

# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

## **General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

**THE CONTRACTOR:**

TBD

**ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form.

**THE OWNER:**

CalOptima Health  
505 City Parkway West  
Orange , CA 92868

**THE ARCHITECT:**

H. Hendy Associates  
4770 Campus Drive, Suite 100  
Newport Beach, CA 92660

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## ARTICLE 1 GENERAL PROVISIONS

### §1.1 Definitions

*Addenda*: Updates and changes to a set of bid documents that are issued before bids are due.

*Bid*: An offer to undertake a project and to do the required work for an amount of money.

*Contract Documents*: The set of documents making up the complete contract between the parties, which may include the Agreement between CalOptima Health and the Contractor, the General, Supplementary and other Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of the Contract, Modifications issued after execution of the Contract, CalOptima's Terms and Conditions, Bidder Representations, other documents listed in the Agreement, and the solicitation or Invitation for Bids.

*Contract*: The entire and integrated agreement between the parties, superseding all prior negotiations, representations, and agreements.

*Drawings*: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

*Final Completion*: The time that final inspection has been performed, CalOptima has accepted the work, and Final Payment has been issued.

*Float*: A measurement of time indicating how late any activity or group of activities in a schedule can be completed without affecting the critical path and the scheduled end date of the Project.

*Force majeure*: An unforeseeable circumstance which is beyond the control of a Party, or any unavoidable event, even if foreseeable, as a result of which a Party is unable to perform its obligations, in whole or in part, under this Contract.

*Initial Decision Maker*: The person identified in the Agreement to render initial decisions on claims.

*Instruments of Service*: Representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

*Modification*: A written amendment to the Contract signed by both parties, which may include a Change Order, a Construction Change Directive, or a written order for a minor change in the Work.

*Owner*: CalOptima Health

*Product Data:* Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

*Project:* All activities for the construction or renovation of the facility, of which the Work to be performed under the Contract may be the whole or a part.

*Project Closeout:* The time between Substantial Completion and Final Payment and acceptance of the Project by CalOptima

*Samples:* Physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

*Separate Contractor:* A contractor retained by CalOptima under separate agreement.

*Shop Drawings:* Drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

*Specifications:* Those portions of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of related services.

*Subcontractor:* A person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term includes a Subcontractor or an authorized representative of the Subcontractor.

*Sub-Subcontractor:* A person or entity who has a contract with a Subcontractor to perform a portion of the Work. The term includes a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

*Unit Prices:* Prices for items such as portions of work or certain materials, for which a contractor bids an individual price for each item.

*Work:* The services required by the Contract Documents, whether completed or partially completed, including all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

## **§1.2 Correlation and Intent of the Contract Documents**

§1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one will be as binding as if required by all; performance by the Contractor will be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement or categorization of Drawings, are for convenience only. Such separations will not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, nor operate to make CalOptima an arbiter to establish limits of subcontracts or jurisdiction.

- §1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- §1.2.4 Incidental work that is obviously necessary to complete the project within the limits established by the drawings and specifications, although not shown on or described, is to be performed by the Contractor as a part of its contract.

### **§1.3 Severability**

The invalidity of any provision of the Contract Documents will not invalidate the Contract or its remaining provisions. If any section, subsection or provision of this Contract, or the application of such section, subsection or provision, is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Contract, other than that which is held invalid, will remain in effect.

### **§1.4 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

- §1.4.1 The Architect and the Architect's consultants are deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. On completion or termination of the Project or the Agreement with the Architect, CalOptima will have a permanent, royalty free right to use the Instruments of Service at no cost and at its own risk. The Contractor, Subcontractors, Sub-subcontractors, and suppliers will not own nor may they claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
- §1.4.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of CalOptima, Architect, and the Architect's consultants.

### **§1.5 Notice**

Where the Contract Documents require one party to notify or give notice to the other party, such notice must be provided in writing to the designated representative of the party to whom the notice is addressed and will be deemed to have been duly served if delivered in person, by mail, by courier, or by e-mail.

### **§1.6 Digital Data Use and Transmission**

The parties may agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

## **§1.7 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model will be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 CALOPTIMA (OWNER)**

### **§2.1 General**

CalOptima will designate in writing a representative who will have express authority to bind CalOptima with respect to all matters requiring CalOptima's approval or authorization. The Architect does not have such authority.

### **§2.2 Information and Services Required of CalOptima**

- §2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, CalOptima shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- §2.2.2 CalOptima will retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located.
- §2.2.3 CalOptima will furnish all information it has that describe physical characteristics, legal limitations and utility locations at the site of the Project, and a legal description of the site. The Contractor may rely on the accuracy of information furnished by CalOptima but is responsible for exercising proper precautions relating to the safe performance of the Work.
- §2.2.4 CalOptima will endeavor to furnish any other information or services under CalOptima's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
- §2.2.5 CalOptima may furnish to the Contractor one copy of the Contract Documents to make reproductions. However, if the documents are electronic, CalOptima will not furnish paper copies to the Contractor.

### **§2.3 CalOptima's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out Work in accordance with the Contract Documents, CalOptima may issue a written order to the Contractor to stop the Work, or any portion of it, until the cause for such order has been eliminated; however, the right of CalOptima to stop the Work will not create a duty on the part of CalOptima to exercise this right for any reason..



## **§2.4 CalOptima’s Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from CalOptima to commence and continue correction of such default or neglect with diligence and promptness, CalOptima may, without prejudice to other remedies CalOptima may have, correct such default or neglect and withhold or nullify one or more Certificates for Payment in whole or in part, to the extent necessary to reimburse CalOptima for the cost of correcting such deficiencies, including CalOptima’s expenses and compensation for the Architect’s additional services made necessary by Contractor’s default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to CalOptima.

## **ARTICLE 3 CONTRACTOR**

### **§3.1 General**

- §3.1.1 The Contractor must be lawfully licensed in the jurisdiction where the Project is located, possessing at a minimum, a California Class B (General) Contractor License, and must comply with all license, certification, and local rules required to conduct the activities related to the Work.
- §3.1.2 The Contractor will designate in writing a representative who will have express authority to bind the Contractor with respect to all matters under this Contract.
- §3.1.3 The Contractor shall perform the Work and install materials and equipment in accordance with the Contract Documents and the manufacturer’s recommendations
- §3.1.4 The Contractor will not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. All deviations from the instructions in the Construction Documents or manufacturer’s directions must be approved in advance by CalOptima.

### **§3.2 Review of Contract Documents and Field Conditions by Contractor**

- §3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site or is generally familiar with local conditions under which the Work is to be performed, has correlated personal observations with requirements of the Contract Documents, and taken steps reasonably necessary to satisfy itself as to factors that can affect the Work or its costs.
- §3.2.2 Contractor is responsible for taking field measurements of existing conditions related to the Work, and observing any conditions at the site that may affect the Work. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor will promptly report to CalOptima and the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor.
- §3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public

authorities, but must promptly report to CalOptima any nonconformity discovered by or made known to the Contractor so that clarifications or corrections may be made. If the Contractor believes that the clarifications or corrections will result in additional costs or time, the Contractor may submit Claims for the additional expenses.

§3.2.4 If the Contractor fails to take field measurements and inspect the Work site and the Contract Documents, the Contractor will be responsible for such costs and damages to CalOptima as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor will not be liable to CalOptima or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§3.3 Supervision and Construction Procedures**

§3.3.1 The Contractor will supervise and direct the Work, using the Contractor's best skill and attention. The Contractor is solely responsible for, and will have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor will evaluate their effects on jobsite safety and if the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, will give notice to CalOptima and Architect, and propose alternative means, methods, techniques, sequences, or procedures. The Architect will evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§3.3.2 The Contractor will be responsible to CalOptima for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§3.3.3 The Contractor will be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. If Contractor or any Subcontractor installs work over surfaces of previous work, they accept the previous Work as being satisfactory to provide a substantial first-class workmanship installation. If the undersurface is such that this is not possible, then Contractor must notify CalOptima, and Subcontractor must notify Contractor, so that proper corrective steps may be taken before any installation is made. If Contractor fails to notify CalOptima, Contractor will be fully responsible, at its own expense, for correcting any unsatisfactory work due to inadequate subsurfaces.

§3.3.4 Measurements: Contractor will verify all measurements at the job. No extra charges or compensation will be allowed as a result of failure to verify dimensions before ordering materials or fabricating items.

- §3.3.5 Layout: Contractor and all Subcontractors will be fully responsible for the accurate placement and installation of their work.
- §3.3.6 Weekly meetings at the jobsite will be held with CalOptima’s project manager, the Architect, the Contractor, and the appropriate Subcontractor’s Foreman or Project Managers to coordinate installation of all systems. CalOptima and the Contractor will decide who is responsible for keeping minutes of the meetings and distributing to the parties for weekly review.

### **§3.4 Labor and Materials**

- §3.4.1 Unless otherwise provided in the Contract Documents, the Contractor will provide and pay for 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, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- §3.4.2 The Contractor is responsible for ordering and receiving all necessary materials, equipment, and supplies to complete the work in accordance with the Specifications, inspecting them for conformance to Specifications or for damage, and rejecting those found to be unsatisfactory.
- §3.4.3 Except in the case of minor changes in the Work approved by or ordered by CalOptima the Contractor may make substitutions only with the consent of CalOptima, in accordance with a Change Order or Construction Change Directive.
- §3.4.4 The Contractor must enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. The Contractor may not permit employment of unfit persons or persons not properly skilled in tasks assigned to them, and will replace any person deemed unsuitable by CalOptima.
- §3.4.5 If an on-site temporary trailer is required, it is Contractor’s responsibility to furnish, install, and maintain the trailer, and to remove it at the end of the Project.

### **§3.5 Warranty**

- §3.5.1 The Contractor warrants to CalOptima that materials and equipment furnished under the Contract will be of good quality and new unless otherwise approved by CalOptima. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by CalOptima, the Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment. CalOptima’s inspection, approval, acceptance, use of, and payment for all or any part of the material and services may in no way affect CalOptima’s warranty rights whether or not a breach of warranty had become evident in time.

§3.5.2 All warranties for materials, equipment, or other special items required by the Contract Documents must be issued in the name of CalOptima, or must be transferable to CalOptima.

### **§3.6 Taxes**

The Contractor will pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

### **§3.7 Permits, Fees, Notices and Compliance with Laws**

§3.7.1 Unless otherwise provided in the Contract Documents, the Contractor will secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§3.7.2 The Contractor will 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.

§3.7.3 All Work must be done in compliance with all current Federal, State, and local laws and regulations. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor will assume appropriate responsibility for such Work and will bear the costs attributable to correction.

### **§3.8 Concealed Or Unknown Conditions**

§3.8.1 If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor will promptly provide notice to CalOptima and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect will promptly notify CalOptima and Contractor, stating the reasons.

§3.8.2 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor will immediately suspend any operations that would affect them and will notify CalOptima and Architect. Upon receipt of such notice, CalOptima will promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor will continue to suspend such operations until otherwise instructed by CalOptima but

will continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be submitted to CalOptima..

### **§3.9 Allowances**

§3.9.1 The Contract Sum includes all allowances stated in the Contract Documents.

§3.9.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances will cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts must be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order. The amount of the Change Order will reflect (1) the difference between actual costs and the allowances and (2) changes in Contractor's costs agreed to by CalOptima.

### **§3.10 Superintendent**

§3.10.1 The Contractor must employ a competent superintendent, which may also be known as a project manager, and necessary assistants to be in attendance at the Project site during performance of the Work. The superintendent must be in attendance on-site when any Work is taking place, will represent the Contractor at daily and weekly meetings, and will have authority to issue orders on behalf of the Contractor. Communications to the superintendent will be as binding as if given to the Contractor.

§3.10.2 As soon as practicable after award of the Contract, the Contractor will notify CalOptima of the name and qualifications of the proposed superintendent. Within 14 days of receiving the information, CalOptima will notify the Contractor, stating whether CalOptima has reasonable objection to the proposed superintendent or requires additional time for review. The Contractor may not employ a proposed superintendent to whom CalOptima has made reasonable and timely objection, nor, once a superintendent is approved, may the Contractor change the superintendent without notice to CalOptima and replacement with a superintendent acceptable to CalOptima..

### **§3.11 Contractor's Construction and Submittal Schedules**

§3.11.1 Construction Schedule

- .1 No later than 14 days after execution of the Contract, the Contractor must submit to CalOptima and Architect a construction schedule for the Work, taking into account the normal weather expected in the locality of the Project and containing detail appropriate for the Project, including

- A. the date of commencement of the Work, interim schedule milestone dates with critical path and risk-assessed work and the date of Substantial Completion;
  - B. a list and schedule of all long lead-time items ,
  - C. an apportionment of the Work by construction activity and subcontractor; and
  - D. the time required for completion of each portion of the Work.
- .2 The schedule must provide for the orderly progression of the Work to completion and may not exceed time limits current under the Contract Documents. The schedule may be revised at appropriate intervals as required by the conditions of the Work and Project.

#### §3.11.2 Submittal Schedule

- .1 Not more than 14 days after execution of the contract, the Contractor will submit to CalOptima a submittal schedule that is coordinated with the Contractor's construction schedule, and that allows CalOptima and the Architect reasonable time to review submittals.
- .2 If the Contractor fails to provide a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor will not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§3.11.3 The Contractor will perform the Work in general accordance with the most recent schedules submitted to CalOptima and Architect.

### §3.12 Documents and Samples at the Site

The Contractor must make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, as well as the approved Shop Drawings, Product Data, Samples, and similar required submittals. These may be in electronic form or paper copy, available to the Architect and CalOptima, and delivered to the Architect for submittal to CalOptima upon completion of the Work as a record of the Work as constructed.

### §3.13 Shop Drawings, Product Data and Samples

§3.13.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents but are intended to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work that require submittals. Submittals that are not required may be returned by the Architect or CalOptima without action.

§3.13.2 The Contractor must review, approve, and submit to CalOptima the Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work.

- §3.13.3 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to CalOptima that the Contractor 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 Contract Documents. CalOptima may require submittals to bear the stamp of approval by the Contractor as evidence that he has checked them, and may return for re-submission, submittals without the stamp of approval, which will be considered as never having been submitted.
- §3.13.4 The Contractor may not perform any portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by CalOptima.
- §3.13.5 The Contractor will not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified CalOptima and the Architect of such deviation at the time of submittal and has received written approval to the specific deviation, or a Change Order or Construction Change Directive has been issued authorizing the deviation. Errors and omissions in Shop Drawings, Product Data, Samples, or similar submittals, are the responsibility of the Contractor, regardless of CalOptima's approval of them.
- §3.13.6 The Contractor must direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.
- §3.13.7 The Contractor must correct at its cost, and without any adjustment to Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including but not limited to, correction of any conflicts in the Work resulting from such failure.
- §3.13.8 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, CalOptima and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

### **§3.14 Use of Site**

- §3.14.1 Contractor's operations at the site are to be confined to areas designated by CalOptima or indicated in the Contract Documents, and permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Contractor may not unreasonably encumber the site with materials or equipment. The site may only be used for performance of the Work and related activities.

§3.14.2 CalOptima and the Architect must have access to the site at all times.

### **§3.15 Cutting and Patching**

§3.15.1 The Contractor is responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§3.15.2 The Contractor may not damage or endanger a portion of the Work or fully or partially completed construction by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor may not cut or otherwise alter construction by CalOptima or another contractor except with written consent of CalOptima and of the other contractor.

§3.15.3 The Contractor is responsible for locating, protecting, and saving from injury utilities of all kinds, either above or below grade found in the areas affected by the Work. The Contractor is responsible for all damage caused to a utility by the operation of equipment, or delivery of materials, or as the direct or indirect result of any of Contractor's work, and will repair all such damage at Contractor's expense and as a part of the work included in the Contract Documents. The Contractor will not be entitled to any increase in the Contract Sum or the Contract Time on account of its damage to any utility.

### **§3.16 Cleaning Up**

§3.16.1 The Contractor must keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by Contractor's operations under the Contract. Contractor must coordinate the preferred route and procedures for the removal of construction debris with CalOptima. For renovation work in an existing building, the building corridors, elevators, stairwells, and common areas must be kept free from accumulations of waste, rubbish, and debris at all times during regular business hours. All waste materials must be handled, transported, and disposed of in accordance with applicable Federal, state, and local regulations.

§3.16.2 At completion of the Work, the Contractor must remove waste materials and rubbish, as well as the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§3.16.3 If the Contractor fails to clean up, CalOptima may do so and will be entitled to deduct the cost of clean-up from any monies due the Contractor, or to request reimbursement from the Contractor.

### **§3.17 Deliveries**

Contractor must have a representative on site to receive deliveries of supplies, equipment, and materials, as they will not be accepted by CalOptima staff on behalf of the Contractor. Materials may not be dropped off or left in loading dock areas, if any, and Contractor is responsible for protecting all supplies, materials, and equipment from theft, vandalism, and the elements.



### §3.18 Royalties, Patents and Copyrights

The Contractor is responsible for paying all royalties and license fees for materials and documents acquired by and used by Contractor in performance of the Work. The Contractor will defend suits or claims for infringement of copyrights and patent rights and will hold CalOptima and Architect harmless from loss on account thereof, but will not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by CalOptima or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor is responsible for the loss unless the information is promptly furnished to CalOptima and the Architect.

### §3.19 Indemnification

- §3.19.1 With regard to the Contractor's performance in connection with or incidental to this Contract, the Contractor will defend, indemnify, protect and hold CalOptima and its directors, officers, and employees as well as the Architect, Architect's consultants, and agents and employees of any of them, harmless from and against any claims asserted or liability established for damages or injuries to any person or property, including injury to the Contractor's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Contractor and its subcontractors and their agents, officers, or employees, in performance of the Work, and all expenses of investigating and defending against same, including attorney's fees and costs. However, Contractor's duty to indemnify and hold harmless will not include any claims or liability arising from the established sole negligence or willful misconduct of CalOptima, its directors, agents, officers, or employees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Contract.
- §3.19.2 In claims against any person or entity indemnified by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation will not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- §3.19.3 Contractor's obligation to indemnify is in addition to any liability Contractor may have to CalOptima for a breach by Contractor of any of the provisions of this Contract. The insurance requirements and limits set forth in this Contract are not to be construed to limit Contractor's indemnification and duty to defend.
- §3.19.4 Contractor's indemnification and duty to defend obligations will survive the expiration or earlier termination of this Contract until such time as any action against the indemnified parties is fully and finally barred by the applicable statute of limitations, including those set forth under the California Government Claims Act (Cal. Gov. Code §900 et seq.).

## ARTICLE 4 ARCHITECT

### §4.1 interpretation of the Instruments of Service

The Architect will provide clarifications and interpretations of the Instruments of Service, as required.

### §4.2 Administration of the Contract

- §4.2.1 The Architect may provide administration of the Contract as described in the Contract Documents and may be CalOptima's representative during construction. In such case, the authority of the Architect will continue until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of CalOptima only to the extent provided in the Contract Documents and CalOptima's agreement with the Architect, and may not take any action that would commit additional funds to the Project or modify the terms of CalOptima's agreement with the Contractor without prior written consent of CalOptima.
- §4.2.2 When the Architect is assisting with administration of the Contract, the Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with CalOptima, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, but will at a minimum have inspected the Work before issuing each approval or Certificate for Payment. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
- §4.2.3 On the basis of the site visits, the Architect will keep CalOptima reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to CalOptima (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
- §4.2.4 CalOptima and Contractor will endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities.
- §4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment and inspections of the Work, the Architect may review and certify the amounts due the Contractor and may issue Certificates for Payment in such amounts, unless this task is performed by the CalOptima Project Manager.
- §4.2.6 CalOptima may reject Work that does not conform to the Contract Documents. Whenever CalOptima or the Architect considers it necessary or advisable, they will have authority to require

inspection or testing of the Work, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

- §4.2.7 CalOptima and the Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of any other of its obligations. The Architect's review will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item Will not indicate approval of an assembly of which the item is a component.
- §4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions.
- §4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive and forward to CalOptima, for CalOptima's review and records, written warranties and related documents required by the Contract and assembled by the Contractor; and issue a final Certificate for Payment.
- §4.2.10 If CalOptima and Architect agree, the Architect may provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. CalOptima shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.
- §4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of CalOptima. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- §4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect not be liable for results of interpretations or decisions rendered in good faith.

§4.2.13 If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### §5.1 Award of Subcontracts and Other Contracts for Portions of the Work

- §5.1.1 Contractor must comply with the “Subletting and Subcontracting Fair Practices Act” found at California Public Contract Code (“PCC”) §4100 *et. seq.* and, and may not replace a Subcontractor listed on the original bid who will be responsible for one-half of 1 percent of the total Project, except for the reasons given at PCC §4107.
- §5.1.2 Except as provided for above, if the Contractor subcontracts after contract award, the Contractor will be subject to the penalties set forth in PCC §4110.
- §5.1.3 Prior to any substitution of a Subcontractor, CalOptima and the Subcontractor must be notified and given notice of the request to substitute and of the reasons for the request. Notice must be given by certified or registered mail to the Subcontractor’s last known address. The Subcontractor has five working days within which to submit written objections to the substitution to CalOptima. If the subcontractor objects, CalOptima will give notice in writing to the Subcontractor of a hearing by CalOptima on the request for substitution.
- §5.1.4 Within 14 days of Contract execution, CalOptima may notify the Contractor whether CalOptima has reasonable objection to any proposed Subcontractor, or requires additional time for review. The Contractor may not contract with a proposed person or entity to whom CalOptima has made reasonable and timely objection, nor will the Contractor be required to contract with anyone to whom the Contractor has made reasonable objection.
- §5.1.5 If CalOptima or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor must propose another to whom CalOptima or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time may be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order may be issued before commencement of the substitute Subcontractor’s Work. If the Contractor proposes to do the work itself, the Contractor represents that it is fully qualified and appropriately licensed to perform that portion of the Work itself.
- §5.1.6 The Contractor is responsible for ensuring that each Subcontractor and Sub-subcontractor is duly licensed and complies with all pertinent license, certification, and local rules required to conduct the activities related to its portion of the Work.
- §5.1.7 Contractor may not use or allow work by any Subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to California Labor Code §1777.1 or 1777.7 and as required by PCC § 6109. The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html)

## §5.2 Subcontract Required Provisions

Contractor is responsible for ensuring that all subcontracts and sub-subcontracts contain the provisions regarding:

- California/OSHA required safety training
- Penalties for Failure to Provide Safety Training
- Compliance with the requirements regarding registration and compliance regulations issued by the Department of Industrial Relations requirements
- Prevailing Rate Requirements
- Prohibited Contributions
- Non-Discrimination
- Payroll and Workforce Filing and Records
- Prompt Payment Requirements found in CA Business and Professions Code §7108.5

## §5.3 Subcontract Relations

By appropriate written agreement, the Contractor must require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward CalOptima and Architect. Each subcontract agreement must preserve and protect the rights of CalOptima and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting will not prejudice such rights, and must allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against CalOptima. Where appropriate, the Contractor must require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor must make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## §5.4 Contingent Assignment of Subcontracts

Subject to any applicable prior rights of the sureties obligated under bonds relating to the Contract, each subcontract agreement for a portion of the Work may be assigned by the Contractor to CalOptima, provided that assignment is effective only after termination of the Contract by CalOptima and only for those subcontract agreements that CalOptima accepts by notifying the Subcontractor and Contractor.

## §5.5 Contractor's Responsibility for Work of Subcontractors

If Contractor subcontracts any of the Work, Contractor will be as fully responsible to CalOptima for the acts, errors, or omissions of Contractor's Subcontractor and of the persons employed by the

Subcontractor as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Contract will create any contractual relationship between any subcontractor of Contractor and CalOptima.

## **ARTICLE 6 CHANGES IN THE WORK**

### **§6.1 General**

- §6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order by the CalOptima project manager for a minor change in the Work.
- §6.1.2 A Change Order will be based upon agreement among CalOptima, Contractor, and Architect. A Construction Change Directive requires agreement by CalOptima and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by CalOptima.
- §6.1.3 When changes are required or requested by CalOptima, if applicable, the Architect will issue a description of proposed changes that will require adjustment to the Contract Sum or Time.
- §6.1.4 Contractor must submit a proposal for changes in the Contract Sum or Time within five business days of receiving the change request from CalOptima. The proposal must:
- .1 include all work necessary due to project requirements and field conditions;
  - .2 provide information including material and labor unit costs and quantities; and
  - .3 must include all items necessary for the scope of changes.
- §6.1.5 After a proposal is accepted, additional claims for the same changes will not be considered. Failure to identify changes in scope on a proposal does not relieve the Contractor from completing the changes in the Work as accepted.

### **§6.2 Change Orders**

- §6.2.1 A Change Order is a written instrument prepared by CalOptima or the Architect and signed by CalOptima, Contractor, and Architect stating their agreement upon all of the following:
- .1 The change in the Work;
  - .2 The amount of the adjustment, if any, in the Contract Sum; and
  - .3 The extent of the adjustment, if any, in the Contract Time.

### **§6.3 Construction Change Directives**

- §6.3.1 A Construction Change Directive is a written order signed by CalOptima and Architect, directing a change in the Work prior to agreement with the Contractor on adjustment, if any, in the Contract Sum or Contract Time, or both. CalOptima may, by Construction 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 and Contract Time being adjusted accordingly.

- §6.3.2 A Construction Change Directive may be used in the absence of total agreement between the parties on the terms of a Change Order.
- §6.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment will be based on one of the following methods:
- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - .2 Unit prices stated in the Contract Documents or subsequently agreed upon; or
  - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
- §6.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, CalOptima will determine 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 in the Contract Sum, 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. The Contractor shall keep and present, in such form as CalOptima may prescribe, an itemized accounting together with appropriate supporting data. Costs for the purposes of this Section will be limited to the following:
- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
  - .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
  - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
  - .5 Costs of supervision and field office personnel directly attributable to the change.
- §6.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim.
- §6.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and CalOptima of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

- §6.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor’s agreement, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement will be effective immediately and will be recorded as a Change Order.
- §6.3.8 The amount of credit to be allowed by the Contractor to CalOptima for a deletion or change that results in a net decrease in the Contract Sum will 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.
- §6.3.9 Pending final determination of the total cost of a Construction Change Directive to CalOptima, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. CalOptima will make an interim determination for purposes of monthly certification for payment for those costs and will pay the amount it determines, to be reasonably justified. .
- §6.3.10 When CalOptima and Contractor agree with a determination concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement will be effective immediately and the Architect will prepare a Change Order.

**§6.4 Minor Changes in the Work**

CalOptima may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The orders for minor changes will be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor must notify CalOptima before proceeding to implement the change in the Work. If the Contractor performs the Work set forth in the order for a minor change without prior notice that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

**ARTICLE 7 TIME**

**§7.1 Definitions**

- §7.1.1 Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- §7.1.2 The date of commencement of the Work is the date established in the Agreement.
- §7.1.3 The date of Substantial Completion is the date certified by the Architect or approved as such by CalOptima.
- §7.1.4 The term “day” as used in the Contract Documents means CalOptima Business Day.



## §7.2 Progress and Completion

- §7.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- §7.2.2 CalOptima will notify the Contractor in writing of the date to start work by issuing a Notice to Proceed. The Notice will mark the beginning of the Contract Time.
- §7.2.3 Upon receipt of Notice to Proceed, the Contractor will proceed expeditiously with adequate forces to achieve Substantial Completion within the Contract Time.
- §7.2.4 Notwithstanding any Notice to Proceed, no work may commence until CalOptima has received all required forms and documents, including:
- .1 Certificates of Insurance with an effective date no later than the date of Notice to Proceed;
  - .2 Performance and Payment Bonds;
  - .3 Proof of Contractor's registration with DIR;
  - .4 A list of all Subcontractors expected to work on the Project, including for each Subcontractor:
    - A. Their main business address;
    - B. A description of the work to be performed;
    - C. The dollar value of the work to be performed;
    - D. Proof of their registration with the DIR.;
  - .5 A declaration that pursuant to PCC §2600 *et. seq.* the Contractor will;
    - A. Comply with applicable Skilled and Trained Workforce requirements for the duration of the Project, and
    - B. Require that its subcontractors at every tier will comply with the requirements.

## §7.3 Delays and Extensions of Time

- §7.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of CalOptima or Architect, or a Force Majeure event, then the Contract Time may be extended for such reasonable time as the parties may agree.
- §7.3.2 All Float contained in the accepted Project Schedule is considered a Project resource and is not for the exclusive use of either Party, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the contract completion date.

## **ARTICLE 8 PAYMENTS AND COMPLETION OF WORK**

### **§8.1 Contract Sum**

- §8.1.1 The Contract Sum is the total amount payable by CalOptima to the Contractor for performance of the Work under the Contract Documents.
- §8.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to CalOptima or Contractor, the applicable unit prices may be equitably adjusted.

### **§8.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, prior to commencement of Work, the Contractor must submit a Schedule of Values to CalOptima, allocating the entire Contract Sum to the various portions of the Work. The schedule of values must be prepared in the form, and supported by the data to substantiate its accuracy, required by CalOptima. This schedule will be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values must be submitted to CalOptima and supported by such data to substantiate its accuracy as CalOptima may require, and unless objected to by CalOptima, will be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§8.3 Applications For Payment**

In compliance with PCC 20104.50, CalOptima will issue payment within 30 days after receipt of an undisputed and properly submitted payment request as described below.

- §8.3.1 Applications must show the percentage of completion of the Work as of the end of the period covered by the application, the Subcontractors who were responsible for completing the Work, if any, and must be supported by all data substantiating the Contractor's right to payment that CalOptima requires, including at a minimum:
- .1 Copies of requisitions and supplier invoices if materials are included in the Application;
  - .2 Up-to-date records of payment to Subcontractors including lien waivers or certification by Contractor, under penalty of perjury, that Subcontractors have been paid, which may reflect retainage;
  - .3 Certification from each Subcontractor due payment under that request, that payment has been made in accordance with Bus. & Prof. Code §7108.5, which may reflect retainage;
  - .4 Certification that Monthly Workforce Reports have been filed.
- §8.3.2 At least ten days before the date established for each progress payment, the Contractor must submit to CalOptima an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Unless otherwise agreed between CalOptima and Contractor, the period covered by each Application for Payment will be one calendar month ending on the last day of the month. Applications for Payment will show the

percentage of completion of each portion of the Work as of the end of the period covered by the application. The application must be supported by all data substantiating the Contractor's right to payment that CalOptima requires, such as copies of requisitions, releases and waivers of liens from Subcontractors and suppliers, certification that workforce reports have been filed, and will reflect retainage if provided for in the Contract Documents.

- §8.3.3 Applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives but not yet included in Change Orders.
- §8.3.4 Applications for Payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.
- §8.3.5 Payments may be made for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on or off the site will be conditioned upon compliance by the Contractor with procedures satisfactory to CalOptima to establish CalOptima's title to such materials and equipment or otherwise protect CalOptima'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.
- §8.3.6 Applications for Payment must include a description of work completed by Subcontractors
- §8.3.7 Title to all Work covered by an Application for Payment will pass to CalOptima no later than the time of payment. An Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from CalOptima must, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### **§8.4 Certificates For Payment**

- §8.4.1 The Architect will, within seven calendar days after receipt of the Contractor's Application for Payment, either (1) issue to CalOptima a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to CalOptima a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and CalOptima of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and CalOptima of the Architect's reason for withholding.
- §8.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to CalOptima, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific

qualifications expressed by the Architect. However, although the Architect will visit the Project to observe the Work and ascertain its progress at least once before issuing each Certificate for Payment, the issuance will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by CalOptima to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **§8.5 Decisions To Withhold Certification**

§8.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect CalOptima, if in the Architect's opinion the required representations to CalOptima cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and CalOptima. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to CalOptima. The Architect 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 in the Architect's opinion to protect CalOptima from loss for which the Contractor is responsible because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to CalOptima is provided by the Contractor;
- .3 failure of the Contractor to make or to document payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to CalOptima;
- .6 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
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§8.5.2 When Contractor disputes the decision regarding a Certificate for Payment in whole or in part, Contractor may submit a Claim.

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

§8.5.4 If the Architect withholds certification for payment, CalOptima may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to

make payment for Work properly performed or material or equipment suitably delivered. If CalOptima makes payments by joint check, CalOptima shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## **§8.6 Progress Payments**

### **§8.6.1 Mobilization**

- .1 Mobilization is preparatory work and operations that may include the movement or equipment, supplies, and incidentals to the Project site; establishment and preparation of offices, facilities, equipment, and materials; premiums on bonds and insurance for the work; and for other operations performed or costs incurred before the beginning of Work.
- .2 Mobilization may not exceed 8% of the total Bid price.
- .3 Mobilization costs, if allowed, will be paid to the Contractor incrementally with successive Applications for Payment as follows:
  - A. When 10 percent of the original contract is completed, 25 percent of total Mobilization may be paid.
  - B. When 25 percent of the original contract is completed 25 percent of total Mobilization may be paid.
  - C. When 40 percent of the original contract is completed 25 percent of total Mobilization may be paid.
  - D. When 50 percent of the original contract is completed, any remaining Mobilization may be paid.

### **§8.6.2 The amount of each progress payment will first include:**

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to Mobilization, if applicable;
- .3 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by CalOptima, suitably stored off the site at a location agreed upon in writing; and
- .4 That portion of Construction Change Directives that CalOptima determines is reasonably justified.

### **§8.6.3 The amount of each progress payment will then be reduced by:**

- .1 The aggregate of any amounts previously paid by CalOptima;
- .2 The amount, if any, for Work that remains uncorrected and for which CalOptima has previously withheld payment;

- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
  - .4 Any amount for which CalOptima may withhold payment or nullify a Certificate of Payment in whole or in part For Work performed or defects discovered since the last payment application;
  - .5 Liquidated Damages, if applicable; and
  - .6 Any retainage withheld.
- §8.6.4 After a Certificate for Payment has been issued, CalOptima may issue full or partial payment unless it has informed the Contractor that all or part of the payment will be withheld and why it will be withheld.
- §8.6.5 The Contractor shall pay each Subcontractor and supplier, no later than seven days after receipt of payment from CalOptima, the amount to which the Subcontractor or supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's or supplier's portion of the Work, and will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- §8.6.6 CalOptima will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken by CalOptima on account of portions of the Work done by such Subcontractor.
- §8.6.7 CalOptima may request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by CalOptima to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, CalOptima may contact Subcontractors and suppliers to ascertain whether they have been properly paid. CalOptima will not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.
- §8.6.8 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by CalOptima will not constitute acceptance of Work not in accordance with the Contract Documents.
- §8.6.9 Provided CalOptima has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify CalOptima from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, CalOptima shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## §8.7 Failure of Payment

If, through no fault of the Contractor, after receipt of a complete and correct Application for Payment, CalOptima does not pay the Contractor within thirty days after the date established in the Contract Documents, the Contractor may, upon seven additional days' notice to CalOptima, stop the Work until

payment of the amount owing has been received. The Contract Time will be extended commensurately and the Contract Sum increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§8.8 Substantial Completion**

- §8.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion of the Work site is sufficiently complete in accordance with the Contract Documents so that CalOptima can occupy or utilize the Work site for its intended use.
- §8.8.2 When the Contractor considers that the Work, or a portion thereof which CalOptima agrees to accept separately, is substantially complete, the Contractor may prepare and submit to CalOptima and the Architect 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 the Contractor to complete all Work in accordance with the Contract Documents.
- §8.8.3 Upon receipt of the Contractor's list, CalOptima and the Architect will make an inspection to determine whether the Work or the designated portion is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that CalOptima can occupy or utilize the Work or the designated portion for its intended use, the Contractor must, before issuance of the Certificate of Substantial Completion, complete or correct the items. In such case, the Contractor must then submit a request for another inspection to determine Substantial Completion.
- §8.8.4 When CalOptima determines that the Work or a designated portion of it is substantially complete, the Architect and CalOptima will prepare a Certificate of Substantial Completion that will establish the date of Substantial Completion; establish responsibilities of CalOptima and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor will finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents will commence on the date of Substantial Completion of the Work or the designated portion of it.
- §8.8.5 Upon Contractor's acceptance of its responsibilities, and consent of the surety if any, CalOptima will make payment of retainage applying to the Work or designated portion of it. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- §8.8.6 At the time of Substantial Completion of the work, and prior to CalOptima's release of funds for Substantial Completion, the Contractor will deliver all warranties, instructions and direction for use of equipment, maintenance requirements, guarantees and brochures, etc., assembled into a booklet or electronic form for CalOptima's keeping and reference. No funds for Substantial Completion will be released until CalOptima has received all such materials.

## **§8.9 Partial Occupancy or Use**

- §8.9.1 CalOptima 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 the Contractor, provided such occupancy or use is consented to by the insurer 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 CalOptima and Contractor 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 Contract Documents. The stage of the progress of the Work shall be determined by written agreement between CalOptima and Contractor.

§8.9.2 Immediately prior to such partial occupancy or use, CalOptima, Contractor, and Architect will jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§8.9.3 Unless otherwise agreed, partial occupancy or use of a portion or portions of the Work will not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§8.10 Final Completion and Final Payment**

§8.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, CalOptima and the Architect will make such inspection. When they find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents. The final Certificate for Payment will constitute a further representation that in the opinion of the Architect, conditions listed as precedent to the Contractor's being entitled to final payment have been fulfilled.

§8.10.2 Neither final payment nor any remaining retainage will become due until the Contractor submits to CalOptima

- .1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which CalOptima or CalOptima's property might be responsible or encumbered (less amounts withheld by CalOptima) have been paid or otherwise satisfied;
- .2 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect;
- .3 A written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 Consent of sureties, if any, to final payment;
- .5 All documents and warranties, such as manufacturers' warranties or specific Subcontractor warranties;
- .6 If required by CalOptima, other data establishing payment or satisfaction of obligations, such as receipts and 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 CalOptima;



- .7 A valid Certificate of Occupancy, if applicable;
- .8 Delivery of all spare parts, stock, and similar physical items to CalOptima;
- .9 Completion of any required training, including training on maintenance requirements, systems operations, etc.;
- .10 Cleaning of the facility and fixtures such that it is ready for immediate occupancy, which will include:
  - 16.1.1 Removal of grease, dust, stains, labels, fingerprints, and other foreign materials from interior and exterior surfaces;
  - 16.1.2 Repairing, patching, and touching up to match adjacent finishes, surfaces that were marred by the Contractor or Subcontractors;
  - 16.1.3 Removing all rubbish, debris and dirt resulting from the Work;
  - 16.1.4 Removing manufacturers' and advertising labels from windows, fixtures, equipment;
  - 16.1.5 Removing all rubbish, tools, scaffolds, etc., from the site.
- .11 Verification that all systems are operating correctly;
- .12 Correction of all shop drawings and schedules of all work for all trades to a true and actual representation of the work actually performed, erected and installed;
- .13 Submission of drawings showing the actual installation of all underground services, utilities and structures;
- .14 Resolution of any remaining Contract or accounting issues, including deletion of any remaining Contract allowances;
- .15 On behalf of CalOptima, process per California law all requisite noticing to those with lien rights and provide proof to CalOptima of filing a Notice of Completion with the County of Orange.

§8.10.3 If a Subcontractor refuses to furnish a release or waiver required by CalOptima, the Contractor may furnish a bond satisfactory to CalOptima to indemnify CalOptima against any lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor must refund to CalOptima all money that CalOptima may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§8.10.4 If, after Substantial Completion of the Work, final completion is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, CalOptima may, upon application by the Contractor and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in

the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted must be submitted by the Contractor to CalOptima prior to certification of payment. Such payment will not constitute a waiver of Claims.

- §8.10.5 The making of final payment will not constitute a waiver of Claims by CalOptima. Moreover, Contractor will remain subject to audit by authorities having oversight of CalOptima. Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY**

### **§9.1 Safety Precautions, Programs, and Training**

- §9.1.1 The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.
- §9.1.2 Contractor is responsible for ensuring that all employees working on the Project have completed the required Cal-OSHA 10-Hour Training for Construction and that all supervisors and employees will comply with all required safety training requirements.

### **§9.2 Safety of Persons and Property**

- §9.2.1 The Contractor assumes sole and complete responsibility for job site conditions during the course of its performance of the Work, including safety of all persons and property, and this requirement must be made to apply continuously and not be limited to normal working hours.
- §9.2.2 The Contractor must take reasonable precautions for safety of, and provide reasonable protection to prevent damage, injury, or loss to
- .1 employees on the Work and other persons who may be affected by the Work;
  - .2 the Work and materials and equipment to be incorporated in the Project, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
  - .3 other property at the site or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- §9.2.3 The Contractor must comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
- §9.2.4 The Contractor must implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

- §9.2.5 If required, Contractor is responsible for providing all barricades, signage, flagging and flagman for traffic control and public safety during the execution of the work, and for coordinating all road closures, whether full or partial, with the local municipalities.
- §9.2.6 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor may carry on such activities only under supervision of properly qualified personnel and after consultation with CalOptima.
- §9.2.7 The Contractor will promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to all property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of CalOptima or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.
- §9.2.8 Prior to commencement of work, the Contractor must designate a member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person may be the Contractor's superintendent unless otherwise designated by the Contractor in writing to CalOptima and Architect.
- §9.2.9 The Contractor may not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **§9.3 Injury or Damage to Person or Property**

If any party suffers injury or damage to person or property because of an act or omission of the Contractor, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, must be given to the other party within 21 days after discovery. The notice must provide sufficient detail to enable the other party to investigate the matter.

### **§9.4 Hazardous Materials and Substances**

- §9.4.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor must, upon recognizing the condition, immediately stop Work in the affected area and notify CalOptima and Architect of the condition.
- §9.4.2 Upon receipt of the Contractor's notice, CalOptima may obtain the services of a licensed laboratory or inspector to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area may resume upon written agreement of CalOptima and Contractor. The Contract

Time may be extended appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§9.4.3 CalOptima is not responsible for hazardous materials or substances the Contractor brings to the site.

§9.4.4 The Contractor will reimburse CalOptima for the cost and expense CalOptima incurs

- .1 for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or
- .2 where the Contractor fails to perform its obligations, except to the extent that the cost and expense are due to CalOptima's fault or negligence.

§9.4.5 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, and prior to commencing work involving the hazardous material or substance Contractor notified CalOptima in writing of the hazardous material or substance but was instructed by CalOptima to continue, CalOptima will reimburse the Contractor for all cost and expense incurred by following CalOptima's direction.

## §9.5 Noise Control

No loud demolition will be allowed without prior CalOptima approval and all work must comply with noise ordinances of the local municipality.

## §9.6 Dust Control

When work is done in an occupied building, Contractor is responsible for preventing dust from leaving the work area and entering other areas of the building. For exterior Work, water or other effective means must be used to control dust where drilling, grinding, or other dust producing operations occur.

## §9.7 Emergencies

In an emergency affecting safety of persons or property, the Contractor must act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency may be provided by CalOptima.

## ARTICLE 10 INSURANCE AND BONDS

### §10.1 Insurance

§10.1.1 Prior to commencing performance of any services or receipt of any compensation under the Contract, Contractor must provide CalOptima broker-issued Certificates of Insurance showing at least the minimum insurance coverages listed below, with applicable amendatory endorsements. Contractor waives the right to receive compensation and agrees to indemnify CalOptima for any work performed prior to approval of insurance by CalOptima.

§10.1.2 Contractor's Certificates of Insurance must include and ISO Additional Insured Endorsement listing CalOptima, CalOptima's officers, officials, directors, employees, and agents, and the Architect, as

additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work or operations. This provision applies to Contractor's General Liability and Auto Liability policies, as applicable, and must be on ISO form CG 20 10 or equivalent.

- §10.1.3 For any claims related to this Contract, the Contractor's insurance coverage will be primary insurance with respect to CalOptima, its officers, officials, directors, employees, agents, and volunteers. This provision applies to the Contractor's General Liability, Auto Liability and Workers' Compensation and Employers' Liability policies, as applicable.
- §10.1.4 Insurance is to be placed with insurers with a current A.M. Best rating of no less than A- VII, unless otherwise approved by CalOptima.
- §10.1.5 If Contractor fails or refuses to maintain or produce proof of the required insurance, CalOptima may terminate this Contract upon written notice to Contractor. Such termination will not affect Contractor's right to be paid for its time and materials expended prior to termination of insurance.
- §10.1.6 Contractor must require each of its Subcontractors who perform services related to this Contract to maintain insurance coverage that meets all of the requirements set forth in this Contract.

## **§10.2 Insurance Minimums**

- §10.2.1 Commercial General Liability, including contractual liability and coverage for Independent Contractors on an occurrence basis on an ISO form GC 00 01 or equivalent covering bodily injury and property damage with the following minimum liability limits:
  - .1 Per occurrence: \$1,000,000
  - .2 Personal Advertising Injury: \$1,000,000
  - .3 Products Completed Operations: \$2,000,000
  - .4 General Aggregate: \$2,000,000
- §10.2.2 Commercial Automobile Liability on an ISO form CA 0001 or equivalent in the amount of \$1,000,000 combined single limit for bodily injury or property damage if Contractor or subcontractors are on CalOptima's premises or transporting CalOptima employees, covering any auto, whether owned, lease, hired, or rented.
- §10.2.3 Worker's Compensation and Employer's Liability Policy written in accordance with applicable laws and providing coverage for all of Contractor's employees:
  - .1 Providing statutory coverage for Worker's Compensation.
  - .2 Providing coverage for \$1,000,000 Employers' Liability for each employee, each accident, and in the general aggregate.
- §10.2.4 Builders Risk Insurance for 100% of the Project cost for the entire duration of the Project, written in amount at least equal to the initial Contract Sum. The insurance must apply on a replacement cost basis and extend to portions of the Work and materials off site but intended to be used on

site, and also extend to transit coverage and to scaffolding, falsework, formwork, and temporary structures located at the Work site. Coverage must also extend to flood and earthquake perils, equipment breakdown, boiler machinery perils and collapse caused by design error. The coverage must remain in place until substantial completion or acceptance of the Work by CalOptima.

§10.2.5 Installation Floater insurance for 100% of the cost of items excluded from the Builder's Risk policy.

### **§10.3 Bonds**

§10.3.1 Prior to commencement of Work, Contractor must provide to CalOptima a Payment Bond, in the amount of 100% of the Contract amount and in accordance with Civil Code § 9554. The bonds are to be executed by a surety company or companies authorized to execute such in the State of California, acceptable to CalOptima. Failure to provide a Payment Bond within ten days of contract award may cause CalOptima to reject the bid and will cause the Contractor to forfeit the Bid Bond. If the Payment Bond is received, the Bid Bond may be returned to the bidder.

§10.3.2 If at any time CalOptima becomes dissatisfied with any surety or sureties, then within five days after notice from CalOptima, Contractor will substitute an acceptable bond signed by a surety or sureties satisfactory to CalOptima. The premiums on such bond will be paid by Contractor. No further contract payments will be due nor made until the new acceptable bond is furnished to CalOptima.

§10.3.3 The Contractor must promptly furnish a copy of the bonds or authorize a copy to be furnished on the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract.

### **§10.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.**

Within three business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to CalOptima of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, CalOptima shall, unless the lapse in coverage arises from an act or omission of CalOptima, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### **§10.5 Waivers of Subrogation**

Contractor waives all rights of subrogation against CalOptima and its elected or appointed officers, officials, directors, agents, and employees for losses paid under the terms of any policy which arise from Work performed by the Contractor for CalOptima. This provision applies to the Contractor's General Liability, Auto Liability and Workers' Compensation and Employers Liability policies.

## ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

### §11.1 Uncovering of Work

§11.1.1 If a portion of the Work is covered contrary to CalOptima's or the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§11.1.2 If a portion of the Work has been covered that CalOptima or the Architect has not specifically requested to examine prior to its being covered, CalOptima or the Architect may request to see such Work and the Contractor will uncover it. If the Work is in accordance with the Contract Documents, the Contractor will be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If the Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, will be at the Contractor's expense.

### §11.2 Correction of Work

#### §11.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by CalOptima or the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### §11.2.2 After Substantial Completion

- .1 If, within one year after the date of Substantial Completion of the Work or designated portion of it, or after the date for commencement of warranties, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from CalOptima to do so, unless CalOptima has previously given the Contractor a written acceptance of such condition. CalOptima will give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if CalOptima fails to notify the Contractor and give the Contractor an opportunity to make the correction, CalOptima waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from CalOptima or Architect, CalOptima may correct it and the Contractor will be responsible for the expense of the correction.
- .2 The one-year period for correction of Work will 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.

- .3 The one-year period for correction of Work will not be extended by corrective Work performed by the Contractor prior to Substantial Completion.

§11.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by CalOptima.

§11.2.4 The Contractor will bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, caused by the Contractor's correction or removal of Work.

§11.2.5 Nothing contained in this Section is to be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§11.3 Acceptance of Nonconforming Work**

If CalOptima prefers to accept Work that is not in accordance with the requirements of the Contract Documents, CalOptima 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 may be effected whether or not final payment has been made.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

### **§12.1 Governing Law and Venue**

The Contract will be governed by and construed in accordance with the laws of the State of California. If any Party institutes legal proceedings to enforce or interpret this Contract, venue and jurisdiction will be in the County of Orange, California.

### **§12.2 No Assignment**

Contractor may not assign or transfer any part of this Contract without the written permission of CalOptima. If Contractor attempts to make an assignment without such consent, Contractor will remain legally responsible for all obligations under the Contract, and CalOptima may terminate the Contract for cause.

### **§12.3 Rights and Remedies**

Duties and obligations imposed by the Contract Documents and their associated rights and remedies are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.



## **§12.4 No Waiver**

Any failure of CalOptima to insist upon strict compliance with any provision of this Contract will not be deemed a waiver of such provision or any other provision of this Contract, nor will a waiver of a breach of any of the covenants, conditions, or agreements to be performed by the Contractor be construed to be a waiver of any succeeding breach of the Contract or of any other covenant or condition of the Contract. Any waiver of any required performance, to be effective, must be in writing and signed by both parties as a Change Order.

## **§12.5 Tests and Inspections**

- §12.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to CalOptima, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor must give CalOptima timely notice of when and where tests and inspections are to be made so that CalOptima or the Architect may be present for such procedures. CalOptima will bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. CalOptima will directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
- §12.5.2 If the Architect, CalOptima, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval, CalOptima will instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to CalOptima, and the Contractor must give timely notice to CalOptima and the Architect of when and where tests and inspections are to be made so that they may be present for such procedures. Such costs will be at CalOptima's expense.
- §12.5.3 If procedures for testing, inspection, or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, will be at the Contractor's expense and may be deducted from future Applications for Payment.
- §12.5.4 Required certificates of testing, inspection, or approval must, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
- §12.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **§12.6 Interest**

Payments due and unpaid under the Contract Documents will bear interest of 2% per month from the date payment is due.

## **ARTICLE 13 CALOPTIMA SPECIAL PROVISIONS**

### **§13.1 No Liability of County of Orange.**

The obligations of CalOptima under this Contract are solely the obligations of CalOptima. The County of Orange, State of California, will have no obligation or liability related to this Contract.

### **§13.2 Force Majeure**

When evidence of a Force Majeure event is presented to the other Party, and nonperformance is not due to the fault of the Party not performing, the Party will be excused from performing its obligations under this Contract during the time and to the extent that it is prevented from performing by such cause. A Party invoking this clause must provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of Force Majeure. If the Force Majeure event continues for a period of 30 days, the Party unaffected by the Force Majeure event may terminate this Contract upon notice to the other Party.

### **§13.3 Violence Prevention**

Beginning July 1, 2024, every employer in California must adhere to the new workplace violence prevention requirements introduced by Senate Bill 553, codified in Labor Code §6401.9. Covered employers must maintain a workplace violence prevention plan (WVPP), either as a stand-alone plan or built into an existing injury and illness prevention plan (IIPP) and all employees must be trained on the WVPP.

### **§13.4 Nondiscrimination**

- §13.4.1 In accordance with California Labor Code §1735, throughout the performance of the Contract, Contractor and its Subcontractors may not unlawfully discriminate against any employee or applicant for employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age (over 40), or sexual orientation (as those discrimination bases are defined in California Government Code sections 12926 and 12926.1) of such persons, except as provided in California Government Code §12940. Any contractor violating this nondiscrimination provision will be subject to penalties that may be imposed pursuant to Division 2, Part 7, Chapter 1 of the California Labor Code.
- §13.4.2 Contractor and its Subcontractors will, in all solicitations or advancements for employees placed by or on behalf of Contractor and its Subcontractors, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, disability, age, or status as a disabled veteran or veteran of the Vietnam era.
- §13.4.3 Contractor and its Subcontractors must send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the federal government or the State of California, advising the labor union or workers' representative of Contractor and its subcontractors' commitments under this Section and will post copies of the notice in conspicuous places available to employees and applicants for employment.

- §13.4.4 Contractor and its Subcontractors must comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (38 U.S.C. 4212), and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity”, and as supplemented by regulation at 41 C.F.R. part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- §13.4.5 If Contractor and its Subcontractors do not comply with the requirements of this section regarding Nondiscrimination, or with any federal rules, regulations, or orders referenced in this section, this Contract may be cancelled, terminated, or suspended in whole or in part, and Contractor and its Subcontractors may be declared ineligible for further federal and state contracts, in accordance with procedures authorized in Federal Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246, as amended, including by Executive Order 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity”, and as supplemented by regulation at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- §13.4.6 Contractor and its subcontractors must include the provisions of this section on Nondiscrimination in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, issued pursuant to Federal Executive Order No. 11246, as amended, including by Executive Order 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity”, and as supplemented by regulation at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”, or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran’s Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor.

### §13.5 California Labor Code Provisions

#### §13.5.1 Workers’ Compensation Certification

Contractor must comply with the provisions of Labor Code §1861 that require each contractor to whom a public works contract is awarded to sign and file with the awarding body the following certification prior to performing the work of the contract:

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

#### §13.5.2 Eight-Hour Day Limitation.

- .1 No worker in the employ of the Contractor or any Subcontractor doing or contracting to do any part of the Work under this Contract, may be required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week; unless subject to

California Labor Code §1815, the workers performing work in excess of 8 hours per day or 40 hours per week are paid not less than one and one-half times the basic rate of pay.

- .2 Except as provided above for overtime, Contractor will forfeit as a penalty to CalOptima the sum of \$25.00 for each worker employed in the execution of this Contract by it or by any subcontractor under it for each calendar day during which such worker is required or permitted to Work more than 8 hours in any one day and 40 hours in any one calendar week in violation of California Labor Code sections 1810 through 1815.

### **§13.6 Certified Payroll and Payroll Records**

§13.6.1 Pursuant to California Labor Code §1776, certified payroll records must be kept and submitted to DIR every payroll period for all employees who performed labor in connection with the Work of this Contract. Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor or Subcontractor in connection with the Work.

§13.6.2 Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- .1 The information contained in the payroll record is true and correct.
- .2 The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by that employer's employees on the public works project.

### **§13.7 Independent Contractor**

Contractor's relationship with CalOptima in the performance of this Contract is that of an independent contractor and nothing in this Contract is to be construed as creating a partnership, joint venture, or agency. Contractor's personnel performing services under this Contract will be at all times under Contractor's exclusive direction and control and will be employees of Contractor and not employees of CalOptima. Contractor will be fully responsible for all matters relating to payment of its employees, including payment of all wages, salaries and other amounts due its employees, agents, and/or Subcontractors in connection with this Contract, and will be responsible for all reports and obligations respecting them, such as social security, state and federal income tax withholding, other payroll taxes, unemployment compensation, workers' compensation, and similar matters.

### **§13.8 Third Party Beneficiaries**

There are no intended third-party beneficiaries of this Contract and nothing in this Contract may be construed as conferring any rights on any other persons.

### **§13.9 Injury and Illness Prevention Plan**

§13.9.1 The apparent low bidder must submit an Injury and Illness Prevention Plan (IIPP) and Code of Safe Practices (CSP) affidavit no later than 7 calendar days after the bid opening. The affidavit requires that the bidder has an IIPP and a CSP that complies with Cal/OSHA Regulations, and that all

subcontractors supplying employees to the jobsite will be required to prove to the Contractor that they have an IIPP and a CSP that complies with Cal/OSHA Regulations, and that their jobsite employees have been trained on IIPP and CSP.

§13.9.2 Failure to submit this affidavit as required may result in a determination that the apparent low bidder is nonresponsive.

### **§13.10 Prevailing Wages**

§13.10.1 The services provided in this Contract constitute "public works" as defined in California Labor Code 1720. The Contractor and its Subcontractors:

- .1 Are responsible for selecting the classification of workers required to perform their respective services under the Contract;
- .2 Must comply with the requirements under California Labor Code §1720, *et seq.* and pay not less than the prevailing wage rates for Work on this Contract;
- .3 Are subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR).

§13.10.2 The current general prevailing wage rate determinations are available at [www.dir.ca.gov/dlsr/pwd/index.htm](http://www.dir.ca.gov/dlsr/pwd/index.htm) Future effective wage rates will be on file with the Department of Industrial Relations. The new wage rates will become effective on the day following the expiration date of the current determinations, and will apply to the Contract in the same manner as if they had been included or referenced in the Contract.

§13.10.3 Per Labor Code §1815, Work performed by employees of Contractor or Subcontractors in excess of 8 hours per day, and 40 hours during any one week, must be compensated for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate.

### **§13.11 Required Signage and Posting**

§13.11.1 Compliance Posting

In accordance with 8 CA Code Reg §16451(d) the Contractor must post the following notice on the job site:

*This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.*

*The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to*

workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

Local Office Telephone Number: \_\_\_\_\_

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc.) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at [www.dir.ca.gov/dlse/PublicWorks.html](http://www.dir.ca.gov/dlse/PublicWorks.html)."

- §13.11.2 The Contractor may be required to post other information, including information related to: safety standards and instructions, location of safety data sheets, operating rules for industrial trucks, payday notices, no-smoking notices, emergency contacts, whistleblower protections, or other signs, forms, and information required by State or local law.

### **§13.12 Work Records**

As required by §1812 of the CA Labor Code, the Contractor must maintain an accurate written record of all employees working on the project each calendar day. The record must include each employee's name, Social Security number, job classification, and the actual number of hours worked.

### **§13.13 Apprentices**

Public works contracts valued at \$30,000 or more require the Contractor to comply with the provisions of §1775.5 of the California Labor Code relating to the employment of apprentices, and the assessment of penalties for noncompliance as determined by the California Labor Commissioner. This duty applies to all contractors and subcontractors on a project, even if their part of the project is less than \$30,000, unless the craft or trade does not require the use of apprentices, as indicated in the corresponding prevailing wage determination.

### **§13.14 Audit**

Pursuant to California Government Code §8546.7, a Contract that is more than \$10,000.00 is subject to examination and audit of the California State Auditor, at the request of CalOptima or as part of any audit of CalOptima for a period of three years after final payment. In addition to and notwithstanding any other right of access or inspection that may be otherwise set forth in this Contract, during the Contract term and for a period of three years after its termination, CalOptima will have access to and the right to examine any directly pertinent books, documents, invoices, and records of Contractor relating to

services provided under this Contract, and no provision of the Contract may be construed to shorten that time period.

### **§13.15 Contractor Behavior on Site**

§13.15.1 All workers of Contractor and its Subcontractors, while on CalOptima property, are to behave in a professional manner. The following activities are prohibited:

- .1 Abusive language;
- .2 Alcohol and drugs;
- .3 Smoking outside of designated smoking areas;
- .4 Loitering in any elevators or building lobbies;
- .5 Use of radios in areas within buildings or in outside areas at volumes in which tenants of buildings may hear them being played;
- .6 Use of floor sinks or drains, restroom sinks, or toilets for clean-up of tools, material, or equipment, or disposal of any material;
- .7 Use of CalOptima property or equipment, including telephones, dollies, trash bins, ladders, photocopiers, vacuums, etc., unless prior approval has been given by CalOptima.

§13.15.2 While on CalOptima property, all Contractor workers must be identified either by employee badges or uniforms with the company logo.

### **§13.16 Contractor Licensing Disclosures**

As It relates to the Work, Contractor shall include its license number in all (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as required by Business & Professions Code § 7040.5.

### **§13.17 Compliance with Applicable Laws**

Each party in performing its obligations under the Contract Documents shall comply with all applicable laws, including without limitation Labor Code §§ 1774 (prevailing wages), 1778 (no employee kickbacks), and 6401 (safe workplace practices and procedures); and PCC § 2204 (certification of no investment activities in Iran).

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§14.1 Termination by the Contractor**

§14.1.1 Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 CalOptima has not made payment on a timely and complete Certificate for Payment within the time stated in the Contract Documents.

§14.1.2 The Contractor may terminate the Contract if through no act or fault of the Contractor, a Subcontractor, or a Sub-subcontractor, there are repeated suspensions, delays, or interruptions of the entire Work by CalOptima, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 180 days in any 365-day period, whichever is less.

§14.1.3 If Contractor terminates as described above, CalOptima will pay for Work executed and costs incurred by reason of such termination.

#### **§14.2 Termination by CalOptima for Cause**

§14.2.1 In the event of material breach, or should the Contractor fail to perform in accordance with the terms of this Contract, CalOptima will send a notice to cure. If Contractor fails to cure the problems to CalOptima's satisfaction within the time specified in the notice, CalOptima may immediately terminate the Contract and seek recovery. The following acts of the Contractor constitute material breach that will give CalOptima the right to terminate the Contract:

- .1 Repeated refusal or failure to supply enough properly skilled workers or proper materials;
- .2 Failure to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers and California law;
- .3 Repeatedly disregarding applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 Failure to maintain required insurance;
- .5 Use of unauthorized Subcontractors on the Work; or
- .6 Other substantial breaches of a provision of the Contract Documents.

§14.2.2 If any of the above conditions exist, CalOptima may, without prejudice to any other rights or remedies of CalOptima, and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts; and



- .3 Finish the Work by whatever reasonable method CalOptima may deem expedient. Upon written request of the Contractor, CalOptima will furnish to the Contractor a detailed accounting of the costs incurred by CalOptima in finishing the Work.

§14.2.3 When CalOptima terminates the Contract for one of the reasons stated above, the Contractor will not be entitled to receive further payment until the Work is finished.

§14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by CalOptima and not expressly waived, such excess may be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor will be responsible for paying the difference to CalOptima and this obligation for payment will survive termination of the Contract.

### **§14.3 Suspension by CalOptima for Convenience**

§14.3.1 CalOptima may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as CalOptima may determine.

§14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by CalOptima's suspension, delay, or interruption. No adjustment need be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### **§14.4 Termination by CalOptima for Convenience**

§14.4.1 CalOptima may, at any time, terminate the Contract for CalOptima's convenience and without cause.

§14.4.2 Upon receipt of notice from CalOptima of such termination for CalOptima's convenience, the Contractor will

- .1 cease operations as directed by CalOptima in the notice;
- .2 take actions necessary, or that CalOptima may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§14.4.3 In case of such termination for CalOptima's convenience, CalOptima will pay the Contractor for Work properly executed including mobilization; supplies purchased and unreturnable; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; closeout costs; and work performed up to the time of termination notice; and the termination fee, if any, set forth in the Contract.

§14.4.4 Once CalOptima has made payment and the Contractor has accepted it, the Contract will be terminated without further obligation of the parties other than those specified as surviving contract closeout.

§14.4.5 Contractor's Deliverables under Early Termination

Before any settlement cost is paid, CalOptima must have received and accepted all deliverables, including documents and correspondence required as deliverables, whether in complete and final form or in draft or incomplete form. If Contractor possesses any property belonging to the County, contractor will return it to CalOptima or account for and dispose of it as directed by the County prior to the release of payment by CalOptima.

§14.4.6 Invoice and Payment Under Early Termination

Separate final invoices for project-related costs and for termination settlement costs must be submitted no later than 30 calendar days after the notification of termination. Contractor's acceptance of final payment releases CalOptima from all claims by Contractor for issues arising under the contract.

## ARTICLE 15 CLAIMS AND DISPUTES

### §15.1 Claims

§15.1.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between CalOptima and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims rests with the party making the Claim.

§15.1.2 Meet and Confer

- .1 If either Party has a dispute arising under or related to this Contract, it will inform the other Party in writing. Within thirty days of the written notice, the Parties will first meet informally to confer and try resolving the dispute.
- .2 At each meet-and-confer meeting, each Party must be represented by persons with final authority to settle the dispute. If either Party fails to meet within the thirty-day period, that Party will be deemed to have waived the meet-and-confer requirement, and at the other Party's option, the dispute may proceed.

§15.1.3 Claims by Contractor

- .1 Claims by Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work, are initiated by notice to CalOptima. Claims must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after Contractor first recognizes the condition giving rise to the claim, whichever is later.

- .2 The Contractor must furnish reasonable documentation to support any claim. Upon receipt of a claim pursuant to PCC § 9204, CalOptima will review the claim and, unless otherwise agreed, within 45 days, will provide the Contractor a written statement identifying any portion of the claim that CalOptima disputes and what portion is undisputed.
- .3 If Board approval is needed to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board does not meet within the 45 Days or within the mutually agreed to time following receipt of a claim, CalOptima will have up to 3 Days following the next duly publicly noticed meeting of the Board after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion

#### §15.1.4 Resolution of Claims

- .1 Claims by the Contractor for a time extension; relief from damages or penalties for delay; payment of money or damages arising from work done by, or on behalf of, the Contractor; and payment of an amount disputed by CalOptima will be governed by PCC § 9204.
- .2 If Board approval is needed to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, CalOptima will have up to three days following the next regular meeting of the Board after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- .3 Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after CalOptima issues its written statement.
- .4 If the Contractor disputes CalOptima's written response, or if CalOptima fails to respond to a claim issued pursuant to §9204 within the time prescribed, or to issue a written statement, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of such a demand, CalOptima will schedule a meet and confer conference within 30 Days for settlement of the dispute.
- .5 Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, CalOptima will provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after CalOptima issues its written statement.

#### §15.1.5 Mediation

- .1 Any disputed portion of a claim will be submitted to nonbinding mediation, with CalOptima and the Contractor sharing the associated costs equally. CalOptima and the Contractor will mutually agree to a mediator within ten business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party may select a mediator and those mediators will select a qualified neutral third party to mediate

with regard to the disputed portion of the claim. Each party will bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute will be subject to applicable procedures outside those established in PCC §9204.

- .2 Mediation must include any nonbinding process, including neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation must conform to the timeframes in §9204.
- .3 Unless otherwise agreed to by CalOptima and the Contractor in writing, the mediation conducted pursuant to §9204 will excuse any further obligation to mediate after litigation has been commenced

#### §15.1.6 Time Limits on Claims

CalOptima and Contractor must commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, not more than 10 years after the date of Substantial Completion of the Work.

#### §15.1.7 Continuing Contract Performance

- .1 Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and CalOptima shall continue to make payments in accordance with the Contract Documents.
- .2 The Contract Sum and Contract Time may be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### §15.1.8 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice must be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property.

#### §15.1.9 Claims for Additional Time

- .1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor's Claim must 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.
- .2 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.

#### §15.1.10 Waiver of Claims for Consequential Damages

The Contractor and CalOptima waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by CalOptima 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
- .2 damages incurred by the Contractor 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.

§15.1.11 Nothing contained in this Section is to be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. CalOptima is not required to file a Claim to impose liquidated damages in accordance with the Contract Documents.

## §15.2 Arbitration

§15.2.1 Subject to PCC §§ 9204 and 20104 and the California Government Claims Act (Cal. Gov. Code §900 *et seq.*) governing claims against public entities, with which Contractor shall comply regarding any dispute with CalOptima, the Parties may agree to submit the dispute for resolution through confidential arbitration, instead of through trial by court or jury, in Orange County, California. Prior to commencing the arbitration, the Parties will agree on the dispute resolution rules and arbitration service that will be used to resolve the dispute. Such rules may follow the provisions in PCC §10240 *et. seq.* If the Parties cannot reach such an agreement, the arbitration will be conducted by Judicial Arbitration and Mediation Services (“JAMS”) in accordance with the commercial dispute rules then in effect for JAMS; provided, however, that this Contract will control in instances where it conflicts with JAMS’s (or the applicable arbitration service’s) rules. The arbitration will be conducted on an expedited basis by a single arbitrator. The Parties prefer that the arbitrator be a retired judge of the California Superior, Appellate, or Supreme Court or of a United States court sitting in California. If no such retired judge is available, the arbitrator may be an attorney with at least 15 years of experience, including at least 5 years in construction law.

§15.2.2 If the Parties are unable to agree on the arbitrator within thirty days of the date that the arbitration service accepts the arbitration, the arbitrator will be selected by the arbitration service from a list of four potential arbitrators submitted by the Parties, two from each side, selected from the certified list created by the California Public Works Contract Arbitration Committee; provided, however, that nothing stated in this section will prevent a Party from disqualifying an arbitrator based on a conflict of interest. In making decisions about discovery and case management, it is the Parties’ express agreement and intent that the arbitrator at all times promote efficiency without denying either Party the ability to present relevant evidence. In reaching and issuing decisions, the arbitrator will have no jurisdiction to make errors of law and/or legal reasoning. The Parties will share the costs of arbitration equally, and each Party will bear its own attorneys’ fees and costs.

§15.2.3 Should the parties not choose to enter arbitration, or if attempts at resolving the issue are unsuccessful, either party may commence further legal action.

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS