

**BIDDING DOCUMENT 0700**

**FORM OF CONSTRUCTION AGREEMENT**  
**(LUMP SUM PRICE)**

This construction agreement (“**Agreement**”) is made as of \_\_\_\_\_, 2026  
(the “**Effective Date**”), among and between:

“**Owner**”: Sequoia Healthcare District  
1016 Laurel Street  
San Carlos, CA 94070

and

“**Contractor**”: \_\_\_\_\_  
\_\_\_\_\_

a [state and form of entity]

Contractor’s License No.: \_\_\_\_\_

For the Project: Interior Office Improvements to 1016 Laurel Street

Lum Sum Price: \$ \_\_\_\_\_

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Owner and the Contractor agree as follows:

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**ARTICLE 1**  
**THE WORK OF THIS AGREEMENT**

1.1 Definition of Work. Owner hereby engages Contractor, and Contractor hereby agrees to perform and supply all work required to complete construction of the Project in accordance with the Contract Documents as defined below in Section 2.1 (the “**Work**”). In addition to the foregoing, Contractor shall be solely responsible for determining the means, methods, techniques, and sequences of construction and for finishing the Work in compliance with the Contract Documents and all applicable laws, codes, permits, and regulations, whether federal, state or local, and whether governmental or public administrative.

1.2 Non-Approved Work. All work not included in the original scope of the Work performed without the written approval of the Owner as evidenced by a Change Order or a Construction Change Directive pursuant to Article 9 shall be at the sole cost and expense of Contractor with no increase in the Contract Sum, as defined in Section 3.1, or the Contract Time, as defined in Section 4.2.

**ARTICLE 2**  
**THE CONTRACT DOCUMENTS**

2.1 The Contract Documents. The “**Contract Documents**” consist of: (i) this Agreement with Exhibits and any addenda thereto; (ii) the scope of work and specification package issued prior to the execution of the Agreement and included in Exhibit “A” (the “**Permit Drawings**”), Exhibit “B” (the “**Interior Design Drawings**”) and Exhibit “C” (the “**Specifications**”) along with all amendments or modifications thereto; and (iii) all amendments or modifications to this Agreement, including any Change Orders and Construction Change Directives issued after execution of this Agreement. Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the Contract Documents.

2.2 Includes All Necessary Items. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.

2.3 Order of Precedence. Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (i) amendments and executed Change Orders and Construction Change Directives in reverse chronological order; (ii) the Agreement; (iii) the Drawings and Specifications, where Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance; and (iv) as to Exhibits, any addenda thereto shall govern over the respective Exhibit, and the higher numbered addendum shall govern over all lower numbered addenda with respect to any item addressed therein. Approved revisions and addenda of later date take precedence over those of earlier date or original documents.

2.4 Review of Contract Documents by Contractor. Execution of the Agreement by the Contractor is a representation that the Contractor: (i) has reviewed and is familiar with the Contract Documents, including but not limited to the Drawings and Specifications; (ii) is familiar with and has had substantial prior experience with the construction of facilities similar to the Project; and (iii) has made all determinations and inquiries that the Contractor deems necessary or appropriate as a basis for entering into this Agreement and performing the Work required under the Contract Documents. Contractor’s review of the Contract Documents is made in Contractor’s capacity as a contractor and not as a licensed design professional.

2.5 Errors and Omissions in Documents. If the Contractor, either before commencing or in the course of the Work, finds that the Contract Documents are at variance with one another, or finds that the Work has not been sufficiently detailed or explained in the Contract Documents, or finds any

discrepancy between the Contract Documents and the physical conditions on the site, or finds any error or omission in any of the Contract Documents, or a misunderstanding arises regarding the intended meaning of the Contract Documents, the Contractor shall promptly notify the Owner in writing of the discrepancy, error, omission, or misunderstanding. On receipt of notice, the Owner shall promptly investigate the circumstances and give appropriate written instructions to the Contractor. Until instructions are given by the Owner to the Contractor, any affected work done by the Contractor either directly or indirectly, after the Contractor's discovery of error, discrepancy, or conflict, will be at the Contractor's own risk. Contractor shall not be responsible for errors or omissions in the Contract Documents unless Contractor had actual knowledge of such error or omission and failed to promptly notify the Owner as set forth above. Furthermore, Contractor's obligations to comply with Applicable Laws shall pertain to those laws bearing on the performance of the Work.

### ARTICLE 3 CONTRACT SUM

3.1 Stipulated Sum. The Owner shall pay the Contractor a stipulated sum of \$ \_\_\_\_\_ in current funds for the Contractor's performance of the Work (the "**Contract Sum**").

3.2 Schedule of Values. The Contractor shall submit to the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner or the Architect may require (the "**Schedule of Values**"). This Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The initial Schedule of Values and any supplements or amendments thereto shall be subject to the approval of the Owner. After approval by the Owner, the Schedule of Values shall be attached to this Agreement as "**Exhibit D**".

3.3 Increases to the Contract Sum. Any increase to the Contract Sum, which may only be achieved by way of an executed Change Order or Construction Change Directive, shall be priced as agreed upon by the Parties but in no event shall that price exceed the sum of the following cost items: (i) the actual labor cost reasonably and necessarily incurred by Contractor to perform the Change Order or Change Directive, including insurance and taxes; (ii) the actual cost of materials, supplies, products, and equipment reasonably and necessarily incurred by Contractor to perform the Change Order or Change Directive, including sales taxes; (iii) the actual cost of Subcontractors reasonably and necessarily incurred by Contractor to perform the Change Order or Change Directive, including insurance and taxes; and (iv) Contractor's fee for overhead and profit not to exceed ten percent (10%) on items (i) through (iii), above. Where the increase to the Contract Sum is based on any pricing mechanism other than a stipulated sum, the Contractor shall be required to maintain accounting records for the increased costs and the Owner shall have a right to audit those costs.

3.4 Inferable Work. Contractor agrees that the scope of the Contract Sum includes Work not expressly indicated in the Contract Documents, but which is reasonably inferable from such Contract Documents, or consistent therewith, and such Work shall be performed by Contractor without any increase in the Contract Sum. The parties agree that such reasonably inferable Work does not include revisions to the Contract Documents that materially change the scope, quality or quantity of the Work. Contractor acknowledges that it bears responsibility for consequences resulting from its construction processes and acknowledges its responsibility to manage and coordinate all of the construction processes for the Work.

## **ARTICLE 4**

### **CONTRACT TIME**

4.1 Commencement of Work. The commencement of the Work, with the exception of the Preconstruction Services which may have commenced pursuant to a separate agreement between Owner and Contractor prior to the Effective Date of this Agreement, shall be established by Owner delivering to the Contractor a written notice to proceed (“**Notice to Proceed**”).

4.2 Contract Time. The “**Contract Time**” is the time beginning on the Effective Date of this Agreement and ending on the date of projected date of Substantial Completion as set forth in the Work Schedule as defined in Section 4.4. The Contract Time may only be extended by an executed Change Order or Construction Change Directive.

4.3 Time of the Essence. Time is of the essence in the performance of the Work. Contractor shall commence performance of the Work upon receipt of a written Notice to Proceed from Owner and shall diligently proceed with performance to Final Completion.

4.4 Work Schedule. Contractor provided a detailed schedule of the Work (the “**Work Schedule**”), which is attached hereto as Exhibit “E” and incorporated herein by reference. Contractor shall, throughout the Contract Time, update the Work Schedule and provide such updates to Owner; provided, however, Contractor shall not change the date for Substantial Completion other than pursuant to a Change Order signed by Owner.

4.5 Extensions of Time. If the critical path of the Work is delayed at any time by any Compensable Delay Event as defined in Section 4.6 below or any Excusable Delay Event as defined in Section 4.7 below, and if such delay adversely impacts the Contractor’s ability to achieve Substantial Completion of the Work within the Contract Time, then the Contract Time shall be extended by Change Order for such time as may be reasonably attributed to such delay.

4.6 Compensable Delay. For purposes of this Article 4, the term “**Compensable Delay Event**” means any delay of one day or more, where the delay is caused by one of the following: (i) an act or omission of the Owner or any person directly or indirectly employed by the Owner other than Contractor; (ii) changes ordered in the Work pursuant to Article 9 below; (iii) concealed or unknown Site conditions as set forth in Article 8 below; (iv) delays in obtaining the necessary permits and approvals required by governmental authorities with jurisdiction over the Project before the Work or a portion of the Work can occur, or (v) any changes in applicable laws enacted after the Effective Date of the Agreement. Contractor’s sole and exclusive remedy for a Compensable Delay Event shall be to request, by means of a Proposed Change Order in accordance with Article 9 below, an extension of the Contract Time and an increase in the Contract Sum, except that Contractor shall not be entitled to indirect damages, such as extended overhead, idle labor and equipment costs, and acceleration costs, where the Compensable Delay Event is concurrent with a delay caused by or attributable to the Contractor.

4.7 Excusable Delay. (i) an industry-wide labor dispute affecting the geographical area in which the Project is located and not limited to the Project; (ii) fire; and (iii) any other unavoidable casualties or other causes which, based on Contractor’s extensive experience in constructing projects of similar scope and complexity in the same location and Contractor’s representations contained in the Contract Documents, are unforeseeable and beyond Contractor’s reasonable control. Contractor’s sole remedy for an Excusable Delay shall be to request, by means of a Proposed Change Order in accordance with Article 9 below, an extension of the Contract Time. Contractor shall not be entitled to any additional compensation (including, without limitation, any increase in the Contract Sum) by reason of an Excusable Delay Event.

**ARTICLE 5**  
**PAYMENT OF CONTRACTOR**

5.1 Applications for Payment. Each month during the performance of the Work, Contractor shall submit to Owner for approval and payment no more than one application for payment (each an “**Application for Payment**”) for all Work performed. Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Contractor in accordance with the Contract Documents and shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Unless Owner directs otherwise in writing, each Application for Payment shall be submitted on AIA Documents G702 – “Application and Certificate for Payment,” and G703 – “Continuation Sheet.” An Application for Payment may only request payment for Work actually performed and shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier. Contractor covenants and agrees that it shall, within ten (10) days of receipt of any payment made by Owner under this Article 5, pay to its Subcontractors and Vendors all amounts due for Work that is the subject of such Application for Payment. For an Application for Payment to be deemed “complete” for the purposes of Section 5.3 below, it must separately identify, itemize, and include the following:

5.1.1 a description of all Work performed and the amount allocated to such Work in the Schedule of Values;

5.1.2 the amount due for Work satisfactorily completed prior to the date of the Application for Payment, as measured by the amount allocated to such Work on the Schedule of Values based on the percentage of the Work complete;

5.1.3 for each category and portion of the Work as shown on the Schedule of Values: (i) the amount requested on all previous Applications for Payments; (ii) the amount requested on the current Application for Payment; and (iii) the amount allocated to the Work yet to be completed;

5.1.4 all amounts allocated to the Retention (defined in Section 5.6 below) for Work performed that is the subject of the Application for payment and the aggregate of all amounts allocated to the Retention since the Commencement Date;

5.1.5 duly executed waivers as required in Section 5.2 below in connection with such Work to the extent that payment is made by Owner to Contractor; and

5.1.6 such additional information and documentation regarding the progress of the Work as Owner may reasonably require.

5.2 Conditional and Unconditional Waivers. As a condition precedent to receiving a Progress Payment, Contractor shall submit with each Application for Payment a duly executed **conditional** waiver and release on progress payment in the form required under California law on behalf of Contractor and on behalf of each Subcontractor, Sub-Subcontractor, and Vendor for which Contractor is seeking payment in the Application for Payment. Contractor shall, within ten (10) calendar days of receiving a Progress Payment, deliver to Owner an **unconditional** waiver on progress payment in the form required under California law on behalf of Contractor and on behalf of each Subcontractor, Sub-Subcontractor, and Vendor for which Contractor was paid.

5.3 Progress Payments. Provided that Owner receives Contractor’s complete Month End Payment Application on or before the 25th day of the calendar month, the Owner shall make a progress

payment (“**Progress Payment**”) to Contractor not later than 30 calendar days following Owner’s receipt of the complete Month End Payment Application. Subject to other provisions of the Contract Documents including but not limited to Owner’s right to withhold pursuant to Section 5.4 below, the amount of each Progress Payment shall be computed as follows:

5.3.1 take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less Retention as defined in Section 5.6 below;

5.3.2 add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less Retention as defined in Section 5.6 below; and

5.3.3 subtract the aggregate of previous payments made by the Owner.

5.4 Owner’s Right to Withhold. In addition to the Retention as defined in Section 5.6 below, Owner may withhold from any payment to be made to Contractor an amount reasonably necessary to protect the Owner from loss for which the Contractor is responsible because of: (i) defective Work not remedied; (ii) third-party claims filed or reasonable evidence indicating probable filing of such claims; (iii) failure of the Contractor to make payments properly to Subcontractors or Vendors or for labor, materials, or equipment; or (iv) damage to the Owner or to a separate contractor.

5.5 Procedure for Owner’s Withholding. If Owner intends to withhold any amount pursuant to Section 5.4, then the Owner must deliver to Contractor, on or before the date that payment is due, a written notice (“**Notice of Withholding**”), signed by an authorized agent of Owner and including: (i) the amount that will be withheld from Contractor; and (ii) a reasonably detailed explanation of the reason for Owner withholding that amount. Upon Contractor correcting any condition described in the Notice of Withholding as the reason for withholding payment due to Contractor, Contractor shall deliver written notice (“**Notice of Correction**”) to Owner identifying the scope and manner of the corrective measures undertaken by Contractor. Upon Owner’s receipt of a Notice of Correction, Owner shall (a) pay to Contractor the amount withheld on or before the date that the next payment is due to Contractor, if the conditions for withholding payment have been corrected to Owner’s reasonable satisfaction, or (b) deliver to Contractor, on or before the date that the next payment is due to Contractor hereunder, a written notice objecting to the scope and manner of the corrective measures taken by Contractor and including a detailed explanation for such objection.

5.6 Retention. From each Progress Payment, Owner shall be entitled to withhold from Contractor an amount equal to ten percent (10%) of the total Cost of Work claimed thereunder (collectively, the “**Retention**”). Once the Work is fifty percent (50%) complete as measured by the most recent Schedule of Values, the Owner may at the Owner’s sole discretion cease withholding Retention on the remainder of the Work.

5.7 Release of Retention. Subject to Owner’s right to withhold pursuant to Section 5.4 above, within thirty (30) days following Substantial Completion of the Work as defined in Section 5.8 below, Owner shall release the balance of the Retention then being held by Owner, except that Owner may withhold sums equal to the amount of (i) any Work that has not been performed (including, without limitation, all items set forth on the Punch List), (ii) the costs and expenses reasonably necessary to correct or repair any Work that is not in compliance with the Contract Documents, and (iii) any other amounts permissible under applicable laws.

5.8 Substantial Completion. “**Substantial Completion**” shall have occurred at the stage in the progress of the Work when all of the following are achieved: (i) the Work is sufficiently complete in accordance with the Contract Documents to enable Owner to fully occupy and utilize the same for all of its intended purposes; (ii) the Work is generally satisfactory to Owner in accordance with the Contract Documents; and (iii) the only Work that remains to be performed is limited to minor punchlist items (the “**Punch List**”).

5.9 Final Completion and Final Payment. “**Final Completion**” shall have occurred when: (i) the Contractor has fully performed the Work in accordance with the Contract Documents, including without limitation completion of all items on the Punch List to Owner’s satisfaction; (ii) the Contractor has submitted to Owner a final Application for Payment clearly identified as the final billing; and (iii) the Contractor has provided to Owner Final Waivers as required in the following Section 5.10. The Owner shall make final payment to the Contractor of the entire unpaid balance of the Contract Sum including all Retention withheld pursuant to Section 5.6 above (“**Final Payment**”) no later than thirty (30) days after receipt by Owner of all of the items required for Final Completion in this Section 5.9.

5.10 Final Conditional and Unconditional Waivers. As a condition precedent to achieving Final Completion and receiving Final Payment, Contractor shall submit with its final Application for Payment a duly executed *conditional* waiver and release on *final payment* in the form required under California law on behalf of Contractor and on behalf of each Subcontractor, Sub-Subcontractor, and Vendor. Contractor shall, within ten (10) calendar days of receiving Final Payment, deliver to Owner an *unconditional* waiver on *final payment* in the form required under California law on behalf of Contractor and on behalf of each Subcontractor, Sub-Subcontractor, and Vendor.

5.11 Effect of Final Payment. The making of any payment to Contractor under this Article 5, including Final Payment pursuant to Section 5.9 above, shall not constitute acceptance by the Owner of the quality of the Work that is the subject of such payment, nor shall it be deemed a waiver of any claims that Owner may have with respect to such work. Acceptance of Final Payment by the Contractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

## **ARTICLE 6**

### **CONTRACTOR COVENANTS**

6.1 Standard of Care. Contractor covenants to furnish its best skill and judgment and to cooperate with Owner in furthering the best interests of Owner, the Work, and the Project.

6.2 Contractor’s License. Contractor warrants that it holds, and that each Subcontractor engaged by Contractor, holds and continue to hold all the licenses required to perform the Work.

6.3 Contractor’s General Warranties. The Contractor expressly warrants to the Owner that: (i) materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or specifically permit otherwise; (ii) the Work will conform to the requirements of the Contract Documents; and (iii) the Work will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective (“**Nonconforming Work**”). The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

6.4 Permits, Fees, Notice, and Compliance with Laws. Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Agreement. The Contractor shall furnish to the Owner copies of all permits, certificates, licenses, and approvals obtained during the course of the Work and shall deliver original certificates of inspection, use, occupancy, and completion to Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved Work Schedule. The Contractor shall furnish to Owner a complete set of “as built” drawings following final inspection.

6.5 Avoid Damage to Other Property. Contractor shall take reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to other property at the site or adjacent thereto, such as trees, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Where necessary and appropriate, Contractor shall coordinate with the owners of adjacent properties and/or their professional consultants to help minimize the impact of the Work on the adjacent properties.

6.6 Coordination with Owner and Others. Contractor acknowledges that Owner reserves the right to engage other contractors, engineers, inspectors, consultants (collectively, “**Other Contractors**”) and/or its own personnel to provide work or services relating to the Project which may be carried out concurrently with Contractor’s Work. Contractor agrees to cooperate with Owner and the Other Contractors during Contractor’s performance of the Work. Such obligation to cooperate shall include, without limitation, entering into joint purchase arrangements with respect to the purchases of materials, supplies and equipment, where such cooperation and joint purchases may lead to a savings in purchase costs relating to such items as determined by Owner. Contractor shall fully cooperate by coordinating the Work with any work or services being performed by Owner and/or any Other Contractors.

6.7 Payment of Prevailing Wages. Contractor and all Subcontractors shall pay all workers on Work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the State of California Department of Industrial Relations, are on file at the Judicial Council's principal office. Prevailing wage rates are also available from on the internet at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

6.7.1 Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1 (a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code. or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 101164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.”

6.7.2 Contractor shall comply, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1) comply, with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to Owner that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

6.8 Nondiscrimination. During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

## ARTICLE 7 SUBCONTRACTS

7.1 Subcontractors and Vendors Defined. For the purposes of this Agreement, (i) “**Subcontractor**” means any person or entity who has a contract with or is engaged by Contractor to construct or perform a portion of the Work and/or provide construction services at the Site, (ii) “**Sub-Subcontractor**” means any person or entity who has a contract with or is engaged by any Subcontractor, at any tier, to construct or perform a portion of the Work and/or provide construction services at the Site, (iii) “**Vendor**” means any person or entity which has an agreement to provide materials, supplies, equipment and/or related services for the Project and/or provide installation services at the Site, through a contract, purchase order or other arrangement with Contractor, Subcontractor, or Sub-Subcontractor, and (iv) “**Subcontract**” means an agreement relating to any portion of the Work and entered into by and between Contractor or any Subcontractor or Sub-Subcontractor with another Subcontractor, Sub-Subcontractor, or Vendor.

7.2 Subcontractors. The Subcontractors have been listed in Contractor’s bid, and any substitutions shall be in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) (“Subcontractor Listing Law”), including, specifically sections 4109 and 4110.

7.3 Subcontracts to Incorporate Terms of this Agreement. Contractor shall provide each Subcontractor copies of the Contract Documents to which the Subcontractor will be bound. Contractor shall ensure that all Subcontracts shall require each Subcontractor to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities that Contractor, by the Contract Documents, assumes toward Owner.

7.4 Assignment of Warranties. Contractor shall assign to Owner in form and substance satisfactory to Owner, all warranties, service life policies, indemnities and guarantees with respect to any and all materials, appliances, mechanical devices, supplies, and equipment incorporated into the Work and given by the manufacturer, retailer, or other supplier, which shall be supplied and assigned to Owner promptly after such is received by or becomes available to Contractor and as a condition to Final Payment. Contractor shall, at Owner’s request, assist the Owner in enforcing all such warranties, guarantees, policies, and indemnities.

**ARTICLE 8**  
**SITE CONDITIONS**

8.1 Owner Provided Site Information. To the extent that Owner has already obtained, or is required to obtain elsewhere in the Contract Documents, any tests, inspections, investigations, or evaluations relating to the conditions existing at the Site (“**Site Information**”), the Owner shall provide such Site Information to the Contractor. The Contractor shall be entitled to rely on the accuracy of any Site Information provided by the Owner but shall exercise proper precautions relating to the safe performance of the Work based on Contractor’s experience and knowledge of construction as a General Contractor in the area in which the Project is located.

8.2 Review of Field Conditions by Contractor. The Contractor is familiar with and has visited the Site, including any existing improvements, and all conditions therein and thereon, and has made all investigations, tests, and inquiries that Contractor deems necessary for performing the Work required under the Contract Documents.

8.3 Concealed or Unknown Site Conditions. If the Contractor encounters conditions at the Site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 20 calendar days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will make an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents, or are not of an unusual nature differing materially from those ordinarily found to exist and generally recognized as inherent in the Work, and that no change in the Contract Sum or Contract Time is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes a determination made by Owner regarding concealed or unknown conditions, Contractor party may proceed as provided in Article 15.

8.4 Hazardous Materials Discovered at the Site. Contractor shall have no responsibility for the handling, removal, or disposal of Hazardous Materials (as defined below in Section 8.5) discovered at the Site, and the Scope of Work shall not include the handling, removal, or disposal of any Hazardous Materials, other than to the extent of Contractor’s negligence, gross negligence, willful misconduct, or other legal fault of Contractor or anyone acting under Contractor’s direction or control, including without limitation Contractor’s failure to comply with applicable laws, causes, contributes to, or exacerbates a Release of Hazardous Materials. “Release” shall have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*) and the regulations promulgated thereunder. If Contractor discovers the presence, or conditions indicating a potential presence, of any Hazardous Materials at the Site, Contractor shall promptly report the presence, or conditions indicating a potential presence, and precise location of such actual or suspected Hazardous Materials to Owner and immediately stop Work in the affected area. If Contractor incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, and such costs and/or delay are not a result of Contractor’s negligence, gross negligence, willful misconduct, or other legal fault of Contractor or anyone acting under Contractor’s direction or control, including without limitation Contractor’s failure to comply with applicable laws, Contractor shall be entitled to an equitable adjustment of the Contract Sum and the Contract Time made in accordance with Article 9 below. Owner shall defend, indemnify, and hold harmless Contractor from and against any and

all claims to the extent caused by or arising from such Hazardous Materials that are discovered at the Site. This Section 8.4 in its entirety shall not apply to Hazardous Materials brought to the Site by Contractor or anyone acting under Contractor's direction or control, which shall be governed by Section 8.6 below.

8.5 Hazardous Materials Defined. As used in this Agreement, the term "**Hazardous Materials**" means any flammable explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyl's, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, *et seq.*), California Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*), Hazardous Materials Release Response Plans and Inventory Act (California Health & Safety Code § 25500, *et seq.*), Underground Storage of Hazardous Substances provisions (California Health & Safety Code § 25280, *et seq.*), California Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*, or any other applicable Environmental Law and the regulations promulgated thereunder.

8.6 Hazardous Materials Brought to the Site by Contractor. Notwithstanding anything to the contrary in this Agreement, Contractor shall: (a) obtain all permits, licenses, approvals, authorizations, consents or registrations required by any applicable law in connection with the ownership, use and/or operation of the Site for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Materials brought onto the Site by Contractor or any of its Subcontractors or Vendors or anyone acting under Contractor's direction or control; and (b) indemnify, protect, defend, and hold harmless the Owner from and against any and all claims or actions relating to, arising out of, or resulting from either (i) the release of such Hazardous Materials prior to Substantial Completion of the Work or (ii) the negligence of Contractor or its Subcontractors or Vendors. In addition to the foregoing indemnity obligation, Contractor shall, upon receipt of written request from Owner, do the following at Contractor's sole cost and expense: (i) promptly remove from the Site any Hazardous Materials brought onto the Site by Contractor; and (ii) repair any damage to the Site, the Project, and any completed Work resulting from such Hazardous Materials from the Site, including without limitation remediation of the Site to the satisfaction of government authorities and Owner should such Hazardous Materials be Released.

## **ARTICLE 9** **CHANGES IN THE WORK**

9.1 Change Orders. Owner may order changes in the scope or character of the Work, including but not limited to: (i) additions to or deletions from the Work; (ii) changes to the materials or quantities specified in the Contract Documents; (iii) corrections or other modifications to the specifications or drawings plans; (iv) changes to the Construction Schedule; and (v) changes resulting from construction conditions. Except for minor changes in the Work not resulting in an adjustment to the Contract Sum or the Contract Time, such changes in the Work shall only be authorized and accomplished by: (a) written Change Order signed by Owner and Contractor; or (b) a written Construction Change Directive signed by Owner. For the purposes of this Agreement, a "**Change Order**" means a written instrument prepared by Contractor and signed by both Owner and Contractor, stating their agreement on all of the following: (a) a change in the Work including a full description of such change; (b) the amount of the adjustment, if any, in the Contract Sum; and (c) the extent of the adjustment, if any, in the Contract Time.

9.2 Change Order Request. If the Owner intends to order a change in the Work, the Owner either acting by itself or through the Architect shall prepare and issue to the Contractor a written change order request (“**Change Order Request**”) describing in reasonable detail the change or changes in the Work being requested by Owner and requesting that Contractor prepare a Proposed Change Order as set forth below in Section 9.3. When time does not permit the processing of a Change Order in advance of commencing the change in the Work, upon receipt of a Change Order Request and written authorization to commence work from the Owner, the Contractor shall proceed with the change in the Work as if pursuant to a Construction Change Directive while concurrently proceeding with the preparation of a Proposed Change Order.

9.3 Proposed Change Order. Within 20 business days of receiving a Change Order Request, the Contractor shall submit a proposed Change Order to the Owner (“**Proposed Change Order**”). The Proposed Change Order shall be sequentially numbered and shall include, at a minimum, an estimate of any change in the Contract Sum or the Contract Time associated with the change described in the Change Order Request together with an itemization of all costs and substantiation of any extension of the Contract Time. If the Contractor is unable to submit the above information within the time limit, it shall notify the Owner in writing, setting forth for the Owner’s approval a date by which the Contractor will submit the information as well as a schedule for the performance of the Work for which the Proposed Change Order will be forthcoming. If the Owner approves in writing a Proposed Change Order submitted by the Contractor, the approved Proposed Change Order shall constitute a Change Order and shall be effective immediately.

9.4 Procedure Where Owner Has Not Issued a Change Order Request. If the Owner has not issued a Change Order Request, but the Contractor nevertheless reasonably believes that the Owner has otherwise directed a change in the Work, then the Contractor may submit a Proposed Change Order no later than 30 calendar days after the Contractor becomes aware of that the Owner has directed such change in the Work. If the Contractor submits a Proposed Change Order that was not prompted by or that differs substantially from a Change Order Request issued by the Owner, and if the Owner does not agree that the work described in that Proposed Change Order constitutes a change in the Work but nevertheless requires that the Contractor perform the work addressed therein, the Contractor shall proceed with the Work, including the work described in the Proposed Change Order, while recording all associated costs, and any additional compensation or extension of time claimed by the Contractor on account of such work shall be determined as provided in Section 3.3.

9.5 Construction Change Directive. If the Owner issues a Change Order Request that does not result in an executed Change Order and the Owner nevertheless desires to move forward with the change that is the subject of the Change Order Request, the Owner may issue a written order prepared by the Owner or the Architect (“**Construction Change Directive**”) directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. If the Owner anticipates that the change being directed in a Construction Change Directive will increase the Contract Sum, then the Construction Change Directive will include an estimated cost of the changed work, which amount shall not be exceeded without another Constructive Change Directive or a Change Order. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time, while recording all associated costs. Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment, and the Owner shall pay the amount that the Owner determines to be reasonably justified pursuant to the terms of the Agreement and the Contract Documents. Any additional compensation or extension of time claimed by

the Contractor on account of the Construction Change Directive shall be determined as provided in Section 3.3.

## **ARTICLE 10** **PROTECTION OF PERSONS AND PROPERTY**

10.1 **Compliance with Law.** Contractor's performance of the Work shall strictly comply with all applicable federal, state, and local laws, including, but not limited to, rules, regulations, statutes, ordinances, directives, and common law ("**Law(s)**") now in force or hereafter in effect. All work, labor, services, or materials necessary to comply with such Laws will be furnished by Contractor as part of this Agreement without any additional time for performance or compensation.

10.2 **Contractor's Site Safety Responsibilities.** Contractor shall be responsible for maintaining all safety precautions and programs in connection with the performance of the Work. Owner shall not approve or have any control over Contractor's safety program.

10.3 **Accidents.** In the event that an accident involving the property, equipment, or personnel of Contractor (or any of its Subcontractors, Vendors, agents, or business invitees), occurs on or off the Site, or while travelling to or from the Site, which arises out of, results from, or is any way connected with the Work, Contractor shall immediately notify the Owner of such accident. Contractor shall provide Owner with a copy of every report of such accident which Contractor is required to submit, or submits, to any entity, including without limitation, any governmental agency or body. Contractor agrees to cooperate fully with Owner in investigating any such accident.

## **ARTICLE 11** **INSURANCE REQUIREMENTS**

11.1 **Contractor's Insurance Requirements.** Contractor shall at its own cost procure and maintain the following types of insurance at all times during the term of this Agreement and during the performance of the Work ("**Contractor Required Insurance**"). In the case of the insurance coverages specified in Section 11.1.2 (workers compensation and employer's liability), and Section 11.1.3 (automobile liability), Contractor shall ensure that its Subcontractors procure and maintain the required insurance at all times during their performance of Work on the Project ("**Subcontractor Required Insurance**"). All Contractor Required Insurance and Subcontractor Required Insurance shall be placed with insurance companies who are authorized to conduct business in the state of California and who are rated, at a minimum, "A VII" by Best's Key Rating Guide. Contractor shall give written notice to Owner as soon as practicable in the event of cancellation, or non-renewal, of any policies.

11.1.1 **Commercial General Liability Coverage.** Contractor shall at its own expense procure and maintain commercial general liability insurance covering claims for personal injury, bodily injury, and property damage arising out of the Work and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance shall provide for all operations and include independent contractors, products liability, contractual liability, personal and advertising injury. The limits of such insurance shall not be less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. The policy shall not contain any exclusions directed toward any types of projects, materials, or processes involved in the Work. Contractor shall require each Subcontractor to procure and maintain commercial general liability insurance consistent with this Section 11.1.1. Contractor shall cause Owner to be named as an additional insured on all commercial general liability insurance required under this Section 11.1.1.

11.1.2 Workers' Compensation and Employer's Liability Insurance. Contractor and all Subcontractors shall procure and maintain: (i) workers' compensation insurance in an amount equal to any amounts and scope required by statute or other governing law; and (ii) employer's liability insurance in the amount of not less than \$1,000,000 per occurrence and for each of the following: bodily injury by accident – \$1,000,000 each accident; bodily injury by disease – \$1,000,000 policy limit; bodily injury by disease – \$1,000,000 each employee.

11.1.3 Automobile Liability. With regard to automobiles that are used in the performance of Work under this Agreement, Contractor and any relevant Subcontractors, Vendors, and Sub-Subcontractors shall maintain business automobile liability insurance covering all owned, non-owned, and hired vehicles on and off-site. Such insurance shall provide coverage not less than the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 00 20), with limits not less than \$2,000,000 each accident, and \$2,000,000 each occurrence for claims subject to The Motor Carrier Act of 1980. If the Work involves transportation of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor shall provide pollution auto coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached. Any statutorily required "No-Fault" benefits and uninsured/underinsured motorists coverage should be included.

11.1.4 Contractor's Equipment. Contractor is not required to procure and maintain insurance covering risk of physical damage to equipment provided for use at the Project site by the Contractor. However, Contractor agrees to waive and does hereby waive its rights of recovery against Owner and each of its officers, employees, consultants and agents, as to any damage or loss which may occur to its equipment to the extent covered by such insurance, and Contractor will have the insurance company specifically agree to this waiver. If uninsured, Contractor will hold harmless Owner and each of its officers, employees, consultants and agents, for loss or damage to its tools and equipment.

11.1.5 Umbrella/Excess Liability. Contractor shall procure and maintain insurance on an occurrence basis in excess of the underlying insurance identified in Sections 11.1.1 (commercial general liability), 11.1.2(ii) (employer's liability), and 11.1.3 (automobile liability), and which is at least as broad as each and every one of the underlying policies. The umbrella/excess liability policies shall be written on a "drop-down-following form" basis, with only such exceptions as Owner shall expressly approve in writing. The amounts of insurance required in subparagraphs Sections 11.1.1, 11.1.2(ii), 11.1.3, and this Section 11.1.5 may be satisfied by Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified below for these types when added to the limit for this Section 11.1.5. The umbrella/excess liability insurance limits shall have limits not less than \$5,000,000 for any one occurrence and annually reinstating general aggregate.

11.1.6 Performance Bond. Contractor shall procure and maintain a performance bond in the amount of 100% of the Contract Sum. The premium for said bond shall be a reimbursable expense.

11.2 Certificates of Insurance. Contractor shall furnish Owner with certificates of insurance completed by a duly authorized representative evidencing coverage required under Article 11 of this Agreement. Such certificates shall be delivered to Owner before any Work hereunder is commenced by Contractor and annually thereafter on or before the policy effective dates of Contractor's general liability

insurance policy. For the coverages are required to remain in force after Substantial Completion, Contractor shall submit an additional certificate evidencing continuation of such coverage with its final billing and at each subsequent renewal of Contractor's insurance.

11.3 Waivers of Subrogation. The Owner and Contractor waive all rights against each other and any of their Subcontractors, Sub-Subcontractors, Vendors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4 Owner's Right to Settle with Insurer. The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five business days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved pursuant to Article 15 below, in which case the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the court.

## **ARTICLE 12** **CONTRACTOR DEFAULT**

12.1 Notice of Default. Contractor shall promptly cure any default of Contractor, or any Subcontractor or Vendor, under the Contract Documents, to Owner's reasonable satisfaction, within 10 calendar days following Contractor's receipt of written notice of such default ("**Notice of Default**"). If it is not possible to cure such a default within 10 calendar days, Contractor shall within said 10 calendar days, provide Owner with written notice setting forth a proposed reasonable course of action for curing such default together with a reasonable estimate of the time required to cure such default ("**Cure Plan**"). Owner may, in its discretion, approve the Cure Plan, in which case Contractor shall immediately commence and diligently continue effective action to cure such default in accordance with such Cure Plan, subject to such changes as Owner may reasonably request. If Owner elects not to approve Contractor's Cure Plan, Owner may hold Contractor in default and exercise its remedies as set forth in this Agreement.

12.2 Owner's Remedies Upon Default by Contractor. If Contractor (or any Subcontractor or Vendor) fails to perform any of its material obligations under the Contract Documents (including, without limitation, failure to perform the Work in a diligent, expeditious, workmanlike and careful manner strictly in accordance with this Agreement), or otherwise breaches any of its obligations under the Contract Documents, then Owner may, following the expiration of any applicable cure period afforded Contractor under Section 12.1, do any or all of the following: (i) hold in abeyance any further payments due Contractor hereunder until Contractor cures all breaches of its obligations under the Contract Documents to the satisfaction of Owner; (ii) terminate this Agreement in its entirety, or only with respect to certain portion(s) of the Work in accordance with Section 13.1 below; and/or (iii) pursue all other remedies available to Owner under any Laws including, without limitation, claims damages.

12.3 Non-Curable Defaults. Notwithstanding the foregoing provisions of this Article 12, in the event any of the events listed below in this Section 12.3 shall occur during the Contract Time, Owner may hold Contractor in default and exercise its remedies as set forth in this Agreement, including but not

limited to termination pursuant to Section 13.1 below, without first providing Contractor with an opportunity to cure:

12.3.1 the commencement of an action or petition by or against Contractor under any applicable bankruptcy laws; any general assignment by Contractor for the benefit of creditors, or the appointment of a receiver, trustee or manager to take charge of the assets of Contractor; or Contractor becomes insolvent, goes into liquidation, has a receiving or administrative order made against it, or compounds with its creditors; or

12.3.2 the failure to maintain all licenses and qualifications necessary to perform the Work; or

12.3.3 the failure to maintain the insurance required by Article 11 of this Agreement.

12.4 Stop Work Orders. In the event of any material breach or default of this Agreement by Contractor (including, without limitation, any of the events set forth in Section 12.3 above), and in lieu of declaring termination of this Agreement for default pursuant to Section 13.1 below (but not in lieu of any other remedies available to Owner under this Agreement or any Laws), Owner may elect to stop, delay, reduce or interrupt any operations of Contractor or any affected Subcontractors or Vendors until such default or failure is remedied to Owner's satisfaction.

12.5 Remedies Not Exclusive. All the rights and remedies of Owner under this Article 12 and the following Article 13 shall be non-exclusive, and shall be in addition to all other rights and remedies available to Owner under the Contract Documents, any Laws, or otherwise.

### **ARTICLE 13** **TERMINATION AND SUSPENSION**

13.1 Termination by Owner for Cause. The Owner may at its sole discretion elect to terminate this Agreement, in whole or in part, should Contractor be in default of any of its obligations under this Agreement and fail to cure such default within 10 calendar days following receipt of written notice of such default (or commence and diligently pursue a cure such default, if the default is of a nature that it cannot reasonably be cured within 10 days). In the event of an Owner termination for cause pursuant to this Section 13.1, Contractor shall not be entitled to receive any further payments under the Agreement until either (i) Final Completion of the Work has been achieved by others; or (ii) Owner elects to forego or suspend completion of the Work. Thereafter, Contractor shall be entitled to reimbursement only of such amount (if any) by which the Contract Sum for those portions of the Work actually and properly performed by Contractor (as determined by the Schedule of Values and the percentage of Work complete) in accordance with the Contract Documents up to the date of such termination ("**Completed Work**") exceeds the total of (a) all payments made by Owner to Contractor for the Completed Work, and (b) all damages and other costs incurred by Owner, directly or indirectly, arising out of or as a result of Contractor's breach or default, including without limitation the additional cost required to complete the Work less the unpaid balance of the Contract Sum. If such damages and other costs exceed the unpaid balance of the Completed Work, then Contractor shall pay the difference to Owner. This obligation for payment shall survive termination of the Agreement.

13.2 Termination by Owner Without Cause. The Owner may at its sole discretion elect to terminate this Agreement, in whole or in part, for Owner's convenience and without cause upon 7 calendar days' prior written notice to Contractor. Contractor shall cause all of its agreements with Subcontractors to include a similar right to terminate for convenience and without cause.

13.2.1 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work actually and properly performed by Contractor (determined by the percentage of Work complete compared against the Schedule of Values) in accordance with the Contract Documents, plus reasonable and necessary demobilization costs, cancellation costs, and cost of items properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions. Notwithstanding the foregoing, the Contractor shall be required to take all reasonable efforts to reduce the demobilization costs and cancellation costs and to expedite the demobilization. The Contractor shall, as a condition to receiving the payments referred to in this Section 13.2.1, execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as Owner may require for the purpose of fully vesting in it the rights and benefits of the Contractor under such obligations or commitments and for assuring that no basis exists for mechanics' liens arising out of Contractor's Work. If the Owner wrongfully terminates the Contractor for Cause under Section 13.1, that wrongful termination shall be deemed a termination for the Owner's convenience under this Section 13.2.

13.2.2 Notwithstanding anything in the Contract Documents to the contrary, in no event shall the Contractor be entitled to recover anticipated profits on work not yet performed as of the time of the termination.

13.3 Procedure Following Termination. If this Agreement is terminated in its entirety or with respect to any portion of the Work, then the following Sections 13.3.1 through 13.3.5 shall apply to such terminated portions of the Work and/or this Agreement:

13.3.1 Contractor shall immediately discontinue the terminated Work and remove its personnel, construction equipment, and any debris and waste material generated by Contractor from the Site to the extent required by such termination, and Owner shall be entitled to take exclusive possession of such portions of the terminated Project, as well as all or any part of the equipment and materials delivered or en route with respect to such portions of the terminated Project. Contractor shall immediately take such steps as are reasonably necessary to preserve and protect all Work completed and in progress and to protect materials, equipment, and supplies at the Site, stored off-Site, or in transit to the Site.

13.3.2 Contractor shall, prior to the effective date of the termination, do all of the following with respect to the Project: (i) assign to Owner (or, at Owner's election, cancel) all contracts with Subcontractors, Vendors, and equipment rental companies upon terms satisfactory to Owner; (ii) execute all documents and take all other reasonable steps requested by Owner that may be reasonably required to vest in Owner all rights and benefits vested in Contractor prior to such termination; (iii) deliver and assign to Owner, pursuant to a document reasonably acceptable to Owner, all warranties as required under Section 7.4; and (iv) deliver to Owner all originals and copies of all drawings, documents relating to Permits, orders placed, bills and invoices relating to the terminated Work; and (v) provide to Owner any other documentary support that is required under this Agreement as a condition to Final Completion.

13.3.3 Owner and Contractor shall use all reasonable efforts to mitigate costs incidental to the termination of such Work following such termination of this Agreement (or part thereof).

13.3.4 A termination of this Agreement (or part hereof) shall not, except as otherwise expressly provided in this Agreement, limit the liability of either party hereto, relieve either party hereto of any obligations or liabilities for loss or damage to the other party hereto arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination, or arising

out of such termination, and shall not relieve Contractor of its obligations as to portions of the Work or other services hereunder already performed.

13.3.5 The provisions of this Section 13.3 shall survive the termination of this Agreement.

#### **ARTICLE 14** **INDEMNIFICATION**

14.1 Indemnity. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner and Owner's agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including, but not limited to, the Work itself), but only to the extent alleged to have been caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

14.2 Indemnity for Improper Liens or Attachments. Contractor shall defend, indemnify, and hold harmless the Owner and Owner's agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from any liens, attachments, or claims asserted by any Subcontractor, Sub-Subcontractor, or Vendor for which Contractor has been fully paid by Owner.

#### **ARTICLE 15** **CLAIMS AND DISPUTE RESOLUTION**

15.1 Contractor Disputes. As used in this Article 15, a "**Dispute**" is a demand or assertion by Contractor seeking an adjustment of the Contract Sum, the Contract Time, or other relief with respect to the terms of the Agreement, whether arising due to an error or omission, breach of the Agreement, or otherwise. Disputes must be made within twenty-one (21) days after occurrence of the event giving rise to such Dispute, or within twenty-one (21) days after Contractor first recognizes the condition giving rise to the Dispute, whichever is later. Every Dispute shall be stated with specificity in writing and signed by Contractor under penalty of perjury. The Owner shall review the Dispute and issue a written decision to Contractor within 30 calendar days from the date the Dispute is received.

15.2 Contractor Claims. If the Contractor disagrees with the Owner's written decision in response to a Dispute, the Claimant Contractor may submit a certified claim ("**Contractor Claim**") within 30 calendar days for the Owner's consideration. Owner will review the Contractor Claim and will render a written decision to Contractor.

15.3 Mediation. Within thirty (30) days after the Owner renders its written decision on a Contractor Claim, the Contractor may request that the parties submit the underlying Dispute to mediation. Absent a request for mediation, the Owner's written decision is final and binding on the parties.

15.4 Litigation. If, after a mediation as indicated above, the parties have not resolved the underlying Dispute the Owner's written decision will be conclusive and binding unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one year following the accrual of the cause of action, whichever is later.

15.5 Exceptions from Dispute and Claims Process. The procedures and provisions for Disputes and Claims as set forth in Sections 15.1 through 15.4 shall not apply to: (i) any claim for personal injury or property damage; (ii) any claim for defective work or breach of warranty; and (iii) stop payment notices.

15.6 Work Continuance and Payment. Unless otherwise agreed in writing, Contractor shall continue to perform its obligations under this Agreement and pursue Final Completion of the Work during any dispute resolution proceedings initiated pursuant to this Article 15. If Contractor continues to perform its full and complete obligations hereunder, Owner shall continue to make payments of all undisputed amounts in accordance with this Agreement.

15.7 Waiver of Consequential Damages. The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes: (i) damages incurred by the Owner for losses of income, profits, financing, business opportunities, and reputation; and (ii) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business opportunities, and reputation, and for loss of profit except earned profit arising directly from the Work actually performed. This mutual waiver does not include: (A) damages incurred by Owner due to Contractor's willful and deliberate misconduct; (B) indemnity obligations arising under this Agreement or by operation of law; and (C) any fines or additional fees imposed by governmental entities with control or jurisdiction over the Project or Owner as a direct result of actions or inactions of the Contractor. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13.

15.8 Legal Fees. In the event of litigation pursuant to this Article 15 or any other action or proceeding at law or in equity between Owner and Contractor to enforce or interpret any provision of the Contract Documents, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including without limitation reasonable attorneys' fees and expenses (to include fees, costs and expenses of experts and consultants), reasonably incurred in connection with such action or proceeding. In any claim for monetary damages, the Party seeking monetary damages shall be deemed the non-prevailing party unless it is awarded seventy-five percent (75%) or more of the original amount claimed.

## **ARTICLE 16** **OTHER CONDITIONS**

16.1 Entire Agreement. This Agreement and the Contract Documents constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, undertakings or negotiations, whether oral or written. No provisions of this Agreement shall be changed or modified, nor shall this Agreement be discharged, in whole or in part, except by an agreement in writing signed by the Party against whom the change, modification or discharge is claimed or sought to be enforced. No waiver of any of Owner's or Contractor's rights under this Agreement shall be effective or binding unless such waiver shall be in writing and signed by the Party claimed to have given, consented to or suffered the waiver.

16.2 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed validly given if sent by United States Certified Mail (return receipt requested), Overnight Delivery Service, or fax, or email addressed to the parties as follows or such other address as either party may notify the other in writing:

**OWNER:**

Sequoia Healthcare District  
1016 Laurel Street  
San Carlos, CA 94070  
Att: Pamela Kurtzman, CEO  
pkurtzman@seqhd.org

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_

16.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

16.4 Severability. If any provision in this Agreement is determined to be invalid, void, or unenforceable, in whole or in part, that determination will not affect any other provision of the Agreement, and the provision in question shall be modified so as to render it enforceable.

16.5 Counterparts. 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 instrument.

16.6 Exhibits. The following Exhibits have been annexed to this Agreement and are made a part hereof:

- Exhibit “A” – Permit Drawings
- Exhibit “B” – Interior Design Drawings
- Exhibit “C” – Specifications
- Exhibit “D” – Schedule of Values
- Exhibit “E” – Work Schedule

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have duly authorized and caused this Agreement to be executed as follows:

**“OWNER”**

Sequoia Healthcare District  
1016 Laurel Street  
San Carlos, CA 94070

By: \_\_\_\_\_

Its: \_\_\_\_\_

**“CONTRACTOR”**

[INSERT NAME] \_\_\_\_\_

[State and Business Entity] \_\_\_\_\_

[Address Line 1] \_\_\_\_\_

[Address Line 2] \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

License No.: \_\_\_\_\_