 - iii. The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
- t. **Consolidation or Joinder.** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that

the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. CTUA and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 53.s, whether by joinder or consolidation, the same rights of joinder and consolidation as CTUA and Design-Builder under this Agreement.

ARTICLE 54. RIGHT TO TERMINATE CONTRACT

a. Termination or Suspension Prior to Execution of the Construction Documents

- i. If CTUA fails to make payments to Design-Build Entity for Work prior to execution of the Construction Documents in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Design-Build Entity's option, cause for suspension of performance of services under this Agreement. If Design-Build Entity elects to suspend the Work, Design-Build Entity shall give seven days' written notice to CTUA before suspending the Work. In the event of a suspension of the Work, Design-Build Entity shall have no liability to CTUA for delay or damage caused by the suspension of the Work. Before resuming the Work, Design-Build Entity shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Design-Build Entity's Work. Design-Build Entity's compensation for, and time to complete, the remaining Work shall be equitably adjusted.
- ii. If CTUA suspends the Project, Design-Build Entity shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, Design-Build Entity shall be compensated for expenses incurred in the interruption and resumption of Design-Build Entity's Work. Design-Build Entity's compensation for, and time to complete, the remaining Work shall be equitably adjusted.
- iii. If CTUA suspends the Project for more than 90 cumulative days for reasons other than the fault of Design-Build Entity, Design-Build Entity may terminate this Agreement by giving not less than seven days' written notice.
- iv. Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- v. CTUA may terminate this Agreement upon not less than seven days' written notice to Design-Build Entity for CTUA's convenience and without cause.

- vi. In the event of termination not the fault of Design-Build Entity, Design-Build Entity shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which Design-Build Entity is not otherwise compensated. In no event shall Design-Build Entity's compensation under this Section 54.a be greater than the compensation set forth as GMP1.

b. Termination or Suspension Following Execution of the Construction Documents

- i. **Termination by Design-Build Entity.** Design-Build Entity may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of Design-Build Entity, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Design-Build Entity, for any of the following reasons:
 - a. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
 - b. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
 - c. Because CTUA has not issued a Certificate for Payment and has not notified Design-Build Entity of the reason for withholding certification, or because CTUA has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.
- ii. Design-Build Entity may terminate the Contract if, through no act or fault of Design-Build Entity, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Design-Build Entity, repeated suspensions, delays or interruptions of the entire Work by CTUA as described in Section 54.c constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- iii. If one of the reasons described in Section 54.b.i or 54.b.ii exists, Design-Build Entity may, upon seven days' written notice to CTUA, terminate the Contract and recover from CTUA payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.
- iv. If the Work is stopped for a period of 60 consecutive days through no act or fault of Design-Build Entity or any other persons or entities performing portions of the Work

- under contract with Design-Build Entity because CTUA has repeatedly failed to fulfill CTUA's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, Design-Build Entity may, upon seven additional days' written notice to CTUA, terminate the Contract and recover from CTUA as provided in Section 54.b.iii.
- v. **Termination by CTUA For Cause.** CTUA may terminate the Contract if Design-Build Entity
- a. fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
 - b. repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
 - c. fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with Design-Build Entity;
 - d. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - e. is otherwise guilty of substantial breach of a provision of the Design-Build Documents.
- vi. When any of the above reasons exist, CTUA may without prejudice to any other rights or remedies of CTUA and after giving Design-Build Entity and Design-Build Entity's surety, if any, seven days' written notice, terminate employment of Design-Build Entity and may, subject to any prior rights of the surety:
- a. Exclude Design-Build Entity from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by Design-Build Entity;
 - b. Accept assignment of the Architect, Consultant and Contractor agreements; and
 - c. Finish the Work by whatever reasonable method CTUA may deem expedient. Upon written request of Design-Build Entity, CTUA shall furnish to Design-Build Entity a detailed accounting of the costs incurred by CTUA in finishing the Work.
- vii. When CTUA terminates the Contract for one of the reasons stated in Section 54.b.v, Design-Build Entity shall not be entitled to receive further payment until the Work is finished.
- viii. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other

damages incurred by CTUA and not expressly waived, such excess shall be paid to Design-Build Entity. If such costs and damages exceed the unpaid balance, Design-Build Entity shall pay the difference to CTUA. The obligation for such payments shall survive termination of the Contract.

c. Suspension by CTUA for Convenience

- i. CTUA may, without cause, order Design-Build Entity in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as CTUA may determine.
- ii. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 54.c.i. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
 - a. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Build Entity is responsible; or
 - b. that an equitable adjustment is made or denied under another provision of the Contract.

d. Termination by CTUA for Convenience

- i. CTUA may, at any time, terminate the Contract for CTUA's convenience and without cause.
- ii. Upon receipt of written notice from CTUA of such termination for CTUA's convenience, Design-Build Entity shall
 - a. cease operations as directed by CTUA in the notice;
 - b. take actions necessary, or that CTUA may direct, for the protection and preservation of the Work; and,
 - c. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.
- iii. In case of such termination for CTUA's convenience, Design-Build Entity shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 55. WARRANTY

- a. The Design-Build Entity warrants to CTUA that all Design Work will be performed in accordance with professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting model. The Design-Build Entity warrants to CTUA that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Design-Build Documents), and all Work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Design-Build Documents.
- b. At or prior to the Contract completion, the Design-Build Entity shall provide the applicable warranties for all Project equipment to CTUA for review. Upon completion of the Project, Design-Build Entity shall provide CTUA with all warranty documentation and shall assist CTUA in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all that may otherwise be available to CTUA.
- c. All work performed by Design-Build Entity must not render void, violate, or otherwise jeopardize any preexisting CTUA facility or building warranties.
- d. Unless otherwise stated, all warranty periods shall begin upon the recording of a Notice of Completion. Unless otherwise stated, the warranty period shall be for one year.
- e. The Design-Build Entity shall remedy at its expense any damage to CTUA-owned or controlled real or personal property.
- f. The Design-Build Entity shall furnish CTUA with all warranty and guarantee documents prior to final Acceptance of the Project by CTUA.
- g. The CTUA shall notify the Design-Build Entity, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Design-Build Entity shall within ten (10) Days after being notified commence and perform with due diligence the repair or replacement of any or all such Work, together with any other Work, which may be displaced in so doing, that may prove defective in workmanship and/or materials without expense whatsoever to CTUA, ordinary wear and tear, unusual abuse or neglect excepted. If the Design-Build Entity fails to promptly remedy any defect, or damage; CTUA shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Design-Build Entity's expense. The Design-Build Entity hereby agrees to pay costs and charges

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therefore immediately on demand.

- h. The Design-Build Entity shall repair or replace any or all such Work, together with any other Work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance without expense whatsoever to CTUA, ordinary wear and tear, unusual abuse or neglect excepted. The CTUA will give notice of observed defects with reasonable promptness. The Design-Build Entity shall notify CTUA upon completion of repairs. In the event of failure of the Design-Build Entity to comply with above-mentioned conditions within one week after being notified in writing, CTUA is hereby authorized to proceed to have defects repaired and made good at the expense of the Design-Build Entity. The Design-Build Entity hereby agrees to pay costs and charges therefor immediately on demand.
- i. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Design-Build Entity not in accordance with the Contract requirements, CTUA may undertake at the Design-Build Entity's expense, and without prior notice, all Work necessary to correct such condition.
- j. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Design-Build Entity shall:
 - i. Obtain for CTUA all warranties that would be given in normal commercial practice;
 - ii. Require all warranties to be executed, in writing, for the benefit of CTUA; and
 - iii. Enforce all warranties for the benefit of CTUA, unless otherwise directed in writing by CTUA.
- k. This Article does not in any way limit the guarantee of any times for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period.
- l. This Article shall not limit CTUA's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The CTUA specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to *California Code of Civil Procedure* Section 337.15.

ARTICLE 56. DOCUMENT RETENTION & EXAMINATION

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- a. In accordance with *California Government Code* Section 8546.7, records of both CTUA and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- b. Design-Build Entity shall make available to CTUA any of the Design-Build Entity's other documents related to the Project immediately upon request of CTUA.
- c. In addition to the State Auditor rights above, CTUA shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Design-Build Entity (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to CTUA, for a period of four (4) years after final payment.

ARTICLE 57. SOILS INVESTIGATIONS

- a. When a soils investigation report for the Project site is available, such report shall not be a part of the Design-Build Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed.

ARTICLE 58. REQUIRED CERTIFICATIONS

- a. The Design-Build Entity shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification" and a "Recycled Content Certification." These forms are included in the Design-Build Documents and must be signed under the penalty of perjury and dated prior to commencing work on this Project.
- b. In addition to the above listed certifications, the Design-Build Entity shall, for all contracts involving state funds, execute and submit an "Asbestos-Free Materials Certification." The Design-Build Entity, further, is aware of the following:
- c. Should asbestos containing materials be installed by the Design-Build Entity in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:
 - i. Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and

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accredited by the Environmental Protection Agency (EPA).

- ii. The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - iii. The asbestos consultant shall be chosen and approved by CTUA which shall have sole discretion and final determination in this matter.
 - iv. The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
- d. If removal of asbestos containing materials is part of the Project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by CTUA shall be borne entirely by the Design-Build Entity.
- e. Hold Harmless: Interface of Work for the Project with work containing asbestos shall be executed by the Design-Build Entity at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Contract, the Design-Build Entity acknowledges the above and agrees to the fullest extent permitted by law to hold harmless CTUA and CTUA Council, its employees, agents, representatives for all asbestos liability which may be associated with this work. The Design-Build Entity further agrees to instruct his/her employees with respect to the above-mentioned standards, hazards, risk and liabilities.

ARTICLE 59. WORK OF OTHER CONTRACTORS

- a. The CTUA reserves the right to let other contracts in connection with this Work or on the Project site. The Design-Build Entity shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- b. If any part of the Work depends for proper execution or results upon work of any other contractor, the Design-Build Entity shall inspect and promptly report to CTUA's Representative any defects in such work that renders it unsuitable for such proper execution and results. The Design-Build Entity's failure to so inspect and report shall constitute its acceptance of the other contractor's work as fit and proper for reception of the Design-

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Build Entity's Work, except as to defects which may develop in the other contractor's work after execution of the Design-Build Entity's Work.

- c. To ensure proper execution of its subsequent Work, the Design-Build Entity shall immediately inspect work already in place and shall at once report to CTUA's Representative any problems with the Work in place or discrepancies with the Design-Build Documents.
- d. The Design-Build Entity shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by CTUA in prosecution of the Project to the end that the Design-Build Entity may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to the Design-Build Entity exclusive occupancy at site of the Project. The Design-Build Entity shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, CTUA shall decide which the Design-Build Entity shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The CTUA shall not be responsible for any damages suffered or for extra costs incurred by the Design-Build Entity resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

ARTICLE 60. NOTICE OF THIRD PARTY CLAIMS

- a. Pursuant to *Public Contract Code* Section 9201, CTUA shall provide the Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.
- b. 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.

ARTICLE 61. OWNERSHIP OF DRAWINGS

- a. All Design-Build Documents furnished by CTUA are CTUA's property. They are not to

be used by the Design-Build Entity or any subcontractor on other work, nor shall the Design-Build Entity claim any right to such documents. With exception of one complete set of Design-Build Documents, all documents shall be returned to CTUA on request at completion of the Work.

- b. Drawings, specifications, and other documents furnished by Design-Build Entity, including those in electronic form, are Instruments of Service. Design-Build Entity, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of Design-Build Entity and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.
- c. Design-Build Entity and CTUA warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.
- d. Upon execution of the Agreement, Design-Build Entity grants to CTUA a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that CTUA substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits CTUA to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If Design-Build Entity rightfully terminates this Agreement for cause as provided in Section 54.a.i, 54.b.i or 54.b.ii the license granted in this Article 61 shall terminate.
- e. Design-Build Entity shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow Design-Build Entity to satisfy its obligations to CTUA under this Article 61. Design-Build Entity's licenses from the Architect and its Consultants and Contractors shall also allow CTUA, in the event this Agreement is terminated for any reason other than the default of CTUA or in the event Design-Build Entity's Architect, Consultants, or Contractors terminate their agreements with Design-Build Entity for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that CTUA (1) agrees to pay to the Architect, Consultant or Contractor all amounts due,

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and (2) provide the Architect, Consultant or Contractor with CTUA's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from CTUA's alteration or use of the Instruments of Service.

- f. In the event CTUA alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, CTUA releases Design-Build Entity, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. CTUA, to the extent permitted by law, further agrees to indemnify and hold harmless Design-Build Entity, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from CTUA's alteration or use of the Instruments of Service under this Section 61.f. The terms of this Section 61.f shall not apply if CTUA rightfully terminates this Agreement for cause under Sections 54.a.iv or 54.b.v.

ARTICLE 62. MISCELLANEOUS PROVISIONS

- a. **Waiver.** No provision of these Design-Build Documents shall be deemed waived by either party unless such waiver shall be expressly specified in writing, regardless of the actions or inaction of the parties.
- b. **Prohibited Interests.** No CTUA official or representative who is authorized in such capacity and on behalf of CTUA to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.
- c. **Governing Law.** The Contract shall be interpreted in accordance with the laws of the State of California.
- d. **Jurisdiction and Venue.** If any action is brought to interpret or enforce any term of these Contract Documents, the action shall be brought in a federal court situated in the County of Riverside, State of California. CTUA consents to the personal jurisdiction of such court solely for purposes of contract interpretation and contract enforcement.

- e. **Successors and Assigns.** CTUA and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

CTUA may, without consent of Design-Build Entity, assign the Contract to a lender providing construction financing for the Project, if the lender assumes CTUA's rights and obligations under the Design-Build Documents. Design-Build Entity shall execute all consents reasonably required to facilitate such assignment.

If CTUA requests Design-Build Entity, Architect, Consultants, or Contractors to execute certificates, CTUA shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If CTUA requests Design-Build Entity, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, Design-Build Entity, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. Design-Build Entity, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

- f. **Notice.** All notices shall be in writing and shall be dated and signed by the party giving such notice, or by the duly authorized representative of such party, and shall be either served by personal delivery or mailed to the other party as designated in the Contract. Either party may designate another address in writing for service of notice. Notice shall be effective upon receipt. Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery. Notice given by facsimile shall not be effective unless acknowledged by machine answerback capability or in writing by the receiving party.
- g. **Rights and Remedies.** Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

No action or failure to act by CTUA or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute

approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

- h. **Laws and Regulations.** The Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If the Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify CTUA in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If the Design-Build Entity performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to CTUA, he shall bear all costs arising therefrom.
- i. **Patent Fees and Royalties.** The Design-Build Entity shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. The Design-Build Entity shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with The Work, and shall defend, indemnify and hold harmless CTUA, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.
- j. **Access to Work.** CTUA, CTUA's Representative, their consultants, and other persons authorized by CTUA will at all times have access to the work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.
- k. **Confidential Information.** If CTUA or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth below.

A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project,

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provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

- l. **Capitalization.** Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.
- m. **Interpretation.** In the interest of brevity the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

- n. **Amendment.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Design-Build Documents.

END OF DOCUMENT