



REQUEST FOR PROPOSALS AND QUALIFICATIONS:

**ARCHITECT, DESIGNER, GENERAL CONTRACTOR,
AND CONSTRUCTION MANAGEMENT SERVICES FOR
TENANT IMPROVEMENT BUILD-OUT OF OFFICESPACE**

Issue Date: July 19, 2018

DUE DATE: AUGUST 28, 2018 @ 4pm

*In order to be considered, proposals must be signed and returned via email
to oleon@wested.org*

*Hard copies may be mailed to the WestEd Procurement Department at 4665
Lampson Ave., Los Alamitos, CA 90720*

**Proposal responses will be considered valid for a period of 120 calendar
days after the proposal due date.**



PROPOSAL FOR DESIGN/BUILD SERVICES

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I. INTRODUCTION

WestEd is soliciting proposals from qualified Design-Build firms to partner with WestEd's Property and Facilities Management Department to provide architecture, interior design, and construction management for an upcoming project in Sacramento, CA. In addition, firms will provide engineering for all mechanical, electrical, and plumbing (MEP) systems. The firm would serve as the Construction Manager at Risk for this project, as defined in the model agreement in Exhibit "A" of the RFP.

The location of the project site is 1000 G Street 5th Floor Sacramento, California. The project ("Project") involves improvements to approximately 1,500 square feet within a leased general office space consisting of 17,900 square feet. The scope of work will include demolition of existing rooms and building approximately 5 private offices and 3 cubicles, 1 copier "closet", and a meeting room suitable for up to 15 people. Construction will need to occur alongside regular operations within the office and be done in a way to minimize the impact of this work on WestEd's Sacramento staff. Construction will need to conclude no later than November 30, 2018. The preliminary estimated total budget for this Project is \$179,000 inclusive of soft costs.

WestEd wants to know the firms' experiences with similar projects, its approach to fulfilling the requirements of the Project, and the experience of key personnel who will be assigned to the Project. WestEd is also interested in learning the firms' fee(s) for the Project, including the cost of preconstruction, design services, and the Proposer's fee basis for construction management, including general conditions, profit, and overhead. WestEd also wants to know the Proposer's bonding capacity and any related costs which will be charged to WestEd.

II. BACKGROUND

WestEd is a not-for-profit research, development, and service agency that works with education and other communities to promote excellence, achieve equity, and improve learning for children, youth, and adults. WestEd has over 640 employees, located in 13 offices across the United States, and had revenue in excess of \$160 million for Fiscal Year 2017.

WestEd is a Joint Powers Agency ("JPA") formed under the California Joint Exercise of Powers Act, California Government Code section 6500 et seq. and governed by public entities in Arizona, California, Nevada, and Utah. WestEd's Board of Directors is comprised of members representing agencies from these states, as well as other national education and business leaders. WestEd's income is tax exempt under Section 115 (1) of the Internal Revenue Code.



WestEd complies with the required federal regulations on procurement, as well as applicable State procurement law and procedures.

Efforts, including affirmative steps prescribed by federal regulation (if applicable), will be made by WestEd to utilize small and minority-owned businesses, women's business enterprises and labor surplus area firms when possible. If the resulting contract is being funded by federal funds, the selected Firm may be required to undertake affirmative steps to utilize such Firms in subcontracts if this contract is federally funded. A Firm qualifies as a small business Firm if it meets the definition of "small business" as established by the Small Business Administration (13 CFR 121.201, Subsector 238) by having average annual receipts for the last three fiscal years not exceeding 15 million dollars.

III. WESTED CONTACT

All communications, including any requests for clarification, concerning this RFP should be addressed in writing to the following:

Oscar Leon
Procurement Manager
oleon@wested.org

IV.SOLICITATION FORM

FAILURE TO SIGN THIS PAGE WILL DISQUALIFY YOUR RESPONSE

If awarded, the undersigned offers and agrees to furnish the services described in this Request for Proposal at the prices and terms stated, subject to mutually agreed upon terms and conditions. The undersigned warrants and represents their authority to bind the Firm into an agreement subject to the terms and conditions of this Request for Proposal.

Company Name:

Street Address:

City, State Zip:

Email:

Telephone:

| | |
|--|--------------|
| By (Authorized Signature) | Date Signed: |
| Print name and title of Authorized Signatory | |
| | |

ALL SPECIFICATIONS, TERMS, AND CONDITIONS OF THIS PROPOSAL WILL BE INCORPORATED INTO ANY RESULTING AGREEMENT.

V. SOLICITATION KEY DATES AND TIMELINE

(Dates are subject to change at any time in WestEd's sole discretion)

| RFP Activity | Dates |
|------------------------------|---------------------------|
| RFP Released, Posted online | July 19, 2018 |
| Questions Due by bidders | August 14, 2018 |
| Response to Questions Posted | August 21, 2018 |
| Proposal Due Date | August 28, 2018 |
| Interviews | September 2018 |
| Award Notice | TBD |
| Protest Period | 5 days after Award Notice |
| Contract Negotiation | TBD |
| Start of contract | Estimate October 2018 |

VI. SCOPE OF WORK

A. Preconstruction Phase and Design Services

Contribute to the design development process in the following ways:

- Schedule and manage pre-construction meetings including taking minutes to be reviewed by all Project team participants.
- Interview key stakeholders related to the goals of the Project.
- Tour office to take an inventory of existing finishes and as-built conditions. Assist with verification of site conditions. Advise on any issues or constraints related to the Project site and inform design development with ongoing feasibility analysis.
- Provide floor plans in accordance to requirements collected from stakeholders and as-built conditions.
- Value-engineering: Propose changes that cut costs while maintaining or enhancing design intent and quality, value, and functional performance of improvements. Assist in the development and implementation of value engineering ideas.
- Budget and Schedule Development: Provide opinions of budget and schedule throughout the design process ensuring that Project team is informed of the status of all Project constraints.
- Develop trade specific bid packages for review by WestEd prior to bid phase and cost estimates.
- Complete a cost estimate of the Project ahead of Bid Phase.
- Develop a draft construction schedule.

B. Bid Phase

All bidding, selection and procurement of all subcontractors and vendors and activities involved in completing the Project will be managed directly by Firm with input by WestEd's Project representatives to ensure that these activities meet WestEd's procurement requirements. Firm may self-perform individual categories of work for any professional services (including MEP design and construction) or design build services only if it identifies that it intends to self-perform such work in its proposal and provides a firm guaranteed maximum price for the work at the time the contract is awarded. All other trades and subcontracts awarded by the Firm must be competitively solicited and procured pursuant to the Construction Agreement and General Conditions, including, but not limited to the bidding requirements set forth in Article 3.23 of the General Conditions. Bid phase will need to include:

- Development of subcontractor bidding process and documents for WestEd Project

representatives in accordance with bidding requirements set forth in Article 3.23 of the General Conditions, which must be in accordance with Public Contract Code 10503.

- Formal competitive bidding with postings in two periodicals and/or websites and awarding of contracts based on best value for eligible professionals and lowest responsive and responsible bidder, in accordance with applicable statute, WestEd Policy, and Article 3.23 of the General Conditions. When formal bidding is not required, Contractor will solicit and compare at least three (3) subcontractor bids for each subcontract
- Pre-bid conferences and job walks
- Management of pre-bid information requests and preparation of pre-bid addenda, as necessary.
- Procedures for comparing and evaluating proposals and post-bid due diligence.

C. Construction Drawings Phase

WestEd will need Firm to produce construction drawings and acquire associated permits. Firm can either self-perform or subcontract MEP design engineering services and permits. All subcontracted design and engineering services will need to be procured per the requirements listed above in subsection B.

D. Construction Project Management Phase

Firm will provide project management services on behalf of and alongside WestEd's project representatives. The services that are expected to be provided by Contractor include but are not necessarily limited to:

- Facilitate and lead all construction meetings (which will occur on at least a weekly basis), produce and circulate minutes and follow-up on tasks assigned to Project team members during the meeting.
- Establish procedures to identify any changes in Project status or scope that may have a direct impact on time or cost.
- Advise WestEd's project representatives on prioritization of critical issues that need resolution.
- Administer, coordinate and enforce the performance of subcontractors.
- Administer and manage all construction activities undertaken by subcontractors necessary to ensure completion and closeout of the Project.
- Monitor and document schedule and cost information for each subcontractor.
- Proactively report schedule and cost impacts and provide recommended solutions to ensure completion on-time and within budget.
- Document and facilitate work flow between design and building activities, subcontractors, WestEd and project inspectors (i.e., RFIs, submittals, non-

compliance notices, etc.)

- Evaluate, verify, and process subcontractor payment applications and/or change order requests.
- Administer and manage project safety as required by Cal OSHA, OSHA, and WestEd requirements, including WestEd's insurance company's requirements.
- Provide monthly project reports with progress photo documentation.

E. Post Construction Phase.

- Ensure completion of all punch-list work in a timely manner.
- Coordinate all contractor close out requirements, including warranties, systems training, keys, manuals, as-built drawings, and verified reports.
- Establish procedures to obtain and monitor warranty work.
- Facilitate and assist WestEd in finalization of all costs and any contractor change orders.
- Provide as-built drawings including architectural, finish schedule and all MEP systems.

[This area is intentionally left blank.]

VII. PROPOSAL OUTLINE

In order to simplify the review process and to obtain the maximum degree of comparability, the proposals should include the following items and be organized in the manner specified below.

1. Letter of Transmittal

A letter of transmittal briefly outlining the Firm's understanding of the work and general information regarding the Firm and individuals to be involved is limited to a maximum of two pages. The letter should clearly identify the local address of the office of the Firm performing the work, the telephone number, and the name of the authorized representative. The letter shall include a clear statement from the Firm that this offer is binding and shall remain open for 120 days from the due date of this RFP and acknowledges that the proposal cannot be withdrawn within that time without the written consent of WestEd.

2. Table of Contents

Include a table of contents that identifies the material by section, page number, and a reference to the information to be contained in the proposal.

3. Solicitation Form

The completed Solicitation Form included in this RFP shall be included here.

4. Profile of Firm Proposing

- a. Provide a brief description of the Firm, its size and the locations of its offices. State whether the Firm is a qualified small or minority-owned business, women business enterprise or labor surplus area Firm and, if certified as such by the State of California or United States Government, indicate which department or agency has so certified the Firm.
- b. State the Firm's entity type (i.e. sole proprietorship, corporation, etc.) and state of incorporation or organization, if applicable.
- c. State whether the Firm is in compliance with the applicable registration, licensure, and permit requirements to do business in California and the applicable county and/or city.
- d. Describe the local office from which the work is to be performed.
 - i. Location of office.
 - ii. Current size of the office.
 - iii. The size of professional staff by level who would be working on this project, such as partner, manager and supervisor, senior, and other professional staff.
 - iv. The credentials and qualifications of key professional staff who will be involved on this Project.

5. Minimum Qualifications (please describe compliance with below)
 - a. Five (5) or more years of experience performing architecture, design and general contractor or construction management services, with a preference for experience performing public works projects.
 - b. Managed at least three (3) previous projects utilizing Design-Build project delivery method.
 - c. Acceptance of the General Conditions in WestEd's standard Construction Agreement, except those conditions that Contractor notes exception to under Section 14 below.

6. Construction Management and Risk Experience
 - a. Provide the name, title, including a detailed description of the role and job responsibilities related to all personnel assigned to the Project, including construction experience, years with the Firm and a list of relevant projects completed. Indicate who will serve as the primary contact for WestEd.
 - b. Provide the details related to any relevant projects especially public works projects and/or projects completed in the City of Sacramento including scope of work and contract sum.
 - c. Provide a list of any projects within the last three years on which the Firm was Architect, Designer, General Contractor, Construction Manager, and/or Project Manager and was terminated, held in default, or failed to complete the work. Include the name of the project(s), timeframe of the project and circumstances surrounding the termination or default.
 - d. Provide information regarding any recent, demand for payment, claims, notice of termination, informal or formal legal actions or proceedings, arbitration, or settlement involving the Contractor that occurred within the last five years.

7. Quality control
 - a. Describe the Firm's policy on notification of changes in key personnel.
 - b. Briefly describe the Firm's system of quality control to ensure the work meets a high-quality standard.
 - c. Provide a description of how the Firm's expertise, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.

8. Bonding Capacity

Provide the Firm's bonding capacity from a surety company licensed to do business in California and the cost of payment and performance bonds equal to 100% of the estimated cost of construction.

9. References
 - a. Include five (5) client references for work that is comparable to the scope of this Project.

- b. Provide a minimum of three (3) credit references.

10. Project Specific Experience

Provide a description of the three most relevant design/construction management contracts held by the Firm within the last five years, one page per project, to include:

- a. Role of the Firm
- b. Dollar value of the project
- c. Dollar value of the Contractor fee
- d. Architect of Record
- e. Project description
- f. Staffing
- g. Duration of project
- h. Relationship to client
- i. Client contact information: name, position, entity name, telephone number, and email address for each project

11. Scope of Services and Proposed Project Schedule

Describe the Firm's understanding of the scope of services to be provided. Provide a description of how the Firm will approach this work including how the Firm will manage the MEP design process, subcontractor bidding and procurement and the overall project management, including budget and schedule.

12. Fees and Compensation

- a. Provide a fixed fee proposal for preconstruction services.
- b. Provide all information related to the basis for compensation and other management costs pertaining to the Design-Build services set forth herein, including:
 - i. Design
 - ii. General Conditions (If Contractor proposes charging for general conditions, describe the types of services included and their associated costs)
 - iii. Overhead
 - iv. Bonding
 - v. Insurance
 - vi. Profit, including any mark-up or fee to be added to subcontractor bids.
- c. In addition, provide the following information as relevant to the fee proposal:
 - i. The hourly rate of staff to be assigned to this project, by staff classification.
 - ii. Estimates of out-of-pocket expenses.
 - iii. The frequency and timing of the Firm's billing process.

If the fee is proposed under a different methodology (e.g., a fixed price for all services) please provide a basis for the proposed fee.

13. Fiscal Stability

Provide evidence of corporate stability, including:

- a. A current report from any commercial credit rating service, such as Dunn and Bradstreet or Experian; or
- b. A letter from a financial institution stating a current line of credit; and
- c. Latest audited financial statement and/or annual report that has been certified by a CPA. This information will remain confidential and is not subject to public disclosure.

14. Exceptions to Contract Requirements

WestEd's standard Construction Agreement and General Conditions are based on those used by the University of California and drafts are attached as Exhibit "A" and incorporated herein by reference. Any exceptions to the requirements of Agreement or General Conditions shall be noted in the proposal. The Firm should pay particular attention to the insurance and indemnification requirements set forth therein, as well as the subcontractor solicitation and bidding requirements. WestEd shall have no obligation to accept any exceptions and may reject any proposal noting exceptions to its contract requirements.

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VIII. PROPOSAL SUBMISSION AND SELECTION PROCESS

WestEd will choose a qualified Firm meeting the minimum standards set forth herein based on a best value process. By use of numerical and narrative scoring techniques, proposals will be evaluated by WestEd against the factors specified below. The relative weights of the criteria—based on a 100-point scale—are shown below.

| Criteria | Points |
|---|-----------|
| 1. Firm’s depth and relevance of experience related to the Project including qualifications, experience, references, and ability to carry out the described scope of work | 25 points |
| 2. Firm’s approach to the Project including its approach to accomplishing Project goals. | 20 points |
| 3. Fees, rates and costs | 15 points |
| 4. Firm’s overall capability, stability and resources | 10 points |
| 5. Qualification and experience of the team assigned to the project. | 10 points |
| 6. References | 10 points |
| 7. Completeness of proposal and adherence to RFP instructions. | 5 points |
| 8. Qualified small or minority-owned Firm, women business enterprise or labor surplus area Firm. | 5 points |

IX. REVIEW PROCESS

WestEd may, at its discretion, request interviews/presentations by or a meeting with any or all Firms, to clarify or negotiate modifications to the Firm’s proposal. However, WestEd reserves the right to make an award without further discussion of the proposals submitted. Therefore, proposals should be submitted initially on the most favorable terms, from both technical and price standpoints, that the Firm can propose. WestEd contemplates award of the contract to the responsive, responsible Firm whose proposal is the most advantageous to WestEd, based on the highest total points and its decision is final.

It is WestEd's policy to utilize, whenever possible, small businesses, small business disadvantaged business concerns, veteran-owned small businesses, minority-owned Firms, and/or woman-owned business enterprises. Therefore, Firms that meet these criteria will be given preference, should they meet all other stated criteria in the RFP.

X. NOTICE TO FIRM(S)

All materials provided to WestEd become the property of WestEd and may be returned only at WestEd's sole discretion. WestEd is a public entity. All proposals and any materials submitted with a proposal may be deemed public records subject to disclosure pursuant to the California Public Records Act. No portion of any proposal or materials submitted therewith will be withheld from disclosure as proprietary, trade secret or confidential unless that portion is clearly marked by the Firm as such, and the Firm agrees to indemnify WestEd against any claim or action to compel disclosure of such portion of the proposal. WestEd is not obligated to accept any proposal or to negotiate with any entity. All transactions are subject to the final approval of WestEd, which reserves the right to reject any and all proposals without liability. All costs directly or indirectly related to a response to this RFP will be borne by the Firm.

The contract, if any, shall be awarded to the Contractor whose proposal is most advantageous and presents the best value to WestEd, based on the evaluation criteria set forth in this RFP. WestEd may at its sole discretion select the response that best fits its needs, may choose to cancel the RFP, or to not select any offeror. A selection committee will evaluate the responses based on established criteria including compliance with the direction herein, experience and qualifications, cost, financial position of the Contractor, and other factors as stated in this RFP. If selected, the successful Contractor will enter into a written agreement with WestEd that will include service agreements and compensation agreements.

Awards may also be made to the subsequent responsible bidders who will be considered the Back-up Contractors, and who will be called in ascending order, based upon their ranking by best value, if after WestEd issues a Notice of Award, WestEd and the selected Contractor do not subsequently execute an agreement.

All information in this RFP should, for purposes of this RFP, be considered proprietary and confidential. Information contained in this RFP should not be shared or distributed without the expressed written consent of WestEd.

XI. REJECTION OF PROPOSAL(S)

WestEd reserves the right, in its sole discretion, to reject any or all proposals, in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. The proposal may be rejected if it fails

to meet a material requirement of the RFP, or if it is incomplete or contains irregularities. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

A deviation from the RFP requirements may cause a bid to be rejected. WestEd may or may not waive an immaterial deviation or defect in a proposal. WestEd's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined to be not competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in WestEd's opinion the information was intended to mislead WestEd regarding a requirement of the RFP.

WestEd may reject a proposal from a Firm it finds non-responsible or non-responsive. Any person or entity that has substantially assisted WestEd in preparing any part of this RFP is prohibited from submitting a proposal. Submission of a proposal to WestEd shall constitute the Contractor's certification that the proposal is not collusive.

XII. USE OF SEPARATE CONSULTANTS/CONTRACTORS & SUBCONSULTANTS FOR PORTIONS OF SERVICES

WestEd reserves the right to award all or only a portion of the work/scope of services that is the subject of this RFP to the successful proposer. This includes the right to award one or more portions of the services to a separate contractor if WestEd deems such award to be most advantageous to WestEd in its sole discretion. WestEd further reserves the right to review, approve, and/or reject any proposed subconsultants and/or subcontractors proposed by any proposer if deemed to be in the best interest of WestEd. Proposers acknowledge that if WestEd elects to award any such separate or independent contract the successful proposer shall coordinate its work with such separate contractors as directed by WestEd.

XIII. COMPLIANCE WITH LAWS

Any offeror must affirmatively agree and certify that it will comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated thereunder (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Any Contractor must affirmatively agree to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

XIV. WRITTEN QUESTIONS AND ADDENDA

Written questions or comments regarding this RFP must be in writing and received no later than 4 p.m. on August 14, 2018. Questions should be emailed to the Procurement Manager, Oscar Leon at oleon@wested.org. All questions will be responded to via email. Contractor(s) invited to submit a proposal understand and agree that they have an affirmative duty to inquire and seek clarification regarding anything in this RFP that is unclear or open to more than one interpretation.

WestEd, at its sole discretion, may make questions submitted by offerors and responses to the submitted questions available to all offerors.

WestEd reserves the right in its sole discretion to revise or amend this RFP prior to the stated submittal deadline. Any such revisions will be made by written addenda to this RFP. Contractors are responsible for verifying they have received, and all proposals shall acknowledge receipt of, all addenda issued by WestEd relating to this RFP. Failure to acknowledge receipt of all such addenda may render a proposal nonresponsive.

XV. SUBMISSION INSTRUCTIONS

Proposal submissions must be received no later than 4:00 PM Pacific time on August 28, 2018. Any response received after this date may be returned or not considered. Responses should be submitted electronically to the Procurement Manager at oleon@wested.org. If Firms wish to also submit a hard copy of the proposal, it needs to be postmarked no later than the due date and mailed to:

WestEd
4665 Lampson Ave.
Los Alamitos, CA 90720
Attn: Oscar Leon

Submission of a proposal shall constitute the Firm's representation that it:

- Has thoroughly examined and become familiar with the scope of work set forth in this RFP;
- Understands the requirements of the scope of work, the nature of the work and all other matters that may affect the work;
- Will honor its proposal for no less than 120 days after the submission date stated in this RFP (or until execution of a final contract with the selected Firm, if sooner), and acknowledges that its proposal cannot be withdrawn within that time without the written consent of WestEd;
- Will comply with all requirements set forth in this RFP, and in the ensuing contract, if any.

XVI. PROTESTS

Following the selection of the apparent successful Firm, WestEd shall notify all Firms of its intent to award a contract to such Firm. Any protest to the award of the contract to the apparent successful Firm shall be submitted to WestEd in writing within no less than five (5) calendar days from the date of such notice. Any protest shall state with specificity the ground on which the protestor alleges the contract may not be awarded to the apparent successful Firm. WestEd shall consider any properly submitted protest and may accept or reject such protest as it determines appropriate in its sole discretion.

XVII. GENERAL PROVISIONS

- A. Amendments to RFP. WestEd reserves the right to amend the RFP or issue to all Respondents a Notice of Amendment to answer questions for clarification.
- B. No Commitment to Award. Issuance of this RFP and receipt of proposals does not commit WestEd to award a contract. WestEd expressly reserves the right to postpone the RFP process for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Respondent concurrently, or to cancel all or part of this RFP.
- C. Amendments to Proposals. No amendment, addendum or modification will be accepted after the deadline stated herein for receiving Proposals. Respondent may modify or amend its Proposal only if WestEd receives the amendment prior to the deadline stated herein for receiving Proposals.
- D. Non-Responsive Proposals. A Proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the Proposal.
- E. Late Proposals. WestEd will not be responsible for Proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for or acknowledged by WestEd.
- F. Costs for Preparing. WestEd will not compensate any Respondent for the cost of preparing any Proposal, and all materials submitted with a Proposal shall become the property of WestEd. WestEd will retain all Proposals submitted and may use any idea in a Proposal regardless of whether that Proposal is selected.
- G. Alternative Proposals. Only one final proposal is to be submitted by each Firm. Multiple proposals will result in rejection of all proposals submitted by the Respondent.
- H. Public Documents. All Proposals and all evaluation and/or scoring sheets shall be available for public inspection at the conclusion of the selection process.

Exhibit “A” Construction Agreement and General Conditions

AGREEMENT

THIS AGREEMENT is made as of the { } day of { }, 20{ },
between

WESTED (“WestEd”),

whose Facility is: {Facility Name}

whose address for notices is: {Department}
WestEd
{Street Address}
{City, State, Zip}

and Design Builder: {Name}

whose address for notices is: {Street Address}
{City, State, Zip}

for the Project: {Project Name}
{Facility, County}
{City, State, Zip}

WestEd’s Responsible Administrator: {Name & Title }

WestEd’s Representative is: {Name & Title}

whose address for notices is: {Street Address}
{Street Address}
{City, State, Zip}

Contract Documents for the Work
Prepared by: {Name}
{Street Address}
{City, State, Zip}

WestEd and Design Builder hereby agree as follows:

ARTICLE 1 WORK

Design Builder shall provide all work required by the Contract Documents (the “Work”). Design Builder agrees to do additional Work arising from changes ordered by WestEd pursuant to Article 7 of the General Conditions. Design Builder shall (1) pay all sales, consumer and other taxes and (2) obtain and pay for any governmental licenses and permits necessary for the work, other than building and utility permits.

ARTICLE 2 CONTRACT DOCUMENTS

“Contract Documents” means the Advertisement For Bids, Instructions To Bidders, Supplementary Instructions to Bidders, Bid Form, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion, and all other documents identified in this Agreement that together form the contract between WestEd and Design Builder for the Work (the “Contract”). The Contract constitutes the complete agreement between WestEd and Design Builder and supersedes any previous agreements or understandings.

ARTICLE 3 CONTRACT SUM

Subject to the provisions of the Contract Documents WestEd shall pay to Design Builder, for the performance of the Work, **{ \$AMOUNT IN FIGURES }**, the “Contract Sum”.

Unit Prices, if any, are as follows:

{ LIST ITEMS AND UNIT PRICES }

The Contract Sum will be increased by an amount equal to the Unit Price multiplied by the actual number of units of each Unit Price item incorporated in the Work.

ARTICLE 4 CONTRACT TIME

Design Builder shall commence the Work on the date specified in the Notice to Proceed and fully complete the work within **{ NUMBER }** days, the “Contract Time”.

By signing this agreement, Design Builder represents to WestEd that the Contract Time is reasonable for completion of the work and that Design Builder will complete the Work within the Contract Time. Time limits stated in the Contract Documents are of the essence of the Contract.

ARTICLE 5 LIQUIDATED DAMAGES

If Design Builder fails to complete the Work within the Contract Time, Design Builder shall pay to WestEd, as liquidated damages and not as a penalty, the sum of **{ \$AMOUNT IN FIGURES }** for each day after the expiration of the Contract Time that the Work remains incomplete. After Substantial Completion, the rate for liquidated damages shall be reduced to the sum of **{ \$AMOUNT IN FIGURES }** per day. WestEd and Design Builder agree that if the Work is not completed within the Contract Time, WestEd's damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of any reasonable sums for such damages. WestEd may deduct any liquidated damages due from Design Builder from any amounts otherwise due to Design Builder under the Contract Documents. This provision shall not limit any right or remedy of WestEd in the event of any other default of Design Builder other than failing to complete the Work within the Contract Time.

ARTICLE 6 COMPENSABLE DELAY

If Design Builder is entitled to an increase in the Contract Sum as a result of a Compensable Delay, determined pursuant to Articles 7 and 8 of the General Conditions, the Contract Sum will be increased by the sum of **{ \$AMOUNT IN FIGURES }** per day for each day for which such compensation is payable.

ARTICLE 7 DUE AUTHORIZATION

The person or persons signing this Agreement on behalf of Design Builder hereby represent and warrant to WestEd that this Agreement is duly authorized, signed, and delivered by Design Builder.

ARTICLE 8 DESIGN BUILDER'S COVENANTS AND REPRESENTATIONS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Design Builder makes the following covenants and representations to WestEd:

8.1 Design Builder and all of its Design Professionals and subcontractors are properly certificated, licensed and qualified to perform the Work required by the Contract Documents.

8.2 Design Builder accepts the relationship of trust and confidence with WestEd established by the Contract Documents. Design Builder will cooperate with WestEd.

8.3 Design Builder and its Design Professionals have carefully examined the site of the Project and the adjacent areas, have suitably investigated the nature and location of the Construction Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to

site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Construction Work.

8.4 Design Builder and its Design Professionals have suitably reviewed the site survey, record documents, seismic data, preliminary geotechnical and other test reports, environmental documents and any other documentation furnished by WestEd in the Exhibits.

8.5 Design Builder and its Design Professionals have carefully reviewed the following exhibits to the Design Build Contract : (1) Scope of Work (including Applicable Codes, Rules and Regulations, Energy Requirements, etc.); (2) the Performance Specifications; (3) Project Program; and (4) Schematic Drawings. Design Builder acknowledges that these Exhibits establish the scope, level of quality, design intent and the procedures for the development of the design to a state of 100% completion.

Design Builder agrees that (1) the Exhibits depict and describe a design for the Project which is partially complete and may vary in degree of completion from 5% to 95% depending on the particular Project; (2) it will manage, coordinate and fully complete the design; (3) Design Builder will cause its Design Professionals to describe and depict the final design for the Project, as approved by WestEd, in Construction Documents which will include all information required by the building trades to complete the construction (other than such details customarily developed by others during construction) and (4) it will manage and timely construct the Project in consideration for WestEd's payment of the Contract Sum.

8.6 Design Builder and its Design Professionals have reviewed the Preliminary Schedule attached to the Request for Proposals and agree that the design and construction tasks and milestones are reasonable and feasible, except as modified by Design Builder's Proposed Contract Schedule, approved by WestEd. Design Builder also agrees that time is of the essence for the performance of the Work.

8.7 Design Builder agrees that all Construction Documents will be complete, coordinated, and accurate.

8.8 Design Builder agrees that all materials, equipment and furnishings incorporated into or used in the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by WestEd, Design Builder will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.

8.9 Design Builder agrees that the Work will be of good quality, free of defects and will conform with the requirements of the Contract Documents. Work not conforming to

the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by WestEd in advance, may be considered defective.

8.10 Design Builder agrees to correct any error(s), omission(s), or deficiencies in the Contract Documents or Construction Documents at no additional cost to WestEd; however, this provision in no way limits the liability of Design Builder.



THIS AGREEMENT is entered into by WestEd and Design Builder as of the date set forth above.

CONTRACTOR:

WESTED:

(Name of Firm)

By: (Signature)

A (Type of Organization)

(Printed Name)

By: (Signature)

(Title)

(Printed Name)

(Title)

California Contractor's License(s):

(Name of Licensee)

(Classification and License Number)

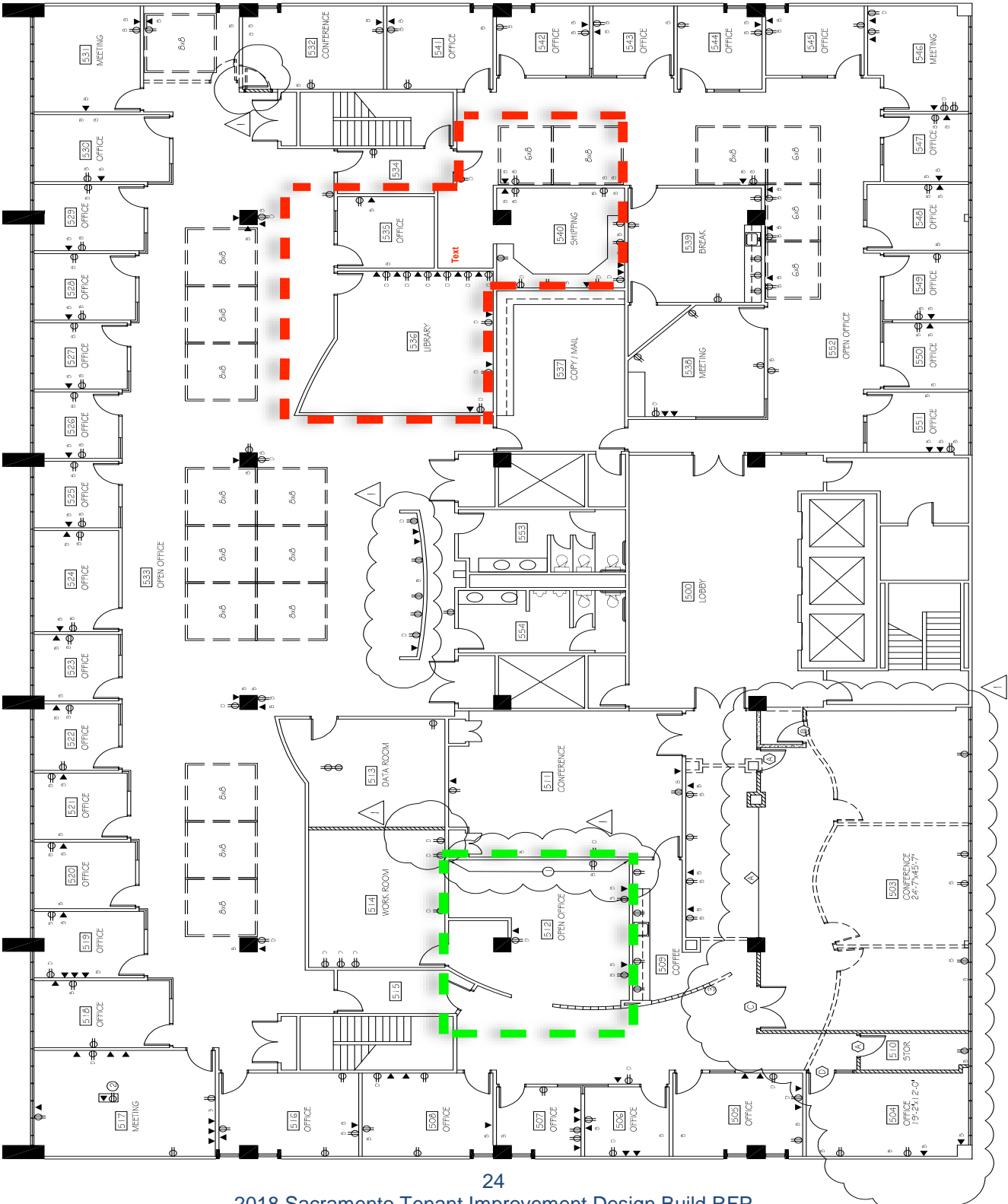
(Expiration Date)

(Employer Identification Number)

Attach notary acknowledgement for all signatures of Design Builder. If signed by other than the sole proprietor, a general partner, or corporate officer, attach original notarized Power of Attorney or Corporate Resolution.

Exhibit "B" Floor Plan

In the image below, the red area shows location of demolition and build area for 5 offices and 3 cubicles. The green area shows the location of the build area for the copier room and the meeting room.



DESIGN-BUILD GENERAL CONDITIONS

ARTICLE 1 - GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

- .1 "Architect of Record" means the Design Professional identified in the Supplementary Conditions that is licensed in the State of California and employed or commissioned by the Design Builder to prepare design documents and construction documents.
- .2 "Contract" shall have the meaning identified in Article 2 of the Agreement.
- .3 "Contract Documents" means all documents listed in Article 2 of the Agreement, as modified by Change Order, including but not limited to the Drawings and Specifications.
- .4 "Construction Documents" means the plans and specifications prepared by the Design Builder for the Project, approved by WestEd. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by WestEd in writing.
- .5 "Day," as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.
- .6 "Project" means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include construction by WestEd or by Separate Contractors.
- .7 "Project Site" or "Site" or "site" means lands and facilities upon which the Work pertaining to physical construction operations is performed, including such access and other lands and facilities designated in the Contract Documents for use by Design Builder.
- .8 "Separate Contractor" means a person or firm under separate contract with WestEd performing other work related to the Project.
- .9 "Subcontractor" means a person or firm that has a contract with Design Builder or with a Subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
- .10 "WestEd's Building Official," or "Certified Building Official," means the individual WestEd has designated to act in the capacity as the "Building Official" as defined by the California Building Standards Code. WestEd's Building Official will determine whether the Work complies with Applicable Code Requirements and will determine whether and when it is appropriate to issue a Certificate of Occupancy.
- .11 "WestEd's Representative" means the person identified as such in the Agreement.
- .12 "WestEd's Responsible Administrator" means the person, or his or her authorized designee, who is authorized to sign the Agreement and other applicable Contract Documents on behalf of WestEd.
- .13 "Work" means all construction, services and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Design Builder to fulfill Design Builder's obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2 - WESTED

2.1 WESTED'S RIGHT TO STOP THE WORK

2.1.1 If Design Builder fails to correct Defective Work as required by Article 12.2 or fails to perform the Work in accordance with the Contract Documents, WestEd or WestEd's Representative may direct Design Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Design Builder.

2.2 WESTED'S RIGHT TO CARRY OUT THE WORK

2.2.1 If Design Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from WestEd, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as WestEd may specify, to correct such failure, WestEd may, without prejudice to other remedies WestEd may have, correct such failure at Design Builder's expense.

ARTICLE 3 – DESIGN BUILDER

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN BUILDER; SINGLE POINT RESPONSIBILITY OF DESIGN BUILDER

3.1.1 In addition to the examination and reviews performed, and obligations assumed, incidental to making the representations set forth in Article 10 of the Agreement, Design Builder shall carefully study and compare each of the Contract Documents with the others and with information furnished by WestEd, and shall promptly report in writing to WestEd's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Design Builder.

3.1.2 Design Builder is responsible for the design and construction of the Project and shall provide all services pursuant to this Contract in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode). The Design Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Design Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to WestEd's Representative.

3.1.3 If Design Builder performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of WestEd's Representative, Design Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.1.4 WestEd does not assume any obligation to employ the Design Builder's services or pay Design Builder royalties of any type as to future programs that may result from the Work performed under this Contract.

3.1.5 Design Builder shall be responsible for all plotting, printing, copying and distribution cost of any and all documents required in connection with the Work.

3.1.6 Design Builder agrees that it has single point responsibility for the design and construction of this Project.

3.1.3 If Design Builder performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2, without notifying and obtaining the written consent of WestEd's Representative, Design Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.2 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Design Builder shall supervise, coordinate, and direct the Work using Design Builder's best skill and attention. Design Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, including, but without limitation, landscape and site work, utilities, and building systems.

3.2.2 Design Builder shall be responsible to WestEd for acts and omissions of Design Builder's agents, employees, and Subcontractors, and their respective agents and employees.

3.2.3 Design Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of WestEd or WestEd's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than Design Builder.

3.2.4 Design Builder shall be responsible for inspection of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

3.2.5 To facilitate communications and the management of the design process, the Design Builder shall establish and maintain a local office for the duration of the design process.

3.2.6 The Design Builder is not required to produce the entire Construction Documents package in the local office; however, the Design Builder shall provide the appropriate management and design staff in the local office to provide WestEd with the current status of, and the capability to properly update, the design documents.

3.2.7 The Design Builder is required to deliver to WestEd, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

3.2.8 Design Builder shall at all times participate in, and implement, the CEQA mitigation process and ensure performance as required in the Contract Documents.

3.2.9 Design Builder is responsible for preparation of the Construction Documents for the entire Project.

3.2.10 Design Builder is responsible for construction of the entire Project as required by the Contract Documents.

3.2.11 Design Builder shall at all times maintain good discipline and order among its employees and subcontractors. Design Builder shall provide competent, fully qualified personnel to perform the Work.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract, Design Builder shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Final Completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4 DESIGN BUILDER'S WARRANTY

3.4.1 Design Builder warrants to WestEd that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by WestEd's Representative, Design Builder shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of WestEd's Representative. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

3.5 TAXES

3.5.1 Design Builder shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by Design Builder.

3.6 PERMITS, FEES, AND NOTICES

3.6.1 Except for the permits and approvals with respect to which WestEd is not subject, Design Builder shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Design Builder shall deliver to WestEd all original licenses, permits, and approvals obtained by Design Builder in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Design Builder shall perform the Work in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

- .1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over WestEd, Design Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.
- .2 Applicable sections in the State of California Labor Code.
- .3 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.7.2 Design Builder shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5, and applicable sections that follow). Design Builder shall promptly notify WestEd's Representative in writing if Design Builder becomes aware

during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

3.7.3 If Design Builder performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to WestEd and WestEd's Representative, Design Builder shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.8 SUPERINTENDENT

3.8.1 Design Builder shall employ a competent Superintendent satisfactory to WestEd who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent Design Builder and communications given to, and received from, Superintendent shall be binding on Design Builder. Failure to maintain a Superintendent on the Project site at all times Work is in progress shall be considered a material breach of this Contract, entitling WestEd to terminate the Contract or, alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, Design Builder fails to complete the Contract on time, Design Builder will be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Construction Work at the Project site when Work is in progress. In addition, the Design Builder will provide all Key Personnel shown in the Exhibits for the time periods stipulated.

3.9 TOXIC MATERIALS

3.9.1 The Design Builder is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design Builder based on its experience and expertise on similar projects in urban areas.

3.10 CONSTRUCTION DOCUMENTS

3.10.1 Construction Documents

- .1 Upon receipt of the Notice to Proceed with design phase services, the Design Builder shall instruct the Architect of Record to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. WestEd's review of the construction documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth herein relating to Schedule. Such review shall not relieve the Design Builder from its responsibilities under this Contract. Such review shall not be deemed an approval or waiver by WestEd of any deviation from, or of the Design Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design Builder and approved by WestEd .
- .2 However, it is acknowledged by the parties hereto that inherent in a design build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Document packages for construction to a reasonable number, not more than that stipulated in the Supplementary Conditions, unless approved in writing by WestEd . Contract Schedule shall indicate the times for WestEd to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
- .3 The Design Builder shall submit completed packages of the Construction Documents for review by WestEd , the California State Fire Marshal, and the California State Architect at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Review meetings between the Design Builder and WestEd to review the Construction Document packages, shall be scheduled and

held so as not to delay the Work. After reviewing the Construction Documents package for conformance to the Criteria Documents, WestEd will issue a Construction Notice to Proceed to the Design Builder.

- .4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to WestEd for review.

3.10.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

- .1 Shop drawings means drawings, submitted to Design Builder by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
- .2 Design Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design Builder's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
- .3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
- .4 The Design Builder shall submit shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products.
- .5 Any variation in quality must be approved by WestEd.

3.10.3 Field Engineering

- .1 The Design Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.
- .2 The Design Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

3.10.4 Geotechnical and Survey

- .1 WestEd has provided the Design Builder with a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey that are included in the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the geotechnical report and legal description and project survey.
- .2 The Design Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.

3.11 REPORTS

3.11.1 The Design Builder shall prepare and submit to WestEd, during both the Design Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by WestEd. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design Builder's projected progress for the forthcoming month.

3.11.2 The Design Builder will cooperate with WestEd in preparing, or causing to be prepared, all or part of, periodic project reports required by the State Public Works Board and other state or federal agencies.

3.12 GUARANTEE

3.12.1 The Design Builder unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. The Design Builder shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to WestEd; ordinary wear and tear and abuse excepted.

3.12.2 The Design Builder further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by WestEd, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If WestEd finds that the Design Builder fails to perform any of the work under the guarantee, WestEd may elect to have the work completed at the Design Builder's expense and the Design Builder will pay costs of the work upon demand. WestEd will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design Builder's refusal to pay the above costs.

3.12.3 Notwithstanding the foregoing Article 3.12.2, in the event of an emergency constituting an immediate hazard to health or safety of WestEd employees, property, or licensees, WestEd may undertake, at the Design Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design Builder not being in accordance with the requirements of the Contract Documents.

3.13 SCHEDULES REQUIRED OF DESIGN BUILDER

3.13.1 The Preliminary Schedule provided with the Request for Proposal provides the Design Builder schedule information to illustrate all Contract Milestones and any anticipated overlap of Phases. The Design Builder shall develop its required Contract schedules for review and approval by WestEd based on and consistent with such Preliminary Schedule.

3.13.2 Design Builder shall submit an initial Contract Schedule and updated Contract Schedules to WestEd's Representative in the form and within the time limits required by the Contract Documents, or, if no such time period is specified, within a reasonable period of time. WestEd's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Contract Documents, or if no such time period is specified, within a reasonable period of time. If WestEd's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to Design Builder the basis for its objection.

3.13.3 The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time as reflected in the Preliminary Schedule may be acceptable if judged by WestEd's Representative to be practical. Schedules showing the Work completed beyond the Contract Time may be submitted under the following circumstances:

- .1 If accompanied by a Change Order Request seeking an adjustment of the Contract Time consistent the requirements of paragraph for Adjustment of the Contract Time for Delay.; or
- .2 If the Contract Time has passed, or if it is a practical impossibility to complete the Work within the Contract Time, then the updated Contract Schedule or fragnet schedule shall show completion at the earliest practical date.

WestEd's Representative will timely review the updated Contract Schedule or Fragnet Schedule submitted by Design Builder. If WestEd's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, WestEd's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. WestEd's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the updated Contract Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of WestEd's Representative to render a decision by the applicable deadline will be deemed a decision denying approval of the updated Contract Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by WestEd's Representative shall not change the Contract Time and is without prejudice to any right of WestEd. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Design Builder under Article 4 and Article 5 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.13.4 If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design Builder shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.

3.13.5 Design Builder shall prepare and keep current, to the reasonable satisfaction of WestEd's Representative, a schedule of submittals that is in the form contained in the Exhibits, as required by the Specifications, and that is coordinated with the Contract Schedule.

3.13.6 The Contract Schedule and the updated Contract Schedules shall meet the following requirements:

- .1 Schedules must be suitable for monitoring progress of the Work.
- .2 Schedules must provide necessary data about the timing of WestEd decisions and WestEd furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning of the Work.
- .4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.

3.13.7 WestEd's Representative's review of the form and general content of the Contract Schedule and updated Contract Schedules is for the purpose of determining if the above-listed requirements have been satisfied.

3.13.8 Design Builder shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases.

3.13.9 In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, Design Builder shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to WestEd's Representative upon request. Design Builder shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, as appropriate, and shall monitor the progress of the Work and the delivery of equipment.

3.13.10 Design Builder shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.13.11 Design Builder shall cooperate with WestEd's Representative in the development of the Contract Schedule and updated Contract Schedules.

3.13.12 WestEd's Representative's acceptance of or its review comments about any schedule or scheduling data

shall not relieve Design Builder from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to WestEd's Representative or WestEd nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule. Failure of WestEd's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design Builder that Design Builder, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve Design Builder from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.14 AS-BUILT DOCUMENTS

3.14.1 Design Builder shall maintain one (1) set of As-built drawings and specifications, which shall be kept up-to-date during the Work of the Contract. All changes which are incorporated into the Work which differ from the documents as drawn and written and approved shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work; each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by Design Builder and dated, attesting to the completeness of the information noted therein. As-built Documents shall be turned over to WestEd's Representative and shall become part of the Record Documents as required by the Scope of Work.

3.15 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.15.1 Design Builder shall maintain the following at the Project site:

- .1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.
- .2 The current accepted Contract Schedule.
- .3 Shop Drawings, Product Data, and Samples.
- .4 All other required submittals.

These documents shall be available to WestEd's Representative and shall be delivered to WestEd's Representative for submittal to WestEd upon the earlier of Final Completion or termination of the Contract.

3.16 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.16.1 Definitions:

- .1 *Shop Drawings* are drawings, diagrams, schedules, and other data specially prepared for the Work by Design Builder or a Subcontractor to illustrate some portion of the Work.
- .2 *Product Data* are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design Builder to illustrate or describe materials or equipment for some portion of the Work.
- .3 *Samples* are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.16.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Design Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.16.3 Design Builder shall review, approve, and submit to WestEd's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of WestEd or of Separate Contractors. Submittals made by Design Builder that are not required by the Contract Documents may be returned without action by WestEd's Representative.

3.16.4 Design Builder shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by WestEd's Representative and no exceptions have been taken by WestEd's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.

3.16.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design Builder represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

3.16.6 If Design Builder discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Design Builder shall notify WestEd's Representative and receive instruction before proceeding with the affected Work. Design Builder shall be responsible to correct to the satisfaction of WestEd, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.16.7 Design Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by WestEd's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless Design Builder has specifically informed WestEd's Representative in writing of such deviation at the time of submittal and WestEd's Representative has given written approval of the specific deviation. Design Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by WestEd's Representative's review, acceptance, comment, or approval thereof.

3.16.8 Design Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by WestEd's Representative on previous submittals.

3.16.9 WestEd will review first resubmittal of Shop Drawing at its cost. WestEd reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

3.10 USE OF SITE AND CLEAN UP

3.10.1 Design Builder shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Design Builder. Design Builder shall remove all excess dirt, waste material, and rubbish caused by the Design Builder; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

3.17 CUTTING, FITTING, AND PATCHING

3.17.1 Design Builder shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.17.2 Design Builder shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Design Builder shall not cut or alter the work of any Separate Contractor without the prior consent of WestEd's Representative.

3.18 ACCESS TO WORK

3.18.1 WestEd, WestEd's Representative, their consultants, and other persons authorized by WestEd will at all times have access to the Work wherever it is in preparation or progress. Design Builder shall provide safe and proper facilities for such access and for inspection.

3.19 ROYALTIES AND PATENTS

3.19.1 Design Builder shall pay all royalties and license fees required for the performance of the Work. Design Builder shall defend suits or claims resulting from Design Builder's or any Subcontractor's infringement of patent rights and shall indemnify, defend and hold harmless WestEd and WestEd's Representative from losses on account thereof.

3.20 DIFFERING SITE CONDITIONS

3.20.1 If Design Builder encounters any of the following conditions at the site, Design Builder shall immediately notify WestEd's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

- .1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.20.2 Design Builder shall be entitled to an adjustment to the Contract Sum and/or Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if Design Builder fulfills the following conditions:

- .1 Design Builder fully complies with Article 3.20.1; and
- .2 Design Builder fully complies with Article 4 (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.20.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8.

3.21 INFORMATION AVAILABLE TO BIDDERS

3.21.1 Any information provided pursuant to Information Available To Bidders is subject to the following provisions:

- .1 The information is made available for the convenience of Bidders and is not a part of the Contract.
- .2 The Design Builder may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.
- .3 Other components of the information, including but not limited to recommendations, may not be relied upon by Design Builder. WestEd shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Design Builder.

3.22 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

3.22.1 Except and only to the extent provided otherwise in Articles 3.21, and Articles 7 and 8 of the General Conditions, by signing the Agreement, Design Builder agrees:

- .1 To bear the risk of concealed, unforeseen or unknown conditions and events, if any, which may be encountered in performing the Contract; and
- .2 That Design Builder's Price Proposal Form for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed, unforeseen or unknown conditions and events, Design Builder understands that, except and only to the extent provided otherwise in Articles 3.21, 7 and 8 of the General Conditions, concealed, unforeseen or unknown conditions shall not excuse Design Builder from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Design Builder to an adjustment of the Contract Sum.

3.22.2 If, as the result of concealed, unforeseen or unknown conditions or events, WestEd issues a Change Order or Field Order that changes design details from those details depicted in the Criteria Documents, Design Builder shall be entitled, subject to compliance with all the provisions of the Contract, including those set forth in Articles 4, 7 and 8 of the General Conditions, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Article 3.22.2, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen or unknown conditions or events.

3.22.3 Design Builder shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under this Article 3.22..3, fully comply with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.23 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.23.1 Design Builder shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake or otherwise) prior to WestEd's acceptance of the Project as fully completed except that Design Builder shall not be liable for Earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the loss was not caused in whole or in part by the negligent acts or omissions of Design Builder, its officers, agents or employees (including all Subcontractors and suppliers of all tiers).

3.23.2 Design Builder shall promptly repair and replace any Work or materials damaged or destroyed for which the Design Builder is liable under Article 3.23.1 above.

3.24 INDEMNIFICATION BY DESIGN BUILDER

3.24.1 To the maximum extent allowed by law, Design Builder shall indemnify, defend and hold harmless (with counsel approved by WestEd), WestEd, WestEd's consultants, WestEd's Representative, WestEd's Representative's consultants, their respective directors, officers, agents, and employees, and any person or entity working under any of them (hereinafter collectively "Indemnitees") from and against all claims, demands, actions, causes of action, obligations, costs, expenses, damages, interest, losses and liabilities caused, or asserted to have been caused, in whole or in part, by:

- .1 Breach of contract, negligence, or other misconduct of Design Builder, its Subcontractors, their officers, agents and employees, or any person or entity under Design Builder on the Project.
- .2 The condition of the Project site (including any of the Work) at any time when the project site, in whole or in part, is in the control of Design Builder, its Subcontractors, their officers, agents and employees, or any person or entity under Design Builder on the Project.
- .3 The failure of Design Builder to perform its obligations under the Contract.
- .4 The inaccuracy of any representation or warranty by Design Builder given in accordance with or contained in the Contract Documents
- .5 Any claim of damage or loss by any Subcontractor against WestEd arising out of any alleged act or omission of Design Builder or any other Subcontractor, or anyone directly or indirectly employed by Design Builder or any Subcontractor.

3.24.2 The obligation to indemnify, defend and hold harmless shall apply irrespective of the negligence of Indemnitees; but the obligation to indemnify, defend and hold harmless shall not apply in the event of the sole negligence of Indemnitees. The obligation to indemnify, defend and hold harmless shall not be limited by any assertion or finding that the Indemnitees are liable by reason of a non-delegable duty.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY WESTED'S REPRESENTATIVE

4.1.1 WestEd's Representative will provide administration of the Contract as provided in the Contract Documents and will be the representative of WestEd. WestEd's Representative will have authority to act on behalf of WestEd only to the extent provided in the Contract Documents.

4.2 DESIGN BUILDER CHANGE ORDER REQUESTS

4.2.1 Design Builder may request changes to the Contract Sum and/or Contract Time for Extra Work, materially differing site conditions, or Delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time, payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

- .1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2; and
- .2 If requested, timely submission of additional information requested by WestEd Representative pursuant to Article 4.2.3.3.

4.2.3 Change Order Request:

- .1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Design Builder discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by WestEd's Representative for submission of the Change Order Request.

- .2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief
- .3 Upon request of WestEd's Representative, Design Builder shall submit such additional information as may be requested by WestEd's Representative for the purpose of evaluating the Change Order Request.

4.2.4 WestEd's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. A final decision is any decision on a Change Order Request which states that it is final. If WestEd's Representative issues a final decision denying a Change Order Request in whole or in part, Design Builder may contest the decision by filing a timely Claim under the procedures specified in Article 4.3.

4.2.5 Design Builder may file a written demand for a final decision by WestEd's Representative on all or part of any Change Order Request as to which WestEd's Representative has not previously issued a final decision pursuant to Article 4.2.4; such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within 30 days of receipt of the demand, WestEd's Representative will issue a final decision on the Change Order Request. WestEd's Representative's failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by Design Builder seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between WestEd and Design Builder arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4, including but not limited to arbitration, shall not apply to the following:

- .1 Claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine.
- .2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.
- .3 Claims by WestEd, except as set forth in Articles 4.5, 4.6, and 4.7.
- .4 Claims respecting stop payment notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Design Builder's Change Order Request pursuant to Articles 4.2.4 and 4.2.5.

4.3.3 A Claim must include the following:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5.
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by Design Builder shall be first submitted to WestEd's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by WestEd's Representative, Design Builder shall not cause any delay, cessation, or termination in or of Design Builder's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 Design Builder shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3, to WestEd's Representative as soon as possible but not later than 30 days after the date the Claim arises under Article 4.3.2. Unless otherwise directed by WestEd, Design Builder shall proceed with the Work regardless of any dispute or claim.

4.5 DECISION OF WESTED'S REPRESENTATIVE ON CLAIMS

4.5.1 WestEd's Representative will timely review Claims submitted by Design Builder. If WestEd's Representative determines that additional supporting data are necessary to fully evaluate a Claim, WestEd's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. WestEd's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid 30-day period shall be 45 days. Failure of WestEd's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline, unless, upon receipt of a Claim, Design Builder and WestEd mutually agree to extend the time periods provided herein, or unless otherwise extended by law. The decision of WestEd's Representative will be final and binding unless appealed in accordance with Articles 4.5.2, 4.6, and 4.7. WestEd's Representative's decision on a Claim or dispute will include a written statement identifying all disputed and undisputed portions of the Claim and substantially including the following:

“This is a decision under Article 4.5 of the General Conditions of your contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting claims specified in Article 4 of the General Conditions of your contract, you may have the right to demand in writing an informal conference to meet and confer for settlement of any remaining issues in dispute, following which, if still dissatisfied, you may demand in writing a further resolution via nonbinding mediation, after which you have the right to arbitrate or litigate this decision. If you fail to take appropriate action within 30 days of the date of this decision, the decision shall become final and binding and not subject to further appeal.”

4.5.2 If either Design Builder or WestEd disputes WestEd's Representative's decision on a Claim, then, within 30 days after the decision of WestEd's Representative on the Claim, or, if no decision has been issued, within 30 days from the date of the applicable deadline in Article 4.5.1 for WestEd Representative to render a decision, such party (the “Disputing Party”) must provide written notice demanding an informal conference to meet and confer. WestEd shall schedule the conference within 30 days upon receipt of the notice demanding an informal conference. The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation at the conference.

4.6 MEDIATION

4.6.1 Within 10 business days following the informal conference to meet and confer stated in Article 4.5.2, if the Claim or any portion of the Claim remains in dispute, WestEd shall provide a written statement identifying the disputed and undisputed portions of the Claim. Within 30 days of receipt of the statement, if either Design Builder or WestEd disputes any portion of the Claim, then the Disputing Party must provide written notice to the non-disputing party demanding non-binding mediation. The Design Builder and WestEd shall share the associated costs equally and shall mutually agree to a mediator within 10 business days. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim, with each party bearing the fees and costs of its respective mediator. Mediation shall include, but not be limited to, neutral evaluation, a dispute review board, or other negotiation or evaluation through an independent third party or board. The Design Builder and WestEd may mutually agree to waive any individual mediation in writing and proceed to arbitration or litigation pursuant to this Contract.

4.7 LITIGATION AND ARBITRATION

4.7.1 Either party may provide a written notice of its election to arbitrate or provide written notice of its election to litigate the Claim within 30 days after the mediation pursuant to Article 4.6.1, or, if the parties mutually agreed in writing to waive mediation, within 30 days after the agreement is signed by both parties.

4.7.2 If a notice of election to arbitrate or litigate is not given by either party within 30 days pursuant to Article 4.7.1, WestEd's Representative's decision on the Claim will be final and binding and not subject to appeal or challenge.

4.7.3 If the Disputing Party gives timely notice of its election to arbitrate WestEd's Representative's decision on a Claim, Disputing Party shall have the right, within 120 days after a Notice of Completion, or a Notice of Cessation, as applicable, is filed for the Contract, to make a demand for arbitration in accordance with Article 4.7. Failure to perfect a Claim for which a timely election to arbitrate has been made by the timely filing of a demand for arbitration and timely payment of all applicable and required fees to the American Arbitration Association ("AAA") shall result in WestEd's Representative's decision on said Claim becoming final and binding and not subject to appeal or challenge. If the Disputing Party makes a timely demand for arbitration, and the amount of the Claim in question, when combined with all other Claims, if any, which are the subject of previously filed demands for arbitration that have not been resolved by settlement or arbitration award, is \$100,000 or more, then the other party may elect to litigate all such Claims by filing a written notice with the AAA within 30 days after its receipt of notice from the AAA of the Disputing Party's demand for arbitration of the Claim that raises the total amount of Claims subject to arbitration to \$100,000 or more. If the other party fails to give notice of its election to litigate within such 30-day period, it shall be deemed to have consented to arbitration and waived the right to litigate. If after commencement of arbitration the amount of unresolved Claims in arbitration are allowed to be increased to \$100,000 or more, through an AAA-allowed amendment or otherwise, either party may elect to litigate within 30 days following the date that the electing party first receives written notification from the AAA that total Claims in arbitration equal or exceed \$100,000. If neither party gives notice of its election to litigate within such 30-day period as applicable, then both parties shall be deemed to have consented to arbitration and waived the right to litigate.

4.7.4 A demand for arbitration pursuant to Article 4.6.3 shall include a copy of the Claim presented to WestEd's Representative pursuant to Article 4.4, a copy of the decision of WestEd's Representative pursuant to Article 4.5, if any, a copy of WestEd's written statement identifying the portion of the Claim that remained in dispute following the informal conference pursuant to Article 4.6.1, and a summary of the remaining portions of the Claim in dispute. The demand shall state the amount in controversy, if any, and state the remedy sought. The demand shall identify WestEd's Responsible Administrator as the representative of the responding party and the Office of the General Counsel as counsel for the responding party. The demand shall be filed with the AAA and shall not be deemed to have been made until all applicable fees have been paid to the AAA by the demanding party. Copies of the demand and attachments shall be sent to WestEd's Responsible Administrator as the representative of the responding party and WestEd's Office of General Counsel as attorney for the responding party. The address for the Office of General Counsel is 1111 Franklin Street, Oakland, CA 94607.

4.7.5 Except as modified by this Article 4.6, arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid AAA rules:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2 WestEd's Representative and/or WestEd's consultants, shall if required by agreement with WestEd, upon demand by WestEd join in and be bound by the Arbitration. WestEd's Representative and WestEd's consultants will have the same rights in any arbitration proceeding as are afforded by the AAA rules to Design Builder and WestEd.
- .3 Design Builder's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.
- .4 Except as provided in Articles 4.6.5.2. and 4.6.5.3 above, no Subcontractor or other person shall have a right or obligation to join in or be a party to any arbitration proceeding provided for in this Article 4 either directly, by joinder, by consolidation or actions, by counterclaim or crossclaim, or otherwise without the express written consent of WestEd, Design Builder, and the joining party.
- .5 If more than one demand for arbitration is made by a party with respect to Claims referred to WestEd's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .6 If total Claims are less than \$50,000, AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of \$100,000 and are submitted to arbitration, either by agreement or by failure to elect litigation the controversy shall be heard by a panel of three arbitrators, one of which shall be an attorney.

- .7 No arbitrator shall be appointed and no discovery may be commenced prior to the date of Final Completion unless WestEd and Design Builder otherwise agree.
- .8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. The AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.
- .9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 7 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to the AAA within 10 days from the date of receipt.
- .10 Except as provided herein, the arbitration shall be conducted and enforced under California law, including the California Arbitration Act (California Code of Civil Procedure section 1280 and following). The Federal Arbitration Act shall not apply to the arbitration.

ARTICLE 5 - SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Design Builder shall submit to WestEd's Representative after selecting Subcontractors, an updated Expanded List of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The Expanded List of Subcontractors shall be provided no later than thirty (30) days after the date which WestEd provides Letter of Design Review. If the Project is to proceed on a fast track/phased basis as identified in the exhibits, then a Letter of Design Review will be issued by WestEd for each such design submittal associated with a particular phase and identified in the exhibits. Failure to identify Subcontractors within the time period(s) above shall commit the Design Builder to carrying out the Construction Work with its own forces.

5.1.2 WestEd has the right to request all documentation that supports the Design Builder's selection of a Subcontractor. WestEd shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within WestEd's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if WestEd or WestEd's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

5.1.3 The Subcontractors listed by Design Builder shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of WestEd. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of WestEd shall a substitution be made.

Any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor pursuant to above Article 5.1.3 or as required by WestEd or WestEd's Representative pursuant to above Article 5.1.2, shall be borne solely by Design Builder. Design Builder shall not be entitled to any increase in Contract Sum or an extension of Contract Time due to such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for Design Builder by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design Builder by the terms of the Contract Documents, to assume toward Design Builder all the obligations and responsibilities which Design Builder assumes towards WestEd by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of WestEd under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Design Builder shall cause each such subcontract to expressly include the following requirements:

- .1 Subcontractor waives all rights that Subcontractor may have against WestEd for damages caused by fire or other perils covered by builder's risk property insurance carried by Design Builder or WestEd, except for such rights Subcontractor may have to the proceeds of such insurance held by WestEd under Article 11 of the General Conditions.

- .2 WestEd, and entities and agencies designated by WestEd, will have access to and the right to audit and the right to copy, at WestEd's cost, all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.
- .3 Subcontractor recognizes the rights of WestEd under Article 5.3 of the General Conditions, Contingent Assignment of Subcontracts, and agrees, upon notice from WestEd that WestEd has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by WestEd, to execute a written agreement confirming that Subcontractor is bound to WestEd under the terms of the subcontract.
- .4 Design Builder is responsible for reviewing and coordinating the Work of and among his subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.2.2 Upon the request of WestEd, Design Builder shall promptly furnish to WestEd a true, complete, and executed copy of any subcontract.

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

ARTICLE 6 – NOT USED

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

7.1.1 WestEd may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to WestEd. Design Builder shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

7.2 DEFINITIONS

7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both WestEd and Design Builder, and states their agreement, as applicable, to the following: A change in the Work, if any; The amount of an adjustment of the Contract Sum, if any; The amount of an adjustment of the Contract Time, if any; and/or A modification to any other Contract term or condition.

7.2.2 A Field Order is a Contract Document issued by WestEd that orders the Design Builder to perform Work. A Field Order does not require the agreement of Design Builder, and shall be valid with or without the signature of Design Builder. A Field Order may, but need not, constitute a change in the Work and may, but need not, entitle Design Builder to an adjustment of the Contract Sum or Contract Time.

7.3 CHANGE ORDER PROCEDURES

7.3.1 Design Builder shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 and this Article 7.3 of the General Conditions. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or to be incurred by Design Builder and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Design Builder demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

- .1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites

- off the Project site, in the direct performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
 - .3 Overtime wages or salaries, specifically authorized in writing by WestEd's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
 - .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by WestEd's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
 - .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by WestEd's Representative. Such costs shall be charged at the lowest price available to the Design Builder but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to WestEd and Design Builder shall make provisions so that they may be obtained.
 - .6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.
 - .7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by WestEd's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at <http://www.dot.ca.gov/hq/construc/equipmnt.html> . Design Builder shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
 - .8 Additional costs of royalties and permits due to the performance of the Extra Work.
 - .9 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .8 above.

WestEd and Design Builder may agree upon rates to be charged for any of the items listed in this Article 7.3.2. Such agreed upon rates shall be subject to audit pursuant to Article 15.7. Design Builder shall promptly refund to WestEd any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.3.3 Cost of Extra Work shall not include any of the following: Supervision, Superintendent(s); Assistant Superintendent(s); Project Engineer(s); Project Manager(s); Scheduler(s); Estimator(s); Drafting or Detailing; Small tools (Replacement value does not exceed \$300); Office expenses including staff, materials and supplies; On-site or off-site trailer and storage rental and expenses; Site fencing; Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment; Data processing personnel and equipment; Federal, state, or local business income and franchise taxes; Overhead and Profit; or Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2.

7.3.4 The term "Design Builder Fee" shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Design Builder for its own Work and the Work of all Subcontractors, for all costs and expenses not included in the Cost of Extra Work, whether or not such costs and expenses are specifically referred to in Article 7.3.3. The Design Builder Fee shall not be compounded. The Design Builder Fee shall be computed as follows:

- .1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the prime contractor with its own forces.
- .2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the prime contractor. Total combined Design Builder and Subcontractor fee shall not exceed 20%.
- .3 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the prime contractor. Total combined Design Builder, Subcontractor and all sub-subcontractor fee shall not exceed 25%.

7.3.5 Compensation for Extra Work shall be computed on the basis of one or more of the following:

- .1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices to the quantities of the items involved.
- .2 Where Unit Prices are not applicable, a mutually agreed upon lump sum
- .3 Where Design Builder and WestEd cannot agree upon a lump sum, by Cost of Extra Work plus Design Builder Fee applicable to such Extra Work.

7.3.6 For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following:

- .1 Unit Prices stated in the Contract Documents.
- .2 Where Unit Prices are not applicable, a lump sum agreed upon by WestEd and Design Builder, based upon the actual costs which would have been incurred in performing the deleted portions of the Work

7.3.7 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Design Builder fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design Builder Fee will be allowed only on the difference between the two amounts.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Design Builder Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design Builder Fee will be allowed only on the difference between the two amounts.

7.3.9 The Contract Sum will be adjusted for a delay if, and only if, Design Builder demonstrates that all of the following four conditions are met:

- .1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.3.1 of the General Conditions.
- .2 Condition Number Two: The delay is caused solely by one, or more of the following:
 - .1 An error or omission in the Contract Documents caused by WestEd and not as a result of Design Builder's failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or
 - .2 WestEd's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
 - .3 WestEd's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
 - .4 The failure of WestEd (including WestEd acting through its consultants, Design Professionals, Separate Contractors or WestEd's Representative) to perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the Design Builder.
 - .5 A materially differing site condition pursuant to Article 3.14 of the General Conditions.
- .3 Condition Number Three: The delay is not concurrent with a delay that is caused by an event other than those listed in Article 7.3.9.2 above.
- .4 Condition Number Four: The delay is not caused, in whole or in part, by an event which occurs during the performance of design phase services.

7.3.10 For each day of delay that meets all four conditions prescribed in Article 7.3.9 above, the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to Design Builder for Compensable Delays as agreed upon. Said daily rate shall not apply to delays occurring after Substantial Completion.

7.3.11 Except as provided in Articles 7 and 8, Design Builder shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.12 If for any reason one or more of the conditions prescribed in Article 7.3.9 above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Contract Time under Article 7.3.10 above.

ARTICLE 8 - CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work shall be set forth in the Notice To Proceed.

8.2 DELAY

8.2.1 Except and only to the extent provided otherwise in Articles 7 and 8, by signing the Agreement, Design Builder agrees to bear the risk of delays to the Work that Design Builder's bid for the Contract was made with full knowledge of this risk. In agreeing to bear the risk of delays to the Work, Design Builder understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that delay the Work shall not excuse Design Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design Builder to an adjustment of the Contract Sum.

8.3 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

8.3.1 Subject to Article 8.3.2, the Contract Time will be extended for each day of delay for which Design Builder demonstrates that all of the following 5 conditions have been met; a time extension will not be granted for any day of delay for which Design Builder fails to demonstrate compliance with the 5 conditions:

- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work beyond the Contract Time. A delay is critical if and only to the extent the delay pushes Final Completion of the Work to a date that is beyond the Contract Time.
- .2 Condition Number Two: Within 7 days of the date the Design Builder discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay, (even if the Design Builder has not been delayed when the Design Builder discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design Builder submits both a timely and complete Change Order Request that meets the requirements of Article 4.2.
- .3 Condition Number Three: The delay is not caused by:
 - .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.14; or
 - .2 The financial inability, misconduct or default of the Design Builder, a Subcontractor or supplier; or
 - .3 The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
 - .1 Fire; or
 - .2 Strikes, boycotts, or like obstructive actions by labor organizations; or
 - .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
 - .4 A materially differing site condition pursuant to Article 3.14; or
 - .5 An error or omission in the Contract; or
 - .6 WestEd's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
 - .7 WestEd's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
 - .8 The failure of WestEd or WestEd's representative to timely perform any Contract obligation unless such failure is due to Design Builder's default or misconduct.

.9 "Rainy weather," but only for such days of rain that are in excess of the number of days specified in the Supplementary Conditions. In order for a day to be considered a day of rainy weather for the purpose of determining whether Design Builder is entitled to an adjustment in Contract Time, both of the following conditions must be met:

- .1 the day must be a day in which, as a result of rain, no critical path work is performed by Design Builder; and
- .2 the day must be a regular work day under the Contract.

.5 Condition Number Five: Design Builder has taken all reasonable measures to avoid and minimize the delay and, notwithstanding such measures, the delay occurred.

8.3.2 If and only if a delay meets all 5 conditions prescribed in Article 8.3.1, then a time extension will be granted for each day that Final Completion of the Work is delayed beyond the Contract Time, subject to the following:

- .1 When two or more delays (each of which meet all seven conditions prescribed in Article 8.3.1) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to Article 8.3.2, such concurrent critical delays shall be treated as a single delay for each such day.
- .2 Design Builder shall be entitled to a time extension for a day of delay that meets all 5 requirements of Article 8.3.1 if the delay is concurrent with a delay that does not meet all seven conditions of Article 8.3.1.

8.3.3 If for any reason one or more of the 5 conditions prescribed in Article 8.3.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Article 8.3.2.

8.4 COMPENSATION FOR DELAY

8.4.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Design Builder, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through Design Builder in connection with the Project.

8.4.2 By signing the Agreement, the parties agree that WestEd is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

- .1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:
 - .1 Changes to correct errors or omissions, if any, in the Contract Documents.
 - .2 Changes resulting from WestEd's decision to change the scope of the Work subsequent to execution of the Contract.
 - .3 Changes due to unforeseen conditions.
- .2 To suspend the Work or any part thereof.
- .3 To delay the Work, including without limitation, delays resulting from the failure of WestEd or WestEd's Representative to timely perform any Contract obligation and delays for WestEd's convenience.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN

9.1.1 Within 10 days after receipt of the Notice of Selection as the apparent lowest responsible Bidder, and with the Agreement, Design Builder shall submit to WestEd's Representative a Cost Breakdown of the Contract Sum. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by WestEd's Representative, shall become the basis for determining the cost of Work performed for Design Builder's Applications for Payment.

9.2 PROGRESS PAYMENT

9.2.1 WestEd agrees to pay monthly to Design Builder, subject to Article 9.4.3, an amount equal to 95% of the sum of the following:

- .1 Cost of the Work in permanent place as of the date of the Design Builder's Application For Payment.
- .2 Less amounts previously paid.

Under this Article 9.2.1, WestEd may, but is not required, to pay Design Builder more frequently than monthly.

9.2.2 After Substantial Completion and subject to Article 9.4.3, WestEd will make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, Design Builder shall submit to WestEd's Representative an itemized Application For Payment, for the cost of the Work in permanent place, as approved by WestEd's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid.

9.3.2 Design Builder warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from WestEd, shall be free and clear of all claims, stop payment notices, security interests, and encumbrances in favor of Design Builder, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 If Design Builder has submitted an Application For Payment in accordance with Article 9.3, WestEd's Representative shall, not later than 5 working days after the date of receipt of the Application For Payment, issue to WestEd, with a copy to Design Builder, a Certificate For Payment for such amount as WestEd's Representative determines to be properly due.

9.4.2 If any such Application For Payment is determined not to be in accordance with Article 9.3, WestEd will inform Design Builder as soon as practicable, but not later than 5 working days after receipt. Thereafter, Design Builder shall have 3 days to revise and resubmit such Application For Payment; otherwise WestEd's Representative may issue a Certificate For Payment in the amount that WestEd's Representative determines to be properly due without regard to such Application For Payment.

9.4.3 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any failure of Design Builder to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Article 9.4.3, WestEd will pay Design Builder the amount set forth in the Certificate For Payment no later than 10 days after the issuance of the Certificate For Payment.

9.5 BENEFICIAL OCCUPANCY

9.5.1 WestEd reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to Design Builder. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following condition: Design Builder shall continue to maintain all insurance required by the Contract in full force and effect.

9.6 SUBSTANTIAL COMPLETION

9.6.1 "Substantial Completion" means the stage in the progress of the Work, as determined by WestEd's Representative, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair WestEd's ability to occupy and fully utilize the Work for its intended purpose and a Certificate of Occupancy has been issued by WestEd.

9.6.2 When Design Builder gives notice to WestEd's Representative that the Work is substantially complete,

unless WestEd's Representative determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, WestEd's Representative will inspect the Work, and prepare and give to Design Builder a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Design Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Design Builder to complete all Work in accordance with the Contract Documents. If WestEd's Representative's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Design Builder shall complete or correct such item. Design Builder shall then submit a request for another inspection by WestEd's Representative to determine Substantial Completion. Costs for additional inspection by WestEd's Representative shall be deducted from any monies due and payable to Design Builder.

9.6.3 When WestEd's Representative determines that the Work is substantially complete, and occupancy has been approved by WestEd's Building Official, WestEd's Representative will prepare a Certificate of Substantial Completion on WestEd's form as contained in the Exhibits, which, when signed by WestEd, shall establish the date of Substantial Completion and the responsibilities of WestEd and Design Builder for security, maintenance, utilities, insurance, and damage to the Work.

9.7 FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION

9.7.1 Upon receipt of notice from Design Builder that the Work is ready for final inspection, WestEd's Representative will make such inspection. Final Completion shall be when WestEd's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by WestEd. WestEd will file a Notice of Completion within 15 days after Final Completion. After receipt of the final Application For Payment, if WestEd's Representative determines that Final Completion has occurred, WestEd's Representative will issue the final Certificate For Payment.

9.7.2 Final payment and retention shall be released to Design Builder, as set forth in Article 9.8.3, after:

.1 Design Builder submits the final Application For Payment and all submittals required in accordance with Article 9.3;

.2 Design Builder submits all guarantees and warranties procured by Design Builder from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;

.3 Design Builder submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and

.4 WestEd's Representative issues the final Certificate For Payment.

At its sole discretion, after Final Completion, WestEd may waive the requirement that Design Builder submit a final Application For Payment before making final payment and/or release of retention to Design Builder.

9.7.3 Final payment shall be paid not more than 10 days after WestEd's Representative issues the final Certificate For Payment. Retention shall be released to Design Builder 35 days after the filing of the Notice of Completion.

9.7.4 Acceptance of final payment by Design Builder shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Design Builder as unsettled at the time of the final Application For Payment.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Design Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions

and programs in connection with the performance of the Contract and shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to employees and other persons who may be affected thereby, the Work and materials to be incorporated therein, and property at the Project site and adjoining property.

ARTICLE 11 - INSURANCE AND BONDS

11.1 DESIGN BUILDER'S INSURANCE

11.1.1 Design Builder shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and WestEd from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Design Builder, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions.

11.1.2 The following policies and coverages shall be furnished by Design Builder:

- .1 COMMERCIAL GENERAL LIABILITY INSURANCE subject to terms no less broad than the Insurance Services Office's (ISO) form CG 0001 (2004 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering all Work done by or on behalf of Design Builder and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. There shall be no limitations or exclusions of coverage beyond those contained in the standard ISO form CG 0001 (2004 or later edition). Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Design Builder by these Contract Documents. Design Builder shall continue to maintain Products/Completed Operations liability insurance coverage for a minimum completed operations period of 10 year(s) or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less. All terms and conditions of such coverage shall be maintained during this completed operations period, including the required minimum coverage limits and the requirement to provide WestEd with coverage as an additional insured for completed operations as specified under this Article 11.1 and the Supplementary Conditions.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE subject to terms no less broad than the Insurance Services Office's (ISO) form CA 0001 (1990 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering owned, hired, leased, and non-owned automobiles used by or on behalf of Insured, and providing liability insurance for bodily injury and property damage arising from the use or operation of such auto(s) with a minimum combined single limit of not less than \$1,000,000 per accident. The minimum limits required may be satisfied by combination of primary and umbrella/excess policies. The Commercial Automobile Liability Insurance shall be provided by Design Builder for all on site and off site Work.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. Design Builder shall also require all of its Subcontractors to maintain this insurance coverage.

11.1.3 The coverages required under this Article 11 shall not in any way limit the liability of Design Builder.

11.1.4 Design Builder's Certificates of Insurance, executed by a duly authorized representative of each broker of record or each insurer as evidence of the insurance required by these Contract Documents and on the form contained in the Exhibits, shall be submitted by Design Builder to WestEd prior to the commencement of Work by the Design Builder. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to WestEd, in accordance with policy provisions.

11.1.5 In the event Design Builder does not comply with these insurance requirements, WestEd may, at its option, provide insurance coverage to protect WestEd; and the cost of such insurance shall be paid by Design Builder and may be deducted from the Contract Sum.

11.1.6 Design Builder's insurance as required by Article 11.1.2, shall, by endorsement to the policies, include the following:

- .1 WestEd, its officials, officers, consultants, agents, employees, and each of their Representative's consultants, regardless of whether or not identified in the Contract Documents or to the Design Builder in writing, will be included as additional insureds on the Design Builder's General Liability insurance for and relating to the Work to be performed by the Design Builder and Subcontractors. Additional Insured provision or endorsement shall be at least as broad as the CG 20 10 07 04 in combination with the CG 20 37 07 04 (or earlier versions of CG 20 10 and CG 20 37 or Form B - CG 20 10 11 85 by itself), as published by Insurance Services Offices (ISO) and shall be included with Certificates of Insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability insurance. Further, the amount of insurance available to WestEd shall be for the full amount of the loss up to the available policy limits and shall not be limited to any minimum requirements stated in the Contract Documents.
- .2 WestEd, WestEd's consultants, WestEd's Representative, and WestEd's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .3 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by WestEd, WestEd's consultants, WestEd's Representative, and WestEd's Representative's consultants. This provision, however, shall only apply as per the stipulations of Article 11.1.6.1.

11.1.7 If insurance company refuses to use the Certificate of Insurance form as contained in the Exhibits, it must provide a Certificate of Insurance evidencing compliance with this Article including those provisions noted under DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES section of the Certificate of Insurance Exhibit by including an endorsement to its Certificate of Insurance form covering Special Provisions 1 and 2 exactly as these provisions appear on the Certificate of Insurance Exhibit. At the request of WestEd, Design Builder shall submit to WestEd copies of the policies obtained by Design Builder.

11.2 BUILDER'S RISK PROPERTY INSURANCE

11.2.1 If and only if the Contract Sum exceeds \$300,000 at the time of award, WestEd will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. A copy of WestEd's standard builder's risk property insurance policy is available at WestEd's Facility office. In addition, a summary of the provisions of the policy is included as an Exhibit to the Contract. Design Builder agrees that WestEd's provision of its standard builder's risk property insurance policy meets WestEd's obligation to provide builder's risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill WestEd's obligation to provide such insurance. The proceeds under such insurance policies taken out by WestEd insuring the Work and materials will be payable to WestEd and Design Builder as their respective interests, from time to time, may appear. Design Builder shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve Design Builder of full responsibility for loss of or damage to materials not incorporated in the Work, and for Design Builder's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve Design Builder of its responsibilities referred to under this Article 11. Materials incorporated in the Work, as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site.

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 Design Builder shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Exhibits.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Contract Sum and shall be in effect on the date the Contract is signed by WestEd.

11.3.3 Surety companies used by Design Builder shall be, on the date the Contract is signed by WestEd, an admitted surety insurer (as defined in the California Code of Civil Procedure Section 995.120).

11.3.4 The premiums for the Payment Bond and Performance Bond shall be paid by Design Builder.

ARTICLE 12 -UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to WestEd's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by WestEd's Representative, be uncovered for WestEd's Representative's observation and be replaced at Design Builder's expense without adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which WestEd has neither Beneficially Occupied nor accepted as Substantially Complete); or
- .2 Are not accepted by WestEd.

The Guarantee To Repair Period for equipment or systems which become fully operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by WestEd.

12.2.2 Design Builder shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (2) replace, repair, or restore to WestEd's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Design Builder shall promptly commence such correction, replacement, repair, or restoration upon notice from WestEd's Representative or WestEd, but in no case later than 10 days after receipt of such notice; and Design Builder shall diligently and continuously prosecute such correction to completion. Design Builder shall bear all costs resulting from such Defective Work.

12.2.3 Design Builder's obligations under this Article 12 are in addition to and not in limitation of its warranty under Article 3.4 or any other obligation of Design Builder under the Contract Documents. Enforcement of Design Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies WestEd may have under the Contract Documents or at law or in equity for Defective Work.

ARTICLE 13 - TERMINATION OF THE CONTRACT

13.1 TERMINATION BY DESIGN BUILDER

13.1.1 Design Builder shall have the right to terminate the Contract only upon WestEd's failure to perform any material obligation under the Contract and to cure such default within 30 days, or WestEd has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Design Builder stating the nature of such default(s).

13.2 TERMINATION BY WESTED FOR CAUSE

13.2.1 WestEd will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

- .1 Design Builder becomes insolvent or files for relief under the bankruptcy laws of the United States.
- .2 Design Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- .3 A receiver is appointed to take charge of Design Builder's property.
- .4 Whenever the Work is materially delayed. The work will be considered materially delayed if the percentage of work completed is more than 25% less than the percentage of Contract Time elapsed (e.g., if the contractor has completed 25% of the work, and 51% of the Contract Time has elapsed) or if Work has not been substantially completed by 125% of the Contract Time (e.g., the Contract Time is 100 days, and the contractor has failed to substantially complete the work in 125 days).
- .5 Design Builder abandons the Work.

13.2.2 WestEd will have the right to terminate the Contract for cause if Design Builder fails to cure any of the following defaults within 5 days after receipt of written notice from WestEd:

- .1 Design Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 Design Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from WestEd.
- .3 Design Builder persistently or materially fails to perform the Work in accordance with the Contract Documents.
- .4 Design Builder is in default of any other material obligation under the Contract Documents.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2, WestEd may, at its election and by notice to Design Builder, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design Builder; accept the assignment of any or all of the subcontracts; and then complete the Work by any method WestEd may deem expedient.

13.3 TERMINATION BY WESTED FOR CONVENIENCE

13.3.1 WestEd may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Design Builder. Upon such termination, Design Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and WestEd shall pay Design Builder in accordance with Article 13.3.3.

13.3.2 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations assumed by Design Builder prior to the date of termination.

13.3.3 Upon such termination, WestEd shall pay to Design Builder the amount of the Contract Sum allocable to the portion of the Work properly performed by Design Builder as of the date of termination, less sums previously paid to Design Builder. The above payment shall be the sole and exclusive remedy to which Design Builder is entitled in the event of termination of the Contract by WestEd pursuant to Article 13.3; and Design Builder will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14 - STATUTORY AND OTHER REQUIREMENTS

For purposes of this Article 14, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.1 NONDISCRIMINATION

14.1.1 Design Builder agrees as follows during the performance of the Work:

.1 Design Builder shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or WestEd's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Design Builder will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Design Builder will, in all solicitations or advertisements for employees placed by or on behalf of the Design Builder, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic

information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or WestEd's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

- .2 Design Builder and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by WestEd or any appropriate agency of the State of California designated by WestEd for the purposes of investigation to ascertain compliance with this Article 14.1

14.2 PREVAILING WAGE RATES

14.2.1 For purposes of this Article 14.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.2.2 Design Builder shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Section 1720 et seq. of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations.

14.2.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at WestEd's principal facility office and will be made available to any interested party upon request. Design Builder shall post a copy of the general prevailing per diem wage rates as well as job site notices as prescribed by regulation at the job site. By this reference, such schedule is made part of the Contract Documents. Design Builder shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Builder in the execution of the Work. Design Builder shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Design Builder shall forfeit to WestEd, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Design Builder or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Design Builder shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 1742 of the California Labor Code.

14.3 PAYROLL RECORDS

14.3.1 Design Builder and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Design Builder or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Builder on the following basis:

- .1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
- .2 A certified copy of all payroll records shall be made available for inspection upon request to WestEd, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial

Relations.

- .3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either WestEd, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Design Builder or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by WestEd shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design Builder awarded the Contract or performing the Contract shall not be marked or obliterated.

14.3.2 Design Builder shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Design Builder shall inform WestEd of the location of such payroll records for the Project, including the street address, city, and county; and Design Builder shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.3 or with the State of California Labor Code Section 1776, Design Builder shall have 10 days in which to comply following receipt of notice specifying in what respects Design Builder must comply. Should noncompliance still be evident after the 10 day period, Design Builder shall forfeit to WestEd, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

14.4 APPRENTICES

14.4.1 Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Design Builder and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Design Builder bears responsibility for compliance with this section for all apprenticeable occupations.

14.4.2 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Work in the craft or trade to which the apprentice is indentured.

14.4.3 When Design Builder or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Design Builder or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design Builder or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Design Builder or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

14.4.4 "Apprenticeship craft or trade," as used in this Article 14.4, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

14.4.5 If Design Builder or Subcontractors employ journeymen or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design Builder and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeymen or apprentices on the Work in the same amount or upon the same basis and in the same manner done by the other contractors. Design Builder may include the amount of such contributions in computing its bid for

the Contract; but if Design Builder fails to do so, it shall not be entitled to any additional compensation therefor from WestEd.

14.4.6 In the event Design Builder willfully fails to comply with this Article 14.4, it will be considered in violation of the requirements of the Contract.

14.4.7 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Builder or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

14.5 WORK DAY

14.5.1 Design Builder shall not permit any worker to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design Builder shall forfeit to WestEd, as a penalty, \$25 for each worker employed in the execution of this Contract by Design Builder, or any Subcontractor, for each day during which such worker is required or permitted to work more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Article 14.5 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Design Builder and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of WestEd, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

14.6 PATIENT HEALTH INFORMATION

Design Builder acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a WestEd facility, etc.). Design Builder shall immediately notify WestEd Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Design Builder will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Design Builder, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Design Builder will report such actions immediately to WestEd Representative. Design Builder will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Design Builder will report to WestEd Representative within five (5) days after Design Builder gives WestEd Representative notice of the event/action of the steps taken to prevent future occurrences.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 Governing Law. The Contract shall be governed by the law of the State of California.

15.2 Successors and Assigns. WestEd and Design Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

15.3 Survival. The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and WestEd's right to audit Design Builder's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.4 Complete Agreement. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

15.5 WestEd's Right to Audit. WestEd and entities and agencies designated by WestEd will have access to and the right to audit and the right to copy at WestEd's cost all of Design Builder's books, records, contracts,

correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Design Builder shall preserve all such records and other items during the performance of the Contract and for a period of at least 3 years after Final Completion.

15.6 Methods of Delivery for Specified Documents.

15.6.1 The following documents must be delivered in a manner specified in Article 15.6.2:

- .1 Design Builder Notices of election to litigate or arbitrate;
- .2 Written demand for an informal conference to meet and confer pursuant to Article 4.5;
- .3 WestEd's written statement identifying remaining disputes following informal conference pursuant to Article 4.6;
- .4 Written demand for non-binding mediation pursuant to Article 4.6;
- .5 Design Builder claims pursuant to Article 4.3;
- .6 Design Builder notices of conditions pursuant to Articles 3.14;
- .7 WestEd's notices of Design Builder's failure to perform and/or correct defective work pursuant to Articles 12.2 and 13.2.3;
- .8 WestEd's notice to stop work pursuant to Article 2.1.1;
- .9 Notices of termination or suspension pursuant to Article 13.

15.6.2 Delivery methods for documents specified in Article 15.6.1:

- .1 By personal delivery.
- .2 Sent by facsimile copy where receipt is confirmed.
- .3 Sent by Express Mail, or another method of delivery providing for overnight delivery where receipt is confirmed.
- .4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.6.3 The documents identified in Article 15.6.1 shall only be effective if delivered in the manner specified in Article 15.6.2. Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.6.

15.7 Time limits stated in the Contract Documents are of the essence of the Contract.

15.8 Reserved.

SUPPLEMENTARY CONDITIONS

1. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 1 – GENERAL PROVISIONS

The “Architect of Record” as referred to in the General Conditions is: {NAME} , {LICENSE}

2. MODIFICATION OF GENERAL CONDITIONS, ARTICLE 11 – INSURANCE AND BONDS

Contractor shall furnish and maintain insurance in the amounts below.

The insurance required by 11.1.2.1 and 11.1.2.2 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by WestEd (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following:

Minimum Requirement

| | | |
|----------|---|------------------|
| 11.1.2.1 | Commercial General Liability Insurance-Limits of Liability | |
| | Each Occurrence-Combined Single Limit for Bodily Injury and Property | <u>\$ AMOUNT</u> |
| | Products-Completed Operations Aggregate | <u>\$ AMOUNT</u> |
| | Personal and Advertising Injury | <u>\$ AMOUNT</u> |
| | General Aggregate | <u>\$ AMOUNT</u> |
| 11.1.2.2 | Business Automobile Liability Insurance-Limits of Liability | |
| | Each Accident-Combined Single Limit for Bodily Injury and Property Damage | <u>\$ AMOUNT</u> |

Insurance required by Paragraph 11.1.2.3 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to WestEd. Such insurance shall be written for not less than the following:

| | | |
|----------|--|--|
| 11.1.2.3 | WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY – | Minimum Requirement |
| | Worker's Compensation: | (as required by Federal and State of California law) |
| | Employer's Liability: | |
| | Each Employee | \$1,000,000 |
| | Each Accident | \$1,000,000 |
| | Policy Limit | \$1,000,000 |

The following article is added to the General Conditions:

11.1.2.4 The Contractor shall obtain, either itself or through the applicable Subcontractor(s) performing Work involving hazardous materials, Contractor's Pollution Liability (CPL) insurance coverage for such Work AND an endorsement to either its CPL or Business Auto policies for transporting or hauling of hazardous materials. The insurance required by this paragraph 11.1.2.4 shall be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by WestEd (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Such insurance shall be written for not less than the following and include WestEd as Additional Insured by endorsement:

| CONTRACTOR'S POLLUTION LIABILITY - Limits of Liability | Minimum Requirement |
|--|---------------------|
| Each Occurrence | {\$AMOUNT} |
| Products-Completed Operations | {\$AMOUNT} |
| General Aggregate | {\$AMOUNT} |

If coverage is provided on a Claims-Made form, Contractor shall provide evidence of coverage to include a three (3)-year Extended Reporting Period beyond completion of such Work. Coverage must extend to Transportation and Hauling of hazardous materials. WestEd shall require a copy of the policy endorsement noting extension of Transportation coverage. If this extension of coverage is not provided under the Contractor's or applicable Subcontractor's Contractor's Pollution Liability, then the Contractor/Subcontractor shall also be required to evidence the following under its Business Auto policy:

BUSINESS AUTO - Combined Single Limit Per Accident {\$AMOUNT}
 Covering Transportation and/or Hauling of hazardous materials by amending the pollution exclusion of ISO Form CA 00010 6/92 (or its equivalent) in the following manner:
 1. Delete Section a.(1)a.: (Pollution) "being transported or towed away by, or handled for movement into, onto or from the Covered Auto"
 2. Delete Section a.(1)b.: "Otherwise in the course of transit by the insured."

Coverage shall include MCS-90 endorsement with WestEd as Additional Insured and shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

3. MODIFICATION OF ARTICLE 8 – CONTRACT TIME

Rainy weather in excess of the following number of days will be granted a Contract Time extension pursuant to Article 8.4 of the General Conditions:

- Example 1 {If facility elects to specify days on a monthly basis}
 - January - 6 days
 - February - 6 days, etc.
- Example 2 {If facility elects to specify a total number of days for the entire project}
 - Total Number of days – 27 days

4. MODIFICATION OF GENERAL CONDITIONS ARTICLE 15 – MISCELLANEOUS PROVISIONS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a WestEd approved digital signature process and shall have the same force and effect as the use of a manual signature. WestEd reserves the right to reject any digital signature that cannot be positively verified by WestEd system as an authentic digital signature.