



## REQUEST FOR PROPOSAL

This document is a Request for Proposal (“**RFP**”) for general conditions and fee proposal for preconstruction and complete construction services for tenant improvements and related building construction elements (“**Services**”).

The State Bar of California (the “**State Bar**”) is seeking proposals for a general conditions and fee proposal for preconstruction and complete construction services for tenant improvements and related building construction elements for the relocation of the State Bar of California’s offices within the building it currently occupies. The State Bar’s offices occupy a portion of the Ground floor and the entirety of floors 4 through 10, totaling 122,339 rentable square feet. It plans to reduce their existing space to floors 1 and 4 through 6, totaling 67,468 rentable square feet in accordance with the terms and conditions contained herein.

The selected general contractor’s general conditions and fee will later be incorporated into a stipulated sum construction agreement where the contract sum will comprise the total of the subcontractor’s contract amounts, design/build mechanical, electrical and plumbing, engineering fees for fire and life safety, approved allowances, and the general contractor’s general conditions and fee.

The State Bar of California will host a vendor pre-bid meeting and facilities walk-through to discuss this request in greater detail. **Attendance is optional.** The vendor pre-bid meeting and facilities walk-through will be held on **Friday, April 5, 2024 at 10 a.m., and Monday, April 8, 2024 at 10 a.m.**, at 180 Howard Street, CA 94105.

The State Bar expects to award a contract based on this RFP on or before **May 3, 2024**, for the Initial Term to commence on or before **May 22, 2024**.

Please submit an electronic copy of your proposal by email to [Sunly.Yap@calbar.ca.gov](mailto:Sunly.Yap@calbar.ca.gov) no later than **3:00 p.m. on April 22, 2024** (“**Submission Deadline**”). Bidders will receive a confirmation email notifying them of receipt. If bidders do not receive such email, please follow up by email to Sunly Yap.

## I. INTRODUCTION

The State Bar of California (“**State Bar**”), created in 1927 by the Legislature and adopted as a judicial branch agency by amendment to the California Constitution in 1960, is a public corporation within the judicial branch of the state government. The purpose of the State Bar is to ensure that the people of California are served by the legal profession in a manner consistent with the highest standards of professional competence, care, and ethical conduct; to carry out such additional programs as may be required by law or by the rule of court, and to contribute generally to the science of jurisprudence and the administration of justice. The State Bar serves as an administrative adjunct to the California Supreme Court in all matters pertaining to the admission, discipline, and regulation of California lawyers. The California Constitution, the State Bar Act, and California Rules of Court vest in the State Bar the duty to regulate the legal profession, formulate and elevate educational and professional standards, raise the quality of legal services, advance the science of jurisprudence, and aid in the improvement of the administration of justice.

The State Bar is a unified, or integrated bar, and all attorneys who wish to practice law in the State of California must be licensed by the State Bar and in good standing. In addition to its mandated licensing, disciplinary, and certification functions, the State Bar offers several other programs designed to assist, educate, and protect the public and licensees. Fees paid by licensees and applicants to practice law finance the State Bar’s programs. The State Bar has nearly 300,000 licensees, making it the largest unified state bar in the country with offices located in Los Angeles and San Francisco. For more than 90 years, the State Bar has shaped the development of the law, regulated the professional conduct of the state’s attorneys, and provided the public with greater access to information in the attorney discipline system.

More information about the State Bar can be found at <http://www.calbar.ca.gov/AboutUs.aspx>.

## II. STATEMENT OF WORK/PROJECT DESCRIPTION/PROJECT SCOPE

### 1.0 Project Overview:

General contractor will construct interior tenant improvements as specified in the drawings issued by Revel Architecture & Design (the “**Architect**” or “**Revel**”). Selection of the general contractor will be based upon criteria including the following: strength of the proposed contractor's team and proven ability in similar assignments; approach and organizational response to pre-construction and pre-purchase requirements; aggressive track-record of cost control without compromise to the quality of construction; ability to fully coordinate with and respond to the project team; appropriate and competitive general conditions, fee, and reimbursable expense allocations. Additional consideration will be given to contractor’s proposal if contractor qualifies as a small business enterprise (SBE) and subcontracts with other SBEs.

This project demands absolute adherence to the scheduled completion date (See [Exhibit B](#) for expected project timeline) and construction budget. Budget will be determined after a preliminary high level ROM pricing exercise is performed.

**2.0 Project Location:**

The project is located at 180 Howard Street, San Francisco, CA 94105, and is comprised of floors 1, 4, 5 and 6 for a total area of approximately 67,468 rentable square feet.

**3.0 Project Scope:**

The project consists of, but is not limited to, the following major scope elements:

- Selective demolition to floors 1 and 4-6, including partitions, doors/frames/hardware, and associated finishes and power/data. Limited construction and upgrades include new partitions and associated power/data, doors/frames/hardware, finishes upgrades, and lighting upgrades in areas of new work only.
- The project also consists of accessibility upgrades at each floor's core restrooms.

**4.0 Project Team:**

The State Bar has retained Revel as their Architect. Revel will assist the State Bar in qualifying, interviewing, and recommending selection of the general contractor for the project. Revel will be the primary point of contact on the design team during the project. Do not contact the architect directly until contract has been awarded.

**5.0 Plans:**

As part of the RFP package [Exhibit A](#) contains the 90% completed pricing plans of the proposed new offices, along with the existing known conditions plans for your reference. The final pricing plans will be sent to all vendors the week of April 1, 2024.

**6.0 Project Schedule:**

Preconstruction Services will begin immediately upon award of contract. A copy of the current project schedule ([Exhibit B](#)) is attached for your reference and is subject to modifications; submitted proposals shall include a detailed construction schedule indicating your ability to complete the work within the allocated time period.

Pending execution of the final contract, and unless specifically noted otherwise in the submitted bid package, it is assumed that the general contractor will agree to proceed with preliminary project activity on the basis of an interim Letter of Intent.

**7.0 Conditions and Requirements:**

**7.1 Complete Work:**

The contract for the work shall be based upon and shall include all work elements required to fully and completely construct and finish the work, governed by plans and specifications to be issued subsequently by Architect and the selected specialty consultants for final pricing and determination of the Cost of the Work.

**7.2 Union Labor:**

Selected contractor to confirm the use of union labor in accordance with the city of San Francisco.

**7.3 Sub-Contractors:**

General contractor is advised that bids for certain sub-contracted portions of the work shall be subject to pre-qualified subcontractors, either designated or approved by the State Bar, the Landlord, and Architect. General contractor must bid subcontracted work to at least three bidders to obtain competitive pricing. For trades bid by general contractor, general contractor must attempt to use SBEs for subcontracted work in as much as possible. SBE subcontractors will receive a 5% pricing differential over non-SBE contractors. General contractor will submit records to show/document such SBE outreach efforts when subcontracting with SBEs is not feasible due to non-responsiveness or unavailability of SBEs to perform the work. General contractor will submit subcontractor list with proposal.

**7.4** General contractor will be required to file a payment and performance bond in conformance with Civic Code Section 9550 et. seq. *Quote a fixed percentage of direct construction costs.*

**8.0 Supervision:**

The general contractor shall assign full-time supervision and such other support as may be required on site from commencement of the work until completion to properly complete the work within the established schedule.

General contractor proposal shall include the following:

- an organizational chart or outline describing the structure of functions within the overall company;
- an organizational chart or outline of the proposed project team;
- the names, job titles, qualifications and references for projects of similar size and scope for each key member of the proposed project team;
- the projected scope of involvement for each member of your proposed project team, expressed as a percentage of time per week.

No team changes are permissible until after move-in without State Bar's pre-approval except in cases of employee termination.

**9.0 Specifically Define the Following (reference each item #):**

- a. Fee for overhead and profit as a percentage of the cost of the work. Clearly define all items included in these costs.
- b. Cost for General Conditions as a fixed cost of the work as defined herein. Clearly define and itemize all items that are included within this cost.
- c. General conditions costs on a weekly basis should the schedule be extended beyond the stated completion date for reasons which are not the responsibility of the general contractor. State the date upon which general conditions commence and end.

- d. The scope and limit of pre-construction Services included.
- e. A detailed listing of what your firm considers to be direct reimbursable expenses, if any. Any and all taxes, insurance and/or license fees must be identified. Do not include general conditions "allowable costs" in your response.
- f. The value or cost of required insurance mark-ups or other charges over and above direct costs, fees and general conditions.  
If MEP will be Design/ Build, your process and delivery method.

**10.0 Direct Work:**

Specifically identify labor, materials, or elements of the work to be completed by your own labor and excluded from the scope of sub-contracted work.

**11.0 Change Orders:**

Specify the amount of your fees and general condition markups (or any other costs) as they pertain to both additional and deductive change orders.  
Subcontractors shall be advised that maximum permissible markup for overhead and profit for change orders to their respective contracts shall not exceed fifteen percent (15%), inclusive of all expenses not specifically incurred as a direct expense of the work.

**12.0 Qualifications:**

All exclusions, allowances, qualifications or exceptions shall be specifically noted upon submission of the proposal.

**13.0 Format:**

Proposal package shall be submitted via email at the date, time and distributed as noted, and shall include all of the information required herein along with other appropriate information relative to the qualifications or capabilities of your company.

**14.0 Contract:**

The construction agreement shall be as drafted by the State Bar of California ("Client" or "State Bar") between Client and general contractor with AIA Document A104, as modified by Client ("Agreement"). Additional provisions including, but not limited to, Termination by Owner for convenience of Owner will be included in the Agreement. The general contractor shall provide complete back-up information from subcontractors and suppliers during the construction phase of the project as part of the application for payment process which will be administered by Revel. A form of Agreement has been provided as Exhibit C for your review and comment. The final Agreement shall supersede this RFP and any other bidding documents.

**15.0 References:**

Provide five (5) recent project references of similar scope, including project description, client references and architectural, sub-contractor and project management references; demonstrated experience in fast-track projects shall be provided.

**16.0 Safety:**

The general contractor shall establish and implement a comprehensive safety program and administer that program for the duration of the work. Submission of proposed safety programs is encouraged; however, such submittal will be for the information of the project team but in no way will imply approval by Owner or Revel.

**17.0 Scope of the Work:**

In addition to the typical obligations and responsibilities required of the general contractor as defined in the contract documents, the selected company will be required to perform the following:

**17.1 Preconstruction Services**

The selected general contractor's project manager and estimator will be required to attend weekly preconstruction meeting.

Additionally, the selected general contractor will assist in preparation of building site survey reports in conjunction with Revel. Evaluation reports will include, but not necessarily be limited to:

- Building conditions.
- Proximity to sources of vibration.
- Condition of existing walls, windows, slab heights, doors & hardware, window coverings, etc.
- Accessibility issues, path of travel, restrooms, etc.
- Assist with building mechanical systems evaluation – system type, age of equipment, distribution, specialty systems.
- Assist with building electrical systems evaluation – service capacity, electrical distribution, existing code violation, etc.
- Building Fire & Life Safety Systems – condition of existing sprinklers system, fire alarm annunciation, pull stations, strobes & horns, areas of refuge, etc.
- Technology & Data Infrastructure – riser closet condition and capacity, fiber status, MPOE condition.

Additional general contractor preconstruction obligations shall include, without limitation:

- Review test fit plans.
- Prepare a conceptual budget for the project based on the test fit plan, space program, and available project information.
- Prepare preliminary procurement and construction schedules, budgets and value engineering recommendations based on Revel's pricing plans which will indicate millwork, glass, floor & wall finish selections, AV systems, video-teleconferencing, special detailing and special/above standard items (as applicable).
- Assist the design team with the development of specifications, alternatives and budgets during the engineering and architectural design development process.
- Review proposed details and specifications to identify pricing options, lead times and generally assist in "value engineering". Develop and revise project budgets and schedules.

- Coordinate the work of outside (N.I.C.) vendors as may be required to maintain the project schedule (e.g., telecommunications/data equipment and cabling contractors, audio-visual equipment installers, furniture installers, security system installers, etc.).
- Confirm project "constructability", by ensuring that all specified materials are available when needed, that drawings and details are appropriate and buildable, and that all project information is complete and in a satisfactory format for sub trade bidding.
- Conduct periodic constructability reviews, value engineering, phasing strategies, updated construction schedules, budgets, labor rates, and unit costs based on design development documents.
- Meet to review project scope and plan check/permit procedures with municipal agencies.
- If deemed necessary, identify pre-purchase material or equipment as required by lead-time or availability and as directed by Architect prior to the selection of subcontractors.

## **17.2 Bid & Permit Phase**

- Submit plans to governmental agencies (other than initial plan check) as required for approval and provide follow-up as necessary to receive permits inspections, and/or certificates of occupancy on an expedited basis.
- Prepare scope of work and phasing for major trades.
- Develop subcontractor/supplier bid list and invitations in accordance with, inasmuch as possible, DEI goals and objectives of Client, i.e. the State Bar of California.
- Conduct job walks of the existing and new premises.
- Obtain competitive bids from approved subcontractors and suppliers.
- Assist in coordinating bids from client's vendors into the procurement project schedule.
- Provide subcontractor/supplier bid analysis, recommendations and construction agreement. Bid pricing shall be in CSI format including all labor, materials, temporary work including protection of existing improvements, and anything else necessary for construction, completion and warranties for the works in accordance with the construction agreement.

## **17.3 Construction Phase**

- Attend weekly construction meetings and special site coordination meetings.
- Conform fully to the provisions of the Agreement and supplements to same as provided herewith, and other applicable building rules and regulations.
- Cost control monitoring.
- Labor & material verification for subcontractor's scope of work.
- Construction project management and project coordination including evaluation of progress and subcontractor performance.
- Become familiar with all existing building systems, standards and field conditions at the site.

- Fully coordinate all aspects of construction to MEP and architectural plans, ensuring that work proceeds in proper sequence; ensure review of complete architectural and engineering plans and specifications by subcontractors to eliminate conflicts and discrepancies.
- Fully coordinate the design and installation of design/build fire/life safety systems as required for the project in conjunction with the Landlord and/or property manager.
- Fully coordinate with client's telecommunication, computer, equipment, furniture and security contractors or vendors all information necessary for construction of the project.
- Provide comprehensive coordination of all field activities as required. Hold weekly subcontractor meetings to resolve questions or discrepancies.
- Coordinate, and expedite as necessary, construction field inspections.
- Safety monitoring and construction contract administration.
- Cost and schedule status reporting & construction phase project records (RFIs, jobsite reports and logs, required submittals/logs and construction phase meeting minutes).
- Tenant, building owner and contractor's suppliers/vendors coordination.
- Construction inspections and quality assurance.
- Owner and contractor supplier/vendor coordination.
- Production and Server relocation assistance and downtime minimization planning.
- Equipment move-in planning, scheduling and post-move assistance.
- Progress and final clean-up.
- Provide two (2) hard copies and one (1) soft copy of the 'Close-Out Package' with all manufacturer warranties and contacts, maintenance instructions and complete as-built drawings as required.

### III. GENERAL INFORMATION

The submission requirements for this RFP are set forth below. A proposal by general contractor shall constitute an irrevocable offer for 60 Business Days following the Submission Deadline. Reference to a certain number of days in this RFP shall mean Business Days unless otherwise specified. **"Business Day"** means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of California are authorized or required by law or other governmental action to close.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized direct or indirect contact with any State Bar personnel may be cause for rejection of a bid.



## A. Submission Requirements

To be considered responsive, a proposal must contain the following, prefaced by a table of contents, referenced by table number and page number, and in the order below.

1. An executive summary of no more than five pages, providing an overview of the bidder's organizational structure, history, services, market position, unique qualifications, strategic alliances, etc.
2. Qualifications, background, experience, and resumes of the project director and other staff proposed to work on the project.
3. A detailed description of the services, techniques, approaches and methods to be used in completing the project scope described in Section II.
4. A detailed description of the chronology for completing the work, including a timeline and deadlines for each task and deliverables (as applicable). Timelines should be designed in weeks, in series starting from Week 1; any and all concurrent services should be clearly noted as such.
5. A detailed cost proposal, including any travel costs and other expenses, as described in Section II. If necessary, bidders' travel expenses will be reimbursed in accordance with the State Bar's [Travel and Business-Related Expense Policy](#). It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in [Section 17030](#) of the Business and Professions Code. As the State Bar may award a contract based on the initial offer, a bidder should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.
6. At least five references from clients for whom the bidder has performed services similar to those being requested in this RFP. The references should include the name of a contact person, title, physical and email addresses, and telephone numbers. The State Bar may, but is not obligated to, contact these references, or ask the bidder to provide additional references.
7. A description of the history of work previously performed for other State of California agencies or State Judicial Branch Entities.

8. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data. Bidders must submit **Attachment 1: Vendor History Questionnaire** electronically in native .xls format per instructions below.
9. A list and description of any legal actions, lawsuits, arbitrations or formal protests related to the project scope described in Section II in which the bidder has been involved in the last 24 months that would have an impact on the bidder's ability to provide the requested Services.
10. Confirmation that the bidder has all necessary business licenses, professional certifications or other credentials to perform the Services, and that the bidder, if a corporation, proof that it is in good standing and qualified to conduct business in California.
11. Proof of small business certification if vendor is certified as a small business by the California Department of General Services (DGS), or with a comparable small business certification from a California municipality.
12. A written acknowledgement of the acceptance of the Contracting Requirements set forth in Section IV of this RFP, or an explanation of specific concerns or requested changes. Specific terms may be reserved for future negotiation but must be clearly identified and reasons given for the reservation.

#### **B. Submission Requirements Format Summary**

Proposals must be emailed to [Sunly.Yap@calbar.ca.gov](mailto:Sunly.Yap@calbar.ca.gov) by the Submission Deadline noted on Page 1 of this RFP.

The proposal package must include:

1. One electronic copy containing the proposal in PDF (file-to-PDF only, do not print and scan) and attachments in Excel format.
  - Proposal (.pdf)
  - Attachment 1: Vendor History Questionnaire (.xls)
  - Attachment A: Schedule of Costs (.xls)

If specific submission components (including the requested plans, samples, and contracts requested) are particularly large and self-contained they may be included in a separate appendix rather than in the body of the proposal. Submittals should not direct the evaluation team to general brochures, marketing materials or websites to obtain information related to the specific submission requirements; submittals that utilize references to external materials as an answer will be considered nonresponsive.

Proposals should be prepared simply and economically, providing a straightforward and concise description of the bidder's ability to meet the requirements of this RFP. Emphasis should be placed on completeness and clarity of content, and conformity to the State Bar's instructions. Proposals should not include generic promotional materials and graphics that increase page count and PDF file size without addressing substantive content. Brochures and marketing materials may be included as a supplement if desired, in hard copy or a separate PDF file.

### **C. Rejection of Proposals**

The State Bar 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. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Notwithstanding the foregoing, immaterial deviations may cause a bid to be rejected. The State Bar may waive an immaterial deviation or defect in a proposal. The State Bar'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 really competitive, inaccurate or unreliable, or where the cost is unreasonable.

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

The State Bar may judge a bidder to be materially compliant, even if that bidder is noncompliant to a particular requirement of the RFP.

### **D. Evaluation Process and Highest Score Bidder**

An evaluation team will review, in detail, all proposals received to determine the Highest Score Bidder ("**HSB**").

The State Bar reserves the right to determine the suitability of a proposal based on that proposal meeting the administrative and technical requirements of this RFP, and the evaluation team's assessment of the quality and performance of the services proposed and the cost of such services.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.

1. Overall responsiveness of the proposal to Sections II and III as set forth in the RFP (10 percent).
2. Agreement with the State Bar's contracting requirements (10 percent).
3. The functional and technical ability, capacity, and flexibility of the bidder to perform the contract in a timely manner, on budget and to the State Bar's standards of professionalism and customer service, as verified by: the content and quality of the proposal; the content and quality of any demonstration or presentation; client references; demonstrated success in projects with similar requirements; reputation in the marketplace; and any other contracts or experience with the State Bar (50 percent).
4. The total cost of the proposal (30 percent).  
For the purpose of evaluating the cost of the proposal, vendors certified as a small business by the California Department of General Services (DGS), or with a comparable small business certification from a California municipality, will receive a five percent (5%) bid preference, capped at \$50,000, if the lowest cost responsive bid is received from a vendor that is not a certified small business. A non-small business prime contractor who uses certified small business subcontractors for at least 25 percent of its net bid price is also eligible for the five percent (5%) bid preference when competing against another non-small business.

During the evaluation process, the State Bar may require a bidder to answer questions or submit additional information with regard to the proposal; and/or may require a bidder to participate in an oral interview with or make a formal presentation to the evaluation team and/or the State Bar's leadership team. A key element of any oral interview or presentation will be the participation of the specific team members that the bidder intends to work on the State Bar's account.

Following the initial review and screening of the written Proposals, using the selection criteria described below, several bidders may be invited to participate in the final selection process, which may include participation in an oral interview and/or submission of any additional information as requested by the State Bar.

- E. The State Bar reserves the right to review the proposals using a tiered evaluation system, with the top candidates advancing as finalists and receiving a full evaluation as outlined above, which may include requests for revised pricing from such bidders.**

This RFP does not commit the State Bar to awarding a contract. Bidders shall bear all costs incurred in the preparation of the proposal and participating in the proposal evaluation process.

#### **F. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all proposals, the highest scored bidder ("**HSB**") will be awarded the contract. In the case of a virtual tie (defined as evaluation scores within two points of one another), the Chief Administrative Officer may determine who will be awarded the contract. Notice will be emailed to the bidders on or about **May 3, 2024** of the State Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by **May 10, 2024**. The evaluation team will select a winning proposal subject to approval by the Board of Trustees. Upon selection, the State Bar and the selected Bidder will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work/Project Scope section above and Contracting Requirements section below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If an agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other bidder who submitted timely and responsive proposals to this RFP.

If, after the State Bar and the HSB agree to the terms and execute a contract, and that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with the next highest scored bidder, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to Sunly Yap, Principal Program Analyst at [Sunly.Yap@calbar.ca.gov](mailto:Sunly.Yap@calbar.ca.gov).

Where written notice is required in this RFP, the notice must be sent by-email.

#### **G. Errors in the RFP**

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the Submission Deadline by issuing an addendum to all potential bidders to whom the RFP was sent.

If prior to the Submission Deadline, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

#### **H. Questions Regarding the RFP**

Questions regarding the RFP may be addressed in writing to Sunly Yap at [Sunly.Yap@calbar.ca.gov](mailto:Sunly.Yap@calbar.ca.gov). All questions must be submitted no later than **3 p.m. on April 15, 2024**. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the bidder may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the bidder must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence, subject to the California Public Records Act. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the bidder will be notified.

A bidder who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar must receive any such request no later than fourteen (14) calendar days before the Submission Deadline.

#### **I. Addenda**

The State Bar may modify the RFP prior to the Submission Deadline by emailing an addendum to the bidders known to be interested in submitting a proposal. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than seven calendar days prior to the Submission Deadline.

#### **J. Withdrawal and Resubmission/Modification of Proposals**

A proposal may be withdrawn at any time prior to the Submission Deadline by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder. The bidder may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the Submission Deadline. Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

## **K. Protest Procedure**

A bidder may protest the award if it meets any of the following conditions:

1. The State Bar failed to follow the procedures specified in either subdivision (c) of Public Contract Code section 10344.
2. The State Bar failed to correctly apply the standards for reviewing the format requirements or evaluating the proposals as specified in this RFP.
3. The State Bar failed to follow the methods for evaluating and scoring the proposals specified in this RFP.
4. The State Bar is proposing to award the contract to a bidder other than the bidder given the highest score by the evaluation team.

A bidder qualified to protest should contact Sunly Yap, Principal Program Analyst at [Sunly.Yap@calbar.ca.gov](mailto:Sunly.Yap@calbar.ca.gov), to attempt an informal resolution. If this contact is unable to resolve the protest to the bidder's satisfaction, the bidder must file a written protest prior to the award. Within five calendar days after filing the protest, the protesting bidder shall file a full and complete written statement specifying the grounds for the protest. The written protest must state the facts surrounding the issue and the reasons the bidder believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California  
Attention: Chief Administrative Officer  
180 Howard Street  
San Francisco, CA 94105-1639

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 calendar days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

## **L. News Releases**

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

## **M. Disposition of Materials**

All materials submitted in response to an RFP will become the property of the State Bar and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for the State Bar's official files and become a public record pursuant to the California Public Records Act. By submitting a proposal, a bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

## Attachment 1: Vendor History Questionnaire

Enter relevant information in all yellow cells below, choosing from menu as applicable. Enter n/a if not applicable to your organization.

Business Details		Complete fields below
Legal Name of Business or Full Name of Individual		
Name of Ultimate Holding Entity <i>if applicable</i>		
Registered Business or Trading Name <i>if applicable</i>		
Registered Business Address--Street		
Registered Business Address--City, ST Zip		
Business URL		
Business Type		State of Registration / Incorporation
Taxpayer Identification Number <i>TIN or SSN</i>		Number of Years in Business
Publicly traded?		Trading Symbol
Number of Full-Time Employees		Part-Time Employees
Former Business Name <i>if applicable</i>		
RFP Point of Contact Name / Title		
RFP Point of Contact Email Address		
Subcontractor Use: Vendor is solely responsible for all deliverables?		
Certified Small Business status as defined in the RFP?		

Financial Details		Summarize financials below. Enter n/a or zero as applicable.	
	Select Year >	Choose From List	
Revenue/Sales			Enter numerical amounts only, no symbols/decimals. Leave no blanks.
Cash			
Accounts Receivable			
Short Term Investment			
Current Assets			
Total Assets			
Current Liabilities			
Total Liabilities			
Cash From Operations			
Current D&B Rating		Audited Financials Included?	
Explanation for Any Missing Financial Information Above:			

Conflict of Interest		Attach detailed explanation for any item(s) marked yes.		
Are there any known business or financial relationships between your firm and members of the State Bar's Trustees?	<a href="#">Current Board of Trustees Roster</a>			
Are there any known business or financial relationships between your firm and the following State Bar staff:		EMPLOYEE NAME	OFFICE / ROLE	Y / N
		Mayte Diaz	Director, General Services	
		Lito Espeleta	Senior Program Analyst	
		Antonio Gonzalez	Program Supervisor	
		Jason Siu	General Services Specialist	
		Sunly Yap	Principal Program Analyst	

Principal Officers / Account Management		Attach detailed explanation for any item(s) marked yes.	
Principal 1 Name / Title			
Principal 1 Primary Office Address / Direct Email Address			
Principal 2 Name / Title			
Principal 2 Primary Office Address / Direct Email Address			
Principal 3 Name / Title			
Principal 3 Primary Office Address / Direct Email Address			
Account Manager name, phone			
Account Manager primary office address, direct e-mail address			

Supplementary Information		Explain any item(s) marked yes below.	
Has any current office bearer above been involved with a business failure?			
Has any current office bearer declared bankruptcy?			
Has any current office bearer been involved in a government investigation?			
Is there any current, pending, or finalized litigation against your organization during the past 5 years?			
Any debt collections by debt collection agency on behalf of creditors of your organization or current office bearers?			
Are there any other contingent liabilities not reported in the financial statements, that are likely to impact your financial position?			



Attachment A-1: Itemized Cost Proposal

**Schedule of Costs**

*Enter either fixed cost or bid percentages of cost in yellow cells only, all others cells locked. Proceed to General Conditions tab >>*

PRECONSTRUCTION			
1	<b>Preconstruction Svcs</b>	Constructability review, preliminary construction schedule and cost estimating.	Fixed price
CONSTRUCTION			
2	<b>General Conditions</b>	Vendor's costs for "overhead" including labor, materials, equipment, etc.  <i>Worksheet A-2, Schedule of General Conditions, will itemize those costs included in General Conditions versus those included in Direct Construction Costs.</i>	Fixed price per week  Proposed # of weeks  \$/week x weeks Total \$ -
3	<b>Fee</b>	Vendor's profit	
4	<b>General Liability</b>	Insurance	Fixed % of direct construction costs
5	<b>Builder's Risk</b>	Insurance	
6	<b>Bond</b>	Vendor must file a payment and performance bond in conformance with Civic Code Section 9550 et. seq.	
CALCULATED TOTALS			
# of A-2 items included in Fixed Cost Total >		0	Fixed Cost Total \$ -
# of A-2 items included in Construction Cost Total >		0	Variable Cost Total % 0.00%
			Estimated Construction \$* \$ 4,000,000.00
			Estimated Variable Cost* \$ -
			GRAND TOTAL \$ -

*\* Total constructions costs placeholder for calculation and scoring purposes ONLY. This placeholder amount does not reflect actual construction costs to be estimated by vendor. This amount does not include any amounts listed in items 1-6 above.*

## General Conditions

*Indicate items below that shall be included either as part of vendor's General Conditions in its performance of the work, or as part of the direct construction cost (i.e. within a particular subcontractors' costs). Select from menu options in column D to indicate where you will allocate the cost for each item. If you need to include additional items in General Conditions, add items to the table (not intended to be an exhaustive list of all components of the project that vendor must perform). Totals will appear on A-1 for reference. Proceed to Exclusions tab >>*

STAFF		
1	Staff	Operations Manager
2	Staff	Project Manager
3	Staff	Project Superintendent
4	Staff	Project Engineer
5	Staff	Scheduling Engineer
6	Staff	Field Engineer
7	Staff	Draftsman/Detailer
8	Staff	Record Drawings
9	Staff	Field Accountant
10	Staff	Time Keeper/Checker
11	Staff	Secretarial/Clerk Typist
12	Staff	Independent Surveyor
13	Staff	Safety &. E.E.O. officer
14	Staff	Runner/Water Boy
15	Staff	Other <i>(define)</i>
16	Staff	Other <i>(define)</i>
TEMPORARY UTILITIES		
17	Utilities	Telephone Installation
18	Utilities	Telephone Monthly Charges
19	Utilities	Elect Power Installation
20	Utilities	Elect Power Dist Wiring
21	Utilities	Elect Power Monthly Charges
22	Utilities	Water Service - Installation
23	Utilities	Water Service - Monthly Costs
24	Utilities	Heating & Cooling Costs
25	Utilities	Light Bulbs & Misc. Supplies
26	Utilities	Clean-Up-Periodical
27	Utilities	Clean-Up-Final
28	Utilities	Dump Permits and Fees
29	Utilities	Recycling/Trash Dumpster Removal/Hauling
30	Utilities	Flagger/Traffic Control
31	Utilities	Dust Control
32	Utilities	Trash Chute & Hopper
33	Utilities	Other <i>(define)</i>
34	Utilities	Other <i>(define)</i>
TEMPORARY FACILITIES		
35	Facilities	Jobsite Office
36	Facilities	Storage Trailer & Tool Shed Rental
37	Facilities	Office Furniture/Equip/Computers

38	Facilities	Xerox Copies/Misc Printing
39	Facilities	Postage/UPS/FedEx
40	Facilities	Project Photographs
41	Facilities	Temporary Toilets
42	Facilities	Project Sign
43	Facilities	Temporary Fencing/Enclosures
44	Facilities	Covered Walkways
45	Facilities	Barricades
46	Facilities	Temporary Stairs
47	Facilities	Opening Protection
48	Facilities	Safety Railing & Nets
49	Facilities	Drinking Water/Cooler/Cup
50	Facilities	Safety/First Aid Supplies
51	Facilities	Fire Fighting Equipment
52	Facilities	Security Guards
53	Facilities	Watchman Service
54	Facilities	Other <i>(define)</i>
55	Facilities	Other <i>(define)</i>

**HOISTING**

56	Hoisting	Hoist & Tower Rental
57	Hoisting	Hoist Landing & Fronts
58	Hoisting	Hoist Operator
59	Hoisting	Hoist Safety Inspections
60	Hoisting	Hoist Material Skips/Hoppers
61	Hoisting	Erect & Dismantle Hoists
62	Hoisting	Crane Rental
63	Hoisting	Crane Operators
64	Hoisting	Crane Safety Inspections
65	Hoisting	Erect & Dismantle Crane
66	Hoisting	Fuel, Repairs, Maintenance
67	Hoisting	Crane Raising/Jumping Costs
68	Hoisting	Temporary Elevator/Rental
69	Hoisting	Elevator Operation Costs
70	Hoisting	Elevator Repairs/Maintenance
71	Hoisting	Cage Rider at Elevator
72	Hoisting	Safety Inspections
73	Hoisting	Forklift Rental
74	Hoisting	Forklift Operator
75	Hoisting	Forklift Safety Inspections
76	Hoisting	Fuel, Repairs, Maintenance
77	Hoisting	Elevator Service Costs

**MISCELLANEOUS PROJECT COSTS**

78	Misc	Printing - Drawings & Specifications
79	Misc	Facility Operator/Training
80	Misc	Other <i>(define)</i>
81	Misc	Other <i>(define)</i>
82	Misc	Other <i>(define)</i>
83	Misc	Other <i>(define)</i>

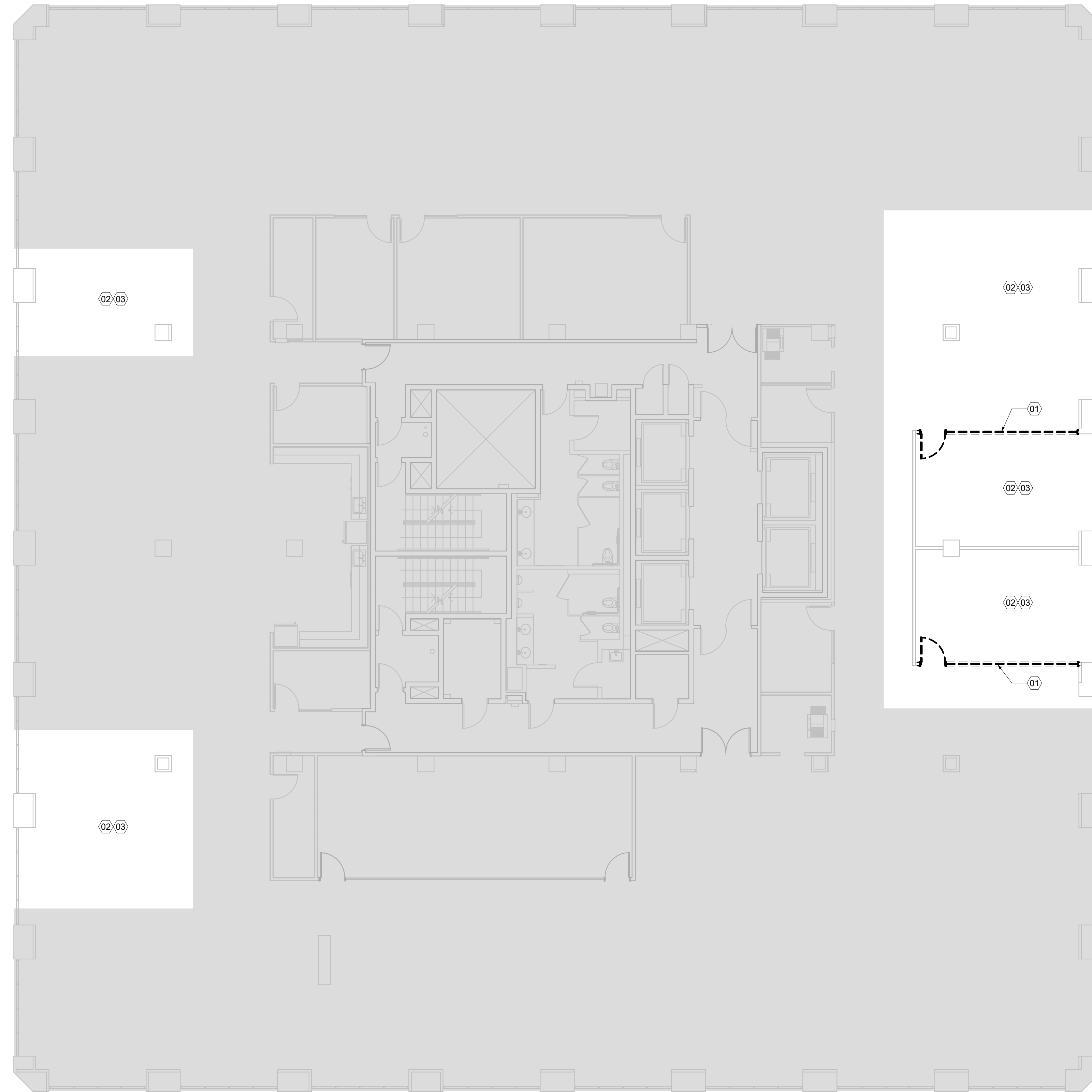
Attachment A-3: Itemized Cost Proposal

**Exclusions**

*The following items will be procured and/or financed by the State Bar, and are therefore excluded from both General Conditions and Direct Construction Costs. This information is provided to assist vendor in completing Schedules A-1 and A-2; there is nothing to complete in Schedule A-3.*





NOT INCLUDED IN BID			
1	Pro Fees	Design and management fees	0
2	Finance	Assessments, taxes, finance, legal or development fees	0
3	Permits	Building permits and fees	0
4	Insurance	Owner's fire and all risk insurance	0
5	Land	Land, building and easement acquisition	0
6	Furn/Equip	Owner supplied and installed furniture, fixtures & equipment	0
7	Furn/Equip	Movable furniture and equipment	0

Provided by State Bar



1 DEMOLITION PLAN - FLOOR 1  
1/8" = 1'-0"

**DEMOLITION LEGEND**

-  NOT IN SCOPE
-  EXISTING MILLWORK TO BE REMOVED
-  EXISTING CONSTRUCTION TO BE REMOVED
-  EXISTING CONSTRUCTION TO REMAIN

**SHEET NOTES - DEMOLITION PLAN**

- A. EXISTING FLOOR FINISHES, WALL BASES, AND WALL FINISHES TO REMAIN THROUGHOUT U.O.N.
- B. EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT U.O.N.
- C. DO NOT DISCONNECT OR CUT ANY ELECTRICAL, TELE/DATA, OR LIFE SAFETY ITEMS WITHOUT PRIOR APPROVAL FROM BUILDING ENGINEER. CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER AND ENGINEER THE LOCATION AND EXTENT OF BUILDING ELECTRICAL, TELE/DATA, AND LIFE SAFETY SYSTEMS AND EQUIPMENT. PROTECT AND MAINTAIN OPERATION OF SYSTEMS DURING DEMOLITION AND CONSTRUCTION.
- D. COMPLY WITH APPLICABLE LOCAL, STATE AND FEDERAL CODES AND REGULATIONS PERTAINING TO SAFETY OF PERSONS, PROPERTY, AND ENVIRONMENTAL PROTECTION.
- E. DO NOT INTERFERE WITH USE OF ADJACENT BUILDINGS AND/OR TENANT SPACES AND MAINTAIN FREE AND SAFE PASSAGE TO AND FROM.
- F. PROVIDE BARRICADES, LIGHTING, AND GUARD-RAILS AS REQUIRED BY APPLICABLE CODES AND REGULATIONS TO PROTECT OCCUPANTS OF BUILDING AND WORKERS, AND TO ALLOW CONTINUED OCCUPANCY BY OWNER AND OTHER TENANTS.
- G. REFER TO GENERAL NOTES SHEET G002 FOR DEMO NOTES.
- H. ITEMS SLATED TO REMAIN ARE TO BE PROTECTED THROUGHOUT THE DURATION OF THE PROJECT. ANY (E) TO REMAIN ITEMS DAMAGED AND/OR BROKEN AT TIME OF DEMO AND/OR CONSTRUCTION ARE TO BE REPLACED WITH (N) TO MATCH (E) AT NO COST TO THE OWNER.
- I. PATCH, PREP AND FINISH (E) PERIMETER GLAZING FRAMES AFFECTED BY DEMO AS NEEDED TO 'LIKE NEW' CONDITION.
- J. PROVIDE ALLOWANCE TO PATCH/FIX AND FINISH ITEMS TO REMAIN TO 'LIKE NEW' CONDITIONS WHERE NEEDED.

**KEY NOTES - DEMOLITION PLAN**

- 01 REMOVE EXISTING STOREFRONT SYSTEM AND DOOR ASSEMBLY. EXISTING PARTITION TO REMAIN AND BE MODIFIED FOR NEW STOREFRONT INSTALLATION. SALVAGE EXISTING DOOR PANELS FOR RE-INSTALLATION AT NEW STOREFRONT SYSTEM. COORDINATE WITH PARTITION PLAN.
- 02 PARTIALLY REMOVE EXISTING CEILING GRID AND MODIFY WHERE REQUIRED FOR INSTALLTION OF NEW FULL-HEIGHT PARTITION. EXISTING LIGHT FIXTURES TO REMAIN. SEE PRICING PLAN FOR PARTITION LOCATION AND NOTIFY ARCHTECT AND OWNER OF ANY CONFLICT.
- 03 PARTIALLY REMOVE EXISTING FLOOR FINISH WHERE REQUIRED FOR INSTALLTION OF NEW FULL-HEIGHT PARTITION.



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REVISION	ISSUE	INFORMATION
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FLOORS 1, 4, 5, 6  
SAN FRANCISCO  
CA 94105

DEMOLITION / EXISTING  
CONDITIONS - FLOOR 1

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FLOORS 1, 4, 5, 6  
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CA 94105

DEMOLITION / EXISTING  
CONDITIONS - FLOOR 4

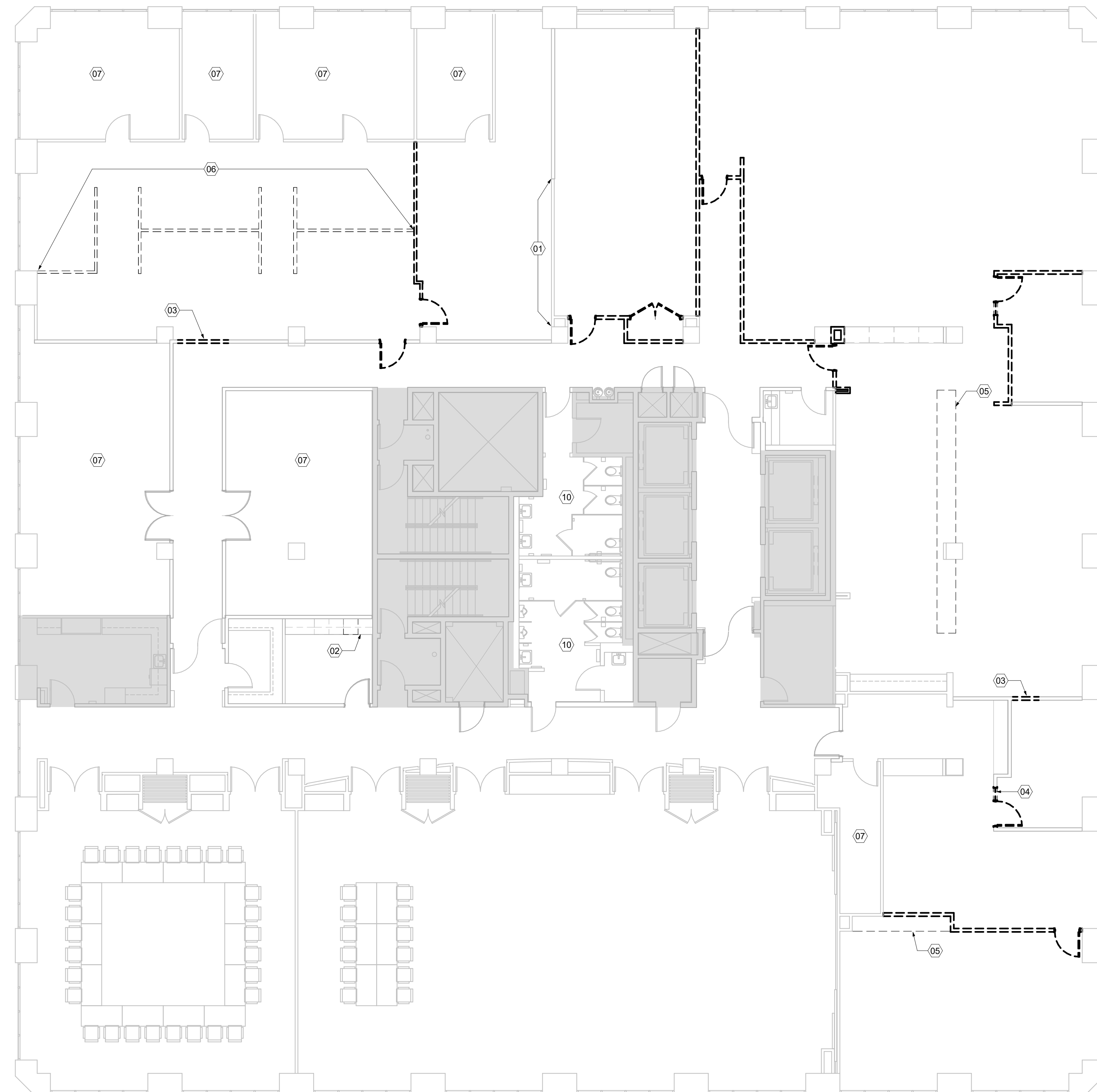
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Author

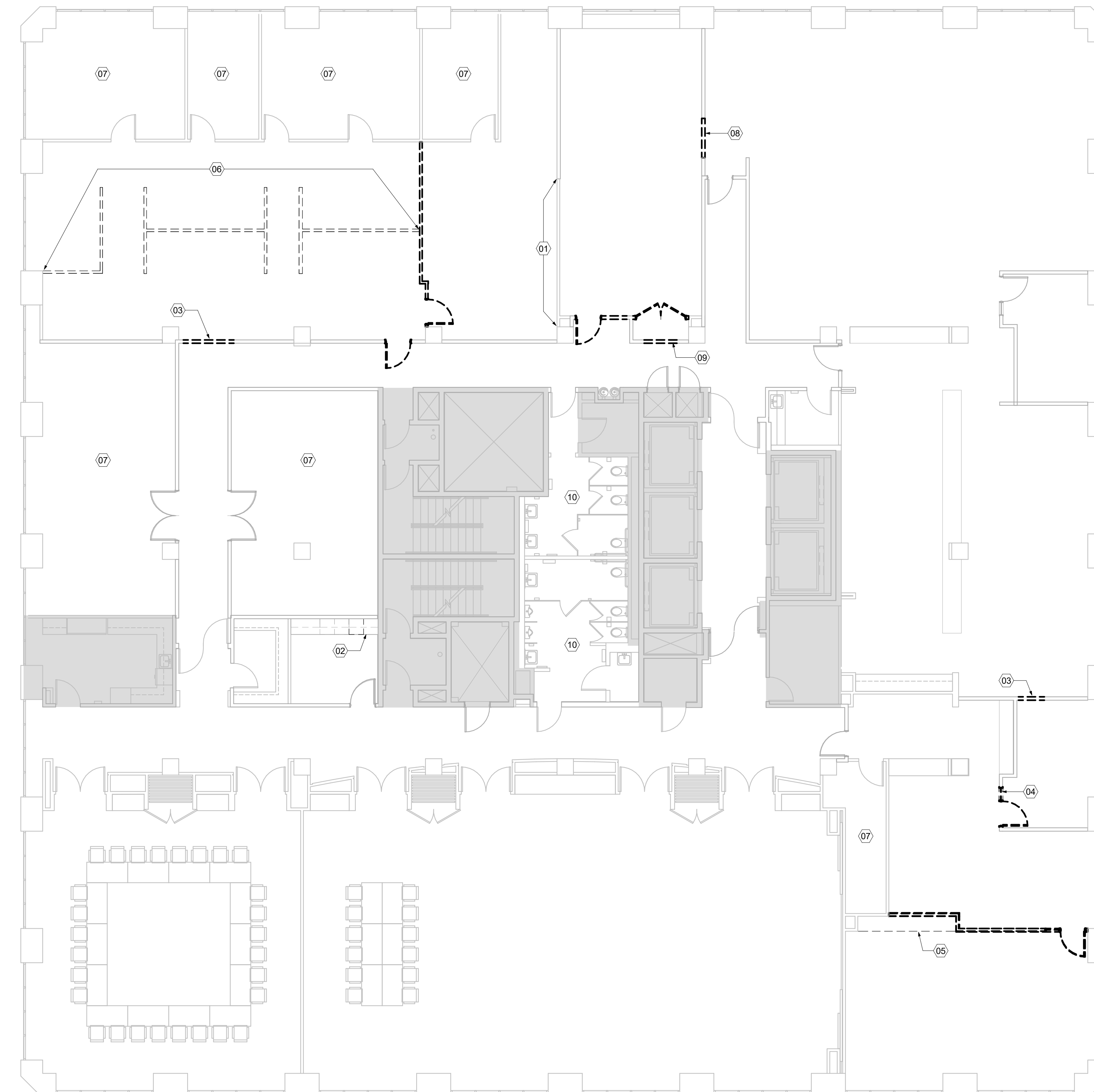
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1 DEMOLITION PLAN - FLOOR 4 - OPTION A  
1/8" = 1'-0"



2 DEMOLITION PLAN - FLOOR 4 - OPTION B  
1/8" = 1'-0"

DEMOLITION LEGEND

- NOT IN SCOPE
- EXISTING MILLWORK TO BE REMOVED
- EXISTING CONSTRUCTION TO BE REMOVED
- EXISTING CONSTRUCTION TO REMAIN

SHEET NOTES - DEMOLITION PLAN

- A. REMOVE AND DISCARD EXISTING FLOOR FINISHES AND WALL BASES AS WELL AS FLASH PATCH, MASTIC AND ASHESIVES DOWN TO STRUCTURAL FLOOR SLAB THROUGHOUT U.O.N. PREPARE FLOOR SLAB FOR NEW FLOOR FINISHES.
- B. EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT U.O.N.
- C. DO NOT DISCONNECT OR CUT ANY ELECTRICAL, TELE/DATA, OR LIFE SAFETY ITEMS WITHOUT PRIOR APPROVAL FROM BUILDING ENGINEER. CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER AND ENGINEER THE LOCATION AND EXTENT OF BUILDING ELECTRICAL, TELE/DATA, AND LIFE SAFETY SYSTEMS AND EQUIPMENT. PROTECT AND MAINTAIN OPERATION OF SYSTEMS DURING DEMOLITION AND CONSTRUCTION.
- D. COMPLY WITH APPLICABLE LOCAL, STATE AND FEDERAL CODES AND REGULATIONS PERTAINING TO SAFETY OF PERSONS, PROPERTY, AND ENVIRONMENTAL PROTECTION.
- E. DO NOT INTERFERE WITH USE OF ADJACENT BUILDINGS AND/OR TENANT SPACES AND MAINTAIN FREE AND SAFE PASSAGE TO AND FROM.
- F. PROVIDE BARRICADES, LIGHTING, AND GUARD-RAILS AS REQUIRED BY APPLICABLE CODES AND REGULATIONS TO PROTECT OCCUPANTS OF BUILDING AND WORKERS, AND TO ALLOW CONTINUED OCCUPANCY BY OWNER AND OTHER TENANTS.
- G. REFER TO GENERAL NOTES SHEET G002 FOR DEMO NOTES.
- H. ITEMS SLATED TO REMAIN ARE TO BE PROTECTED THROUGHOUT THE DURATION OF THE PROJECT. ANY (E) TO REMAIN ITEMS DAMAGED AND/OR BROKEN AT TIME OF DEMO AND/OR CONSTRUCTION ARE TO BE REPLACED WITH (N) TO MATCH (E) AT NO COST TO THE OWNER.
- I. PATCH, PREP AND FINISH (E) PERIMETER GLAZING FRAMES AFFECTED BY DEMO AS NEEDED TO 'LIKE NEW' CONDITION.
- J. PROVIDE ALLOWANCE TO PATCH/FIX AND FINISH ITEMS TO REMAIN TO 'LIKE NEW' CONDITIONS WHERE NEEDED.

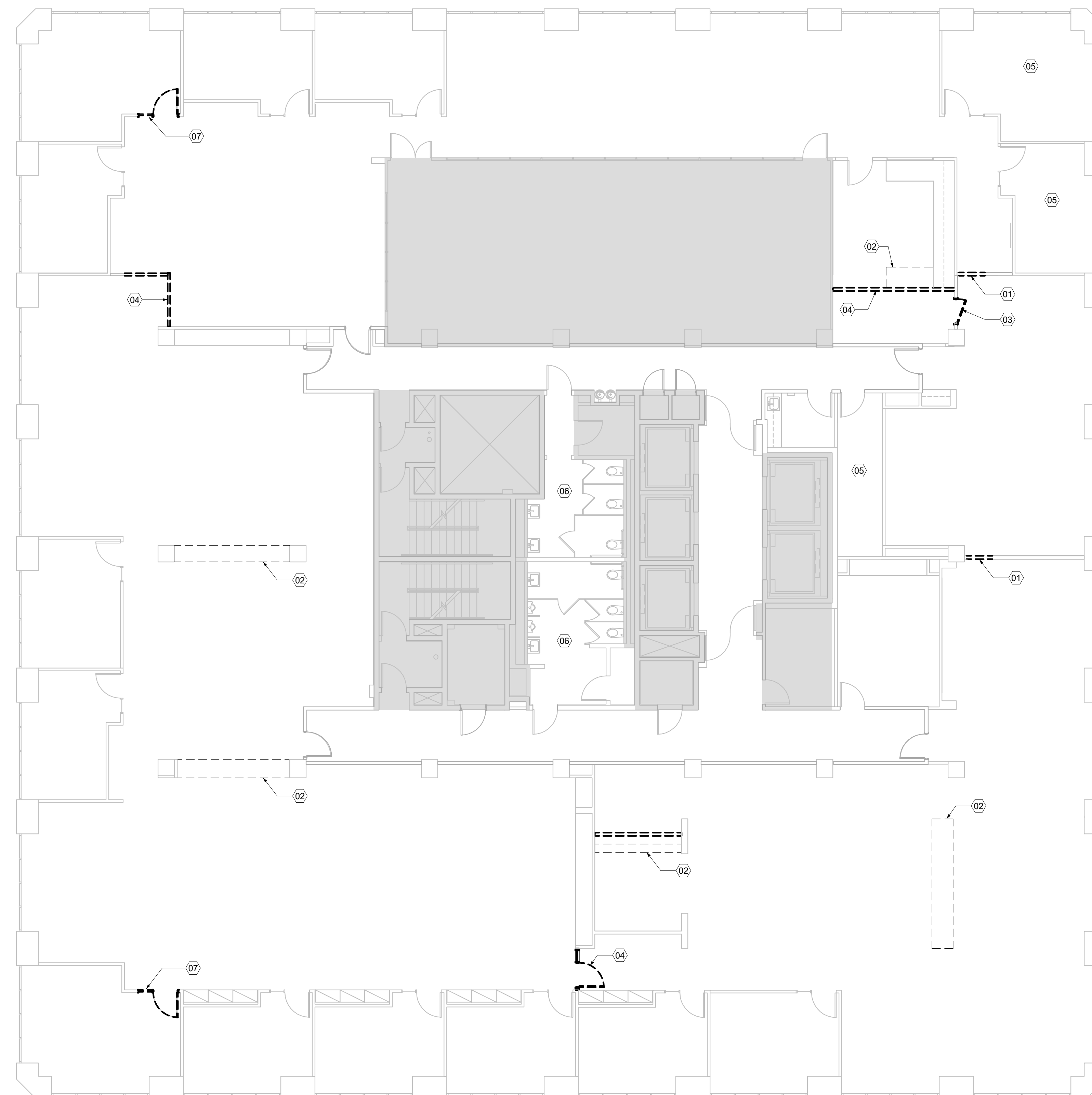
KEY NOTES - DEMOLITION PLAN

- 01 REMOVE EXISTING GYP BOARD FROM EACH SIDE OF EXISTING PARTITION. EXISTING METAL STUDS TO REMAIN AND RECEIVE NEW TYPE X GYP BOARD.
- 02 REMOVE (2) EXISTING BASE CABINETS. REPAIR AND PREP EXISTING SURFACES FOR INSTALLATION OF (1) NEW OPEN SHELVING BASE CABINET AND (1) UNDERCOUNTER REFRIGERATOR.
- 03 REMOVE PORTION OF EXISTING PARTITION AS INDICATED FOR NEW DOOR INSTALLATION. COORDINATE WITH PRICING PLAN.
- 04 REMOVE EXISTING DOOR ASSEMBLY AND FILL IN EXISTING OPENING. NEW STUD SIZE TO MATCH EXISTING CONDITION.
- 05 REMOVE AND DISCARD EXISTING MILLWORK COUNTER AND CABINETS. PATCH AND REPAIR EXISTING FLOOR DECK AS REQUIRED AFTER REMOVING ASSICATED ANCHORS AND SCREW.
- 06 REMOVE EXISTING PARTIAL-HEIGHT PARTITIONS.
- 07 EXISTING FLOOR FINISH AND WALL BASE TO REMAIN IN THIS AREA.
- 08 REMOVE PORTION OF EXISTING PARTITION AS INDICATED FOR NEW CASED OPENING INSTALLATION. COORDINATE WITH PRICING PLAN.
- 09 REMOVE PORTION OF EXISTING PARTITION AS INDICATED FOR NEW OPENING WITH FIRE SUTTER INSTALLATION. COORDINATE WITH PRICING PLAN.
- 10 EXISTING FLOOR FINISH, WALL BASE, AND WALL FINISH TO REMAIN IN THIS AREA.



ISSUE INFORMATION  
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1 DEMOLITION PLAN - FLOOR 5  
1/8" = 1'-0"

**DEMOLITION LEGEND**

- NOT IN SCOPE
- EXISTING MILLWORK TO BE REMOVED
- EXISTING CONSTRUCTION TO BE REMOVED
- EXISTING CONSTRUCTION TO REMAIN

**SHEET NOTES - DEMOLITION PLAN**

- A. REMOVE AND DISCARD EXISTING FLOOR FINISHES AND WALL BASES AS WELL AS FLASH PATCH, MASTIC AND ASHESIVES DOWN TO STRUCTURAL FLOOR SLAB THROUGHOUT U.O.N. PREPARE FLOOR SLAB FOR NEW FLOOR FINISHES.
- B. EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT U.O.N.
- C. DO NOT DISCONNECT OR CUT ANY ELECTRICAL, TELE/DATA, OR LIFE SAFETY ITEMS WITHOUT PRIOR APPROVAL FROM BUILDING ENGINEER. CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER AND ENGINEER THE LOCATION AND EXTENT OF BUILDING ELECTRICAL, TELE/DATA, AND LIFE SAFETY SYSTEMS AND EQUIPMENT. PROTECT AND MAINTAIN OPERATION OF SYSTEMS DURING DEMOLITION AND CONSTRUCTION.
- D. COMPLY WITH APPLICABLE LOCAL, STATE AND FEDERAL CODES AND REGULATIONS PERTAINING TO SAFETY OF PERSONS, PROPERTY, AND ENVIRONMENTAL PROTECTION.
- E. DO NOT INTERFERE WITH USE OF ADJACENT BUILDINGS AND/OR TENANT SPACES AND MAINTAIN FREE AND SAFE PASSAGE TO AND FROM.
- F. PROVIDE BARRICADES, LIGHTING, AND GUARD-RAILS AS REQUIRED BY APPLICABLE CODES AND REGULATIONS TO PROTECT OCCUPANTS OF BUILDING AND WORKERS, AND TO ALLOW CONTINUED OCCUPANCY BY OWNER AND OTHER TENANTS.
- G. REFER TO GENERAL NOTES SHEET G002 FOR DEMO NOTES.
- H. ITEMS SLATED TO REMAIN ARE TO BE PROTECTED THROUGHOUT THE DURATION OF THE PROJECT. ANY (E) TO REMAIN ITEMS DAMAGED AND/OR BROKEN AT TIME OF DEMO AND/OR CONSTRUCTION ARE TO BE REPLACED WITH (N) TO MATCH (E) AT NO COST TO THE OWNER.
- I. PATCH, PREP AND FINISH (E) PERIMETER GLAZING FRAMES AFFECTED BY DEMO AS NEEDED TO 'LIKE NEW' CONDITION.
- J. PROVIDE ALLOWANCE TO PATCH/FIX AND FINISH ITEMS TO REMAIN TO 'LIKE NEW' CONDITIONS WHERE NEEDED.

**KEY NOTES - DEMOLITION PLAN**

- 01 REMOVE PORTION OF EXISTING FURRING PARTITION AS INDICATED FOR NEW DOOR INSTALLATION. COORDINATE WITH PRICING PLAN.
- 02 REMOVE AND DISCARD EXISTING MILLWORK COUNTER AND CABINETS. PATCH AND REPAIR EXISTING FLOOR DECK AS REQUIRED AFTER REMOVING ASSICATED ANCHORS AND SCREW.
- 03 REMOVE EXISTING DOOR ASSEMBLY AND FILL IN EXISTING OPENING. NEW STUD SIZE TO MATCH EXISTING CONDITION.
- 04 REMOVE EXISTING PARTITION TO ADJACENT EXISTING CEILING HEIGHT. PROVIDE NEW GYP BOARD FOR UNDERSIDE OF REMAINING PORTION. FINISHED FACE OF NEW GYP BOARD AT UNDERSIDE TO ALIGN WITH BOTTOM OF EXISTING CEILING.
- 05 EXISTING FLOOR FINISH AND WALL BASE TO REMAIN IN THIS AREA.
- 06 EXISTING FLOOR FINISH, WALL BASE, AND WALL FINISH TO REMAIN IN THIS AREA.
- 07 REMOVE EXISTING DOOR ASSEMBLY AND FILL IN EXISTING OPENING WHERE SIDELIGHT IS REMOVED. NEW SINGLE DOOR WITH NO SIDELIGHT TO BE INSTALLED AT EXISTING DOOR LOCATION. COORDINATE WITH PRICING PLAN AND DOOR SCHEDULE.

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DEMOLITION / EXISTING  
CONDITIONS - FLOOR 5

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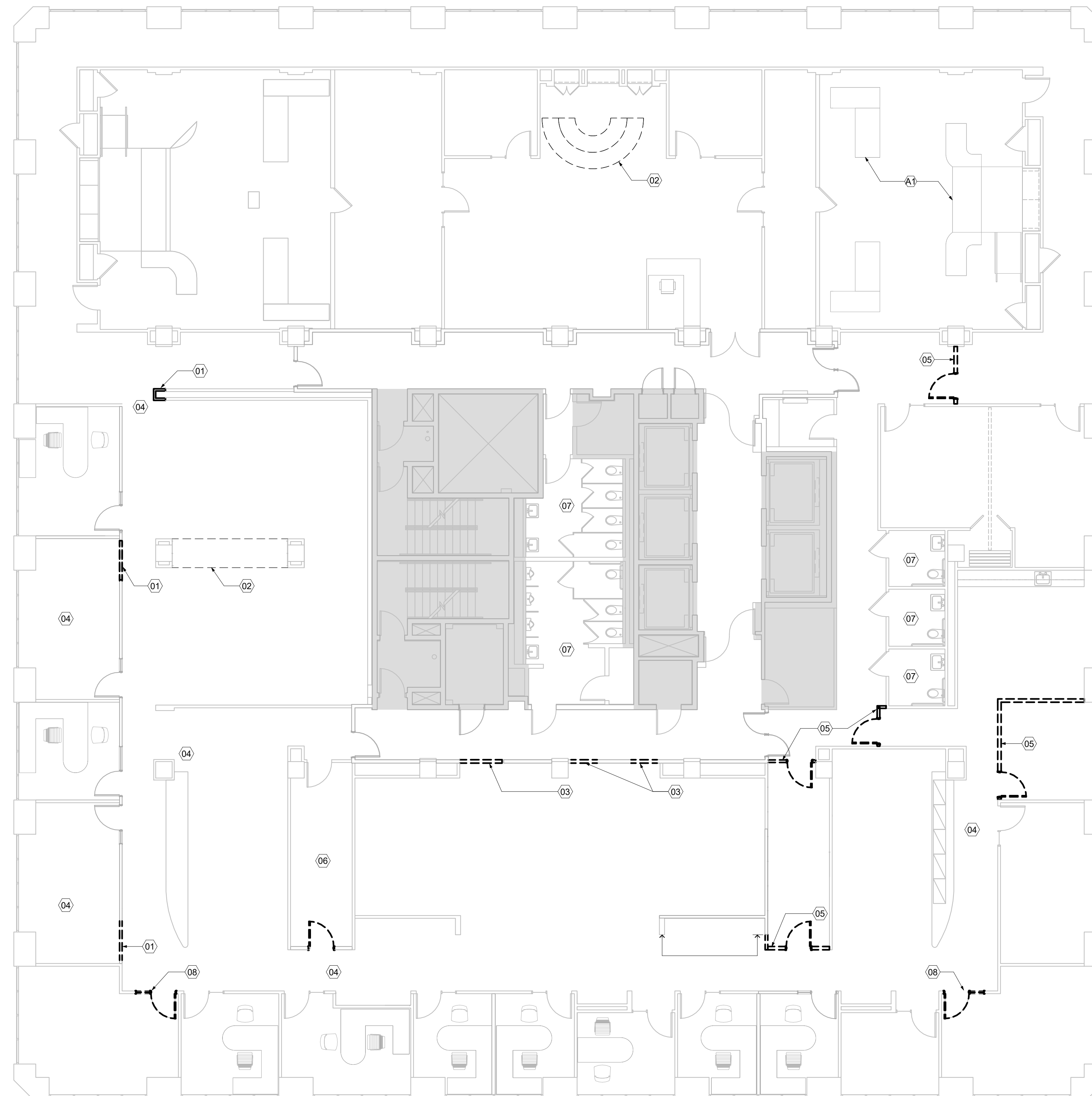
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1 DEMOLITION PLAN - FLOOR 6  
1/8" = 1'-0"

**DEMOLITION LEGEND**

-  NOT IN SCOPE
-  EXISTING MILLWORK TO BE REMOVED
-  EXISTING CONSTRUCTION TO BE REMOVED
-  EXISTING CONSTRUCTION TO REMAIN

**SHEET NOTES - DEMOLITION PLAN**

- A. REMOVE AND DISCARD EXISTING FLOOR FINISHES AND WALL BASES AS WELL AS FLASH PATCH, MASTIC AND ASHESIVES DOWN TO STRUCTURAL FLOOR SLAB THROUGHOUT U.O.N. PREPARE FLOOR SLAB FOR NEW FLOOR FINISHES.
- B. EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT U.O.N.
- C. DO NOT DISCONNECT OR CUT ANY ELECTRICAL, TELE/DATA, OR LIFE SAFETY ITEMS WITHOUT PRIOR APPROVAL FROM BUILDING ENGINEER. CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER AND ENGINEER THE LOCATION AND EXTENT OF BUILDING ELECTRICAL, TELE/DATA, AND LIFE SAFETY SYSTEMS AND EQUIPMENT. PROTECT AND MAINTAIN OPERATION OF SYSTEMS DURING DEMOLITION AND CONSTRUCTION.
- D. COMPLY WITH APPLICABLE LOCAL, STATE AND FEDERAL CODES AND REGULATIONS PERTAINING TO SAFETY OF PERSONS, PROPERTY, AND ENVIRONMENTAL PROTECTION.
- E. DO NOT INTERFERE WITH USE OF ADJACENT BUILDINGS AND/OR TENANT SPACES AND MAINTAIN FREE AND SAFE PASSAGE TO AND FROM.
- F. PROVIDE BARRICADES, LIGHTING, AND GUARD-RAILS AS REQUIRED BY APPLICABLE CODES AND REGULATIONS TO PROTECT OCCUPANTS OF BUILDING AND WORKERS, AND TO ALLOW CONTINUED OCCUPANCY BY OWNER AND OTHER TENANTS.
- G. REFER TO GENERAL NOTES SHEET G002 FOR DEMO NOTES.
- H. ITEMS SLATED TO REMAIN ARE TO BE PROTECTED THROUGHOUT THE DURATION OF THE PROJECT. ANY (E) TO REMAIN ITEMS DAMAGED AND/OR BROKEN AT TIME OF DEMO AND/OR CONSTRUCTION ARE TO BE REPLACED WITH (N) TO MATCH (E) AT NO COST TO THE OWNER.
- I. PATCH, PREP AND FINISH (E) PERIMETER GLAZING FRAMES AFFECTED BY DEMO AS NEEDED TO 'LIKE NEW' CONDITION.
- J. PROVIDE ALLOWANCE TO PATCH/FIX AND FINISH ITEMS TO REMAIN TO 'LIKE NEW' CONDITIONS WHERE NEEDED.

**KEY NOTES - DEMOLITION PLAN**

- 01 REMOVE PORTION OF EXISTING FURRING PARTITION AS INDICATED FOR NEW DOOR INSTALLATION. COORDINATE WITH PRICING PLAN.
- 02 REMOVE AND DISCARD EXISTING MILLWORK COUNTER, PATCH AND REPAIR EXISTING FLOOR DECK AS REQUIRED AFTER REMOVING ASSICATED ANCHORS AND SCREW.
- 03 REMOVE PORTION OF EXISTING FIRE RATED PARTITION AS INDICATED FOR NEW DOOR INSTALLATION. EXISTING FIRE RATING TO BE MAINTAINED WITH NEW DOOR INSTALLATION.
- 04 PARTIALLY REMOVE EXISTING CEILING GRID AND MODIFY WHERE REQUIRED FOR INSTALLTION OF NEW FULL-HEIGHT PARTITION EXISTING LIGHT FIXTURES TO REMAIN. SEE PRICING PLAN FOR PARTITION LOCATION AND NOTIFY ARCHITECT AND OWNER OF ANY CONFLICT.
- 05 REMOVE EXISTING PARTITION TO ADJACENT EXISTING CEILING HEIGHT. PROVIDE NEW GYP BOARD FOR UNDERSIDE OF REMAINING PORTION. FINISHED FACE OF NEW GYP BOARD AT UNDERSIDE TO ALIGN WITH BOTTOM OF EXISTING CEILING.
- 06 EXISTING FLOOR FINISH AND WALL BASE TO REMAIN IN THIS AREA.
- 07 EXISTING FLOOR FINISH, WALL BASE, AND WALL FINISH TO REMAIN IN THIS AREA.
- 08 REMOVE EXISTING DOOR ASSEMBLY AND FILL IN EXISTING OPENING WHERE SIDELIGHT IS REMOVED. NEW SINGLE DOOR WITH NO SIDELIGHT TO BE INSTALLED AT EXISTING DOOR LOCATION. COORDINATE WITH PRICING PLAN AND DOOR SCHEDULE.

**KEY NOTES - ALTERNATE PRICING**

- A1 PROVIDE ADD ALT. PRICING FOR REMOVING EXISTING MILLWORK COUNTER, DESKS, PLATFORM, AND ASSOCIATED RAMP AND RAILING. INLCUDE COST ASSOCIATED WITH PATCHING AND REPAIRING EXISTING PARTITIONS AND FLOOR DECK AND PREPARING FOR NEW FINISHES.

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**STATE BAR OF CALIFORNIA**

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**DEMOLITION / EXISTING CONDITIONS - FLOOR 6**

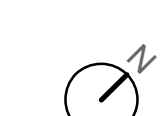
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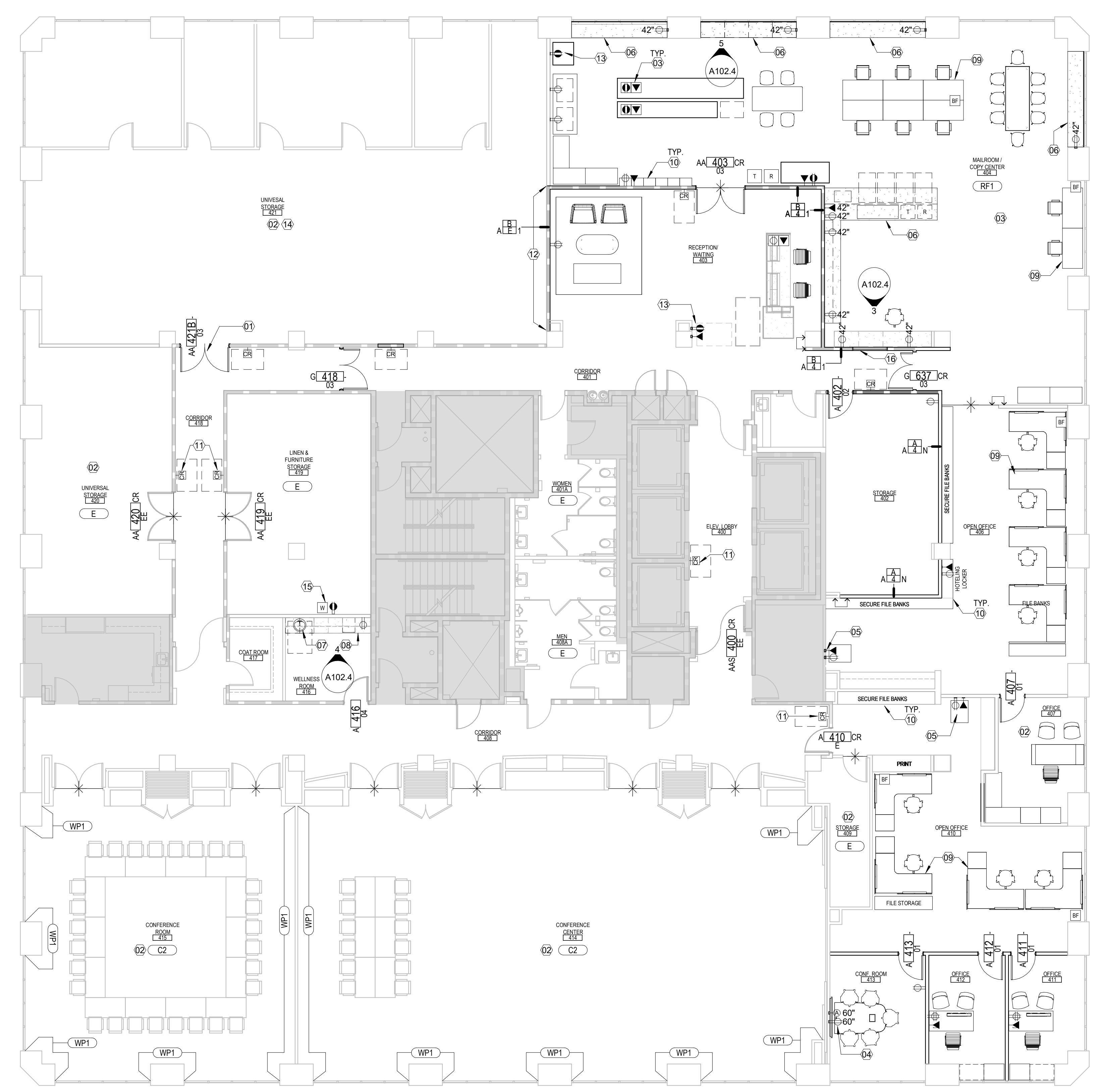




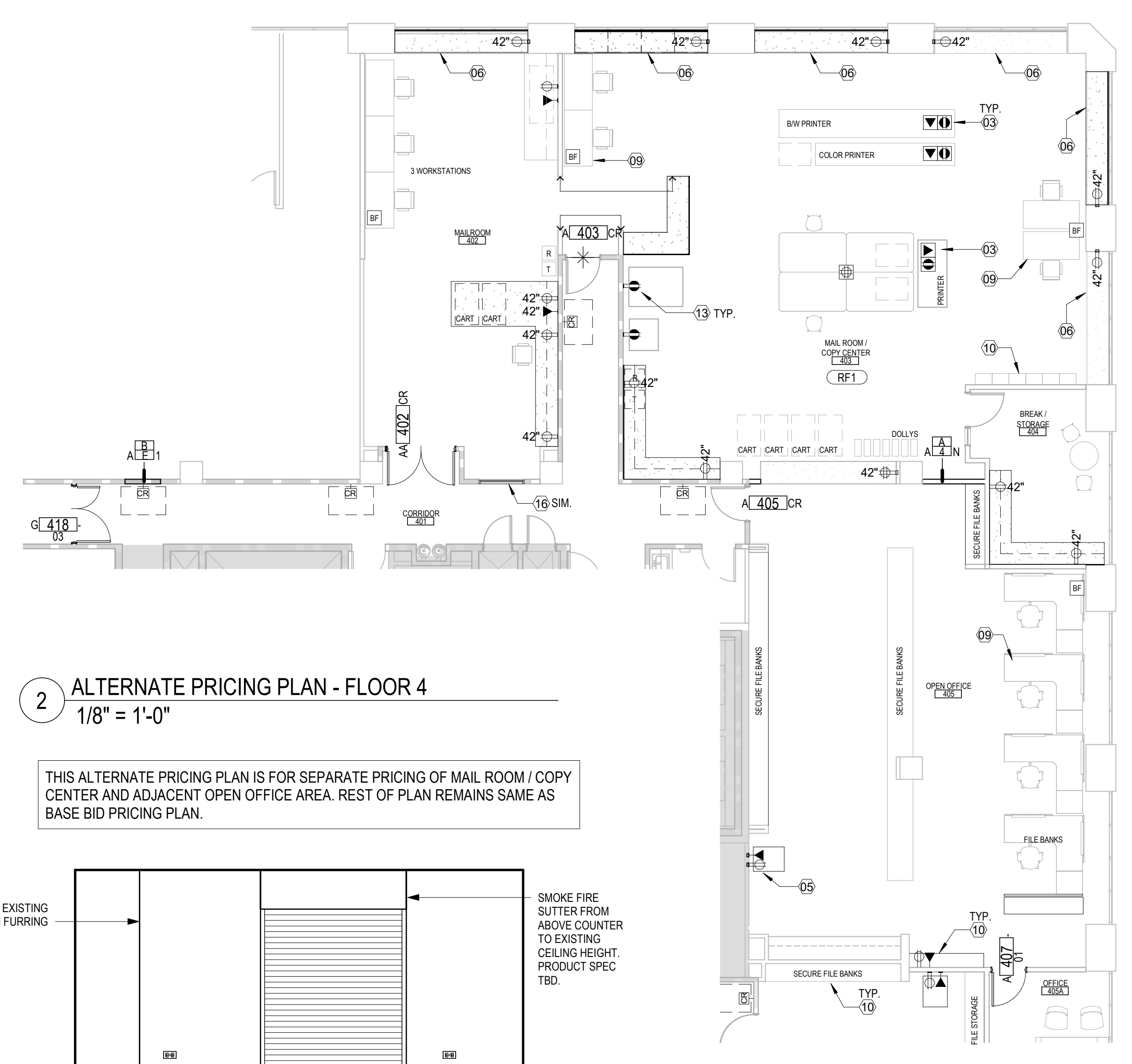




90% PRICING DRAWINGS

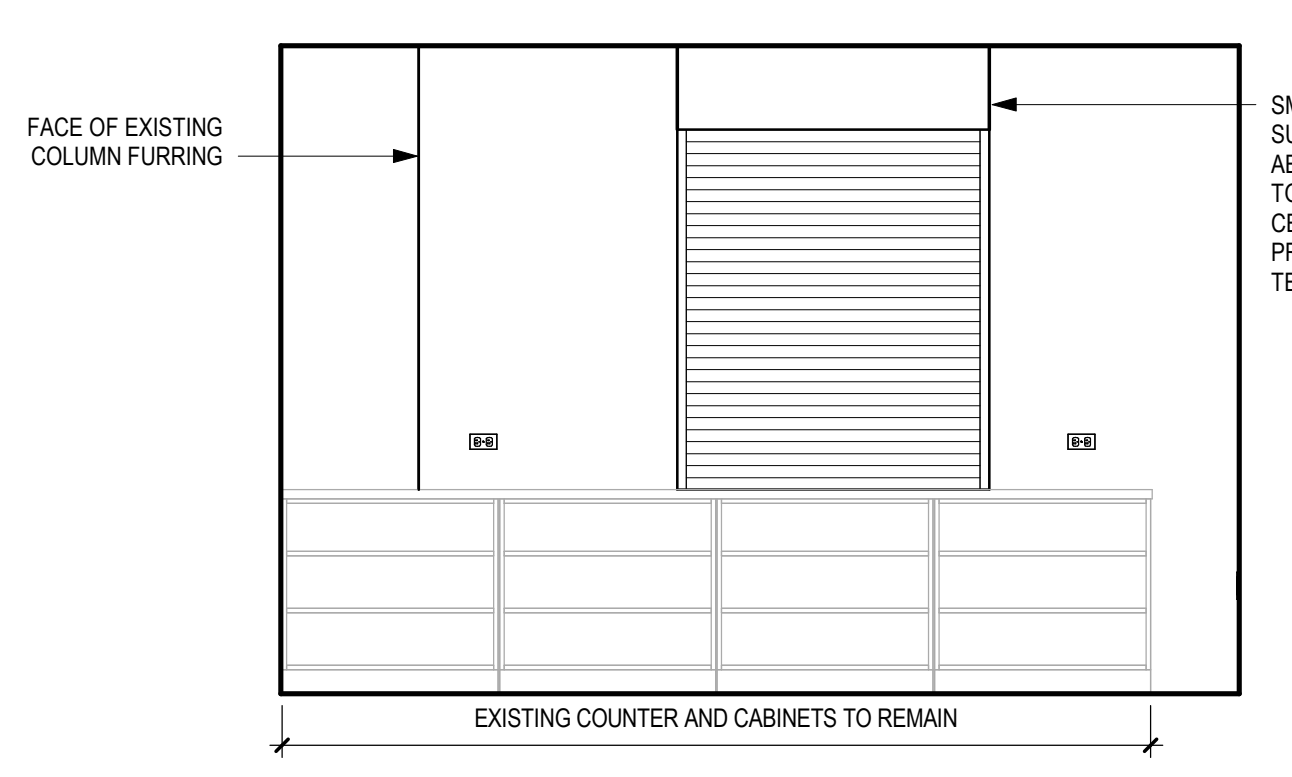


1 PRICING PLAN - FLOOR 4  
1/8" = 1'-0"

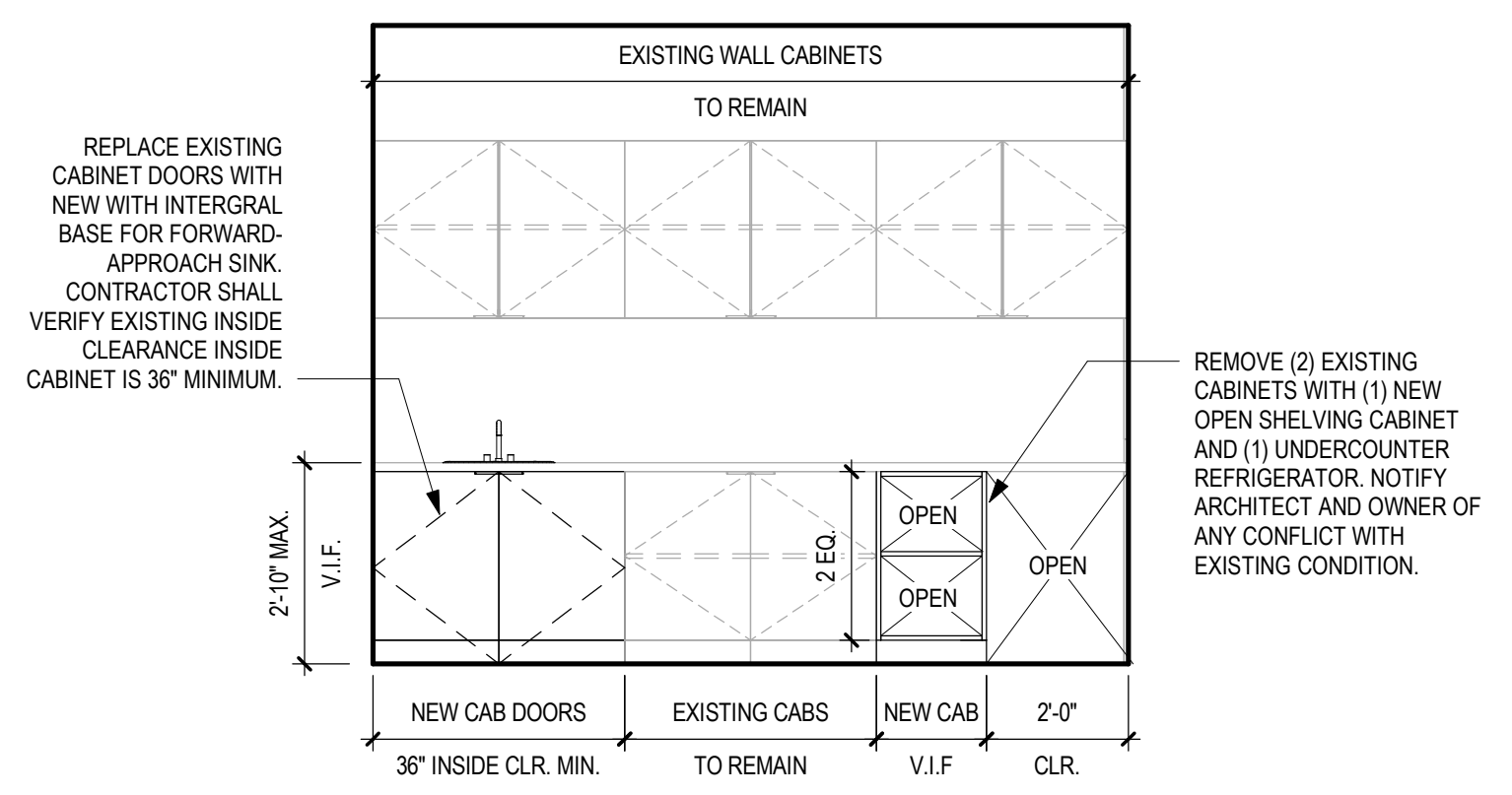


2 ALTERNATE PRICING PLAN - FLOOR 4  
1/8" = 1'-0"

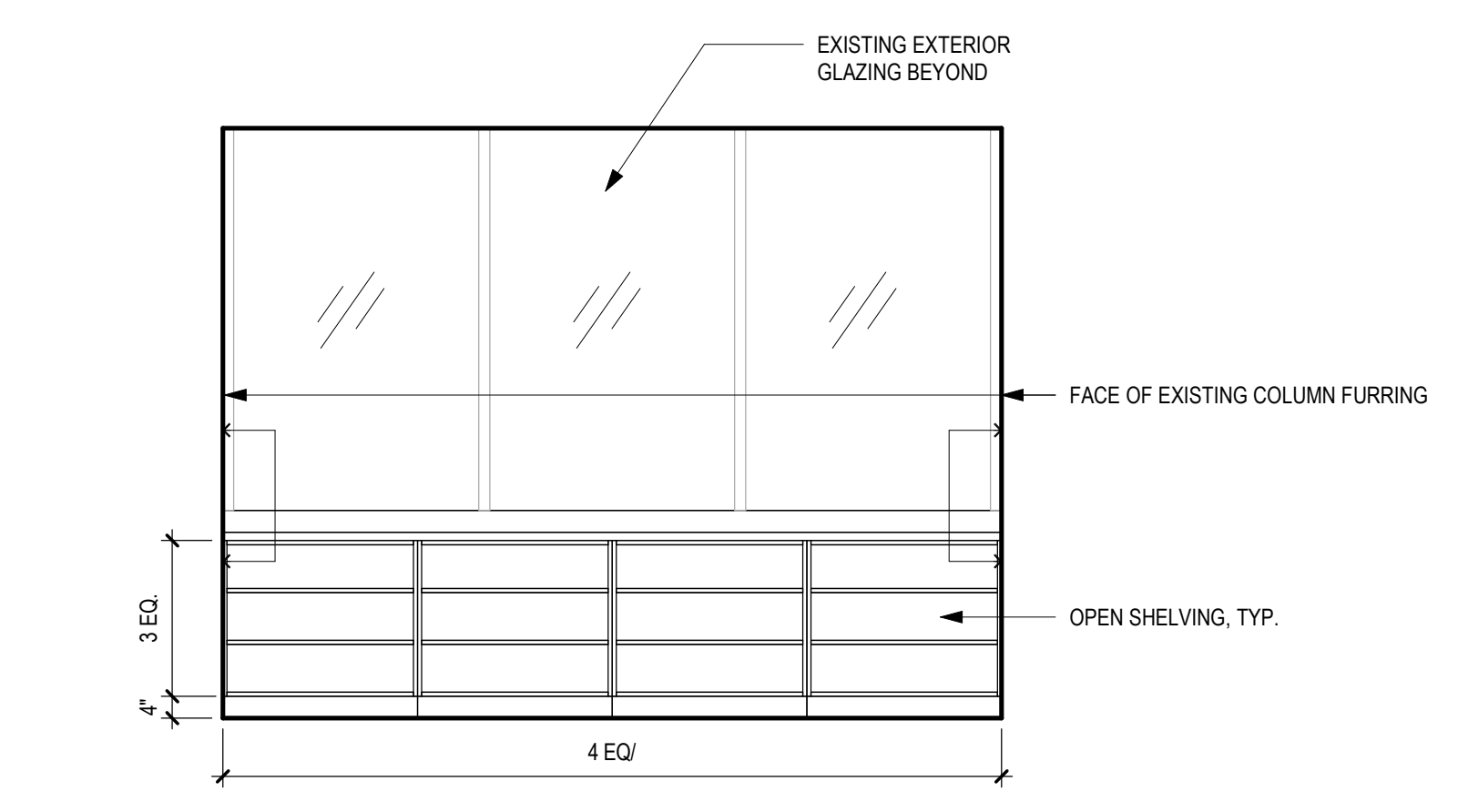
THIS ALTERNATE PRICING PLAN IS FOR SEPARATE PRICING OF MAIL ROOM / COPY CENTER AND ADJACENT OPEN OFFICE AREA. REST OF PLAN REMAINS SAME AS BASE BID PRICING PLAN.



3 MAIL PICK UP WINDOW ELEVATION  
3/8" = 1'-0"

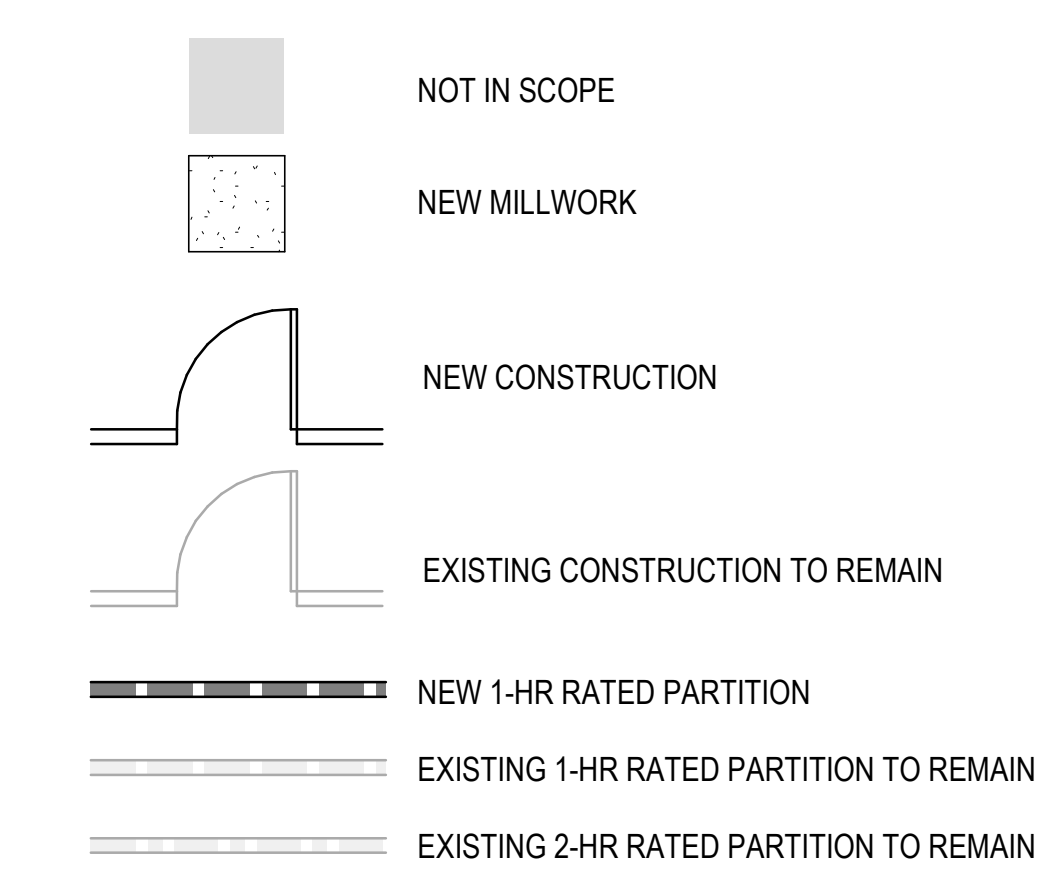


4 WELLNESS ROOM - CABINETS ELEVATION  
3/8" = 1'-0"

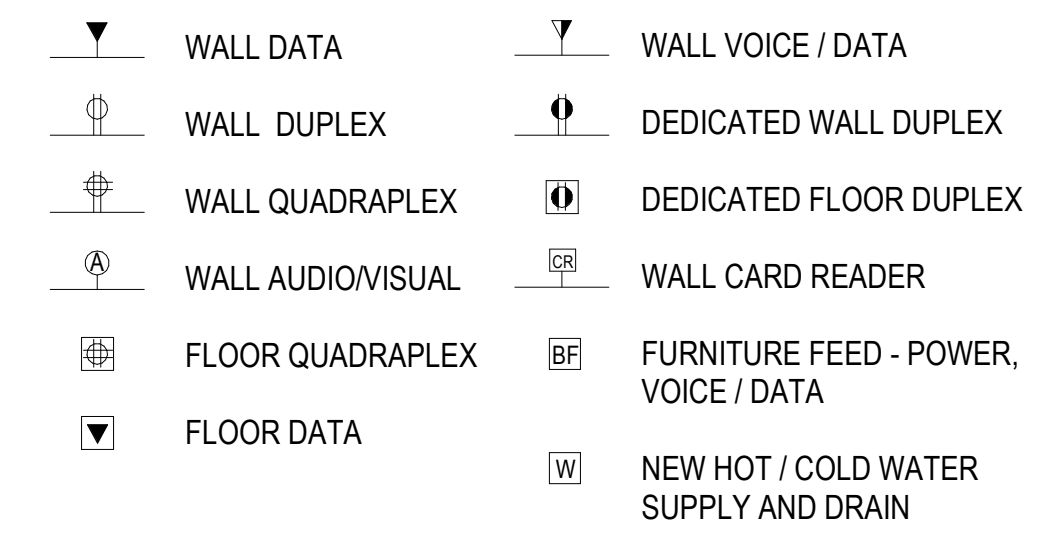


5 TYPICAL MAIL ROOM / COPY CENTER COUNTER ELEVATION  
3/8" = 1'-0"

**PRICING PLAN LEGEND**



**POWER & SIGNAL LEGEND**



**PARTITION TYPE (SEE - / - - FOR DETAILS)**

TYPE A - NON-RATED FULL HT. PTN.  
TYPE B - RATED FULL HT. PTN.  
TYPE E1 - FULL HT. ONE SIDED PTN.  
TYPE H - PARTIAL HT. PTN.  
TYPE L - FULL HT. PTN. (2-SIDED TILE)  
TYPE M - FULL HT. PTN. (1-SIDED TILE)

**STUD SIZE DESIGNATION :**

E - EXISTING STUD TO REMAIN - REPLACE GYP BD AS NOTED - OR MATCH EXISTING STUD SIZE  
4 = 3 5/8" METAL STUD

**WALL TAGS**

INDICATES PARTITION TYPE  
INDICATES PARTITION FIRE RATING (N OR BLANK = NOT RATED)  
STUD SIZE  
ADDITIONAL NOTE:  
A - PROVIDE ACOUSTIC BATT INSULATION & ACOUSTIC SEALANT  
B - MOISTURE-RESISTANT PURPLE BOARD REQUIRED  
C - DEFLECTION CRITERIA OF U/360 REQUIRED  
D - THERMAL INSULATION  
E - PROVIDE DENSGLASS GOLD SHEATHING

**DOOR TAGS**

INDICATES DOOR TYPE  
INDICATES DOOR NUMBER  
INDICATES DOOR SECURITY  
INDICATES DOOR HARDWARE GROUP

**FINISH TAGS**

RF1 FINISH TYPE TAG. SEE LEGEND  
FINISH TRANSITION SYMBOL

**SHEET NOTES - PRICING PLAN**

- SEE PROJECT GENERAL NOTES ON SHEET G002.
- WHERE NEW EXTENTION OR FILL-IN OF EXITING PARTITION IS INDICATED ON PLAN, MATCH NEW STUD SIZE WITH EXISTING.
- ALL NEW AND EXISTING PARTITIONS IN PROJECT SCOPE TO RECEIVE NEW PAINT, U.O.N.
- CONTRACTOR SHALL VERIFY EXISTING FIRE RATED PARTITIONS. EXISTING FIRE RATING TO BE MAINTAINED THROUGHOUT.
- CONTRACTOR SHALL INSPECT EXISTING PARTITIONS IN PROJECT SCOPE AND PATCH AND REPAIR AS REQUIRED TO RECIEVE NEW SCHEDULED FINISHES.
- ALL NEW GLASS AND ALUMINUM FRAMING TO MATCH (E) THICKNESS AND FINISH U.O.N.
- EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT. U.O.N. WHERE NEW GRID CEILING AND LIGHT FIXTURE ARE INDICATED, PROVIDE SPECS TO MATCH EXISTING.
- FOR NEW DOORS AND EXISTING DOORS RECEIVING NEW HARDWARE, COORDINATE KEYING AND LOCK FUNCTION WITH TENANT OR BUILDING MANAGEMENT. VERIFY ALL LOCKSETS AND LATCHSETS FUNCTION CORRECTLY.
- CONTRACTOR SHALL VERIFY THAT ALL (E) POWER/DATA TO REMAIN IS IN PROPER WORKING ORDER PRIOR TO FINAL PRICING. INCLUDE REPAIR/REPLACEMENT AS NEEDED.
- FURNITURE SHOWN IS FOR REFERENCE ONLY AND NOT IN ARCHITECTURAL SCOPE. FURNITURE AND AV VENDORS ARE TO DIRECTLY COORDINATE POWER/DATA TYPES, QUANTITIES/PULLS, DIMENSIONED LOCATIONS AND ANY OTHER NECESSARY EQUIPMENT/ITEMS/DETAILS WITH CONTRACTOR AND ELECTRICIAN.
- RECONFIGURE EXISTING FIRE LIFE SAFETY DEVICES PER NEW PLAN AS REQUIRED.
- CONTRACTOR SHALL INSPECT EXITING CEILING TILES THROUGHOUT AND REPLACE DAMAGED OR STAINED WITH NEW.
- ALL NEW POWER AND DATA OUTLETS TO BE INSTALLED AT 18" TO CENTER ABOVE FINISHED FLOOR, U.O.N. ALL OUTLETS ABOVE COUNTER SURFACE TO BE IN HORIZONTAL ORIENTATION.
- ALL UNTAGGED DOORS ARE TO REMAIN UNCHANGED.

**FINISH NOTES**

- PROVIDE P1 PAINT THROUGHOUT U.O.N.
- PROVIDE C1 FLOORING AND B1 WALL BASE THROUGHOUT U.O.N. SEE FINISH TAGS ON PLAN FOR LOCATION OF OTHER FLOORING TYPES.

**FINISH LEGEND**

- P1 TYPE: PAINT  
MANUFACTURER: BENJAMIN MOORE  
PRODUCT: ULTRA SPEC 500 INTERIOR LATEX PRIMER/PAINT  
COLOR: TBD  
NOTE: EGGSHELL FINISH  
MATERIAL COST: \$0.15 / SQ.FT. ALLOWANCE
- B1 TYPE: RESILIENT WALL BASE  
MANUFACTURER: TARKETT  
PRODUCT: JOHNSONITE BASEWORKS THERMOSET RUBBER (TYPE T5)  
COLOR: TBD  
SIZE: 4" HEIGHT  
NOTE: TOILESS  
MATERIAL COST: \$1.50 / LINEAR FOOT
- C1 TYPE: FELD CARPET  
MANUFACTURER: TBD  
PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON-NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM, COMMERCIAL GRADE  
COLOR: TBD  
SIZE: TBD  
NOTE: MINIMUM 10 YEAR WARRANTY  
MATERIAL COST: \$25 / YARD ALLOWANCE  
PRICING COMMENTS: ADD \$7 / YARD FOR CUSHION BACK.
- C2 TYPE: ACCENT CARPET  
MANUFACTURER: TBD  
PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON-NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM, COMMERCIAL GRADE  
COLOR: TBD  
SIZE: TBD  
NOTE: MINIMUM 10 YEAR WARRANTY  
MATERIAL COST: 35\$ / YARD ALLOWANCE
- RF1 TYPE: RESILIENT FLOORING  
MANUFACTURER: TBD  
PRODUCT: TBD -LVT. NO PHTHALATES ACCEPTED  
COLOR: TBD  
SIZE: TBD  
MATERIAL COST: \$13 / SQ.FT. ALLOWANCE
- E TYPE: EXISTING FLOORING TO REMAIN
- WP1 TYPE: STRETCHED FABRIC WALL PANEL  
MANUFACTURER: CAMIRA  
PRODUCT: MAIN LINE FLEX  
COLOR: TBD  
SIZE: 54" WIDE MINIMUM  
NOTE: PROVIDE 1" THICK X 48" WIDE CORE ACOUSTIC PANEL AND FABRITRAX 15E10 /HSJ110 PROFILES

**KEY NOTES - PRICING PLAN**

- NEW DOOR ASSEMBLY ON EXISTING PARTITION TO REMAIN.
- EXISTING POWER/DATA AND OTHER CONNECTIONS TO REMAIN IN THIS ROOM. PROVIDE NEW FINISHES ONLY.
- NEW FLOOR CORE FOR PRINTING EQUIPMENT. COORDINATE WITH OWNER FOR POWER/DATA REQUIREMENTS.
- NEW AV SCREEN PROVIDED BY OWNER. COORDINATE WITH AV VENDOR FOR POWER, DATA, AND AV CONNECTION TO CONFERENCE TABLE.
- NEW POWER AND DATA FOR OWNER PROVIDED COPIER.
- NEW MILLWORK COUNTER WITH BASE CABINETS. SEE ELEVATIONS.
- NEW SINK, FAUCET, AND SOAP DISPENSER ON EXISTING COUNTER.
- PROVIDE (1) NEW OPEN SHELVING BASE CABINET AND (1) UNDERCOUNTER REFRIGERATOR. SEE ELEVATION.
- PROVIDE NEW FURNITURE FEED FOR POWER AND DATA FOR NEW WORKSTATIONS. FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS.
- LOCKERS AND STORAGE UNITS BY FURNITURE. FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS FOR LOCKERS.
- CONTRACTOR SHALL CONFIRM EXISTING DOORS ARE READY FOR NEW CARD READERS. CARD READER LOCATIONS SHALL PROVIDE 30" X 48" CLEAR FLOOR SPACE CENTERED ON CARD READER IN EITHER FORWARD OR PARALLEL APPROACH. IF EXISTING DOORS ARE NOT CARD READER READY
- PROVIDE 1 LAYER OF NEW TYPE X GYP BOARD ON EACH SIDE OF EXISTING STUDS
- NEW DEDICATED OUTLETS FOR USER-PROVIDED EQUIPMENT. COORDINATE WITH OWNER FOR REQUIREMENTS.
- PROVIDE NEW CEILING TILES FOR EXISTING CEILING GRID TO REMAIN IN THIS AREA. EXISTING LIGHT FIXTURES TO REMAIN.
- NEW DEDICATED OUTLET AND PLUMBING LINES FOR OWNER PROVIDED WASHER AND DRYER. COORDINATE WITH OWNER FOR POWER AND PLUMBING REQUIREMENTS.
- CASED OPENING WITH PULL-DOWN FIRE SHUTTER. SEE ELEVATION.

**STATE BAR OF CALIFORNIA**  
180 HOWARD STREET  
FLOORS 1, 4, 5, 6  
SAN FRANCISCO  
CA 94105

**PRICING PLAN - FLOOR 4 - OPTION A & B**

**JOB NUMBER**  
PSBC180.2301.00

**DRAWN BY**  
Author

**SCALE**  
As indicated

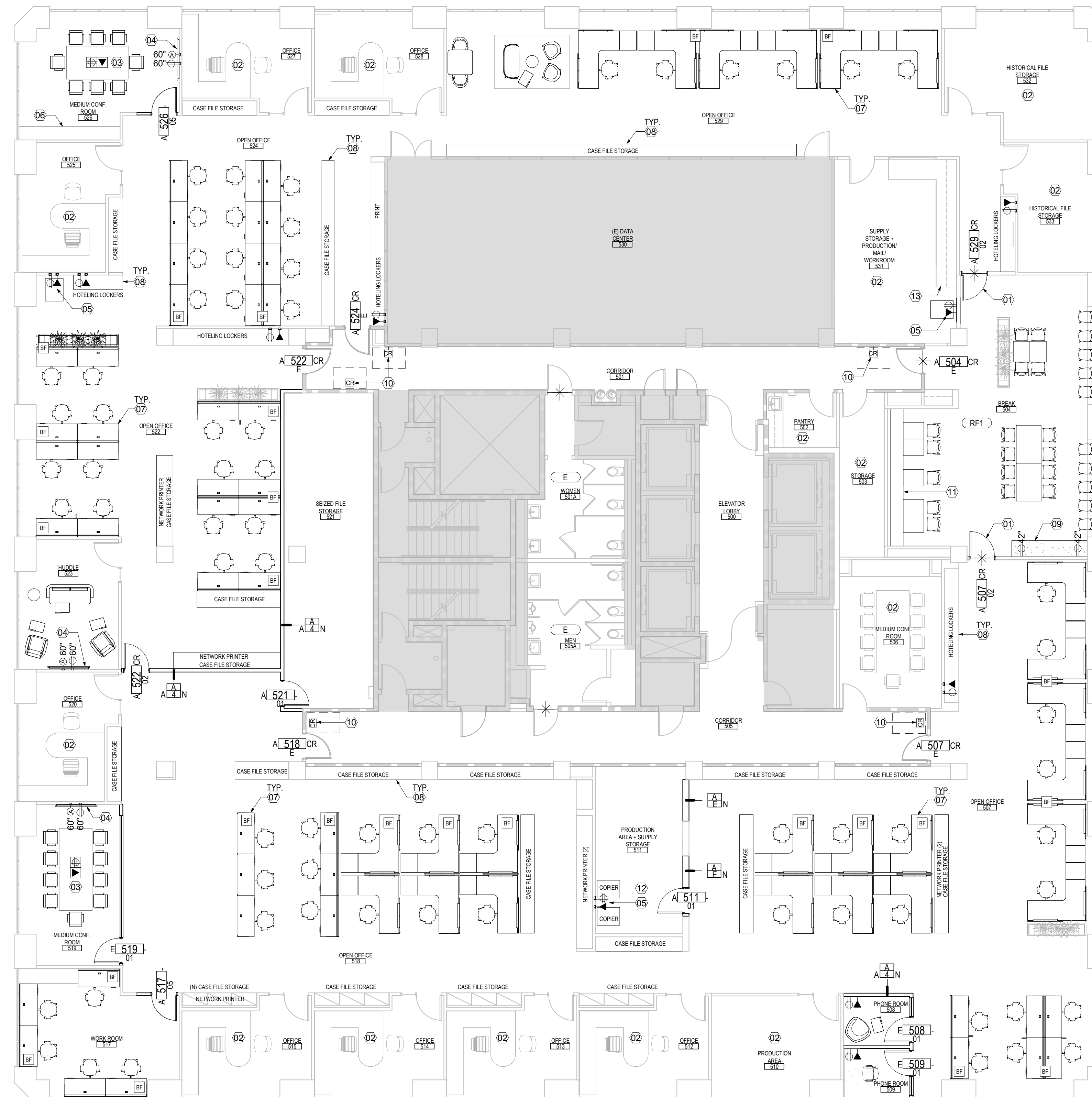
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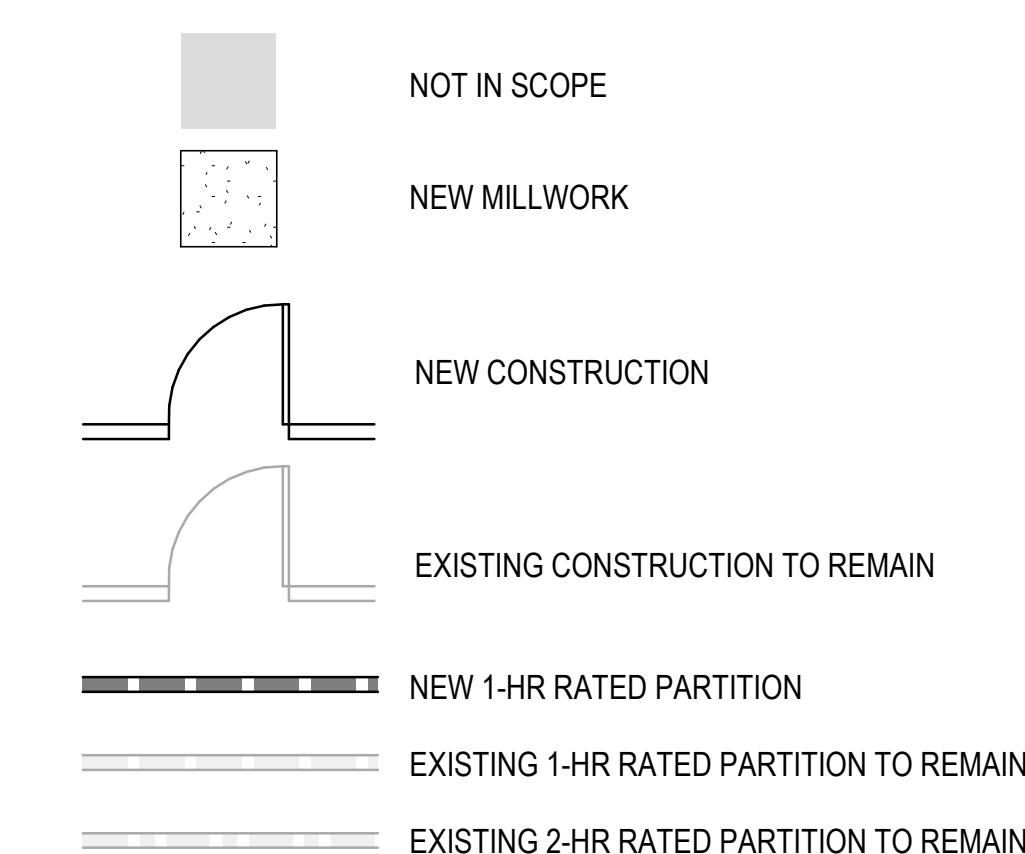


REVISION	ISSUE	INFORMATION
No.	Description	Date

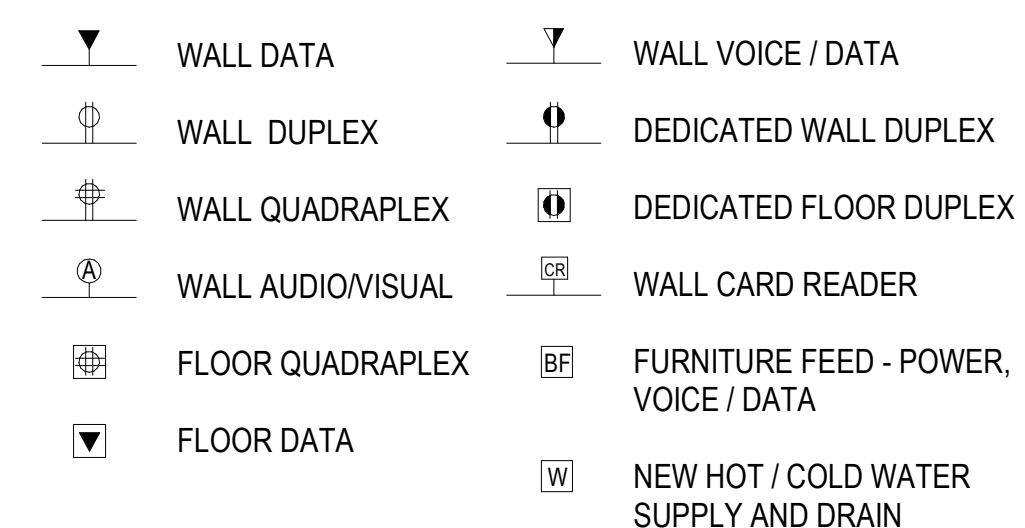


1 PRICING PLAN - FLOOR 5  
1/8" = 1'-0"

**PRICING PLAN LEGEND**



**POWER & SIGNAL LEGEND**



**PARTITION TYPE (SEE - / - - FOR DETAILS)**

TYPE A - NON-RATED FULL HT. PTN.  
TYPE B - RATED FULL HT. PTN.  
TYPE E1 - FULL HT. ONE SIDED PTN.  
TYPE H - PARTIAL HT. PTN.  
TYPE L - FULL HT. PTN. (2-SIDED TILE)  
TYPE M - FULL HT. PTN. (1-SIDED TILE)

**STUD SIZE DESIGNATION :**

E - EXISTING STUD TO REMAIN - REPLACE GYP BD AS NOTED - OR MATCH EXISTING STUD SIZE  
4 = 3 5/8" METAL STUD

**WALL TAGS**

INDICATES PARTITION TYPE  
INDICATES PARTITION FIRE RATING (N OR BLANK = NOT RATED)  
STUD SIZE  
**ADDITIONAL NOTE:**  
A - PROVIDE ACOUSTIC BATT INSULATION & ACOUSTIC SEALANT  
B - MOISTURE-RESISTANT PURPLE BOARD REQUIRED  
C - DEFLECTION CRITERIA OF U360 REQUIRED  
D - THERMAL INSULATION  
E - PROVIDE DENSGLOSS GOLD SHEATHING

**DOOR TAGS**

INDICATES DOOR TYPE  
INDICATES DOOR NUMBER  
INDICATES DOOR SECURITY  
INDICATES DOOR HARDWARE GROUP

**FINISH TAGS**

RF1 FINISH TYPE TAG. SEE LEGEND  
FINISH TRANSITION SYMBOL

**SHEET NOTES - PRICING PLAN**

- SEE PROJECT GENERAL NOTES ON SHEET G002.
- WHERE NEW EXTENTION OR FILL-IN OF EXITING PARTITION IS INDICATED ON PLAN, MATCH NEW STUD SIZE WITH EXISTING.
- ALL NEW AND EXISTING PARTITIONS IN PROJECT SCOPE TO RECEIVE NEW PAINT, U.O.N.
- CONTRACTOR SHALL VERIFY EXISTING FIRE RATED PARTITIONS. EXISTING FIRE RATING TO BE MAINTAINED THROUGHOUT.
- CONTRACTOR SHALL INSPECT EXISTING PARTITIONS IN PROJECT SCOPE AND PATCH AND REPAIR AS REQUIRED TO RECIEVE NEW SCHEDULED FINISHES.
- ALL NEW GLASS AND ALUMINUM FRAMING TO MATCH (E) THICKNESS AND FINISH U.O.N.
- EXISTING CEILING AND LIGHT FIXTURES TO REMAIN THROUGHOUT. U.O.N. WHERE NEW GRID CEILING AND LIGHT FIXTURE ARE INDICATED, PROVIDE SPECS TO MATCH EXISTING.
- FOR NEW DOORS AND EXISTING DOORS RECEIVING NEW HARDWARE, COORDINATE KEYING AND LOCK FUNCTION WITH TENANT OR BUILDING MANAGEMENT. VERIFY ALL LOCKSETS AND LATCHSETS FUNCTION CORRECTLY.
- CONTRACTOR SHALL VERIFY THAT ALL (E) POWER/DATA TO REMAIN IS IN PROPER WORKING ORDER PRIOR TO FINAL PRICING. INCLUDE REPAIR/REPLACEMENT AS NEEDED.
- FURNITURE SHOWN IS FOR REFERENCE ONLY AND NOT IN ARCHITECTURAL SCOPE. FURNITURE AND AV VENDORS ARE TO DIRECTLY COORDINATE POWER/DATA TYPES, QUANTITIES/PULLS, DIMENSIONED LOCATIONS AND ANY OTHER NECESSARY EQUIPMENT/ITEMS/DETAILS WITH CONTRACTOR AND ELECTRICIAN.
- RECONFIGURE EXISTING FIRE LIFE SAFETY DEVICES PER NEW PLAN AS REQUIRED.
- CONTRACTOR SHALL INSPECT EXITING CEILING TILES THROUGHOUT AND REPLACE DAMAGED OR STAINED WITH NEW.
- ALL NEW POWER AND DATA OUTLETS TO BE INSTALLED AT 18" TO CENTER ABOVE FINISHED FLOOR, U.O.N. ALL OUTLETS ABOVE COUNTER SURFACE TO BE IN HORIZONTAL ORIENTATION.
- ALL UNTAGGED DOORS ARE TO REMAIN UNCHANGED.

**FINISH NOTES**

- PROVIDE P1 PAINT THROUGHOUT U.O.N.
- PROVIDE C1 FLOORING AND B1 WALL BASE THROUGHOUT U.O.N. SEE FINISH TAGS ON PLAN FOR LOCATION OF OTHER FLOORING TYPES.

**FINISH LEGEND**

- |  |   |
|--|---|
| <b>(P1)</b> TYPE: PAINT<br>MANUFACTURER: BENJAMIN MOORE<br>PRODUCT: ULTRA SPEC 500 INTERIOR LATEX PRIMER/SEAL<br>COLOR: TBD<br>NOTE: EGGSHELL FINISH<br>MATERIAL COST: \$0.15 / SQ.FT. ALLOWANCE   | <b>(B1)</b> TYPE: RESILIENT WALL BASE<br>MANUFACTURER: TARKETT<br>PRODUCT: JOHNSONITE BASEWORKS THERMOSET RUBBER (TYPE TS)<br>COLOR: TBD<br>NOTE: TOILESS<br>MATERIAL COST: \$1.50 / LINEAR FOOT  |
| <b>(C1)</b> TYPE: FIELD CARPET<br>MANUFACTURER: TBD<br>PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM. COMMERCIAL GRADE<br>COLOR: TBD<br>SIZE: TBD<br>NOTE: MINIMUM 10 YEAR WARRANTY<br>MATERIAL COST: \$25 / YARD ALLOWANCE<br>PRICING COMMENTS: ADD \$7 / YARD FOR CUSHION BACK. | <b>(C2)</b> TYPE: ACCENT CARPET<br>MANUFACTURER: TBD<br>PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM. COMMERCIAL GRADE<br>COLOR: TBD<br>SIZE: TBD<br>NOTE: MINIMUM 10 YEAR WARRANTY<br>MATERIAL COST: 35\$ / YARD ALLOWANCE |
| <b>(RF1)</b> TYPE: RESILIENT FLOORING<br>MANUFACTURER: TBD<br>PRODUCT: TBD -LVT. NO PHTHALATES<br>ACCEPTED<br>COLOR: TBD<br>SIZE: TBD<br>MATERIAL COST: \$13 / SQ.FT. ALLOWANCE  | <b>(E)</b> TYPE: EXISTING FLOORING TO REMAIN  |
|  | <b>(WP1)</b> TYPE: STRETCHED FABRIC WALL PANEL<br>MANUFACTURER: CAMIRA<br>PRODUCT: MAIN LINE FLEX<br>COLOR: TBD<br>SIZE: 54" WIDE MINIMUM<br>NOTE: PROVIDE 1" THICK X 48" WIDE CORE ACOUSTIC PANEL AND FABRITRAX 15E10 /HSJ110 PROFILES   |

**KEY NOTES - PRICING PLAN**

- NEW DOOR ASSEMBLY ON EXISTING PARTITION TO REMAIN.
- EXISTING POWER/DATA AND OTHER CONNECTIONS TO REMAIN IN THIS ROOM. PROVIDE NEW FINISHES ONLY.
- NEW FLOOR CORE FOR CONFERENCE TABLE. COORDINATE WITH OWNER AND FURNITURE VENDOR TO CONFIRM FINAL LOCATION AND POWER, DATA, AND AV CONNECTION REQUIREMENTS.
- NEW AV SCREEN PROVIDED BY OWNER. COORDINATE WITH AV VENDOR FOR POWER, DATA, AND AV CONNECTION TO CONFERENCE TABLE REQUIREMENTS.
- NEW POWER AND DATA FOR COPIER PROVIDED BY OWNER.
- NEW MILLWORK SHELVING. SEE TYPICAL ELEVATION 2/A102.6 FOR PRICING INFORMATION. CONTRACTOR SHALL FIELD VERIFY DIMENSIONS.
- PROVIDE NEW FURNITURE FEED FOR POWER AND DATA FOR NEW WORKSTATIONS. FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS.
- LOCKERS AND STORAGE UNITS BY FURNITURE FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS FOR LOCKERS.
- NEW COUNTER WITH BASE CABINETS.
- CONTRACTOR SHALL CONFIRM EXISTING SUITE ENTRY DOORS ARE READY FOR NEW CARD READERS. CARD READER LOCATIONS SHALL PROVIDE 30" X 48" CLEAR FLOOR SPACE CENTERED ON CARD READER IN EITHER FORWARD OR PARALLEL APPROACH. IF EXISTING DOORS ARE NOT CARD READER READY, PROVIDE NEW HARDWARE AND CARD READERS AS INDICATED ON THIS PLAN.
- LINEAR BENCH BY FURNITURE.
- CONTRACTOR SHALL VERIFY EXISTING PARTITIONS FOR THIS ROOM ARE FULL-HEIGHT. IF EXISTING CONDITION HAS PARTIAL-HEIGHT PARTITIONS, MATCH HEIGHT OF NEW SCHEDULED PARTITIONS TO EXISTING.
- PROVIDE NEW FINISHED END PANEL TO MATCH EXISTING CONDITIONS FOR REMAINING PORTION OF EXISTING COUNTER AND CABINETS.

SEAL / F

90% PRICING DRAWINGS

STATE BAR OF CALIFORNIA  
180 HOWARD STREET  
FLOORS 1, 4, 5, 6  
SAN FRANCISCO  
CA 94105

**PRICING PLAN - FLOOR 5**

JOB NUMBER  
PSBC180.2301.00

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Author

SCALE  
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**90% PRICING DRAWINGS**

**STATE BAR OF CALIFORNIA**  
180 HOWARD STREET  
FLOORS 1, 4, 5, 6  
SAN FRANCISCO  
CA 94105

**PRICING PLAN - FLOOR 6**

**JOB NUMBER**

PSBC180.2301.00

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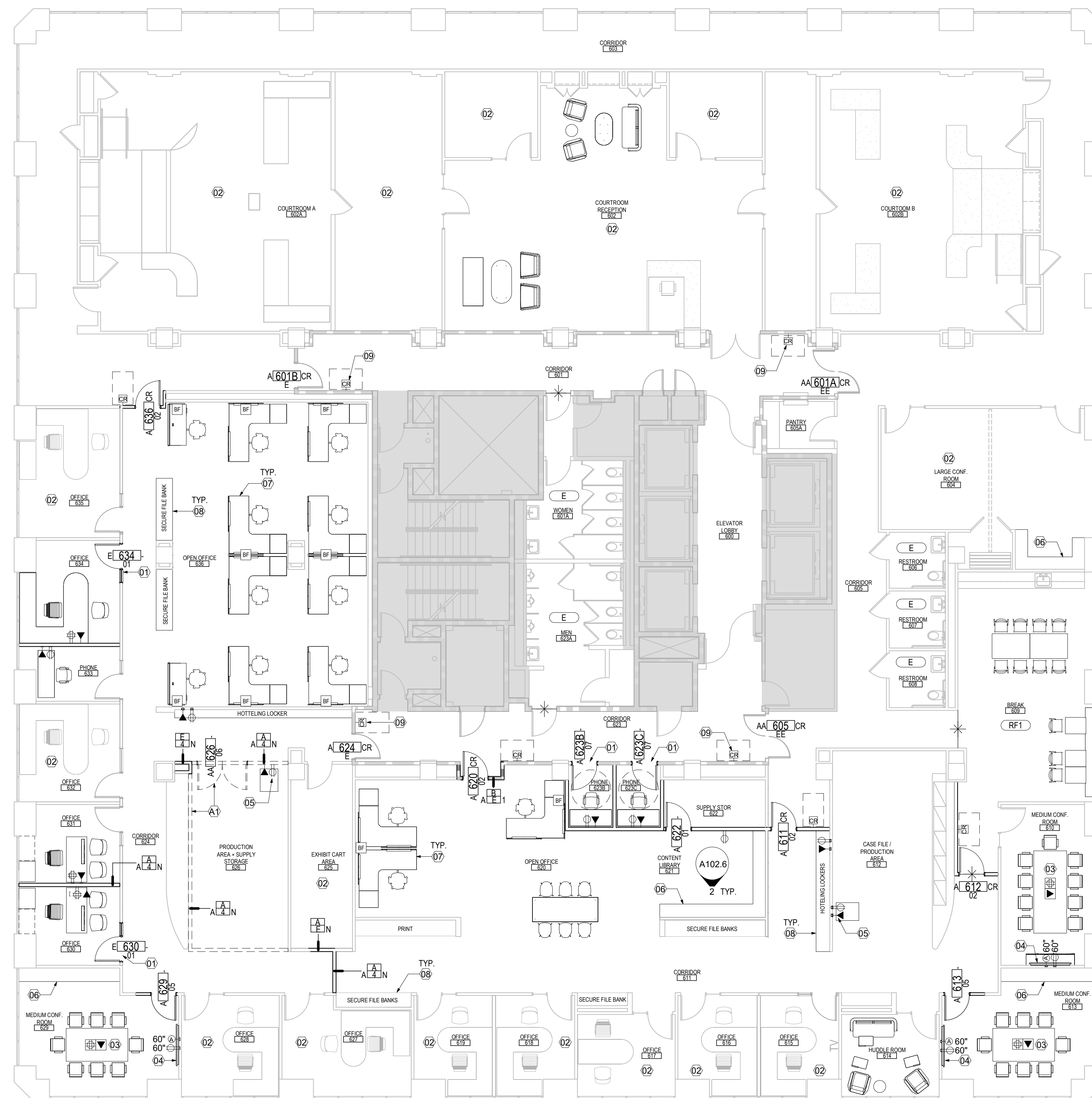
Author

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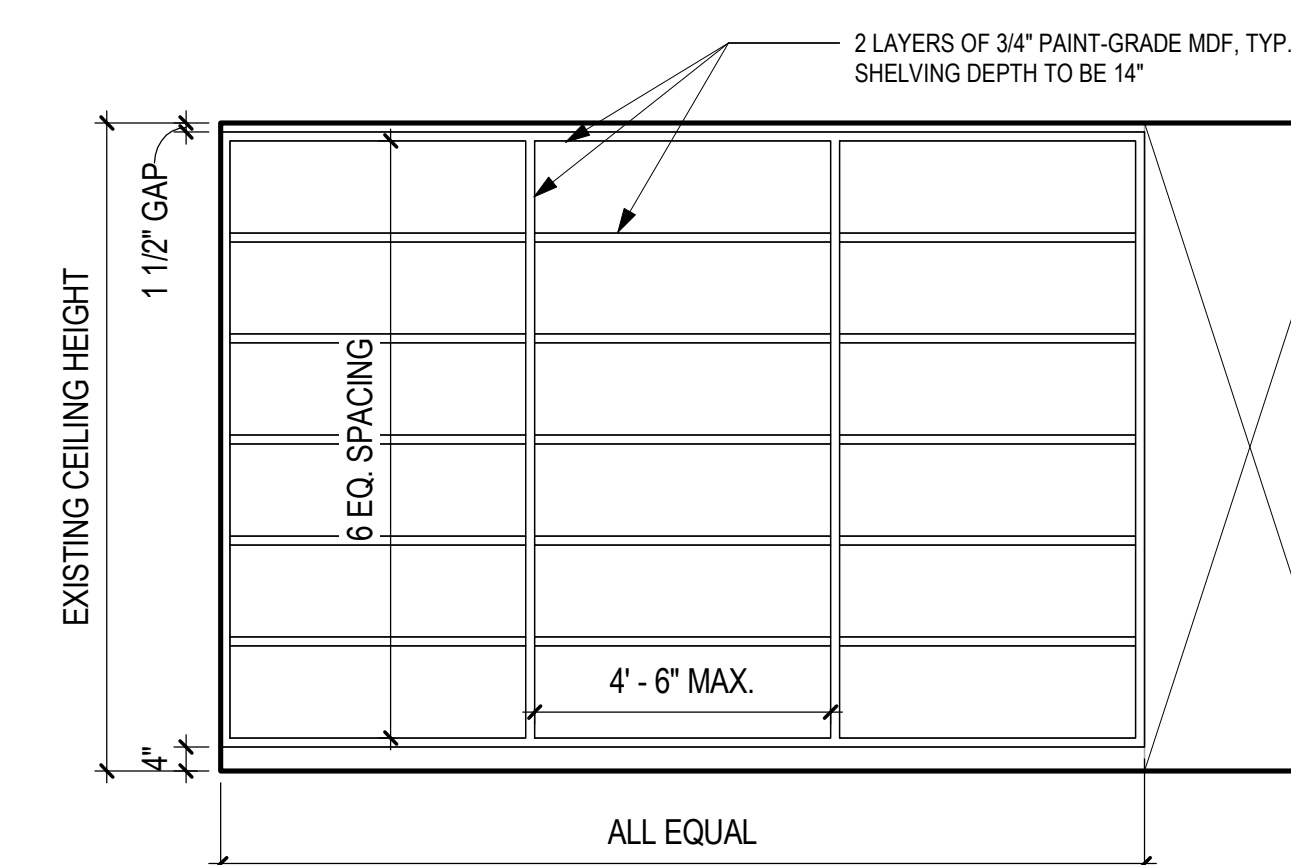
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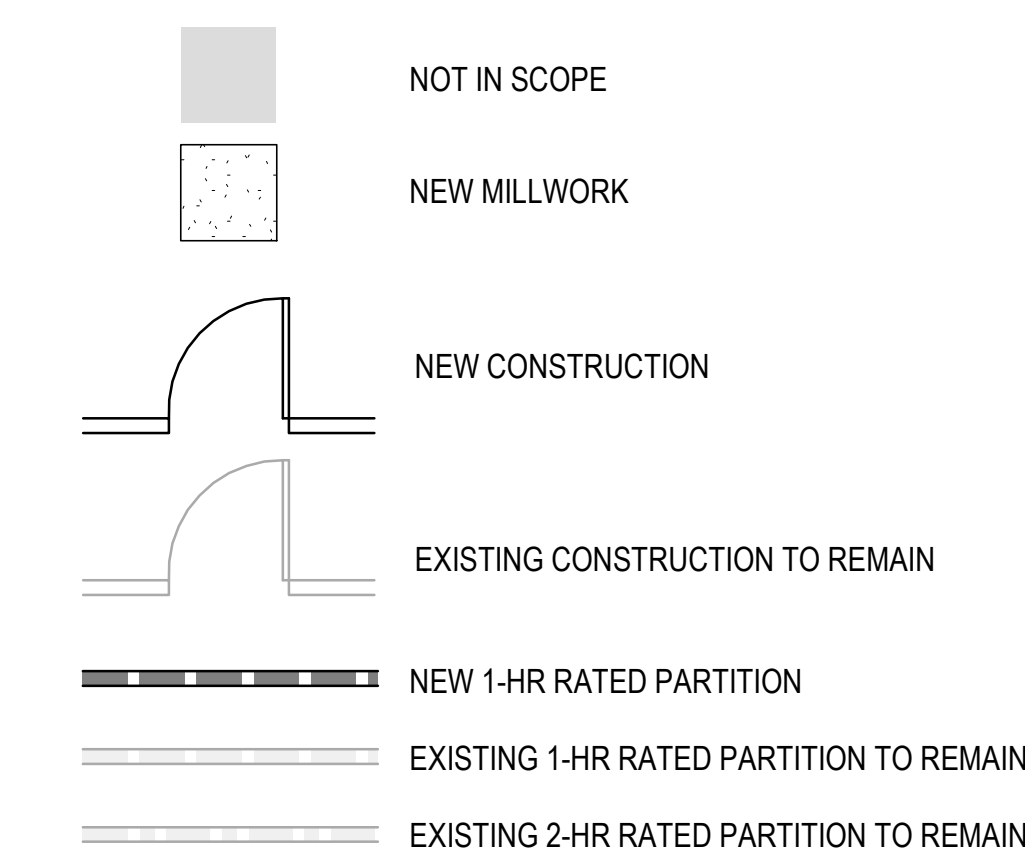


**1 PRICING PLAN - FLOOR 6**  
1/8" = 1'-0"

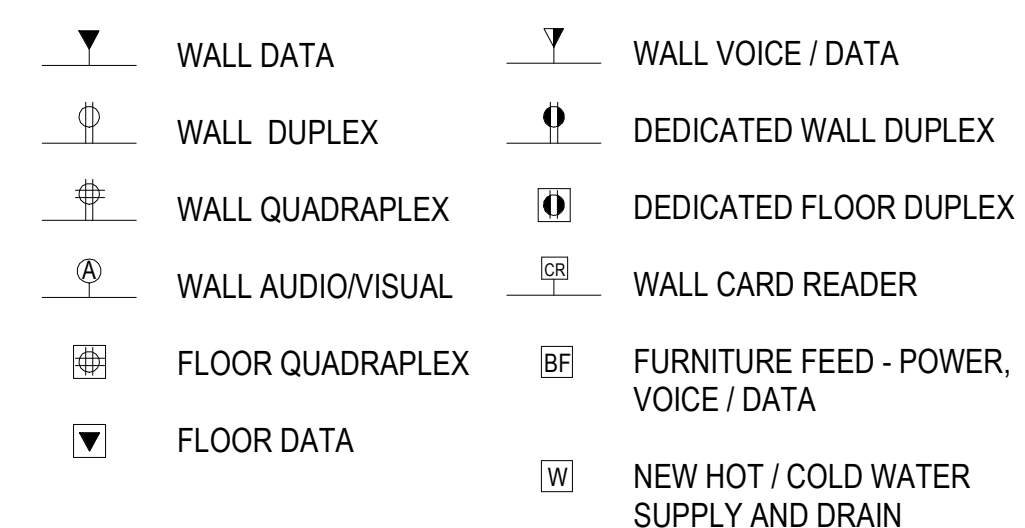


**2 TYPICAL WALL SHELVING ELEVATION**  
3/8" = 1'-0"

**PRICING PLAN LEGEND**



**POWER & SIGNAL LEGEND**



**PARTITION TYPE (SEE - / - - FOR DETAILS)**

TYPE A - NON-RATED FULL HT. PTN.  
TYPE B - RATED FULL HT. PTN.  
TYPE E1 - FULL HT. ONE SIDED PTN.  
TYPE H - PARTIAL HT. PTN.  
TYPE L - FULL HT. PTN. (2-SIDED TILE)  
TYPE M - FULL HT. PTN. (1-SIDED TILE)

**STUD SIZE DESIGNATION :**

E - EXISTING STUD TO REMAIN - REPLACE GYP BD AS NOTED - OR MATCH EXISTING STUD SIZE  
4 = 3 5/8" METAL STUD

**WALL TAGS**

INDICATES PARTITION TYPE  
INDICATES PARTITION FIRE RATING (N OR BLANK = NOT RATED)  
STUD SIZE  
**ADDITIONAL NOTE:**  
A - PROVIDE ACOUSTIC BATT INSULATION & ACOUSTIC SEALANT  
B - MOISTURE-RESISTANT PURPLE BOARD REQUIRED  
C - DEFLECTION CRITERIA OF U360 REQUIRED  
D - THERMAL INSULATION  
E - PROVIDE DENSGLOSS GOLD SHEATHING

**DOOR TAGS**

INDICATES DOOR TYPE  
INDICATES DOOR NUMBER  
INDICATES DOOR SECURITY  
INDICATES DOOR HARDWARE GROUP

**FINISH TAGS**

RF1 FINISH TYPE TAG. SEE LEGEND  
FINISH TRANSITION SYMBOL

**SHEET NOTES - PRICING PLAN**

- SEE PROJECT GENERAL NOTES ON SHEET G002.
- WHERE NEW EXTENTION OR FILL-IN OF EXITING PARTITION IS INDICATED ON PLAN, MATCH NEW STUD SIZE WITH EXISTING.
- ALL NEW AND EXISTING PARTITIONS IN PROJECT SCOPE TO RECEIVE NEW PAINT, U.O.N.
- CONTRACTOR SHALL VERIFY EXISTING FIRE RATED PARTITIONS. EXISTING FIRE RATING TO BE MAINTAINED THROUGHOUT.
- CONTRACTOR SHALL INSPECT EXISTING PARTITIONS IN PROJECT SCOPE AND PATCH AND REPAIR AS REQUIRED TO RECIEVE NEW SCHEDULED FINISHES.
- ALL NEW GLASS AND ALUMINUM FRAMING TO MATCH (E) THICKNESS AND FINISH U.O.N.
- EXISTING CEILINGS AND LIGHT FIXTURES TO REMAIN THROUGHOUT. U.O.N. WHERE NEW GRID CEILING AND LIGHT FIXTURE ARE INDICATED, PROVIDE SPECS TO MATCH EXISTING.
- FOR NEW DOORS AND EXISTING DOORS RECEIVING NEW HARDWARE, COORDINATE KEYING AND LOCK FUNCTION WITH TENANT OR BUILDING MANAGEMENT. VERIFY ALL LOCKSETS AND LATCHSETS FUNCTION CORRECTLY.
- CONTRACTOR SHALL VERIFY THAT ALL (E) POWER/DATA TO REMAIN IS IN PROPER WORKING ORDER PRIOR TO FINAL PRICING. INCLUDE REPAIR/REPLACEMENT AS NEEDED.
- FURNITURE SHOWN IS FOR REFERENCE ONLY AND NOT IN ARCHITECTURAL SCOPE. FURNITURE AND AV VENDORS ARE TO DIRECTLY COORDINATE POWER/DATA TYPES, QUANTITIES/PULLS, DIMENSIONED LOCATIONS AND ANY OTHER NECESSARY EQUIPMENT/ITEMS/DETAILS WITH CONTRACTOR AND ELECTRICIAN.
- RECONFIGURE EXISTING FIRE LIFE SAFETY DEVICES PER NEW PLAN AS REQUIRED.
- CONTRACTOR SHALL INSPECT EXITING CEILING TILES THROUGHOUT AND REPLACE DAMAGED OR STAINED WITH NEW.
- ALL NEW POWER AND DATA OUTLETS TO BE INSTALLED AT 18" TO CENTER ABOVE FINISHED FLOOR, U.O.N. ALL OUTLETS ABOVE COUNTER SURFACE TO BE IN HORIZONTAL ORIENTATION.
- ALL UNTAGGED DOORS ARE TO REMAIN UNCHANGED.

**FINISH NOTES**

- PROVIDE P1 PAINT THROUGHOUT U.O.N.
- PROVIDE C1 FLOORING AND B1 WALL BASE THROUGHOUT U.O.N. SEE FINISH TAGS ON PLAN FOR LOCATION OF OTHER FLOORING TYPES.

**FINISH LEGEND**

- |  |   |
|--|---|
| <b>(P1)</b> TYPE: PAINT<br>MANUFACTURER: BENJAMIN MOORE<br>PRODUCT: ULTRA SPEC 500 INTERIOR LATEX PRIMER/SEAL<br>COLOR: TBD<br>NOTE: EGGSHELL FINISH<br>MATERIAL COST: \$0.15 / SQ.FT. ALLOWANCE   | <b>(B1)</b> TYPE: RESILIENT WALL BASE<br>MANUFACTURER: TARKETT<br>PRODUCT: JOHNSONITE BASEWORKS THERMOSET RUBBER (TYPE TS)<br>COLOR: TBD<br>SIZE: 4" HEIGHT<br>NOTE: TOILESS<br>MATERIAL COST: \$1.50 / LINEAR FOOT   |
| <b>(C1)</b> TYPE: FIELD CARPET<br>MANUFACTURER: TBD<br>PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON-NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM, COMMERCIAL GRADE<br>COLOR: TBD<br>SIZE: TBD<br>NOTE: MINIMUM 10 YEAR WARRANTY<br>MATERIAL COST: \$25 / YARD ALLOWANCE<br>PRICING COMMENTS: ADD \$7 / YARD FOR CUSHION BACK. | <b>(C2)</b> TYPE: ACCENT CARPET<br>MANUFACTURER: TBD<br>PRODUCT: NON-PVC BACKING WITH RECYCLED-CONTENT YARN FACE OR CARBON-NEUTRAL/POSITIVE COBINATION BACKING AND YARN SYSTEM, COMMERCIAL GRADE<br>COLOR: TBD<br>SIZE: TBD<br>NOTE: MINIMUM 10 YEAR WARRANTY<br>MATERIAL COST: 35\$ / YARD ALLOWANCE |
| <b>(RF1)</b> TYPE: RESILIENT FLOORING<br>MANUFACTURER: TBD<br>PRODUCT: TBD -LVT. NO PHTHALATES ACCEPTED<br>COLOR: TBD<br>SIZE: TBD<br>MATERIAL COST: \$13 / SQ.FT. ALLOWANCE   | <b>(E)</b> TYPE: EXISTING FLOORING TO REMAIN  |
|  | <b>(WP1)</b> TYPE: STRETCHED FABRIC WALL PANEL<br>MANUFACTURER: CAMIRA<br>PRODUCT: MAIN LINE FLEX<br>COLOR: TBD<br>SIZE: 54" WIDE MINIMUM<br>NOTE: PROVIDE 1" THICK X 48" WIDE CORE ACOUSTIC PANEL AND FABRITRAX 15E10 /15J10 PROFILES  |

**KEY NOTES - PRICING PLAN**

- NEW DOOR ASSEMBLY ON EXISTING PARTITION TO REMAIN.
- EXISTING POWER/DATA AND OTHER CONNECTIONS TO REMAIN IN THIS ROOM. PROVIDE NEW FINISHES ONLY.
- NEW FLOOR CORE FOR CONFERENCE TABLE. COORDINATE WITH OWNER AND FURNITURE VENDOR TO CONFIRM FINAL LOCATION AND POWER, DATA, AND AV CONNECTION REQUIREMENTS.
- NEW AV SCREEN PROVIDED BY OWNER. COORDINATE WITH AV VENDOR FOR POWER, DATA, AND AV CONNECTION TO CONFERENCE TABLE REQUIREMENTS.
- NEW POWER AND DATA FOR COPIER PROVIDED BY OWNER.
- NEW MILLWORK SHELVING. SEE TYPICAL ELEVATION 2/A102.6 FOR PRICING INFORMATION. CONTRACTOR SHALL FIELD VERIFY DIMENSIONS.
- PROVIDE NEW FURNITURE FEED FOR POWER AND DATA FOR NEW WORKSTATIONS. FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS.
- LOCKERS AND STORAGE UNITS BY FURNITURE VENDOR TO CONFIRM POWER AND DATA REQUIREMENTS FOR LOCKERS.
- CONTRACTOR SHALL CONFIRM EXISTING SUITE ENTRY DOORS ARE READY FOR NEW CARD READERS. CARD READER LOCATIONS SHALL PROVIDE 30" X 48" CLEAR FLOOR SPACE CENTERED ON CARD READER IN EITHER FORWARD OR PARALLEL APPROACH. IF EXISTING DOORS ARE NOT CARD READER READY, PROVIDE NEW HARDWARE AND CARD READERS AS INDICATED ON THIS PLAN.

**KEY NOTES - ALTERNATE PRICING**

- PROVIDE DEDUCT ALT. PRICING FOR REMOVING PARTITIONS AND PAIR DOOR ENCLOSING PRODUCTION ROOM 626, SHOWN WITH DASHED LINES.



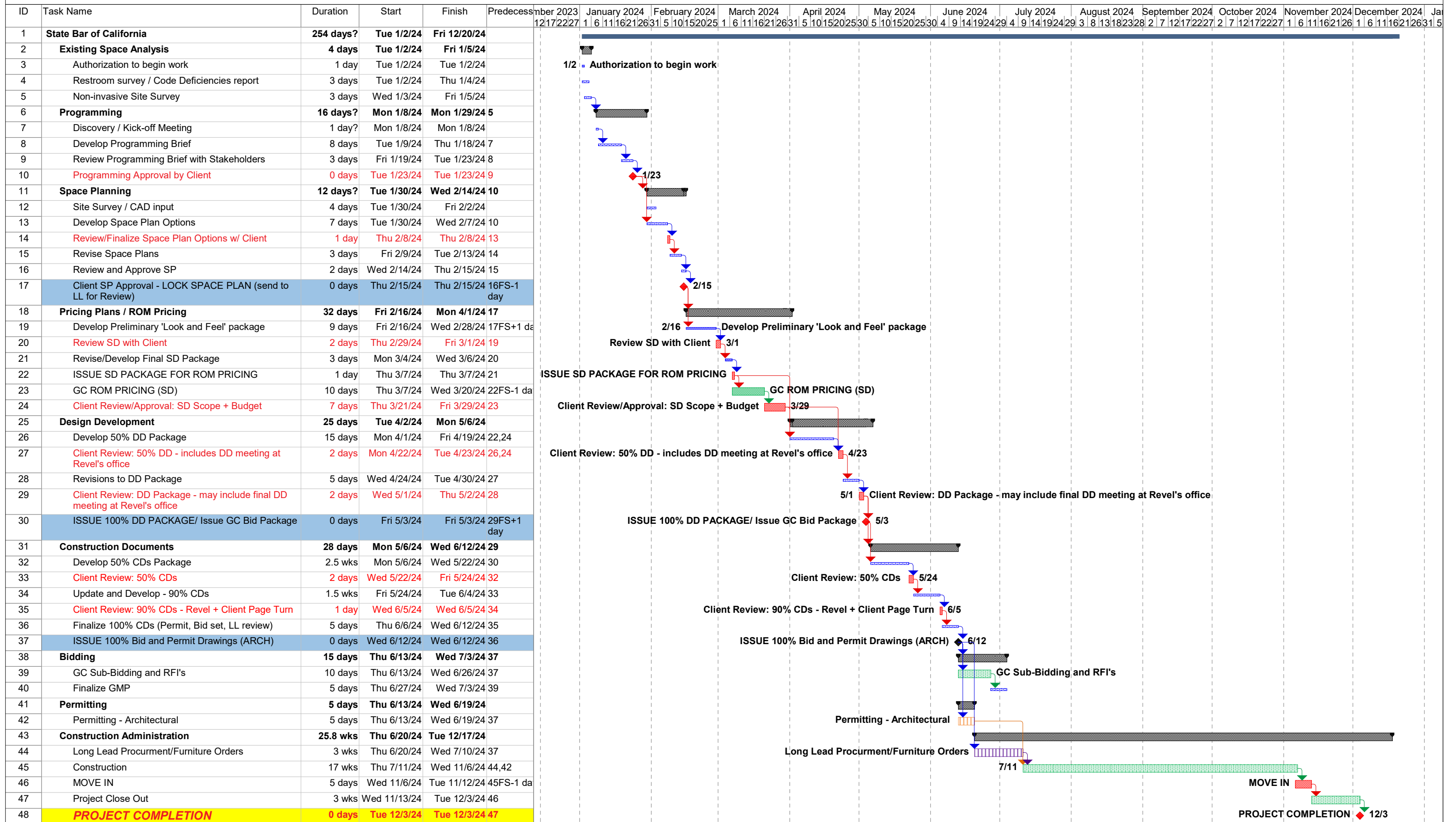




# Exhibit B

## State Bar of California

Schedule V.1  
12/15/23





# AIA® Document A104® – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty-Four  
(In words, indicate day, month and year.)

**BETWEEN** the "Owner":

THE STATE BAR OF CALIFORNIA  
Attn: Procurement  
845 S. Figueroa St.  
Los Angeles, CA 90017

and the "Contractor":

(Name, legal status, address and other information)

[\*\*contact]

for the following "Project":

(Name, location and detailed description)

Certain tenant improvements to the commercial office space commonly known as 180 Howard Street, Floors 1, 4, 5 and 6, San Francisco, CA 94105, as more particularly described in the Contract Documents.

The "Architect":

Revel Architecture & Design  
417 Montgomery St., 7th Floor  
San Francisco, CA 94104

The "Owner's Representative":

\*contact

The "Landlord":

180 Howard Owner, LLC  
c/o Ridge Capital Investors, LLC  
44 Montgomery Street, Suite 1910  
San Francisco, CA 94104  
Attn: Trevor Wilson, Managing Director

With a copy to:

David Karol  
Managing Director  
Ridge Capital Investors, LLC  
44 Montgomery Street, Suite 1910  
San Francisco, CA 94104  
D: 415-967-7802  
C: 415-672-5684  
dkarol@ridgecapitalinv.com

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

## TABLE OF ARTICLES

1	THE WORK OF THIS CONTRACT
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENT
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6	ENUMERATION OF CONTRACT DOCUMENTS
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14	TIME
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20	TERMINATION OF THE CONTRACT
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22	ADDITIONAL PROVISIONS
23	CONFIDENTIALITY
24	INTELLECTUAL PROPERTY RIGHTS
25	CONFLICT OF INTEREST

The Owner and Contractor (together the "**Parties**" and each a "**Party**") agree as follows.

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**User Notes:** Revised by Leigh Draper 7/13/23 at 10:19 AM

(1129658697)



## ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The "Date of Commencement" of the Work shall be:

(Check one of the following boxes.)

(Paragraphs deleted)

The date of this Agreement.

§ 2.2 Upon Contractor's receipt of items 1, 2 and 3 contained in **Section 2.1** above, Contractor shall commence the Work. The Contract Time shall be measured from the official Date of Commencement.

### § 2.3 Substantial Completion

(Paragraphs deleted)

§ 2.3.1 The "Contract Time" is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in this Agreement. Subject to adjustments of the Contract Time as provided in the Contract Documents, The Contractor shall achieve Substantial Completion of the entire Work ("**Scheduled Substantial Completion Date**"):

By the following date: **October 6, 2024**

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

#### Portion of Work

#### Substantial Completion Date

Contractor shall achieve Final Completion (as defined in **Section 15.7.1** below) and shall cause all conditions for final payment under **Section 4.2.1** to have been satisfied, no later than **November 6, 2024** ("**Outside Completion Date**").

(Paragraph deleted)

§ 2.3.2 If the Contractor fails to achieve Substantial Completion as provided in this **Section 2.3**, damages for delay shall be assessed as set forth in **Section 3.5**.

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The "Contract Sum" shall be the following:

Stipulated Sum, in accordance with **Section 3.2**  
(Paragraphs deleted)  
below

§ 3.2 The Stipulated Sum shall be (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents. Contractor bears the risk of any inaccurate assumptions, estimates, measurements or other matters upon which its price may have been based. Contractor acknowledges and agrees that the Contract Sum includes all Work indicated in and reasonably inferable from the Contract Documents, including, without limitation, work by Subcontractors (defined below) contracted with by Contractor in connection with the Agreement. This is a stipulated sum contract and, therefore, the Contract Sum shall include all items and services necessary for the proper execution and completion of the Work and shall be no more than the amount stated above, including all applicable taxes. The Contract Sum is broken down into components and listed in the Schedule of Values, to be provided by Contractor. The Contract Sum shall be deemed inclusive of all of Contractor's direct and indirect costs of performing the Work, including without limitation all compensation to the employees, contractors, and agents of Contractor and

any Subcontractors (including payroll, salary, withholding taxes, workers' compensation insurance, contributions, assessments and benefits), cost of labor and materials, costs of equipment and machinery, costs of insurance, taxes (including sales, consumer, use and similar taxes relating to the Work), and Contractor's overhead and profit.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

§ 3.2.2 Unit prices, if any:

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 3.2.3 Allowances, if any, included in the stipulated sum:

*(Identify each allowance.)*

Item	Price
------	-------

*(Paragraphs deleted)*

§ 3.4 [Intentionally Omitted].

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 3.5 Damages for Delay.

§ 3.5.1 It is critically essential that Contractor complete all Work on schedule. Contractor acknowledges and agrees that Owner will suffer significant damages if Contractor does not complete the Work by the Scheduled Substantial Completion Date. Owner, as tenant under a lease agreement with Landlord dated November 13, 2023 ("**Lease**"), is occupying a temporary space in the Building pending Final Completion of the Work and Owner's ability to occupy the Project for its intended purposes. Without prejudice to Owner's other rights and remedies at law and in equity for Contractor's default or breach of this Agreement, with respect to Contractor defaults or breaches due solely to delay in completing the Work, Owner shall be entitled to recover from Contractor, and Contractor shall pay to Owner, as damages for delay (which the parties agree is a reasonable estimation of Owner's damages for delay), and not as a penalty, the amounts calculated in the following **Section 3.5.2** and **Section 3.5.3**.

§ 3.5.2 Owner shall be entitled to recover from Contractor, and Contractor shall pay to Owner, as liquidated damages for delay (which the parties agree is a reasonable estimation of Owner's damages for delay), and not as a penalty, the sum of \$2,000 per day for each day completion of the Work is delayed after the Scheduled Substantial Completion Date, and the sum of \$3,000 per day for each day completion of the Work is delayed after the Outside Completion Date, in addition to damages for delay computed in accordance with **Section 3.5.3** below.

§ 3.5.3 Owner's "**Temporary Space Expiration Date**" under the Lease is November 13, 2024. For each day completion of the Work is delayed after the Temporary Space Expiration Date, in addition to the damages payable under the foregoing **Section 3.5.2**, Contractor shall pay to Owner the amount of Owner's actual damages to Landlord under the Lease, calculated as follows: (a) holdover rental damages in the following sum: (i) for the first month, \$127,436.45 per month, calculated daily; (ii) for the second month, \$254,872.91 per month, calculated daily; and (iii) for each month thereafter, \$509,745.83 per month, calculated daily; plus (b) excess rent Owner pays for its temporary space in excess of its contract rate for its completed long-term space in the following sum: (i) for the first year,

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\$144,294.16 per month, calculated daily; (ii) for the second year, \$133,330.61 per month, calculated daily; and (iii) for each year thereafter, the actual difference in rent as stated in the Lease; plus (b) Owner's actual charges for basic operating costs, property taxes, and other amounts due to Landlord under the Lease, to the extent they exceed the amount that would otherwise be due to Landlord if Owner was occupying the long-term space. In the event Owner receives any waiver or reduction in the damages due to Landlord described in this **Section 3.5.3**, such waiver or reduction shall be proportionately reflected in Contractor's damages due to Owner hereunder.

**§ 3.5.4** Payment of damages specified in this **Section 3.5** shall be due and payable by Contractor to Owner within five (5) days after written demand therefor from time to time and at any time, and shall be in lieu of and replacement of any other damages that Owner might claim solely from the failure of Contractor to complete the Work on or before the dates specified in the foregoing **Section 3.5.2** and **Section 3.5.3**, but shall be without prejudice or limitation to Owner's rights and remedies for other Contractor defaults or breaches, time being of the essence as to all of the foregoing dates. At Owner's sole election, Owner may offset in whole or in part any damages for delay against amounts due to Contractor under this Agreement.

## **ARTICLE 4 PAYMENT**

### **§ 4.1 Progress Payments**

**§ 4.1.1** Based upon Applications for Payment submitted to Architect and the Owner's Representative by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 4.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 4.1.3** Provided that an Application for Payment is received by the Architect not later than the 1<sup>st</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30<sup>th</sup> day thereafter. If an Application for Payment is received by the Architect after the date fixed above, payment of the certified amount to the Contractor not in dispute shall be made by the Owner not later than 30 days after the Architect receives the Application for Payment.

**§ 4.1.4** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:  
*(Paragraphs deleted)*  
ten percent (10%) ("**Retainage**").

**§ 4.1.5** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate  
*(Paragraphs deleted)*  
of three percent (3%) per annum.

### **§ 4.2 Final Payment**

**§ 4.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum (except for the balance of Retainage), or such portion thereof not in dispute, shall be made by the Owner to the Contractor within thirty (30) days after all of the following conditions have been satisfied:

- .1 the Contractor has achieved Final Completion (as defined below) and has fully performed and completed the Work (including completion of all Punch List items) in accordance with the Contract and to Owner's satisfaction, except for the Contractor's responsibility to correct Work as provided in **Section 18.2**, and to satisfy other requirements, if any, which extend beyond final payment pursuant to this Agreement;
- .2 a final Certificate for Payment has been issued by the Architect in accordance with **Section 15.7.3** and approved in writing by Owner;
- .3 Owner is in receipt of executed final conditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work as well as executed final unconditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work previously paid for;
- .4 Owner has received final written approval of the Work by all applicable government authorities, including without limitation a Temporary Certificate of Occupancy;

- .5 Contractor has submitted to Architect and Owner's Representative, if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- .6 Contractor has delivered to Owner: (A) all Project Close-Out Documentation, and (B) copies of all warranties, guaranties, and operating manuals and information relating to all improvements, equipment, and systems installed in the Project as part of the Work.
- .7 The Work, Project and surrounding area have been cleaned up and are free from trash, rubbish, debris, dirt, smudges, tools and equipment, and leftover material and inventory and a final cleaning has been completed;
- .8 Owner has accepted the Work (including all Punch List Work) in writing; and
- .9 Contractor has recorded a Notice of Completion, following final inspection, in accordance with California Civil Code Section 8182.

*(Paragraphs deleted)*

**§ 4.2.2** Owner's final payment to Contractor of the balance of Retainage, shall be due forty-five (45) days after satisfaction of all of the foregoing conditions in **Section 4.2.1**. Final payment to Contractor and Contractor's acceptance thereof shall constitute an irrevocable, unconditional release and waiver of all claims by Contractor against Owner except those previously made in writing and presented to Owner. Within five (5) Business Days after final payment, Contractor shall deliver to Owner executed unconditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work, to the extent not previously delivered, and this obligation shall survive completion and termination of this Agreement.

**§ 4.3 Lien Releases and Waivers.** All lien releases required or issued pursuant to this Agreement shall meet the form requirements of California Civil Code Sections 8132-8138. The lien releases required by this Agreement, when signed and submitted, shall also constitute a waiver of any right that the submitting entity (or person, if a sole proprietorship) may have to file a design professionals lien under California Civil Code Sections 8300-8319. Each lien release shall be on the letterhead of the entity or person submitting the lien release. Each lien release is effective as against the entity submitting the lien release if it is signed by any employee, representative or agent of the entity. All lien releases shall identify the address of the released Project and Building.

**§ 4.4 Other Payment Terms.**

**§ 4.4.1** All payments for Subcontractor Work may, at Owner's sole discretion, be made directly to the Subcontractor in each case upon presentation by the Subcontractor to Architect and Owner's Representative of all executed lien waivers and releases from such Subcontractor, or others listed on such Subcontractor's affidavit or sworn statement, as and where required under this Agreement; or Owner may issue joint checks for payment, made out to both Contractor and any Subcontractors involved in such Work.

**§ 4.4.2** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within two (2) Business Days after Owner's written request, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Owner's Representative shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors shall be held by the Contractor in trust for those Subcontractors who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

**ARTICLE 5 – DISPUTE RESOLUTION**

**§ 5.1 Binding Dispute Resolution**

For any Dispute subject to, but not resolved by, mediation pursuant to **Section 21.4**, the method of binding dispute resolution shall be

*(Paragraphs deleted)*

Arbitration pursuant to **Section 21.5** of this Agreement.

**ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

§ 6.1 The "Contract Documents" are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below. Any conflicts between the Contract Documents shall be resolved in the following order of priority: (1) this Agreement; (2) the Building Rules & Regulations; (3) the Specifications; (4) the Drawings; (5) the Addenda; (6) all other Contract Documents.

§ 6.1.1 The "Agreement" is this executed AIA Document A104™–2017, Modified Abbreviated Form of Agreement Between Owner and Contractor and the below listed exhibits.

*(Paragraphs deleted)*

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 6.1.4 The "Specifications":  
*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The "Drawings":  
*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
--------	-------	------

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Documents relating to bids, proposals, or bidding or proposal requirements are not part of the Contract Documents unless enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Other Exhibits:  
*(Check all boxes that apply.)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Paragraphs deleted).* .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

- Landlord’s Building Rules & Regulations; Landlord’s Asbestos Notification

**ARTICLE 7 GENERAL PROVISIONS**

**§ 7.1 The Contract Documents**

The "Contract Documents" are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change

Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by Owner, Architect, or Owner's Representative. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

## § 7.2 The Contract

The Contract Documents form the "**Contract**" for Construction. The Contract represents the entire and integrated agreement between the Parties hereto and supersedes prior or contemporaneous negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Contractor.

## § 7.3 The Work

The term "**Work**" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, supervision, materials, supplies, tools, equipment, machinery, transportation, and other facilities or services provided or to be provided by the Contractor to fulfill the Contractor's obligations, as well as all other obligations of Contractor under this Agreement that are required to achieve Final Completion and to satisfy the requirements for final payment as described in **Section 4.2.1** below. The Work may constitute the whole or a part of the Project.

## § 7.4 Instruments of Service

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

## § 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 Owner and Owner's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor and Subcontractors shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner and Owner's consultants' reserved rights.

§ 7.5.2 The Contractor and Subcontractors are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to **Sections 7.6** and **7.7**, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor and Subcontractors may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, and the Owner's consultants.

## § 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

## § 7.7 Building Information Models Use and Reliance

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

## § 7.8 Severability

The invalidity of any term or provision of the Contract Documents shall not invalidate the Contract or its remaining terms and provisions. If it is determined that any term or provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision

legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the Parties' intentions and purposes in executing the Contract.

### § 7.9 Notice

**§ 7.9.1 Notice Requirements.** All notices required or permitted by this Agreement shall be in writing and may be delivered and shall be deemed sufficiently given only if served in a manner specified in this Section. The addresses noted below shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice. A copy of all notices to Owner shall be concurrently transmitted to such party or parties at such addresses as Owner may from time to time hereafter designate in writing.

**§ 7.9.2 Date of Notice.** Depending on which of the following delivery methods is used (which list is exclusive, meaning no other methods may be used), that notice shall be deemed effective upon the number of days specified below for each delivery method: (i) if sent by Certified or first-class mail, deemed effective two (2) Business Days after deposited (as determined by the postmark), sufficient postage and fees prepaid, in the United States mail; (ii) if sent by Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, or other comparable overnight courier service, for guaranteed overnight delivery, all applicable charges prepaid or charged to the sender's account, deemed effective the next business day; (iii) if personally delivered to the recipient, deemed effective the date of recipient's actual receipt; or, (iv) if sent by email, and such transmission is electronically confirmed to the sender (by absence of notice of undeliverability, out-of-office reply, or other failure of transmission) or by the recipient as having been successfully transmitted, deemed effective the date of such receipt if received before 5:00 P.M. on a Business Day, otherwise deemed effective on the next business day.

To Owner: THE STATE BAR OF CALIFORNIA  
Attn: Procurement  
845 S. Figueroa St.  
Los Angeles, CA 90017  
With copies to:  
  
SSL Law Firm LLP  
505 Montgomery St., Ste. 620  
San Francisco, CA 94111  
Attn: Daniel Dersham (ddersham@sslfirm.com)

To Architect: REVEL ARCHITECTURE & DESIGN  
417 Montgomery Street, 7th Floor  
San Francisco, CA 94104

To Contractor: **[\*\*contact]**

**§ 7.9.2** Notwithstanding the foregoing, a Notice of Dispute shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the Party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 7.10 Relationship of the Parties

**§ 7.10.1** Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Owner's Representative and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Contractor warrants that it and its personnel, employees, and Subcontractors have the education, qualifications, expertise, experience, and ability necessary to perform the Work in a diligent, timely, professional, and workmanlike manner consistent with the highest industry standards for similar services. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## ARTICLE 8 OWNER

### § 8.1 Information and Services Required of the Owner

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall conduct its own diligence and investigations, and exercise proper precautions relating to the safe performance of the Work.

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under **Section 9.6.1**, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

*(Paragraph deleted)*

### § 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work in accordance with the Contract Documents, then without prejudice to Owner's available rights and remedies including without limitation those set forth under Article 20, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### § 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have including without limitation those set forth under Article 20, and during or after the term of this Contract, correct such default or neglect at Contractor's sole cost and expense. Architect may, pursuant to **Section 15.4.3**, withhold or nullify a Certificate for Payment in whole or in part, and the Owner shall be entitled, without prejudice to other available rights and remedies, to recover from Contractor or deduct from payments then and thereafter due the Contractor, to the extent reasonably necessary to reimburse the Owner, all reasonable costs of correcting such deficiencies, including without limitation the Owner's expenses and compensation for the additional services of Architect or Owner's Representative, or of Owner's Separate Contractors, architects, engineers, or consultants, made necessary by such default, neglect, or failure, and the cost of materials and labor for necessary removal, uncovering, replacement, and reconstruction of nonconforming Work. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner within 10 days after written demand. If the Contractor disagrees with the actions of the Owner, Architect, or the Owner's Representative, or the amounts claimed as costs to the Owner, the Contractor may file a Notice of Dispute pursuant to Article 21. The provisions of this Section shall survive completion and termination of this Agreement.

§ 8.4 **Owner as Tenant.** The Parties acknowledge that Owner is a tenant in the Project, and that Landlord is the owner of the building containing the Project ("**Building**"). In Landlord's Building Rules & Regulations, Owner is referred to as "Tenant". Contractor acknowledges that all Work contemplated under the Contract Documents, including the Construction Schedule and Contractor's insurance coverage, is subject to Landlord's prior written consent pursuant to the terms of the Lease, and Contractor covenants to reasonably cooperate, at no additional cost to Owner, with providing notices, requests for consent, and other efforts applicable to obtaining Landlord's consent at any stage of the Work.

## ARTICLE 9 CONTRACTOR

### § 9.1 Review of Contract Documents and Field Conditions by Contractor; Preconstruction and Bidding Services

§ 9.1.1 Execution of the Contract by the Contractor shall be deemed an irrefutable representation by Contractor that Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents, including, without limitation, (A) the location, condition, layout, and nature of the Project site and surrounding areas, (B) generally prevailing climatic conditions, (C) anticipated labor supply and costs, (D) availability and cost of materials, tools, and equipment, and (E) other similar issues. The Contractor shall carefully study and compare the Contract Documents with each other and

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with information furnished by the Owner. Before commencing activities, the Contractor shall (X) take field measurements and verify field conditions, and Building systems standards and conditions; (Y) carefully compare this and other information known to the Contractor with the Contract Documents; and (Z) promptly report any and all observed, discovered, reasonably apparent, or suspected errors, defects, inconsistencies, or omissions in the Contract Documents to the Owner; provided, however, that Contractor is not responsible for the negligence of any contracted professional or consultant of Owner who prepared the Drawings and Specifications. In addition, the Contractor hereby specifically acknowledges and declares that the Contract Documents are sufficient to have enabled it to determine the cost of the Work and that the Drawings and Specifications and all addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with Applicable Requirements (defined below), and otherwise to fulfill all of its obligations under the Contract Documents. Owner assumes no responsibility or liability for the physical condition or safety of the Work site. Contractor shall be solely responsible for providing a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any breach of the representations in, or failure by Contractor to have complied with the requirements of, this Section.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to **Section 8.1.1**, shall take field measurements of any existing conditions related to that portion of the Work and shall note any reasonably apparent conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to Architect and Owner's Representative any errors, inconsistencies, or omissions discovered by or made known to or which are reasonably apparent to the Contractor as a request for information in such form as Architect or Owner's Representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Notwithstanding the foregoing, if the Contractor performs or causes the performance by any Subcontractor of any construction activity or other work with knowledge that any of the Contract Documents contains an error, inconsistency or omission, the Contractor shall be solely responsible for such performance at its sole cost and shall bear the sole cost for correction hereof.

**§ 9.1.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Requirements (unless Contractor is also serving as Architect or the Owner's design professional), but the Contractor shall promptly report to Architect and Owner's Representative any nonconformity discovered by, reasonably apparent to, or made known to the Contractor as a request for information in such form as Architect or Owner's Representative may require.

**§ 9.1.4 Preconstruction Services.** Contractor's Work shall include all necessary or reasonably appropriate preconstruction services associated with the Project.

**§ 9.1.4.1** Contractor shall assist, at no additional cost to Owner, in preparation of building site survey reports in conjunction with Architect. Evaluation reports will include, but not necessarily be limited to:

- .1 Building conditions.
- .2 Proximity to sources of vibration.
- .3 Condition of existing walls, windows, slab heights, doors & hardware, window coverings, etc.
- .4 Accessibility issues, path of travel, restrooms, etc.
- .5 Assist with building mechanical systems evaluation – system type, age of equipment, distribution, specialty systems.
- .6 Assist with building electrical systems evaluation – service capacity, electrical distribution, existing code violation, etc.
- .7 Building Fire & Life Safety Systems – condition of existing sprinklers system, fire alarm annunciation, pull stations, strobes & horns, areas of refuge, etc.
- .8 Technology & Data Infrastructure – riser closet condition and capacity, fiber status, MPOE condition.

**§ 9.1.4.2** Additional Contractor preconstruction obligations shall include, without limitation:

- .1 Review test fit plans.

- .2 Prepare a conceptual budget for the project based on the test fit plan, space program, and available project information.
- .3 Prepare preliminary procurement and construction schedules, budgets and value engineering recommendations based on Architect's pricing plans which will indicate millwork, glass, floor & wall finish selections, AV systems, video-teleconferencing, special detailing and special/above standard items (as applicable).
- .4 Assist Architect and Owner's design team with the development of specifications, alternatives and budgets during the engineering and architectural design development process.
- .5 Review proposed details and specifications to identify pricing options, lead times and generally assist in "value engineering".
- .6 Develop and revise project budgets and schedules.
- .7 Coordinate the work of outside (N.I.C.) vendors as may be required to maintain the Project schedule (e.g., telecommunications/data equipment and cabling contractors, audio-visual equipment installers, furniture installers, security system installers, etc.).
- .8 Confirm project "constructability", by ensuring that all specified materials are available when needed, that drawings and details are appropriate and buildable, and that all project information is complete and in a satisfactory format for sub trade bidding.
- .9 Conduct periodic constructability reviews, value engineering, phasing strategies, updated construction schedules, budgets, labor rates, and unit costs based on design development documents.
- .10 Meet to review Project scope and plan check/permit procedures with municipal agencies.
- .11 If deemed necessary by Owner or Architect, identify pre-purchase material or equipment as required by lead-time or availability and as directed by Architect prior to the selection of subcontractors.

**§ 9.1.5 Bidding and Permit Phase Services.** Contractor's Work shall include all necessary or reasonably appropriate bidding phase and permit phase services associated with the Project, including without limitation the following:

- .1 Submit plans to governmental agencies (other than initial plan check) as required for approval and provide follow-up as necessary to receive permits inspections, and/or certificates of occupancy on an expedited basis.
- .2 Prepare scope of work and phasing for major trades.
- .3 Develop subcontractor/supplier bid list and invitations in accordance with, inasmuch as possible, DEI goals and objectives of Owner, i.e., the State Bar of California.
- .4 Conduct job walks of the existing and new premises.
- .5 Obtain competitive bids from approved Subcontractors.
- .6 Assist in coordinating bids from Owner's vendors into the procurement project schedule.
- .7 Provide Subcontractor bid analysis, recommendations, and construction agreement. Bid pricing shall be in CSI format including all labor, materials, temporary work including protection of existing improvements, and anything else necessary for construction, completion and warranties for the works in accordance with the Agreement.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 9.2.2** The Contractor shall be responsible to the Owner for intentional or negligent acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. Contractor shall retain control of its employees, Subcontractors, and other Contractor Parties it assigns to the Work of the Project; provided, however, that if Owner becomes dissatisfied with the performance of any Contractor Parties performing the Work, Owner may

notify Contractor of the details of the unsatisfactory performance and the Parties will cooperate to remedy the problem as soon as reasonably possible. If Owner makes such a request, the problem is not timely remedied to Owner's satisfaction, Contractor shall reassign any Contractor Parties who are the subject of the State Bar's dissatisfaction and instead perform the Work through replacement Contractor Parties that are satisfactory to Owner.

§ 9.2.3 Contractor shall provide a full-time foreman or superintendent who shall be on site at all times during the performance of the Work; and shall provide Owner, Architect, Owner's Representative, and Landlord with the cell phone number, email address, and other contact information of such foreman or superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Architect, and Owner's Representative, the name and qualifications of a proposed superintendent. The Contractor shall not employ a proposed superintendent to whom the Owner, Architect, or Owner's Representative has made reasonable and timely objection. In addition, Contractor shall designate an employee of sufficient management rank to act as its representative in dealing with Owner ("**Contractor's Representative**"), which person may also serve as owner's foreman or superintendent. Contractor's Representative must represent Contractor and have responsibility for ensuring that Contractor performs its obligations under the Agreement and for communicating with Owner regarding Project status and issues. The Contractor shall not change or remove the foreman or superintendent, Contractor's Representative, or any other Subcontractor or employee (except in the case of employee termination) performing any Work at the Project, without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 9.2.4 Contractor shall make itself available to meet Owner, Architect, and Owner's Representative at least once per week at the Work site (or, at Owner's option, by videoconference) and such additional times as may be reasonably requested by Owner, Architect, and/or Owner's Representative, in order to review the progress and status of the Work. Contractor's or Contractor's Representative's attendance at such meetings is included in the Work but shall not cause any increase to the Contract Sum. Contractor will be responsible for taking notes during all meetings, documenting said notes in meeting minutes and distributing the meeting minutes within 72 hours of said meeting. Landlord or its designee shall have the right to attend any such meetings and Contractor shall include Landlord on its distribution list for all meeting minutes.

§ 9.2.5 Contractor shall maintain at the site for the Owner, Architect, and Owner's Representative one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved shop drawings, product data, samples and similar required submittals. All of the aforementioned items, along with the following described items (together, the "**Project Close-Out Documentation**") shall be delivered to Owner no later than thirty (30) days after Substantial Completion of the Work as a record of the Work as constructed:

- .1 Two (2) hard copies and one (1) electronic copy of actual permit drawings, with original municipal approval stamps and red lines.
- .2 Two (2) hard copies and one (1) electronic copy of A copy of the Temporary Certificate of Occupancy when applicable.
- .3 Project close-out binders, in two (2) hard copies and one (1) electronic copy, to include:
  - (a) As-Built drawings for the Work as completed, including architectural, Mechanical/Plumbing, Electrical, Fire Protection, and Life Safety trades to the extent applicable, in hard copy full size set and electronic PDF copies, and CAD Files of As-Built, on portable thumb drive, CDs, or via secure shared electronic data room (e.g., Dropbox);
  - (b) All approved submittals, with separate sections for all finishes, including samples with manufacturers' color and style numbers; for doors, frames and hardware; for ceiling grid and tile information, and for electrical and mechanical submittals;
  - (c) All approved submittals for specialty construction items, such as audio-visual equipment.
  - (d) All warranty information, including instruction manuals for installed equipment, including audio-visual equipment, as well as operation and maintenance instructions;
  - (e) All Requests for Information and responses as well as all Change Orders and Construction Change Directives; and
  - (f) All balancing reports.

§ 9.2.6 Contractor shall at all times comply and shall cause all Subcontractors and other Contractor Parties to comply with Landlord's rules and regulations governing construction at the Project site, a copy of which is attached hereto and

incorporated herein by reference), which may be amended, from time to time ("**Building Rules & Regulations**"). References to "Tenant" in the Building Rules & Regulations shall be interpreted as "Contractor" for purposes of compliance therewith.

§ 9.2.7 As part of the Work, Contractor shall provide production and server relocation assistance and downtime minimization planning, as well as equipment move-in planning, scheduling, and post-move assistance.

### § 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, supervision, materials, equipment, tools, supplies, construction equipment and machinery, water, heat, cooling, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall not contract or continue to contract with any Subcontractor to whom the Owner makes a timely and reasonable objection.

§ 9.3.3 The Contractor may make a substitution only with the prior written consent of the Owner, after evaluation by Architect and in accordance with a Modification. Contractor shall personally investigate each proposed substitute material or product and advise Owner if it is not equal or superior in all respects to the materials or product(s) originally specified.

§ 9.3.4 Contractor shall be solely responsible for timely scheduling all inspections in relation to the Work. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. The Contractor shall provide the Owner, Architect, Owner's Representative, and Landlord access to the Work in preparation and progress at any time and wherever located, whether for purposes of observation, inspection for compliance or otherwise.

§ 9.3.5 The Contractor shall promptly review, approve in writing, and submit to the Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents. By submitting shop drawings, product data, samples and similar submittals, the Contractor represents to the Owner, Architect, and Owner's Representative that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been reviewed and approved by Architect. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by Architect's approval thereof. The Contractor shall review for compliance with the Contract Documents, approve and submit to Architect shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the Construction Schedule approved by Architect, or in the absence of an approved Construction Schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Separate Contractors or the Owner's own forces. The Contractor shall cooperate with the Architect in the coordination of the Contractor's shop drawings, product data, samples and similar submittals with related documents submitted by other Separate Contractors.

§ 9.3.6 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs, including all those required by Applicable Requirements in connection with performance of the Contract and the Work. The term "**Applicable Requirements**" as used herein means (A) all applicable laws, statutes, codes, ordinances, rules, regulations, orders, judgments, or governmental or quasi-governmental orders, rulings, notices, directives, or guidelines of any kind, whether existing now or at any time hereafter; (B) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters); (C) building material and equipment manufacturers' specifications; and (D) all rules and procedures communicated to Contractor in writing by Owner, including those related to safety, security, and confidentiality. The Contractor shall take and observe reasonable precautions to prevent damage, injury, or loss to employees and other workers on the Work site and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other

property at the Project or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable. The Contractor shall take and observe necessary measures and precautions for the safety and protection of all property and persons in connection with the performance of the Work.

**§ 9.3.7** Contractor represents and warrants to Owner that it presently holds and shall at all times continue to hold a valid, current California contractor's license. Contractor is, and shall at all times remain, fully bonded as required by Applicable Requirements. Contractor represents and warrants that it has or it will obtain in a timely manner, all permits, licenses, registrations, or approvals necessary or applicable to Contractor's performance of the Work. Contractor represents and warrants that it has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to do business in and is in good standing in the State of California. Contractor represents and warrants that to the knowledge of Contractor (after reasonable inquiry and investigation), no litigation is pending or threatened against or affecting Contractor or any Contractor Parties that will have a material adverse effect on Contractor's ability to perform the Work. Contractor represents and warrants that it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform its obligations under this Agreement. All representations and warranties of Contractor in this Agreement are essential inducements on which Owner relies in awarding and performing under the Agreement. Except where a different survival period is stated in this Agreement, all of Contractor's representations and warranties under this Agreement will survive the termination or expiration of the Agreement, without any time limitation. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSING BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

#### **§ 9.4 Warranty**

The Contractor warrants to the Owner, Architect, and Owner's Representative that: (A) all materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise; (B) the Work will be free from defects (including, without limitation, free from leaks in all roofs, ceilings, walls, windows, fixtures, systems, lines, floors, and foundations, and all aspects of the foregoing); (C) the Work will conform to the requirements of the Contract Documents in all respects; and (D) all Work shall be completed in a good and workmanlike manner and in compliance with Applicable Requirements. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, or ordinary wear and tear under normal usage. Any material or equipment warranties required by or provided under the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence, and shall be assigned to Owner, upon Substantial Completion of the Work. The Contractor shall assemble and deliver to Owner before final payment all operating and maintenance information (including, without limitation, manuals, receipts and warranties) from all manufacturers whose materials or equipment is or will be installed in the Work by the Contractor. The Contractor shall secure and deliver to the Owner written warranties and guarantees from the Contractor's Subcontractors bearing the date of Substantial Completion or other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier.

#### **§ 9.5 Taxes**

The Contractor shall pay at its sole cost and expense all unemployment insurance, social security insurance, withholding taxes, sales and use taxes, or any other local, state or federal taxes or royalties related to the Work or to Contractor's performance of the Work.

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

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Owner shall pay for the building permit as well as other permits, government approvals, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded; provided, however, that Contractor shall be solely responsible for

applying for, securing, scheduling, and arranging for all such permits, government approvals, and inspections, and, pursuant to **Section 9.3.7** above, Contractor shall remain solely responsible for maintaining all licenses and certifications of Contractor and its respective agents and employees that are required by Applicable Requirements for Contractor's performance of the Work as required by the Contract Documents.

**§ 9.6.2** The Contractor shall at all times observe and comply with and give notices required by Applicable Requirements, including those applicable to performance of the Work. If the Contractor performs Work that is contrary to Applicable Requirements, the Contractor shall assume sole responsibility for such Work and shall bear the costs attributable to correction. In the event Contractor is notified of any violations of Applicable Requirements by the jurisdictional authorities or by Owner, Architect, or Owner's Representative, Contractor shall correct such violations within seven (7) calendar days from such date of notification.

**§ 9.6.3** As part of Contractor's obligation to comply with Applicable Requirements, Contractor shall observe and comply at all times with the Fair Employment and Housing Act (California Government Code, section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Contractor will include the nondiscrimination and compliance provisions of this **Section 9.6.3** in all subcontracts with any Subcontractors that will perform any portion of the Work.

### **§ 9.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, within three (3) Business Days after execution and delivery of this Agreement and before the first Application for Payment, shall submit, for the Owner's and Architect's information and written approval, is a construction schedule covering the entire Work ("**Construction Schedule**"). The Construction Schedule shall not exceed time limits current under the Contract Documents and shall be related to the entire Work and shall provide for expeditious and practicable execution of the Work. At all times, the Construction Schedule shall contain detail appropriate for the Work and the Project, including (A) the Date of Commencement of the Work, interim schedule milestone dates, and the Scheduled Substantial Completion Date; (B) an apportionment of the Work by trade and construction activity; and (C) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall be revised at appropriate intervals as required by the conditions of the Work and Project. In addition, The Construction Schedule shall (W) include all Punch List, final inspections and close-out activities, (X) be produced and updated using software reasonably approved by Owner (Y) be updated once weekly, and (Z) cover all basic construction sequences, tasks and milestone events in a critical path method format indicating both planned and actual duration and completion percentages and dates for each sequence, task and milestone event. The Construction Schedule shall be subject to Owner's reasonable approval, including, without limitation, any proposed changes to the planned projections for completing portions of the Work. At each scheduled Work meeting, Contractor shall report whether the Work is on schedule, and if not, the reasons therefor and a detailed plan for completing the Work on schedule. In addition, Contractor shall maintain and distribute to Owner and Architect a log of submittals, requests for information, Change Orders and Construction Change Directives. The Contractor shall perform the Work in accordance with the most recent Construction Schedule submitted to the Owner and Architect. In no event shall Contractor be permitted to extend the Contract Time or delay the Scheduled Substantial Completion Date without first requesting and obtaining a Change Order, which Owner shall have no obligation to approve.

**§ 9.8.2** The Contractor shall perform the Work in accordance with the most recent Construction Schedule approved by the Owner and Architect.

### **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Owner and the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents in coordination with the Contractor's Construction Schedule and in such sequence as to allow the Owner and Architect

reasonable time for review. By submitting shop drawings, product data, samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

**§ 9.9.2** Shop drawings, product data, samples and similar submittals are not Contract Documents.

**§ 9.9.3** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor is providing such services under separate agreement with Owner or needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with Applicable Requirements. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect or Owner's designated design professionals will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents.

**§ 9.10 Use of Site**

**§ 9.10.1** The Contractor shall confine operations at the site to areas permitted by Applicable Requirements, and shall not unreasonably encumber the site with materials or equipment.

**§ 9.10.2** Contractor shall keep all materials, equipment, and goods involved in Contractor's Work stored in appropriate, secured containers or at adequately marked and secured stations. Additionally, Contractor shall be responsible for providing and installing any shelters, equipment, or materials required to protect the Work and the Project from the elements of weather.

**§ 9.10.3** Contractor shall at all times throughout performance of the Work clean the jobsite of all unsightly debris (including paper, cans, bottles, and trash) on a daily basis, and shall keep noise levels to a minimum and shall not unreasonably disturb occupants or neighboring properties of the Project. Contractor shall clear all dirt and building materials from the streets and adjacent properties. Waste cans shall be provided by Contractor for disposal of refuse. Clean and regularly maintained restroom facilities shall be provided by Contractor for use by workers at the Project site, and workers shall not use Owner's or Landlord's restroom facilities without the prior written consent of Owner and Landlord. Contractor shall use only authorized entrances and storage areas, as designated by Owner, Architect, or Owner's Representative. Contractor will be responsible for ensuring that all workers at the Project site comply with any State, City, or County mandates regarding COVID-19 distancing, masking, and other health and safety protocols. Contractor shall perform all work as tidily as is consistent with correct and professional performance in Contractor's specialty. Contractor shall promptly remove all equipment and materials on completion of each applicable phase of the Work, and will leave the Project free from all refuse. The Contractor shall confine operations at the site to areas permitted by Applicable Requirements, the Contract Documents, and the Owner. The Contractor shall keep the Project and surrounding area free from accumulation of debris and trash related to the Work.

**§ 9.10.3** Contractor and the Contractor Parties will not be allowed to post any signage containing the name or advertising of their firm to any part of the Project, Building, or surrounding property at any time. Owner and Landlord reserve the right to post Notices of Non-Responsibility on any entry into space as required by Owner's Lease. Owner and Landlord may post any additional signs or notices they deem necessary for the benefit of the Project or the Building.

**§ 9.10.4** Contractor and Subcontractors are prohibited from consuming or being under the influence of alcohol, cannabis, or any other intoxicant while on Landlord's property (including but not limited to the Project, Building, eating areas, or vehicles parked on property). No smoking or vaping of any substance is permitted in any part of the Project or Building or in any adjacent areas.

**§9.10.5** At Owner's, Architect's, or Owner's Representative's request, Contractor must provide additional ventilation to the Project when necessary.

### **§ 9.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Separate Contractors except with written consent of the Architect, Owner and such other Separate Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Separate Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

### **§ 9.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, facilities, portable restroom facilities, machinery, and surplus material from and about the Project, and shall properly dispose of waste materials, leaving the Project in a neat and clean condition.

### **§ 9.13 Access to Work**

Unless a different procedure is required by Landlord, keys/access cards may be issued to the Contractor's superintendent on a daily basis from the Building's security desk at check-in. Superintendent is responsible for the returning the keys/cards at the end of each day, or as otherwise required by Landlord. Contractor is required to notify Landlord at least 48 hours in advance for access to the Project and provide a Subcontractor directory reflecting trade, project manager and contact information. Contractors and Subcontractors are required to check-in upon arrival at the Building security desk and will be allowed access, if previously authorized by Contractor. The Contractor shall provide the Owner, Architect, Landlord, and Owner's Representative with access to the Work in preparation and progress wherever located.

### **§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees pertaining to the Work and any materials, products, processes, designs used in the course of performing or incorporated into the Work. The Contractor shall defend at its sole cost and expense all suits or claims for misuse or infringement of copyrights, patent rights, and other intellectual property rights used in the course of performing or incorporated into the Work and shall indemnify, defend, and hold the Owner and Owner's Related Parties (defined below) harmless from any Claims (defined below) on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Architect or Owner other design professionals; provided, however, that the foregoing exception to Contractor's liability shall not apply where Contractor has provided or is providing architectural, engineering, or design services or consulting to Owner under separate agreement. Notwithstanding the foregoing, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for any Claims relating thereto unless the information is promptly furnished to Owner and Architect. The foregoing indemnification obligation shall survive completion and termination of this Agreement.

*(Paragraphs deleted)*

### **§ 9.15 Indemnification**

**§ 9.15.1** The term "Owner's Related Parties" shall collectively mean Owner, Architect, Owner's Representative, Landlord, Owner's Board of Trustees, and each of their respective affiliates, lenders, consultants, direct and indirect members, managers, partners, shareholders, beneficial owners, principals, lenders, mortgagees, employees, agents, officers, directors, beneficiaries, and trustees and their respective successors, heirs, legal representatives and assigns.

**§ 9.15.2** To the fullest extent permitted by law, including without limitation California Civil Code Sections 2782 and 2782.05, if applicable, the Contractor shall, at its sole cost and expense, indemnify, reimburse, defend (with counsel reasonably approved by Owner) and hold harmless Owner and Owner's Related Parties from and against any and all accounts, actions, acts, adjudications, allegations, awards, causes of action, citations, claims, costs, damages, deaths, debts, defects, defenses, delays, demands, expenses (including, without limitation, attorneys' fees, expert witness fees, and court costs), fees, fines, harm, infections, injuries, judgments, liabilities, liens (including mechanic's, materialman's, design professionals', or construction liens), losses, maintenance, obligations, orders, penalties,



proceedings, promises, property damage, repairs, remediations, sicknesses, stop notices, suits, taxes, and violations of every kind and character (collectively, "**Claims**"), whether actual or alleged, whether direct Claims or third-party Claims, and whether or not litigation or arbitration is commenced, based upon, arising out of or resulting in whole or in part from: (a) any negligence (whether by error, omission, or act), recklessness, or intentional wrongdoing or misconduct of the Contractor, any Subcontractor, Contractor's Representative, the Contractor Representatives, and any of their respective direct or indirect agents or employees, or anyone for whose acts they may be liable (collectively, including Contractor, the "**Contractor Parties**"), in the performance of the Work, the preparation or delivery of the Work Product or other deliverables contemplated under this Agreement, or otherwise, including specifically without limitation: (i) any Claims for personal injury, including bodily injury, sickness, disease, or death, sustained by any person whomsoever; (ii) any damage or loss to or loss of use of property (including the property of Owner, Owner's Related Parties, Landlord (including without limitation any property adjacent to the Project or Building), Contractor, or any Contractor Parties); and (iii) any increase in the cost of the Work or the additional cost of remedial or substitute work caused thereby; (b) any default or breach of this Agreement or any of the representations and warranties in this Agreement by Contractor or caused by any Contractor Parties, including without limitation any delays in Contractor's completion of the Work; (c) any infringement of any claimed copyright, patent or other property right arising out of performance of the Work or use by any of the Owner's Related Parties of the Work or the Project, or of any Work Product or Contract Documents produced by Contractor in connection herewith; (d) any Claims made by any Contractor Parties; (e) any failure by Contractor or any Contractor Parties to comply with Applicable Requirements in the performance of the Work or Contractor's other obligations under the Agreement; (f) breach or potential breach of data or privacy; or (g) any Claims arising under **Section 9.14** or **Section 16.2.3**. The indemnity obligations of this **Section 9.15.2** shall be deemed to include, and shall not be construed to negate, abridge, or otherwise reduce, any other rights or obligations of indemnity which would otherwise exist as to any party or person described in this **Section 9.15.2** or elsewhere in this Agreement. The indemnification obligations under this **Section 9.15.2** shall include Claims arising in whole or part from the ordinary negligence of any Owner's Related Parties; provided, however, that nothing in this **Section 9.15.2** shall be interpreted to require Contractor to indemnify the Owner's Related Parties to the extent of the sole or active negligence or willful misconduct of such parties. The terms and provisions of this **Section 9.15.2** shall survive completion and termination of this Agreement.

**§ 9.15.3** Regarding any Claims against any person or entity indemnified under **Section 9.15.2** or **Section 9.15.4** by any Contractor Parties, the indemnification obligations under **Section 9.15.2** and **Section 9.15.4** shall not be limited or reduced by: (A) a limitation on amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts; or (B) any insurance policies required to be maintained by Contractor or any Subcontractors under this Contract, regardless of whether such coverage is actually maintained.

**§ 9.15.4** In addition to the foregoing, provided that Owner has paid Contractor all amounts then due and owing hereunder, Contractor further expressly agrees to indemnify, defend (with counsel reasonably approved by Owner), reimburse, and hold harmless Owner and Owner's Related Parties, at Contractor's sole cost and expense, from and against any Claims asserted against or incurred by such indemnitees as a result of the filing of any lien (including without limitation any liens filed or asserted by Contractor, or any Subcontractors, or other Contractor Parties) or the service of any stop notice against or relating to the Work, the site of the Work, the Project site or any improvement thereon, any payment owing to the Contractor, or any funds or other property of such Owner's Related Parties. Without limiting the foregoing, if any such lien is filed or any such stop notice is served, the Contractor shall cause it to be released, by bonding or otherwise, within 10 days after written demand from the Owner. If the Contractor fails to cause such release within such 10-day period, the Owner shall have the right to cause such release, by payment to the claimant, by bonding, or by such other means as the Owner determines in its sole discretion is the most economical or advantageous method, in which event the Contractor shall reimburse the Owner for the cost of such release, plus Owner's reasonable attorneys' fees, within 10 days after written demand from the Owner and such cost shall not be part of, or cause any adjustment to, the Contract Sum. The foregoing indemnification obligation shall survive completion and termination of this Agreement.

#### **§ 9.15.5 Indemnification Procedures.**

**§ 9.15.5.1** If any third-party Claim is commenced against Owner or any of the other Owner's Related Parties entitled to indemnification under this **Section 9.15**, Owner will promptly give written notice thereof to Contractor, and Contractor will immediately assume the defense of such claim with counsel satisfactory to Owner. Owner's failure to provide a notice to Contractor under this section does not relieve Contractor of any liability that Contractor may have to Owner. The indemnified party will cooperate, at the sole cost of Contractor, in all reasonable respects with

Contractor and its attorneys in the investigation, trial, and defense of such claim, and in any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys (including, but not limited to, the State Bar's Office of General Counsel) or otherwise, in such investigation, trial, and defense of such claim, and any appeal arising therefrom. Contractor will coordinate the defense of any third-party claim with Owner, including any investigation and trial, and any appeal therefrom. Contractor will not enter into a settlement of any Claim without the prior written consent of Owner. If Contractor does not assume an immediate defense of a Claim that Contractor is obligated to defend, Owner will have the right to defend the Claim in such manner as it may deem appropriate, at the sole cost and expense of Contractor.

**§ 9.15.5.2** Notwithstanding anything to the contrary in this **Section 9.15.5**, Owner may select its own legal counsel to represent its interests, and Contractor will: (a) reimburse Owner for its costs and attorneys' fees immediately upon request as they are incurred; and (b) remain responsible to Owner for any Claims indemnified under this section.

**§ 9.15.5.3** If any legal work reasonably necessary to Owner's defense as described herein is performed by the State Bar's Office of General Counsel, Owner will determine the value of such work at a reasonable hourly rate for comparable outside counsel and it will be promptly paid by Contractor; provided, however, the Parties hereby confirm that such fees will be recoverable with respect to legal work performed by the Office of General Counsel only to the extent that such work is not duplicative of legal work performed by outside counsel paid for by Contractor and representing Owner in such matter.

**§ 9.15.5.4** Contractor will be liable to Owner for all costs (including but not limited to reasonable attorneys' fees, costs, and expenses) incurred by Owner for the purposes of enforcing the provisions of this **Section 9.15.5**.

**§ 9.15.6 Survival.** All of Contractor's obligations under this **Section 9.15** shall survive the expiration or termination of the Agreement.

## **ARTICLE 10 ARCHITECT**

**§ 10.1** Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date Architect issues the final Certificate for Payment. Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 10.2** Duties, responsibilities, and limitations of authority of Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Architect, Contractor, and Owner's Representative. Consent shall not be unreasonably withheld.

**§ 10.3** Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 10.5** Based on Architect's evaluations of the Work and of the Contractor's Applications for Payment, Architect will review and certify, as appropriate, the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in sound professional judgment.

§ 10.9 Architect decisions, with Owner's prior written approval, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 10.10 The Owner's Representative referenced on the first page of this Agreement is an individual or entity that Owner may designate in its sole direction to serve as a point of contact between Owner and Contractor. Owner's Representative shall owe no duties or obligations to Contractor whatsoever, is acting in connection with the performance of this Agreement solely as an agent for Owner, and shall not be liable for any Disputes that may accrue to Contractor in connection with this Agreement or the performance of the Work or the Contract.

## ARTICLE 11 SUBCONTRACTORS

§ 11.1 A "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform or supply a portion of the Work at the site, including without limitation subcontractors, sub-subcontractors, consultants, vendors, manufacturers, suppliers, distributors, and materialmen. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized agent, employee, or representative of the Subcontractor. The term "Subcontractor" does not include other Separate Contractors (defined below) or subcontractors of other Separate Contractors.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of the Contract, shall notify the Owner and Architect of the Subcontractors proposed for each of the portions of the Work. Contractor shall not retain or contract with any Subcontractor without Owner's prior written approval. The Contractor shall not contract with any Subcontractor to whom the Owner or Architect has made reasonable written objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made timely and reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.

§ 11.4 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders. Contractor shall carefully monitor all costs and expenses (both as to the Work and as to all contracts with Subcontractors), and shall verify labor, material, and equipment requirements for all subcontracts. Owner shall have no responsibility for payments to any Subcontractor not directly retained by Owner. Any payment to Contractor for subcontracted work will be made only upon Owner's receipt of conditional lien waiver and release forms signed by each Subcontractor involved in that portion of the Work for which payment is to be made by Contractor, and unconditional lien waiver and release forms signed by each Subcontractor involved in that portion of the Work for which payment has been previously made by Contractor.

§ 11.5 Before commencing the Work, and thereafter at all stages of performance of the Work, Contractor shall provide Owner with a full, current, and complete list of the names, business addresses, email addresses, and phone numbers of

all Subcontractors on the Project at any given time (including any Subcontractors retained directly by Owner). For any required payments to Contractor for Work that is subcontracted, Owner may issue joint checks for payment, made out to both Contractor and any Subcontractors involved in such Work.

§ 11.6 Contractor warrants that all Subcontractors engaged by Contractor who are required by law to be licensed, shall be duly licensed by all applicable governmental agencies having or asserting jurisdiction, and shall have and exercise the same standards of professionalism, ability, skill, and expertise as are required of Contractor under this Agreement.

§ 11.7 Contractor shall obtain from each Subcontractor, prior to the time it makes a payment to such Subcontractor, an executed conditional waiver of lien and release. Nothing contained in any waiver of lien and release shall limit any defenses Owner may have to any open claims listed in such waiver of lien and release. If any Subcontractor files a lien against the Project or makes a claim against Owner, Contractor shall, within two (2) Business Days after Owner's request, deliver to Owner a copy of Contractor's contract with the Subcontractor, supplier, or materialman. If one or more liens is filed by any Subcontractor with respect to the Work as to which Owner has made a payment to Contractor, in addition to Contractor's indemnifications in **Section 9.15** and without prejudice to Owner's other available rights and remedies, Contractor at its own cost and expense shall cause such lien or liens to be discharged of record, by bonding or otherwise, within ten (10) days after Owner's written demand, and such obligations shall survive completion and termination of this Agreement.

§ 11.8 Contractor acknowledges that Owner is a public corporation, allowing only union contractors to work on the Project. Without limiting the other requirements of this Article 11, Contractor, each of its Subcontractors, and all other Contractor Parties performing or supplying any Work to the Project must be approved in advance in writing by Landlord and Owner. Pursuant to California Public Contracts Code Section 16001(a), Contractor and all Subcontractors shall comply with state prevailing wage rate requirements as set forth in California Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771, and Contractor and each Subcontractor shall otherwise comply with all Applicable Requirements that apply to "public works" projects as defined in California Labor Code Section 1720. All of such parties shall be licensed in the State of California, capable of being bonded and shall in each such case be union contractors. Contractor is advised that bids for certain sub-contracted portions of the Work shall be subject to pre-qualified subcontractors, either designated or approved by Owner, Landlord, or Architect. Contractor must bid all subcontracted work to at least three bidders to obtain competitive pricing. For trades bid by Contractor, Contractor must attempt to use small business enterprises (SBE) for subcontracted work in as much as possible. SBE subcontractors will receive a 5% pricing differential over non-SBE contractors. Contractor shall submit records to Owner and Architect to show/document such SBE outreach efforts when subcontracting with SBEs is not feasible due to non-responsiveness or unavailability of SBEs to perform the Work.

§11.9 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that: (1) assignment is effective only after termination of the Contract by the Owner for cause pursuant to **Section 20.2** and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Upon such assignment to the Owner under this Section, the Owner may further assign the subcontract to a successor Contractor or other entity.

§11.10 Contractor shall provide comprehensive management and coordination of all Subcontractor work, activity, and scheduling, and shall hold weekly meetings with all Subcontractors as appropriate for each stage of the Work.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The term "**Separate Contractor(s)**" shall mean other contractors, vendors, consultants, and suppliers retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under terms and conditions satisfactory to Owner in its sole discretion, including those provisions related to insurance and waiver of subrogation. When separate contracts are awarded for different portions of the Work or other construction or operations on the Project, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Owner-Contractor Agreement. The term "Separate Contractors" as used herein shall also include Landlord's contractors and subcontractors that may perform any work at the Project.

§ 12.2 The Contractor shall reimburse the Owner for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective Work or construction of the Contractor. The

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Contractor shall promptly remedy at its sole cost and expense any damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate contractors.

§ 12.3 The Contractor shall afford the Owner's own forces, Architect, Owner's Representative, and other Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall not create or permit any interference with or delay of the work of any Separate Contractors.

§ 12.4 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Separate Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 12.5 If a dispute arises among the Contractor, other Separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project premises and surrounding areas free from waste materials and rubbish, the Owner may clean up and Architect will allocate the cost among those responsible.

### ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly as provided below. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor, or by written Construction Change Directive signed by the Owner and Architect. Any material changes from or additions or reductions to the Work covered in this Contract shall be set forth in a written change order using the AIA Document G701 Change Order ("**Change Order**") signed by both Owner and Contractor before the changed or additional work is required to be performed. "Material" for purposes of this section means that the proposed changes would materially increase the scope, nature, or cost of Work as described in the Contract Documents, or would materially increase the Contract Time. Architect shall review any proposed changes to the Work and reasonably determine whether the changes would constitute a Change Order or a Construction Change Directive, and the Architect's determination shall be binding on the Parties. Any Party's challenge to Architect's determination shall be subject to dispute resolution as provided in **Article 21**. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

*(Paragraph deleted)*

§ 13.2 In the absence of a fully executed written Change Order, Contractor will have no cause of action against Owner for failure to compensate Contractor for work deviating from the terms of this Contract on the basis of an alleged oral or written contract or otherwise, and, accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Owner, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. If the Parties execute a written Change Order, its terms will govern over those of any prior contract in this transaction, and it will be automatically incorporated along with all prior Modifications into the Contract Documents. Owner shall have no obligation to execute a Change Order under any circumstances whatsoever, regardless of the cause necessitating the Change Order. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ 13.3 After review of the proposed change or addition or reduction to the Work covered in this Contract, Contractor shall promptly advise Owner as to whether the Contract Sum, Schedule of Values, or Contract Time would be increased, decreased or unchanged as a result of an applicable Change Order. Contractor shall provide Owner with either a fixed cost quote estimate or a time and materials estimate, depending on the nature of the proposed change at Contractor's reasonable discretion, which shall include: (A) the actual, out of pocket cost, without administrative

expense or other "extras," including labor costs, material costs and equipment rental costs ("**Actual Cost**") plus (B) overhead and (C) profit as allowed herein. Contractor covenants that it shall provide Owner with accurate and complete information on all of its Actual Costs for the Change Order in question. All Change Order proposals shall meet the following requirements: (V) labor: cost for labor shall be fair and reasonable in accordance with industry standards; (W) materials: cost for material shall be fair and reasonable in accordance with industry standard and paid at fair market value, (X) equipment: cost for equipment rental shall be in accordance with industry standard rates; (Y) overhead: based on a percentage of the labor + material + equipment; (Z) profit: based on a percentage of the labor + material + equipment; provided that overhead and profit shall collectively not exceed 15% of the Actual Cost. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from such proposed changes, Architect (or, at Owner's option, the Contractor) will prepare a Change Order for the Parties' review and approval. Upon completion by Contractor of the portion of the Work subject to the Change Order, Contractor may submit in the next scheduled Application for Payment the full agreed cost of the change or addition, less Retainage, provided that all required conditional and unconditional waivers and lien release forms are executed and delivered to Owner concurrent with such Application for Payment, and Contractor shall thereafter deliver to Owner executed unconditional waivers and lien release forms, in accordance with the payment process and terms of this Contract. Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment as it concerns the proposed changes, additions, or reductions to Work. Notwithstanding anything to the contrary in this Agreement or in the Contract Documents, the Owner and Contractor acknowledge and agree that the Contractor shall not be entitled to any additional compensation or extensions of the Contract Time, including, without limitation, any additive Change Orders, resulting from the errors, omissions, misconduct, or negligent acts of Contractor or any Contractor Parties.

*(Paragraph deleted)*

§13.4 Notwithstanding the foregoing, Owner or Architect may order in writing from time-to-time changes to the Work that would not materially increase the cost of materials or labor in the Schedule of Values or materially alter the Construction Schedule, and would otherwise not be unreasonably inconsistent with the general nature and scope of the Work as it existed prior to such requested change. Such requested changes shall be a "**Construction Change Directive**" and shall not constitute Change Orders. Construction Change Directives shall be prepared by Architect and signed by Architect and Owner, and shall be binding on Contractor. Contractor shall promptly accommodate and implement such Construction Change Directives into the Work without increase to the Contract Sum or added cost or expense to Owner, and without alteration to the Contract Time.

§ 13.5 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor in a Change Order, provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed. Notwithstanding the foregoing, no adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed or discovered by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or reasonably should have performed in connection with the Project.

#### **ARTICLE 14 TIME**

§ 14.1 All time limits stated in this Agreement and the other the Contract Documents are of the essence of the Contract. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. "Business Day" means a day other than a Saturday, Sunday, or other day on which commercial banks in San Francisco, California are authorized or required by law to close.

*(Paragraph deleted)*

§ 14.3 Except where a different period is stated in this Agreement, all amounts due to Owner from Contractor shall be due and payable within ten (1) Business Days after Owner's written demand, and may, at Owner's option, be offset against any amounts otherwise owed to Contractor.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with **Section 15.6**.

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## § 14.5 Force Majeure

§ 14.5.1 Except as provided in the following **Section 14.5.2** hereof, Contractor shall be liable to Owner for any loss, costs, expenses, liabilities, damages, or other Claims sustained by or alleged against Owner for delays in performance of the Work hereunder, other than those resulting from Force Majeure, for which Contractor shall have timely requested a reasonable extension of time, depending on the nature of the delay. An event of "**Force Majeure**" is an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent or foresee provided that event or circumstance is not preexisting as of the execution of this Contract, and is expressly limited to the following:

- A. riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- B. explosions; ionizing radiation or contamination; radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive, toxic, explosive, or other hazardous properties of any explosive assembly or nuclear component;
- C. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- D. earthquakes, flood, fire or other extreme and widespread physical natural disaster, but excluding weather conditions regardless of severity;
- E. events of mass contagion that are classified as a pandemic by the World Health Organization, and related government orders and restrictions (provided, the Parties acknowledge that the COVID-19 pandemic, the virus known as SARS-CoV-2 and any variants thereof, and related government orders and restriction all preexist the execution of this Contract and are therefore excluded from the definition of Force Majeure); and
- F. strikes at State or national level or industrial disputes at a State or national level, and which affect an essential portion of the obligation to be performed by the affected Party but excluding any industrial dispute which is local (i.e. limited to the city, county, or region where the Project is located) in nature or is specific to Contractor's business or employees.

§ 14.5.2 Neither Party is responsible for any failure to perform its obligations under this Contract, if it is prevented or delayed in performing those obligations by an event of Force Majeure. Where there is an event of Force Majeure, the Party prevented from or delayed in performing its obligations under this Contract must immediately notify the other Party giving full particulars of the event of Force Majeure, the period of time the Force Majeure event is expected to continue, and describing the impact on performance of the Work and other obligations under the Contract and the reasons for the event of Force Majeure preventing that Party from, or delaying that Party in performing its obligations under this Contract, and that Party must use its reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract. Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Contract. An event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event. The Parties hereby waive all applicable laws, including the provisions of Civil Code Section 1511, to the extent they are inconsistent with this Section. In any event, extension of time shall be Contractor's sole remedy for any event of Force Majeure. Changes, regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Work, or requirements of correction or re-execution of any defective Work, shall not under any circumstances be construed as events of Force Majeure in Contractor's performance of the Work. Owner's payment obligations hereunder are expressly included as being subject to events of Force Majeure as provided in this **Section 14.5**, including by way of example and without limitation any certifications or payments whose approval or issuance relies on reviews or inspections by Architect that are delayed by events of Force Majeure. Notwithstanding the foregoing, no event of Force Majeure shall excuse Contractor under any circumstances for its obligation under **Section 3.5** to pay Owner's damages for delay.

## ARTICLE 15 PAYMENTS AND COMPLETION

**§ 15.1 Schedule of Values.** The Contractor shall submit to the Owner and Architect within three (3) Business Days after the execution and delivery of this Agreement and before the first Application for Payment and prior to commencement of any Work, 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 Architect may require, to include a detailed breakdown by trade of each portion of the Work to be performed by Contractor and any Subcontractors ("**Schedule of Values**"). The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by Architect, and shall require the prior written approval of Owner and Architect. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

*(Paragraphs deleted)*

### **§ 15.2 [Intentionally Omitted].**

*(Paragraphs deleted)*

### **§ 15.3 Applications for Payment**

**§ 15.3.1** At least ten (10) days before the date established for each progress payment under the Construction Schedule (but in no event more frequently than once every month), the Contractor shall submit to the Owner and Architect an itemized and signed AIA Document G702 "Application and Certificate for Payment" (or form substantially similar thereto), prepared in accordance with the Schedule of Values, for Work completed in accordance with the Contract Documents ("**Applications for Payment**"). Each Application for Payment shall be notarized, if required by Owner or Architect; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect may require; and shall reflect reduction for Retainage. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not performed, unless such Work has been performed by others whom the Contractor intends to pay. Each Application for Payment (including for final payment and any Change Orders) must include:

- A. copies of all paid invoices and other data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, including without limitation payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment;
- B. for Work performed by the Contractor with its own forces, the Contractor's statement of the scheduled value, the amounts previously paid to Contractor for such Work, the amount due Contractor for such Work as of the end of the period covered by the Application For Payment, the percentage of completion of such Work, Retainage, and the balance remaining to be paid for such Work;
- C. a statement of the Contractor giving the names and trades of all Subcontractors furnishing materials or labor to the Work to be performed under the Contract Documents and, with respect to all Work performed by Subcontractors, a breakdown of Work by trade category, the portion and percentage of the Contract Sum or scheduled value of the Work to be performed by such Subcontractors, the amounts previously paid on account of such Work, the amounts due on account of such Work as of the end of the period covered by the Application for Payment, Retainage, the balance of Work to be performed, and the balance remaining to be paid;
- D. fully executed conditional lien waiver and release forms signed by Contractor and each Subcontractor involved in that portion of the Work for which payment is requested (including, without limitation, all persons or entities providing preliminary 20-day notices in respect of the Project); and
- E. fully executed unconditional lien waiver and release signed by Contractor and each Subcontractor involved in that portion of the Work that has been completed and for which payment was made.
- F. All lien waivers and releases provided or required pursuant to this Contract shall meet the form requirements of California Civil Code Sections 8132-8138.

**§ 15.3.2** Each Application for Payment shall cover the previous month beginning from the cut-off date of the previous Application for Payment. For each payment made for the Work, Owner may withhold the Retainage. Architect shall issue Certificates for Payment for amounts not in dispute, provided that no payment shall be due for any Application for Payment that does not satisfy each of the requirements of this Agreement, including without limitation **Article 4** and this **Article 15**.



§ 15.3.3 All lien releases and waivers required or issued pursuant to this Agreement shall meet the form requirements of California Civil Code Sections 8132-8138. The lien releases and waivers required by this Agreement, when signed and submitted, shall also constitute a release and waiver of any right that the submitting entity (or person, if a sole proprietorship) may have to file a design professionals lien under California Civil Code Sections 8300-8319. Each lien release and waiver shall be on the letterhead of the entity or person submitting the lien release and waiver. Each lien release and waiver is effective as against the entity submitting the lien release and waiver if it is signed by any employee, representative or agent of the entity. All lien releases and waivers shall identify the address of the released Project.

§ 15.3.4 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.5 The Contractor warrants that title to all Work and Work Product covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

#### § 15.4 Certificates for Payment

§ 15.4.1 Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as Architect determines is properly due, or notify the Contractor and Owner of Architect's reasons for withholding certification in whole or in part as provided in **Section 15.4.3**.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by Architect to the Owner, based on Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by Architect. However, the issuance of a Certificate for Payment will not be a representation that Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in Architect's opinion the representations to the Owner required by **Section 15.4.2** cannot be made. If Architect is unable to certify payment in the amount of the Application, Architect will notify the Contractor and Owner as provided in **Section 15.4.1**. If the Contractor and Architect cannot agree on a revised amount, Architect will promptly issue a Certificate for Payment for the amount for which Architect is able to make such representations to the Owner. Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including without limitation any loss resulting from acts and omissions described in **Section 9.2.2**, because of:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to timely and properly make payments to Subcontractors for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or stipulated damages for the anticipated delay; or

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.7 failure to carry out the Work in accordance with the Contract Documents.

Payments (including progress payments and final payment) may be withheld up to 150% of the amount in dispute.

§ 15.4.4 When either Party disputes Architect's decision regarding a Certificate for Payment under **Section 15.4.3**, in whole or in part, that party may submit a Notice of Dispute in accordance with **Article 21**.

### § 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

*(Paragraph deleted)*

### § 15.6 Substantial Completion

§ 15.6.1 "**Substantial Completion**" is the stage of the progress of the Work when (A) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, and (B) if applicable and required by Applicable Requirements, the governmental entity or officer having jurisdiction over the Project has issued a "signed-off" notice of final inspection (or its equivalent in a form acceptable to Owner) for the Project approving the Work. If any additional corrective work that is the responsibility of Contractor is required to obtain the necessary final approvals, then Owner may withhold 200% of the reasonable cost of those corrective items from any final payment.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, Architect or Owner's other designee will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item at Contractor's sole cost and expense upon notification by Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by Architect to determine Substantial Completion.

§ 15.6.4 When Architect and Owner determine that the Work or designated portion thereof is Substantially Complete, Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall include a "**Punch List**" describing any remaining items identified by the Owner or Architect to be completed by Contractor as part of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Contractor and Owner will then execute the Punch List, and shall fix the date by which the Punch List must be fully performed, which shall in no event be more than fifteen (15) days after the date of the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

### § 15.7 Final Completion and Final Payment

*(Paragraphs deleted)*

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**§15.7.1 "Final Completion"** shall occur on the date when: (1) Contractor and Architect have each certified in writing that to the best of their knowledge, information and belief on the basis of their on-site observations and inspections, the Work and the Project have been completed in accordance with the terms and conditions of the Contract Documents; (2) Contractor and Architect have certified in writing that all Punch List items have been finally completed; (3) the Owner has agreed and accepted Contractor's certifications; and (4) Owner has accepted the Work in writing. The Contractor shall achieve Final Completion not later than thirty (30) calendar days following the date of Substantial Completion, unless such date is extended in accordance with the Contract Documents, and subject to any delays in inspections, approvals, or sign-off procedures by the City of San Francisco that are not due to the fault of Contractor or any Contractor Parties. Notwithstanding the certification by Owner or Architect or any other party that Final Completion has occurred, Contractor shall be responsible for remedying all defects in the Work in accordance with the Contract Documents.

**§15.7.2** The Contractor and Owner expressly agree that in the event the Contractor is behind the Construction Schedule to such an extent that Contractor, in the judgment of the Owner or Architect, will not be able to achieve Substantial Completion of the Work, or the applicable portion thereof by the applicable dates set forth above, or to achieve Final Completion by the date set forth above, as such dates may be extended in accordance with the Contract Documents; Contractor, at a cost which shall not cause an adjustment to the Contract Sum, shall employ such additional forces or pay such additional overtime wages and salaries as may be required to place the progress of the Work in conformance with the Construction Schedule required to achieve timely Substantial Completion and Final Completion. At Owner's or Architect's request, Contractor shall deliver to Owner and Architect a written recovery plan describing measures the Contractor will take to achieve timely Substantial Completion and Final Completion.

**§ 15.7.3**

*(Paragraphs deleted)*

Upon receipt of the Contractor's notice that it believes it has achieved Final Completion of the Work, and that the Work ready for final inspection and acceptance, and upon receipt of a final Application for Payment, Architect will promptly make such inspection and, when Architect finds that the conditions in **Section 4.2.1** have been fully and completely satisfied and that the Work is acceptable under the Contract Documents and the Contract fully performed, Architect will promptly issue a final Certificate for Payment stating that to the best of Architect's knowledge, information and belief, and on the basis of Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is payable.

**§ 15.7.4** Without limiting the other requirements in this Agreement, final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

**§ 15.7.5** The making of final payment shall constitute a waiver of known claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 15.7.6** Acceptance of final payment by the Contractor or a Subcontractor 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 16 PROTECTION OF PERSONS AND PROPERTY**

**§ 16.1 Safety Precautions and Programs**

**§16.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit, prior to commencement of the Work and otherwise upon Owner's or Architect's request from time to time, the Contractor's safety program to the Owner and Architect for review and coordination with the safety programs of Subcontractors and Separate

Contractors. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work site and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or a Subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner or Separate Contractors.

**§16.1.2** The Contractor shall at all times observe and comply with, and give notices required by, Applicable Requirements, including those bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy at its sole cost and expense damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by or acting on behalf of any of them, or by anyone for whose acts they may be liable. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the sole or active negligence or willful misconduct of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable in whole or in part to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under **Section 9.15**.

**§ 16.1.3** The safety and adequacy of the methods and means employed by the Contractor in performing its Work are solely the responsibility of the Contractor, and it shall provide such supervision and take all such steps as are necessary to ensure that the Work is performed in a safe and adequate manner. Neither the activities of the Owner nor the presence of the Owner's employees and/or other contractors shall be construed by any party to imply that the Owner has any responsibility for any of the Contractor's methods of work performance, procedures, superintendence, sequencing of operations or safety in, on or about the Project site. Contractor and its Subcontractors shall conduct the Work in conformance with all Applicable Requirements, and with all safety procedures promulgated by Owner or its property manager. **THE PRESENCE OF OWNER PERSONNEL ON THE PROJECT SITE CARRYING OUT PROFESSIONAL ACTIVITIES DOES NOT MEAN THAT THE OWNER UNDERTAKES TO OVERSEE THE CONTRACTOR'S COMPLIANCE RESPONSIBILITIES.**

**§ 16.1.4** The Contractor shall promptly report in writing to the Owner and Architect all accidents and/or claims whatsoever arising out of, or in connection with the performance of the Work, giving full details and statements of witnesses. If death or serious injury or serious damage is caused, the accident shall be reported immediately by telephone or messenger to the Owner. The Contractor shall immediately report to the Owner any unsafe conditions in their work area which the Contractor cannot properly and adequately correct on its own and shall immediately stop work in that portion of the Project site and not proceed until written direction is received from the Owner.

**§ 16.1.5** Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 16.1.6** Contractor shall make best efforts to minimize dust and obstruction of access to the Project site caused by the performance of the Work. In addition, Contractor shall make best efforts to minimize noise associated with the implementation of the Work; provided, however, should the noise level be such that the Work generating such noise is required to be suspended or deferred to an alternate time, Contractor shall advise Owner as to the schedule and cost impact of such deferral.

## **§ 16.2 Hazardous Materials and Substances**

**§ 16.2.1** Except only for such of its employees, if any, as are fully qualified to do so, Contractor shall not direct, suffer or permit any Contractor Parties to at any time handle, use, manufacture, store or dispose of any flammable,

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explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation, including without limitation those defined at 40 CFR 302.4 (collectively "**Hazardous Materials**") by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments thereto, and all rules and regulations issued pursuant to any of the foregoing (collectively "**Environmental Laws**") in or about the Project or the Building, nor shall Contractor suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws or the Project or Building or surrounding areas to become contaminated with any Hazardous Materials. Notwithstanding the foregoing and subject to Owner's prior written consent, Contractor may handle, store, use, or dispose of Hazardous Materials to the extent customary and necessary for the performance of Contractor's duties hereunder, provided that Contractor shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Project or the environment. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials and substances (as defined in 40 CFR 302.4) ("**Hazardous Material**") and shall exercise the utmost caution to avoid disturbing encapsulated asbestos containing material or concealed Hazardous Materials. The Contractor shall not be required to perform without its consent any Work relating to the removal or abatement of asbestos or polychlorinated biphenyl (PCB), unless otherwise specified in the Contract Documents. If the Contractor encounters Hazardous Materials not addressed in the Contract Documents or otherwise made known to Contractor and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. Contractor acknowledges receipt of Landlord's Asbestos Notification, a copy of which is attached hereto and incorporated herein by reference.

**§ 16.2.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor and its agents and employees from and against claims, damages, losses, and expenses, to the extent arising out of or resulting from performance of the Work in the affected area, if in fact, the Hazardous Materials present the risk of bodily injury or death as described in **Section 16.2.1** and has not been rendered harmless, 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 (other than the Work itself), and only to the extent such damage, loss, or expense is due to the negligence of Owner. The Owner shall not be responsible under this **Section 16.2.2** for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

**§ 16.2.3** If, without negligence or fault on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by and in accordance with the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Notwithstanding the foregoing, Contractor shall indemnify, defend, and hold harmless the Owner's Related Parties (as part of Contractor's indemnification obligations under **Section 9.15.2**) for all Claims relating to: (1) remediation of a material or substance the Contractor or any Contractor Parties bring to the site and negligently handles, stores, transports, disposes of, emits, or releases; or (2) where the Contractor fails to perform its obligations under **Section 16.2.1**, except to the extent that the cost and expense are due to the Owner's sole or active negligence or willful misconduct. The indemnification obligations in this **Section 16.2.3** shall survive completion and termination of this Agreement.

## **ARTICLE 17 INSURANCE AND BONDS**

### **§ 17.1 Contractor's Insurance**

**§ 17.1.1** Without in any way limiting Contractor's liability pursuant to **Section 9.15** of this Agreement, the Contractor shall purchase and maintain at all times, for the joint benefit of Contractor and Owner, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this **Section 17.1** or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and with an A.M. Best minimum financial strength rating of A:X, according to the most recent edition of Best's Key Rating Guide (Property-Casualty). The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in **Section 18.4**, unless a different duration is stated below.

## § 17.1.2

§ 17.1.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than \$2,000,000 each occurrence, \$5,000,000 general aggregate, and \$5,000,000 aggregate for products-completed operations hazard, providing coverage for claims including, without limitation:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of operations or completed operations; and
- .8 broad form contractual liability for the Contractor's indemnity obligations under **Section 9.15**.

§ 17.1.2.2 Contractor's Commercial General Liability policy under this Section 17.1.2 shall not contain an exclusion or restriction of coverage for any of the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under **Article 9** arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.3 Comprehensive Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than \$2,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Such coverage must be for (A) "any auto" or (B) "all owned autos, hired autos and non-owned autos".

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under **Sections 17.1.2 and 17.1.3**, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation as required by the State of California, with Statutory Limits, covering liability for injuries to all persons employed by the insured in the conduct of its operations, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease, and each policy shall be endorsed with a waiver of subrogation in favor of Owner for all work performed by Contractor, its employees, and agents; and Employers' Liability with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit.

§ 17.1.6 Umbrella/Excess Liability Insurance providing coverage with limits of not less than Ten Million Dollars (\$10,000,000) each occurrence for bodily injury and property damage, and Ten Million Dollars (\$10,000,000) general aggregate and products and completed operations aggregate. Policies shall be excess to the primary commercial general liability, employers liability and business automobile liability coverage and shall be written as follow form or alternatively with a form that provides coverage that is at least as broad as the primary insurance policies.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than \$2,000,000 per claim and \$4,000,000 in the aggregate. Such policies may be claims-based, provided the policy coverage is maintained for at least ten (10) years after the Final Completion Date.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than \$2,000,000 per claim and \$4,000,000 in the aggregate.

§ 17.1.9 Coverage under **Sections 17.1.7** and **17.1.8** may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less \$2,000,000 per claim and \$5,000,000 in the aggregate.

§ 17.1.10 The Contractor shall provide in form acceptable to the Owner original certificates and amendatory endorsements or copies of the applicable policy language effecting all coverages required by this **Section 17.1** evidencing compliance with the requirements in this **Section 17.1** at the following times: (1) prior to commencement of the Work and before Contractor's equipment is moved to the Project site; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the written request of Owner, Landlord, or Architect from time to time. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by **Section 17.1.1**. Failure to obtain the required documents prior to the Work beginning shall not waive Contractor's obligation to provide them.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause each insurance policy and coverage required by this **Section 17.1** to include (1) the Owner, the State Bar and its Board of Trustees, directors, officers, and employees, Architect, Owner's Representative, Landlord, and their direct and indirect subsidiaries, affiliated entities, joint venture entities (whether defined by written contract as Owner, Client, Company, Landlord, Lessor, Licensor, Customer or similar) associated with the Building, and any other parties designated by Owner to Contractor in writing (collectively, the "**Additional Insureds**") as additional insureds for claims caused in whole or in part by the Contractor's negligent acts, errors, or omissions during (1) the Contractor's operations, and (2) during completed operations. All coverage that Contractor is required to carry under this Agreement shall be primary and non-contributory to any insurance coverage maintained by the Owner or any of the Additional Insureds listed herein and shall apply to both ongoing and completed operations; and shall reference the Owner's name and the address of the Building. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to Architect, CG 20 32 07 04. Upon renewal or replacement of Contractor's commercial general liability, automobile liability, and umbrella or excess liability policies, Contractor shall cause the Additional Insureds listed in this paragraph to be added as additional insureds under such policies, as required herein. Additionally, Contractor shall cause Owner and Landlord to be the named certificate holders on all insurance policies that Contractor and any Subcontractor is required to carry hereunder.

§ 17.1.13 Each insurance policy required in this **Section 17.1** shall state that coverage shall not be canceled or reduced, except with no less than 30 days' notice to Owner. Within three (3) Business Days of the date the Contractor becomes aware of an impending or actual cancellation, reduction, or expiration of any insurance required by this **Section 17.1**, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any

contractual obligation to provide any required coverage. Prior to commencement of the Work, Contractor shall deliver to Owner certificates evidencing compliance with each of the insurance requirements under this **Section 17.1** to:

The State Bar of California  
Attention: Risk Management  
845 S. Figueroa Street  
Los Angeles, CA 90017

**§ 17.1.14 Other Insurance Provided by the Contractor:** Contractor and each Subcontractor shall maintain all-risk Property Insurance providing full replacement cost coverage for property in which Contractor/Subcontractor retains the risk of loss including their own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by Contractor/Subcontractor. If Contractor/Subcontractor chooses to self-insure the property described under this Section, it is agreed that Contractor/Subcontractor shall hold Owner harmless for any loss or damage to that property. Contractor shall also maintain Privacy Security Liability/Cyber Insurance coverage for a minimum limit of One Million Dollars (\$1,000,000) per claim and annual aggregate.

**17.1.15 Subcontractors Insurance.** Contractor shall ensure that all Subcontractors of every tier also carry insurance with the coverage terms and limits of liability specified in this **Section 17.1**. Contractor is also required to ensure that all Subcontractors comply with the other insurance provisions described above including naming the Additional Insureds as additional insureds on each of their insurance policies (liability, automobile, and excess) and having each insurance policy include a waiver of subrogation in favor of the Additional Insureds for all work performed.

**§ 17.1.16** Promptly following Owner's or Landlord's request, Contractor will cause any lender and/or financial institution and/or any trustee designated by Owner or Landlord to be added as Additional Insureds under the insurance policies required under this **Section 17.1**. If Contractor fails to carry or provide evidence of insurance provided for herein, Owner may, but shall not be obligated to, procure the same and charge the cost thereof, along with all associated costs and expenses, to Contractor. Should any required insurance lapse during the term of the Agreement, then without prejudice to Owner's other rights and remedies under this Agreement, requests for payments originating after such lapse will not be processed until Owner receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. Contractor shall carry sufficient comprehensive insurance covering the replacement cost of its equipment at the Work site and en route to or from the Work site as may be necessary to fully protect itself and Contractor acknowledges that Owner shall have no responsibility or liability therefor.

*(Table deleted)*

**§ 17.1.17** No insurance required under this **Section 17.1** shall be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit.

## **§ 17.2 Owner's Insurance**

### **§ 17.2.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **§ 17.2.2 Property Insurance**

**§ 17.2.2.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Work on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. This insurance shall include the interests of Owner, Landlord and its mortgagees as loss payees.

**§ 17.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by **Section 17.2.2.1** or, if necessary, replace the insurance policy required under **Section 17.2.2.1** with property insurance written for the total value of the Work that shall remain in effect until expiration of the period for correction of the Work set forth in **Section 18.4**.

**§ 17.2.2.3** If the insurance required by this **Section 17.2.2** is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions, except for deductibles or

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retentions relating to claims or losses resulting from the negligent acts or omissions of the Contractor or any Contractor Parties, which such deductibles shall be paid by the Contractor.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall cause to be purchased and maintained, until the expiration of the period for correction of Work as set forth in **Section 18.4**, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and, upon the Contractor's reasonable request, provide evidence of the coverage required under this **Section 17.2.2**.

§ 17.2.2.6 **Waiver of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Landlord; (3) Architect and its consultants; and (4) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss or damage, to the extent those losses or damages are covered by property insurance required by this Agreement or other property insurance applicable to the Project or the Building, except such rights as they have to proceeds of such insurance. By endorsement or otherwise, Contractor shall cause each of its insurance policies to contain such waivers in favor of Owner, and shall require similar written waivers in favor of Owner from the Subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this **Section 17.2.2.6** shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

*(Table deleted)*

*(Paragraphs deleted)*

### § 17.3 Performance Bond and Payment Bond

§ 17.3.1 Contractor and each Subcontractor performing any aspect of the Work shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder, in accordance with California Civil Code Section 9550, et seq., or as may be further stipulated in bidding requirements or specifically required in the Contract Documents.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall at its sole cost and expense promptly correct Work that fails to conform to the requirements of the Contract Documents or that is rejected by the Owner or Architect for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such nonconforming or rejected Work, including without limitation additional testing and inspections, the cost of uncovering and replacement, and compensation for Architect's services and expenses made necessary thereby, as well as the services and expenses of Owner's architects, engineers, and other professional consultants, all at the Contractor's sole cost and expense. The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 18.2 In addition to the Contractor's obligations under **Section 9.4**, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under **Section 15.6.3**, or by terms of an applicable special warranty required by the Contract Documents, any of the Work (whether labor, workmanship, materials, or otherwise) is found to be not in accordance with Contractor's warranty under **Section 9.4** or otherwise not in conformance with the requirements of this Agreement or any of the other Contract Documents, the Contractor shall at its sole cost and expense correct it promptly after receipt of notice from the Owner or Architect to do so. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Work (as the same may be extended), if the Owner notifies the

Contractor of the defect or nonconformity requiring correction, Owner shall have preserved its rights to require correction by the Contractor and to make a claim for breach of warranty.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, during or after the term of this Contract, the Owner may correct it in accordance with **Section 8.3**.

**§ 18.4** The period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 18.5** The period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

**§ 18.6** The provisions of this **Article 18** apply to Work done or provided by Contractor, any Subcontractors, as well as to Work done or provided by any of their respective agents or employees or any other Contractor Parties. Owner shall not have any obligation to pay for the cost of any defective or non-conforming Work performed, and, if such defective or non-conforming Work is not promptly repaired, replaced or corrected, then Owner shall have the right to repair, replace or correct such Work and charge Contractor for the cost thereof (which charge may be offset in whole or in part against any amounts still owing to Contractor under the Contract Documents).

**§ 18.7** Nothing contained in this **Article 18** shall be construed to establish a waiver of implied warranties established by Applicable Requirements or a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period described in **Section 18.2** relates only to the express warranty of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 18.8** The acceptance by Owner of, or failure of Owner to object to, any Work performed by or for Contractor shall not supersede or diminish any obligation or duty of Contractor herein with respect to such Work or render Owner or any Owner's Related Parties responsible for any injury or damage suffered by any party arising out of any act or omission of Contractor or any Subcontractor in or about the performance of such Work.

**§ 18.9** Contractor's obligations and warranties under this Article 18 shall survive completion and termination of this Agreement.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 Assignment of Contract**

Contractor has been selected to perform the Work covered by this Contract on the basis of Contractor's personal service and, without Owner's prior written consent which may be withheld at Owner's sole and absolute discretion, may not delegate any duties or responsibilities imposed by this Contract. By consenting to any assignment, Owner will not waive any cause of action against Contractor arising out of circumstances preceding the assignment. Owner may assign its rights, obligations and benefits under this Contract, including any warranties hereunder and the right to receipt of Contractor's performance, to any party and for any reason, without the requirement of Contractor's consent.

### **§ 19.2 Governing Law**

The Contract shall be governed by the law of the State of California, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern **Section 21.5**.

### **§ 19.3 Tests and Inspections**

*(Paragraphs deleted)*

**§ 19.3.1** Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by Applicable Requirements shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give Architect and Owner timely notice of when and where tests and inspections are to be made

so that Architect and Owner may be present for such procedures. Contractor shall coordinate and expedite, as necessary, all inspections and testing. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where Applicable Requirements or regulations so require.

§ 19.3.2 If Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under **Section 19.3.1**, Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to Architect of when and where tests and inspections are to be made so that Architect and Owner may be present for such procedures. Such costs except as provided in **Section 19.3.3**, shall be at the Owner's expense.

§ 19.3.3 If such procedures for testing, inspection or approval under **Section 19.3.1** or **Section 19.3.2** reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 19.3.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to Owner and Architect.

§ 19.3.5 If Architect is to observe tests, inspections or approvals required by the Contract Documents, Architect will do so promptly and, where practicable, at the normal place of testing.

§ 19.3.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **ARTICLE 20 TERMINATION OF THE CONTRACT**

### **§ 20.1 Termination by the Contractor**

If Owner fails to make payment for a period of forty-five (45) days after the same becomes due and payable, and the Parties have not otherwise agreed to a mutually acceptable payment schedule, Contractor may, upon delivering fourteen (14) additional days' written notice and opportunity to cure to Owner and Architect, stop the Work until payment of the amount owing has been received. In the case of a suspension authorized hereunder, before resuming services, the Contract Time shall be equitably adjusted, and Contractor shall be paid all sums due for Work properly performed prior to suspension and any reasonable expenses actually incurred in the interruption and resumption of Contractor's Work but only to the extent directly resulting from Owner's failure to make payment as and when due under this Agreement, and further provided that Contractor shall have an affirmative duty to reasonably anticipate, avoid, and mitigate damages resulting from Owner's nonpayment. If Owner fails to cure such nonpayment within thirty (30) days after Contractor's additional 7-day written notice, Contractor may terminate this Agreement by written notice to Owner, subject to **Article 21**.

### **§ 20.2 Termination by the Owner for Cause**

§ 20.2.1 The Owner may terminate or suspend the Agreement upon written notice to the Contractor, and without prejudice to any other remedy the Owner may have, if Contractor:

- .1 repeatedly or persistently refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor or other services in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 fails to comply with or disregards Applicable Requirements;
- .4 causes or permits repeated material deviations from the Construction Schedule;
- .5 fails to properly perform or correct the Work or any portion thereof when and as required under the Contract Documents;
- .6 repeatedly fails to communicate with the Owner or Architect regarding material aspects of the Work;
- .7 causes or permits any Work stoppage not authorized by this Agreement;
- .8 fails to comply with the Landlord's Building Rules & Regulations or any terms, requirements, or conditions thereof;
- .9 otherwise defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract Documents; or
- .10 otherwise is guilty of a substantial breach of any provision of the Contract Documents.

"Repeated" or "repeatedly" for purposes of this Section shall mean two (2) or more times in a one (1) month period, regardless of cure.

§ 20.2.2 When any of the reasons described in **Section 20.2.1** exists, the Owner may, without prejudice to any other remedy the Owner may have and immediately upon giving the Contractor written notice, suspend the Work or any portions thereof, or terminate or suspend the Contract in whole or in part, and: (A) exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; (B) accept assignment of subcontracts pursuant to **Section 11.9**; and (C) finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in **Section 20.2.1**, the Contractor shall not be entitled to receive further payment due (if any) until the Work is finished.

§ 20.2.4 If the costs of finishing or correcting the Work (during or after the term of this Contract) exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to Owner within 30 days after Owner's written demand, and this obligation for payment shall survive termination of the Contract.

§ 20.2.5 This Agreement will terminate automatically in the event of the bankruptcy or insolvency of either Party.

### § 20.3

*(Paragraphs deleted)*

#### **Suspension by the Owner for Convenience**

§ 20.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine in its sole discretion.

§ 20.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in **Section 20.3.1**. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent:

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

#### **§ 20.4 Termination by the Owner for Convenience**

Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause and for any reason or no reason. In such event, Contractor waives any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of Contractor, the Owner shall pay Contractor in accordance with this **Section 20.4**. The provisions of the Contract, which expressly or by their nature survive final acceptance of the Work or termination of the Agreement, shall remain in full force and effect after such termination to the extent provided in such provisions. 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 Contractor prior to the date of termination. Upon termination, Contractor shall be entitled to be paid the reasonable cost of all Work properly done by Contractor (and not in dispute by Owner) to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed. If at the date of such termination Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for the reasonable cost of such goods or materials. Notwithstanding, Contractor shall not be entitled to any compensation that has not been previously approved by Owner in writing.

§ 20.5 Upon receipt of any notice of termination regardless of cause, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on that date and to the extent specified in the notice; place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work, and exercise reasonable efforts to preserve and protect Work already completed or in progress and to protect materials, plants and equipment on the site or in transit thereto. In addition, within seven (7)

calendar days after any expiration, cancellation, or termination of the Agreement, and otherwise at any time upon Owner's written request, Contractor shall: (a) deliver to Owner all deliverables (whether complete or incomplete), Work Product and all materials, equipment, and other property provided for Contractor's use by Owner; (b) deliver to Owner all tangible documents and other media, including any copies, containing, reflecting, incorporating, or based on the Confidential Information; (c) permanently erase, and cause all Contractor Parties to permanently erase, all Confidential Information their respective computers, files, file storage systems, data storage systems, and phone systems; and (d) certify in writing to Owner that Contractor and each of the Contractor Parties has complied with the requirements of this **Section 20.5**.

**§ 20.6** Without limiting any of the foregoing in this Article 20, if the term of the Agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of the Agreement is subject to an authorization of sufficient funding for such purpose by the California State Legislature and the Governor of the State of California. If sufficient funds are not so authorized, the Parties mutually agree that the Agreement may be terminated by Owner or amended as appropriate in response to such occurrence. If the Agreement is terminated, Contractor agrees to relieve Owner of any further obligations, except for Owner's obligation to pay for the Work already properly performed up to the date of termination pursuant to the terms of the Agreement.

## **ARTICLE 21 CLAIMS AND DISPUTES**

### **§ 21.1 Definition.**

A "**Dispute**" is a demand or assertion by one of the Parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Dispute" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Disputes shall rest with the party claiming the Dispute.

### **§ 21.2 Notice of Disputes**

**§ 21.2.1** Disputes by either the Owner or Contractor, where the condition giving rise to the Dispute is first discovered prior to expiration of the period for correction of the Work set forth in **Section 18.2**, shall be initiated by notice to the Architect within a reasonable period of time after occurrence of the event giving rise to such Dispute or within a reasonable period of time after the claimant first recognizes the condition giving rise to the Dispute, whichever is later ("**Notice of Dispute**").

**§ 21.2.2** Disputes by either the Owner or Contractor, where the condition giving rise to the Dispute is first discovered after expiration of the period for correction of the Work set forth in **Section 18.2**, shall be initiated by notice to the other Party.

### **§ 21.3**

*(Paragraphs deleted)*

#### **Initial Decision.**

**§ 21.3.1** Disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by Owner's Representative but excluding those arising under **Section 16.2**, shall be referred initially to Architect for decision. Such matters, except those waived as provided for in **Section 21.9.3**, shall, after initial decision by Architect or 30 days after submission of the matter to Architect with no decision being rendered or subsequent action being taken (subject to extension for events of Force Majeure), be subject to mediation as a condition precedent to binding dispute resolution.

**§ 21.3.2** Architect will review Disputes and within ten days of the receipt of a Dispute take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other Party, (2) reject the Disputes in whole or in part, (3) approve the Disputes, (4) suggest a compromise, or (5) advise the Parties that Architect is unable to resolve the Disputes if Architect lacks sufficient information to evaluate the merits of the Dispute or if Architect concludes, in its sole discretion, that it would be inappropriate for Architect Representative to resolve the Dispute.

**§ 21.3.2** In evaluating Disputes, Architect may, but shall not be obligated to, consult with or seek information from either Party or from persons with special knowledge or expertise who may assist Architect in rendering a decision.

§ 21.3.3 If Architect requests a Party to provide a response to a Dispute or to furnish additional supporting data, such Party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise Architect when the response or supporting data will be furnished or (3) advise Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, Architect may reject or approve the Dispute in whole or in part.

§ 21.3.4 Architect will render an initial decision approving or rejecting the Dispute in whole or in part, or indicating that Architect is unable to resolve the Dispute. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the Parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the Parties but subject to mediation and, if the Parties fail to resolve their dispute through mediation, to binding dispute resolution in the method selected under **Section 5.1**.

#### § 21.4 Mediation.

Disputes not resolved by initial decision of Architect shall be submitted to mediation in accordance with this Section as a condition precedent to binding dispute resolution. The Parties shall endeavor to resolve their disputes by mediation which, unless the Parties mutually agree otherwise, shall be administered in San Francisco, California by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. If an arbitration is stayed pursuant to this Section, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 21.5 Arbitration.

§21.5.1 If the Parties have selected arbitration as the method for binding dispute resolution in this Agreement, any Disputes, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Parties mutually agree otherwise, shall be administered in San Francisco, California by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other Party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Requirements in any court having jurisdiction thereof.

§ 21.5.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either Party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.5.3 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any Party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 21.5.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under the Federal Arbitration Act in any court having jurisdiction thereof.

#### § 21.6 Continuing Contract Performance

Pending final resolution of a claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments as they become due and payable in accordance with the Contract Documents.

### § 21.7 Time Limits on Claims.

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by Applicable Requirements.

### § 21.8 Exclusions.

The following matters are excluded from mediation and arbitration: any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to preserve a statute of limitations shall not constitute a waiver of the mediation and arbitration provisions.

### § 21.9 Liability Limitations

§ 21.9.1 Other than the contractual obligations of the entity constituting Owner as defined under this Agreement, none of Owner's Related Parties shall be personally liable for the performance of Owner's obligations under this Agreement or any of the other Contract Documents. Contractor shall not seek recourse for such enforcement or satisfaction against any of Owner's Related Parties.

§ 21.9.2 Contractor acknowledges that Architect is acting in connection with the performance of this Agreement solely as an agent for Owner, and shall not be liable for any Disputes that may accrue to Contractor in connection with this Agreement or the performance of the Work.

§ 21.9.3 Contractor and Owner shall not be liable to each other for and hereby waive all claims against each other for any consequential, indirect, or punitive damages arising out of or relating to this Contract. Owner specifically reserves all other rights and remedies at law and in equity. Nothing contained in this **Section 21.9.3** shall be deemed to preclude an award of, or limit Contractor's obligation to pay, damages for delay when applicable, in accordance with **Section 3.5** or the requirements of the Contract Documents.

## ARTICLE 22 ADDITIONAL PROVISIONS

§ 22.1 **Captions.** The captions and section headings used in this Agreement are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Agreement, or be used to interpret specific sections.

§ 22.2 **Binding Effect.** Subject to any provisions hereof restricting assignment by Contractor, all of the provisions hereof shall bind and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns; provided, however, that the obligations contained in this Agreement to be performed by Owner shall be binding on Owner and its successors and assigns only during their respective periods of leasehold interest in the Project.

§ 22.3 **Choice of Law; Choice of Venue.** This Agreement is deemed to have been made and entered into by the Parties at San Francisco, California. This Agreement shall be governed by and interpreted and enforced exclusively under the laws of California, without regard to any conflicts of law principles. Any civil action arising out of or relating to the performance, enforcement, or interpretation of this Agreement, shall be submitted to and heard in the Superior Court of San Francisco, California. The Parties waive all challenges to personal jurisdiction or claims of inconvenient forum or improper venue in the Superior Court of San Francisco, California.

§ 22.4 **No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to render Owner in any way or for any purpose a partner, joint venturer, or associate in any relationship with Contractor, nor shall this Agreement be construed to authorize either to act as agent for the other. The Contractor and Owner agree that in performing its obligations under the Agreement and the Contract Documents, the Contractor is at all times acting as an independent contractor and not as an agent or employee of Owner. Contractor is not eligible to participate in any vacation benefits, group medical or life insurance, disability benefits, retirement benefits, or any other fringe benefits or benefit plans offered by Owner to its employees. Owner will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes. Owner will not be responsible for making any insurance contributions, including for unemployment, disability, or workers' compensation insurance on Contractor's or any Contractor Parties' behalf. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of any Contractor Parties, including workers' compensation coverage as required, all federal, state, and

local income taxes, unemployment and disability insurance, Social Security, or other applicable withholdings. Neither Contractor nor any Contractor Parties will perform any act or acts that might lead others to believe that they are representatives of Owner. Contractor has no authority (and will not hold itself out as having authority) to bind Owner and Contractor will not make any agreements or representations on Owner's behalf without Owner's prior written consent. Owner will not control or direct the manner or means by which Contractor, or any Contractor Parties, perform the Work. The Parties agree that the Work to be performed is outside the usual course of Owner's business. Contractor represents that it is customarily engaged in an independently established trade, occupation, or business of the same nature as the Work to be performed hereunder.

**§ 22.5 Waiver.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**§ 22.6 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original as against any Party whose signature appears thereon, and all of which will together constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the original signatures, which may include facsimile or electronic signatures, of all the Parties reflected hereon as the signatories. All provisions contained in this Agreement will be binding on, inure to the benefit of and be enforceable by the respective successors and assigns of the Parties to the same extent as if each such successor and assign were named as a Party hereto.

**§ 22.7 Interpretation.** The Parties hereby waive California Civil Code Section 1654, or any successor statute, that provides that ambiguities are to be construed against the drafter of a contract. This Agreement shall be interpreted so as to give the fullest effect to its terms as expressed herein, without any ambiguities being construed against a Party or its agents. This Agreement shall be deemed jointly drafted and agreed to by the Parties.

**§ 22.8 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 22.9 Patriot Act.** Contractor warrants that: (1) Contractor is not in violation of any Anti-Terrorism Law; (2) Contractor is not, as of the date hereof: (A) conducting any business or engaging in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (B) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (C) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in, any Anti-Terrorism Law; and (3) neither Contractor nor any of its affiliates, officers, directors, shareholders, or members, as applicable, is a Prohibited Person. As used herein, "Anti-Terrorism Law" is defined as any law relating to terrorism, anti-terrorism, Executive Order No. 13224, and Title 3 of the USA Patriot Act, and any regulations promulgated under any of them. As used herein "Executive Order No. 13224" is defined as Executive Order No. 13224 on Terrorist Financing effective September 24, 2001, and relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism", as may be amended from time to time. "Prohibited Person" is defined as (1) a person or entity that is listed in the Annex to Executive Order No. 13224, or a person or entity owned or controlled by an entity that is listed in the Annex to Executive Order No. 13224; (2) a person or entity with whom Owner is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (3) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the United States Treasury Department Office of Foreign Assets Control. "USA Patriot Act" is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56), as may be amended from time to time.



**§ 22.10 OFAC Certification.** Contractor represents that: (a) Contractor is not now and has never been listed or named as a Blocked Person, and (b) Contractor is not now and has never been acting directly or indirectly for, or on behalf of, any Blocked Person. "Blocked Person" means any person, group, entity or nation designated by the United States Treasury Department as a terrorist or a "Specially Designated National and Blocked Person," or that is a banned or blocked person, entity, nation under any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. With regard to any employees or contractors of Contractor that perform any part of the Work, Contractor represents that: (a) such person(s) or entity(ies) is/are not now and has/have never been listed or named as a Blocked Person, and (b) such person(s) or entity(ies) is/are not now and has/have never been acting directly or indirectly for, or on behalf of, any Blocked Person.

**§ 22.11 No Third-Party Beneficiaries.** This Agreement does not create and shall not be construed as creating any rights enforceable by any person who is not a Party to this Agreement.

**§ 22.12 Independent Judgment; Advice of Counsel.** Each Party represents and warrants that he or she has relied wholly upon his or her own judgment, belief and knowledge in entering into this Agreement and each has had adequate opportunity to seek the advice of its, his, or her own attorney prior to entering into this Agreement.

**§ 22.13 No Offer.** Preparation of this Agreement by either Party or their attorney or agent and submission of same to the other Party shall not be deemed an offer to Agreement to the other Party. This Agreement is not intended to be binding until executed and delivered by all Parties hereto.

**§ 22.14 Additional Documents.** From time to time, and without any further consideration, the Parties agree to execute, acknowledge and deliver all such additional addenda, amendments, instruments, notices, and other documents, all in accordance with Applicable Requirements, as may be necessary to more fully and effectively carry out the purposes and intent of this Agreement.

**§ 22.15 Audit.** Owner reserves the right from time to time and at any time to have an independent audit conducted of Contractor's compliance with the terms of the Agreement, if the Owner reasonably believes such audit is necessary to ensure confidentiality, or financial or program accountability or integrity. Contractor will retain all records associated with the Work performed for a period of four years from the expiration, cancellation, or termination of the Agreement. Accordingly, Contractor agrees that Owner or its designated representative will have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement. Contractor agrees to allow interviews of any Contractor Parties who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of Owner to audit in any subcontract related to the performance of the Agreement.

**§ 22.16 Survival.** The provisions of Articles 9, 20, 21, 22, 23, 24, 25, (Warranties and Representations, Indemnity, Confidentiality, Intellectual Property Rights, Dispute Resolution, Termination of Agreement, Conflict of Interest, Audit, Assignment and General Provisions), and any other terms of this Agreement that by their terms expressly survive, will survive the cancellation, termination, or expiration of this Agreement.

**§ 22.17 Owner Furnished Information.** If Owner is required to furnish any information in connection with this Agreement, Owner shall furnish this material for informational purposes only, and Owner does not warrant or guarantee that such material or information is accurate in all respects, and Contractor shall perform, and/or recommend to Owner, such verification of data and additional investigation as may be necessary to properly perform the Work.

## ARTICLE 23 CONFIDENTIALITY

**§ 23.1** Contractor agrees to maintain in strictest confidence any non-public, proprietary, or confidential information, or material disclosed or provided by Owner to Contractor or any of Contractor's agents, employees, Subcontractors, attorneys, and accountants ("**Contractor Representatives**"), either orally, in writing, electronically or in any other form or medium, or that Contractor or any Contractor Representatives may otherwise receive access to in connection with the Work or the Contract, concerning any aspect of the affairs of Owner, and regardless of whether marked as confidential, including by way of example and without limitation any information or material pertaining to Owner's operations, processes, plans, policies, procedures, Board of Trustees, leadership, management, employees, personnel, contractors, volunteers, legal and regulatory affairs, financial data, licensees (former and current), applicants, and

relationships with third-parties ("**Confidential Information**"). Confidential Information also includes any notes, analyses, compilations, studies or other material, Work Product, deliverables or documents prepared by Contractor or any Contractor Representatives which contain, reflect, or are based, in whole or in part, on the Confidential Information. Confidential Information also includes any confidential or proprietary information of any third-party who may disclose such information to Owner in the course of Owner's affairs. Confidential Information will also include the existence and terms of this Agreement. Confidential Information does not include information that: (a) is or becomes generally available in the public domain through no act or omission of Contractor or any Contractor Parties; (b) is lawfully disclosed to Contractor or the Contractor Representatives by a third-party without restrictions on disclosure; or (c) was in Contractor or the Contractor Representatives' lawful possession, as established by documentary evidence, prior to the disclosure by the Owner.

§ 23.2 Contractor will safeguard such Confidential Information, will not disclose or use such Confidential Information without Owner's prior written consent at Owner's sole and absolute discretion, and will take all necessary steps to protect such Confidential Information. Contractor will only use and disclose Confidential Information to Contractor Representatives requiring such Confidential Information to perform the Work pursuant to this Agreement. Contractor will require each of the Contractor Representatives to execute a written agreement containing obligations of confidentiality substantially equivalent to those in this Agreement. All Confidential Information furnished to Contractor by Owner is the sole and exclusive property of Owner or, where applicable, other third-parties. Contractor will notify Owner immediately of any unauthorized use, access, or disclosure of Confidential Information and take all commercially reasonable steps to prevent further use, access, or disclosure.

§ 23.3 Contractor will not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third-party without the prior written consent of Owner in each instance. If any person or entity requests by a subpoena or court order any information or materials relating to this Agreement which is within the possession, custody, or control of Contractor (or the possession, custody, or control of any Contractor Representatives), then prior to any disclosure of Confidential Information, Contractor will promptly inform Owner of such request and cooperate with Owner to the extent Owner objects or moves to quash such request or subpoena. Notwithstanding any contrary provision contained herein, Contractor may disclose Confidential Information to the extent that such disclosure is required by law or regulation, or is pursuant to a valid order of a court of competent jurisdiction or an authorized governmental authority; provided that Contractor: (a) immediately notifies Owner in writing of the disclosure request and, to the extent not prevented from doing so by an applicable government authority, provides Owner a copy of the order by the applicable court or governmental authority so Owner may seek a protective order or another appropriate remedy; (b) cooperates with Owner if Owner seeks a protective order or other appropriate remedy preventing or limiting disclosure; and (c) seeks confidential treatment of any Confidential Information required to be disclosed before disclosure. If Owner cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, Contractor will work with Owner to disclose the requested Confidential Information only to the extent required by such law, regulation, or order.

§ 23.4 Contractor acknowledges that irreparable harm can result to Owner and to third parties by disclosure or threatened disclosure of Confidential Information that cannot be adequately relieved by money damages alone. Accordingly, Owner may seek equitable remedies including a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction, without the necessity of showing actual damages and without the necessity of posting any bond or other security. The equitable relief will be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief. If Owner incurs any loss or liability arising out of disclosure or use of any Confidential Information by any one or more Contractor Representatives other than as authorized herein, that disclosure or use will be deemed to have been by Contractor for purposes of determining whether Contractor breached any of its obligations under the Agreement.

§ 23.5 Contractor will not issue any public announcements or statements related to this Agreement or the Work performed for Owner, or engage in any publicity or advertising related to the same without obtaining the prior written consent of Owner.

§ 23.6 Without the prior written permission of Owner at its sole and absolute discretion, Contractor shall not include any information about the Work, the Project, the Property, the Building, Landlord, or Owner, or other work done in connection with this Agreement (including without limitation representations, drawings, photographs, videos, etc., of any design or work based on that design) among Contractor's promotional and professional materials, including Contractor's website. Such permission may be granted (at Owner's sole discretion) on a case-by-case basis after

receiving from Contractor a written request for such permission that includes (1) the proposed representations, illustrations, photos, etc., and (2) a description regarding in which promotional and/or professional materials Contractor proposes to include the representations. Contractor shall not have the right to place any promotional signs of any kind at the Building or Project. If Contractor reasonably requests, Owner shall provide professional credit for Contractor in Owner's promotional materials that include the Project.

§ 23.7 Without limiting the other requirements of this Agreement pertaining to Subcontractors, Contractor shall not retain or contract with any Subcontractor to furnish Work and access Confidential Information without meeting all requirements of this **Section 23.7**. All Subcontractors must be approved in advance in writing by Owner, such approval to be granted in Owner's sole discretion. In advance of performing any Work or receiving any Confidential Information, all Subcontractors shall execute a written agreement reasonably satisfactory to Owner: (a) sufficient to secure compliance by such Subcontractors with the obligations of confidentiality concerning Confidential Information as set forth in this Article 23; (b) in accordance with Article 24, acknowledging such Subcontractor's obligation to transfer and/or assign any rights, title, and interest to all materials and Work Product in connection with performance hereunder; and (c) effecting assignments of all Intellectual Property Rights concerning the Work Product to Owner as set forth in Article 24. Owner, upon request, may review such agreements at any time before or after execution by such Subcontractors to ensure compliance with this Agreement.

§ 23.8 The provisions of this Article 23 shall survive the expiration or termination of this Agreement.

## ARTICLE 24 INTELLECTUAL PROPERTY RIGHTS

§ 24.1 **Intellectual Property Rights Defined.** For purposes of this Agreement, the term "**Intellectual Property Rights**" means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, authorship, integrity and other similarly afforded "moral" rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

### § 24.2 Work Product.

§ 24.2.1 Contractor recognizes and agrees that all right, title, and interest, including all Intellectual Property Rights, which may be prepared, procured, or produced in whole or in part in, or resulting from, the Work rendered by Contractor pursuant to this Agreement, including, without limitation, any and all deliverables, designs, specifications, drawings, instructions, directions, analysis, research, proposals, materials, reports, plans, other writings, and other work product (collectively referred to as "**Work Product**") will be owned by Owner. Contractor warrants that all Work Product is and will be Contractor's original work (except for material in the public domain or provided by Owner, and except as otherwise agreed to by Owner in the Contract Documents) and does not and will not violate or infringe upon the intellectual property rights or any other rights of any person, firm, corporation, or other entity. If any Work Product or other deliverable fails to conform to the standard specified above, Contractor, at its sole expense, shall promptly correct the defective deliverable, and this obligation shall survive expiration or termination of this Agreement. This remedy is cumulative of any and all other remedies to which Owner may be entitled pursuant to this Agreement and Applicable Requirements.

§ 24.2.2 To ensure that the Work Product becomes the sole property of Owner, in consideration of the mutual promises contained in this Agreement, Contractor hereby agrees to transfer, in perpetuity, to Owner all of the right, title, and interest in the Work Product, in the United States of America and throughout the world, and hereby assigns any and all renewals and extensions of each such copyright that may be secured under the laws now or hereafter. Contractor will execute, at Owner's request and expense, during and after the term of this Agreement, all further actions including execution and delivery of documents reasonably required to perfect the foregoing rights in Owner. In the event Contractor fails to execute any documents, Contractor appoints Owner as its attorney-in-fact to execute such documents on Contractor's behalf (which appointment shall be deemed coupled with an interest). Contractor hereby waives or transfers any and all moral rights, including without limitation any right to attribution, identification, integrity, disclosure, authorship or any other rights that may be known as "moral rights," or limitation on a subsequent

modification that Contractor (or any Contractor Representatives) has or may have in the Work Product or any part thereof.

**§ 24.3 No Transfer of Title in and to Contractor's Pre-Existing IP.** Notwithstanding the foregoing, Owner acknowledges that independent of this Agreement, Contractor has created, acquired, or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, or techniques (collectively, "**Pre-Existing IP**"). Contractor warrants that (a) Contractor owns all right, title, and interest in, or otherwise has full right and authority to permit the use of any Pre-Existing IP; (b) the Pre-Existing IP does not infringe the rights of any third party, and use of the Pre-Existing IP as well as any of Contractor's intellectual property rights in connection with the Work does not and will not violate the rights of any third parties; (c) Contractor will comply with the terms and conditions of any licensing agreements which govern the use of third party materials; and (d) Contractor will comply with all Applicable Requirements as they relate to the Work, Work Product, and other deliverables contemplated under this Agreement. Owner and Contractor intend that Contractor's interests in or title to such Pre-Existing IP will remain vested in Contractor; provided, however, that to the extent that the Work or the Work Product incorporates any Pre-Existing IP, Contractor hereby grants to Owner a worldwide, perpetual, non-exclusive, fully paid-up, royalty-free, irrevocable right and license to use such Pre-Existing IP as incorporated into such Work or Work Product to enable Owner to have full use of the Project and such Work Product as contemplated by this Agreement, including, without limitation, the right to run, execute, copy, modify, create derivative works, display, distribute, and sublicense such rights. Contractor represents that its rights to any Pre-Existing IP are sufficiently broad to meet the requirements of this section.

**§ 24.4 No Transfer of Title in and to State Bar's Pre-Existing IP.** As between Contractor and Owner, Owner is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, Confidential Information and other materials provided to Contractor by Owner ("**Owner Materials**"), including all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any Owner Materials except solely during the term of this Agreement to the extent necessary to perform Contractor's obligations under this Agreement. All other rights in and to Owner Materials are expressly reserved by Owner. Contractor has no right or license to use Owner's trademarks, service marks, trade names, logos, symbols, or brand names.

**§ 24.5 Third Party Materials.** As used in this Agreement, "**Third Party Materials**" means proprietary third-party materials which are incorporated into the Work or the Work Product. All Third-Party Materials are the exclusive property of their respective owners. Contractor must inform Owner of all Third-Party Materials that may be required to perform the Work or otherwise integrated into the Work Product. Under such circumstances, Contractor will inform Owner of any need to license and unless otherwise agreed to in writing by Owner, Contractor will obtain the license(s) necessary to permit Owner's use of the Third-Party Materials consistent with the usage rights granted herein. In the event Contractor fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third-Party Materials, Vendor hereby indemnifies, saves and holds harmless Owner and the Owner's Related Parties from any and all Claims arising out of any claim, demand, or action by a third party arising out of Contractor's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Work or the Work Product.

**§ 24.6 Survival.** All of Contractor's obligations under this Article 24 shall survive the expiration or termination of the Agreement.

## **ARTICLE 25 - CONFLICT OF INTEREST**

Contractor understands and acknowledges that Owner is a public corporation and, consequently, certain Owner employees and volunteers are subject to government-mandated conflict-of-interest provisions. These provisions concern, among other things, accepting gifts or gratuities from potential contracting entities and contracting with entities owned or controlled by Owner, certain persons associated with Owner, or its employees. With this understanding, Contractor will not take any action which creates a situation which would or which could appear to result in a violation of the conflict-of-interest code provisions by any Owner employee or volunteer. Contractor represents that Contractor has been provided an adequate opportunity to review the conflict-of-interest code adopted by Owner, available at: <https://www.calbar.ca.gov/Portals/0/documents/Conflict-of-Interest-Code-State-Bar.pdf>. Further, Contractor certifies that its employees and officers of its governing body will avoid any actual or potential

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conflicts of interest and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement has or will have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

# **Additions and Deletions Report for** **AIA® Document A104® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:33:46 PT on 03/25/2024.

## **PAGE 1**

**AGREEMENT** made as of the    day of    in the year Two Thousand Twenty-Four

...

**BETWEEN** the ~~Owner~~: "**Owner**":  
(~~Name, legal status, address and other information~~)  
THE STATE BAR OF CALIFORNIA  
Attn: Procurement  
845 S. Figueroa St.  
Los Angeles, CA 90017

...

and the ~~Contractor~~: "**Contractor**":

...

[\*\*contact]

for the following ~~Project~~: "**Project**":  
(*Name, location and detailed description*)

Certain tenant improvements to the commercial office space commonly known as 180 Howard Street, Floors 1, 4, 5 and 6, San Francisco, CA 94105, as more particularly described in the Contract Documents.

...

**The "Architect":**

Revel Architecture & Design  
417 Montgomery St., 7th Floor  
San Francisco, CA 94104

**The "Owner's Representative":**

The Architect: \*contact

**The "Landlord":**

180 Howard Owner, LLC  
c/o Ridge Capital Investors, LLC  
44 Montgomery Street, Suite 1910  
San Francisco, CA 94104

Attn: Trevor Wilson, Managing Director  
(Name, legal status, address and other information)With a copy to:  
David Karol  
Managing Director  
Ridge Capital Investors, LLC  
44 Montgomery Street, Suite 1910  
San Francisco, CA 94104  
D: 415-967-7802  
The Owner and Contractor agree as follows.C: 415-672-5684  
dkarol@ridgecapitalinv.com

**PAGE 2**

**21 CLAIMS AND DISPUTES**

**22 ADDITIONAL PROVISIONS**

EXHIBIT A – DETERMINATION OF THE COST OF THE WORK **23 CONFIDENTIALITY**

**24 INTELLECTUAL PROPERTY RIGHTS**

**25 CONFLICT OF INTEREST**

The Owner and Contractor (together the "**Parties**" and each a "**Party**") agree as follows.

**PAGE 3**

§ 2.1 The date of commencement "**Date of Commencement**" of the Work shall be:

...

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the  The date of this Agreement.

§ 2.2 Upon Contractor's receipt of items 1, 2 and 3 contained in **Section 2.1** above, Contractor shall commence the Work. The Contract Time shall be measured from the ~~date of commencement.~~ official Date of Commencement.

...

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- Not later than ( ) calendar days from the date of commencement of the Work.
- By the following date:

§ 2.3.1 The "**Contract Time**" is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in this Agreement. Subject to adjustments of the Contract Time as provided in the Contract

Documents, The Contractor shall achieve Substantial Completion of the entire Work ("Scheduled Substantial Completion Date"):

By the following date: **October 6, 2024**

...

Contractor shall achieve Final Completion (as defined in **Section 15.7.1** below) and shall cause all conditions for final payment under **Section 4.2.1** to have been satisfied, no later than **November 6, 2024 ("Outside Completion Date")**.

~~§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.~~

~~§ 2.3.2 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, damages for delay shall be assessed as set forth in Section 3.5.~~

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.) "**Contract Sum**" shall be the following:

Stipulated Sum, in accordance with **Section 3.2** below

Cost of the Work plus the Contractor's Fee, in accordance with **Section 3.3** below

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with **Section 3.4** below

(Based on the selection above, complete ~~Section 3.2, 3.3 or 3.4~~ below.)

§ 3.2 The Stipulated Sum shall be (\$ \_\_\_\_\_), subject to additions and deductions as provided in the Contract Documents. Contractor bears the risk of any inaccurate assumptions, estimates, measurements or other matters upon which its price may have been based. Contractor acknowledges and agrees that the Contract Sum includes all Work indicated in and reasonably inferable from the Contract Documents, including, without limitation, work by Subcontractors (defined below) contracted with by Contractor in connection with the Agreement. This is a stipulated sum contract and, therefore, the Contract Sum shall include all items and services necessary for the proper execution and completion of the Work and shall be no more than the amount stated above, including all applicable taxes. The Contract Sum is broken down into components and listed in the Schedule of Values, to be provided by Contractor. The Contract Sum shall be deemed inclusive of all of Contractor's direct and indirect costs of performing the Work, including without limitation all compensation to the employees, contractors, and agents of Contractor and any Subcontractors (including payroll, salary, withholding taxes, workers' compensation insurance, contributions, assessments and benefits), cost of labor and materials, costs of equipment and machinery, costs of insurance, taxes (including sales, consumer, use and similar taxes relating to the Work), and Contractor's overhead and profit.

**PAGE 4**

~~§ 3.3 Cost of the Work Plus Contractor's Fee~~

~~§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~

~~§ 3.3.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)~~

~~§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price [Intentionally Omitted].~~

~~§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~



**§ 3.4.2 The Contractor's Fee:**

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*

**§ 3.4.3 Guaranteed Maximum Price**

**§ 3.4.3.1** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$ ), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

**§ 3.4.3.2** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

**§ 3.4.3.3 Unit Prices, if any:**

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:**

*(Identify each allowance.)*

Item	Price
------	-------

**§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:**

**§ 3.4.3.6** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.4.3.7** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

**§ 3.5 Liquidated damages, if any: Damages for Delay.**

**§ 3.5.1** It is critically essential that Contractor complete all Work on schedule. Contractor acknowledges and agrees that Owner will suffer significant damages if Contractor does not complete the Work by the Scheduled Substantial Completion Date. Owner, as tenant under a lease agreement with Landlord dated November 13, 2023 ("Lease"), is occupying a temporary space in the Building pending Final Completion of the Work and Owner's ability to occupy the Project for its intended purposes. Without prejudice to Owner's other rights and remedies at law and in equity for Contractor's default or breach of this Agreement, with respect to Contractor defaults or breaches due solely to delay in

completing the Work, Owner shall be entitled to recover from Contractor, and Contractor shall pay to Owner, as damages for delay (which the parties agree is a reasonable estimation of Owner's damages for delay), and not as a penalty, the amounts calculated in the following **Section 3.5.2** and **Section 3.5.3**.

**§ 3.5.2** Owner shall be entitled to recover from Contractor, and Contractor shall pay to Owner, as liquidated damages for delay (which the parties agree is a reasonable estimation of Owner's damages for delay), and not as a penalty, the sum of \$2,000 per day for each day completion of the Work is delayed after the Scheduled Substantial Completion Date, and the sum of \$3,000 per day for each day completion of the Work is delayed after the Outside Completion Date, in addition to damages for delay computed in accordance with **Section 3.5.3** below.

~~(Insert terms and conditions for liquidated damages, if any.)~~ **§ 3.5.3** Owner's "**Temporary Space Expiration Date**" under the Lease is November 13, 2024. For each day completion of the Work is delayed after the Temporary Space Expiration Date, in addition to the damages payable under the foregoing **Section 3.5.2**, Contractor shall pay to Owner the amount of Owner's actual damages to Landlord under the Lease, calculated as follows: (a) holdover rental damages in the following sum: (i) for the first month, \$127,436.45 per month, calculated daily; (ii) for the second month, \$254,872.91 per month, calculated daily; and (iii) for each month thereafter, \$509,745.83 per month, calculated daily; plus (b) excess rent Owner pays for its temporary space in excess of its contract rate for its completed long-term space in the following sum: (i) for the first year, \$144,294.16 per month, calculated daily; (ii) for the second year, \$133,330.61 per month, calculated daily; and (iii) for each year thereafter, the actual difference in rent as stated in the Lease; plus (b) Owner's actual charges for basic operating costs, property taxes, and other amounts due to Landlord under the Lease, to the extent they exceed the amount that would otherwise be due to Landlord if Owner was occupying the long-term space. In the event Owner receives any waiver or reduction in the damages due to Landlord described in this **Section 3.5.3**, such waiver or reduction shall be proportionately reflected in Contractor's damages due to Owner hereunder.

**§ 3.5.4** Payment of damages specified in this **Section 3.5** shall be due and payable by Contractor to Owner within five (5) days after written demand therefor from time to time and at any time, and shall be in lieu of and replacement of any other damages that Owner might claim solely from the failure of Contractor to complete the Work on or before the dates specified in the foregoing **Section 3.5.2** and **Section 3.5.3**, but shall be without prejudice or limitation to Owner's rights and remedies for other Contractor defaults or breaches, time being of the essence as to all of the foregoing dates. At Owner's sole election, Owner may offset in whole or in part any damages for delay against amounts due to Contractor under this Agreement.

## PAGE 5

**§ 4.1.1** Based upon Applications for Payment submitted to ~~the Architect~~ Architect and the Owner's Representative by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 4.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

**§ 4.1.3** Provided that an Application for Payment is received by the Architect not later than the 1<sup>st</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~day of the~~ month, 30<sup>th</sup> day thereafter. If an Application for Payment is received by the Architect after the date fixed above, payment of the certified amount to the Contractor not in dispute shall be made by the Owner not later than ~~(—)~~ 30 days after the Architect receives the Application for Payment.

~~(Federal, state or local laws may require payment within a certain period of time.)~~

**§ 4.1.4** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

ten percent (10%) ("**Retainage**").

~~§ 4.1.5~~ Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

~~—%~~ of three percent (3%) per annum.

...

~~§ 4.2.1~~ Final payment, constituting the entire unpaid balance of the Contract ~~Sum, Sum~~ (except for the balance of Retainage), or such portion thereof not in dispute, shall be made by the Owner to the Contractor ~~when~~ within thirty (30) days after all of the following conditions have been satisfied:

- ~~.1~~ the Contractor has achieved Final Completion (as defined below) and has fully performed and completed the Work (including completion of all Punch List items) in accordance with the Contract and to Owner's satisfaction, except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment; ~~payment pursuant to this Agreement;~~
- ~~.2~~ the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.3 and approved in writing by Owner;
- ~~.3~~ Owner is in receipt of executed final conditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work as well as executed final unconditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work previously paid for;
- ~~.4~~ Owner has received final written approval of the Work by all applicable government authorities, including without limitation a Temporary Certificate of Occupancy;
- ~~.5~~ Contractor has submitted to Architect and Owner's Representative, if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- ~~.6~~ Contractor has delivered to Owner: (A) all Project Close-Out Documentation, and (B) copies of all warranties, guaranties, and operating manuals and information relating to all improvements, equipment, and systems installed in the Project as part of the Work.
- ~~.7~~ a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.7 ~~The Work, Project and surrounding area have been cleaned up and are free from trash, rubbish, debris, dirt, smudges, tools and equipment, and leftover material and inventory and a final cleaning has been completed;~~
- ~~.8~~ Owner has accepted the Work (including all Punch List Work) in writing; and
- ~~.9~~ Contractor has recorded a Notice of Completion, following final inspection, in accordance with California Civil Code Section 8182.

~~§ 4.2.2~~ The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

~~§ 4.2.2~~ Owner's final payment to Contractor of the balance of Retainage, shall be due forty-five (45) days after satisfaction of all of the foregoing conditions in **Section 4.2.1**. Final payment to Contractor and Contractor's acceptance thereof shall constitute an irrevocable, unconditional release and waiver of all claims by Contractor against Owner except those previously made in writing and presented to Owner. Within five (5) Business Days after final payment, Contractor shall deliver to Owner executed unconditional lien releases and waivers from Contractor and each Subcontractor who performed or supplied any part of the Work, to the extent not previously delivered, and this obligation shall survive completion and termination of this Agreement.

**§ 4.3 Lien Releases and Waivers.** All lien releases required or issued pursuant to this Agreement shall meet the form requirements of California Civil Code Sections 8132-8138. The lien releases required by this Agreement, when signed and submitted, shall also constitute a waiver of any right that the submitting entity (or person, if a sole

proprietorship) may have to file a design professionals lien under California Civil Code Sections 8300-8319. Each lien release shall be on the letterhead of the entity or person submitting the lien release. Each lien release is effective as against the entity submitting the lien release if it is signed by any employee, representative or agent of the entity. All lien releases shall identify the address of the released Project and Building.

#### **§ 4.4 Other Payment Terms.**

**§ 4.4.1** All payments for Subcontractor Work may, at Owner's sole discretion, be made directly to the Subcontractor in each case upon presentation by the Subcontractor to Architect and Owner's Representative of all executed lien waivers and releases from such Subcontractor, or others listed on such Subcontractor's affidavit or sworn statement, as and where required under this Agreement; or Owner may issue joint checks for payment, made out to both Contractor and any Subcontractors involved in such Work.

**§ 4.4.2** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within two (2) Business Days after Owner's written request, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Owner's Representative shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors shall be held by the Contractor in trust for those Subcontractors who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

#### **PAGE 6**

For any ~~claim-Dispute~~ subject to, but not resolved by, mediation pursuant to ~~Section 21.5,~~ **21.4**, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

— Arbitration pursuant to Section 21.6 of this Agreement

— Litigation in a court of competent jurisdiction

— Other *(Specify)*

~~If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction. Arbitration pursuant to Section 21.5 of this Agreement.~~

#### **PAGE 7**

**§ 6.1** The ~~Contract Documents-~~ **"Contract Documents"** are defined in **Article 7** and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below. Any conflicts between the Contract Documents shall be resolved in the following order of priority: (1) this Agreement; (2) the Building Rules & Regulations; (3) the Specifications; (4) the Drawings; (5) the Addenda; (6) all other Contract Documents.

**§ 6.1.1** The ~~Agreement-~~ **"Agreement"** is this executed AIA Document A104™-2017, ~~Standard Modified~~ Abbreviated Form of Agreement Between Owner and Contractor and Contractor and the below listed exhibits.

**§ 6.1.2** ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

...  
§ 6.1.4 The Specifications: "Specifications":

...  
§ 6.1.5 The Drawings: "Drawings":

...  
Portions of Addenda Documents relating to bids, proposals, or bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

...  
 Exhibit A, Determination of the Cost of the Work.

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.2 Other documents, if any, listed below:

...  
 Landlord's Building Rules & Regulations; Landlord's Asbestos Notification

...  
The ~~Contract Documents~~ "Contract Documents" are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A ~~Modification~~ "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect, Owner, Architect, or Owner's Representative~~. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**PAGE 8**

The Contract Documents form the ~~Contract~~ "Contract" for Construction. The Contract represents the entire and integrated agreement between the ~~parties~~ Parties hereto and supersedes prior or contemporaneous negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

...

The term "**Work**" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, supervision, materials, supplies, tools, equipment, machinery, transportation, and other facilities or services provided or to be provided by the Contractor to fulfill the Contractor's obligations, obligations, as well as all other obligations of Contractor under this Agreement that are required to achieve Final Completion and to satisfy the requirements for final payment as described in Section 4.2.1 below. The Work may constitute the whole or a part of the Project.

...

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

...

**§ 7.5.1** ~~The Architect and the Architect's~~ Owner and Owner's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. ~~The Contractor, Subcontractors, Sub-subcontractors, and suppliers~~ Contractor and Subcontractors shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's~~ Owner and Owner's consultants' reserved rights.

**§ 7.5.2** ~~The Contractor, Subcontractors, Sub-subcontractors and suppliers~~ Contractor and Subcontractors are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to **Sections 7.6 and 7.7**, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. ~~The Contractor, Subcontractors, Sub-subcontractors, and suppliers~~ Contractor and Subcontractors may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect and the Architect's~~ Owner's consultants.

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model ~~and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

The invalidity of any term or provision of the Contract Documents shall not invalidate the Contract or its remaining terms and provisions. If it is determined that any term or provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision

legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the ~~parties~~ Parties' intentions and purposes in executing the Contract.

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**§ 7.9.1** Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203 2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.) **Notice Requirements.** All notices required or permitted by this Agreement shall be in writing and may be delivered and shall be deemed sufficiently given only if served in a manner specified in this Section. The addresses noted below shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice. A copy of all notices to Owner shall be concurrently transmitted to such party or parties at such addresses as Owner may from time to time hereafter designate in writing.

**§ 7.9.2 Date of Notice.** Depending on which of the following delivery methods is used (which list is exclusive, meaning no other methods may be used), that notice shall be deemed effective upon the number of days specified below for each delivery method: (i) if sent by Certified or first-class mail, deemed effective two (2) Business Days after deposited (as determined by the postmark), sufficient postage and fees prepaid, in the United States mail; (ii) if sent by Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, or other comparable overnight courier service, for guaranteed overnight delivery, all applicable charges prepaid or charged to the sender's account, deemed effective the next business day; (iii) if personally delivered to the recipient, deemed effective the date of recipient's actual receipt; or, (iv) if sent by email, and such transmission is electronically confirmed to the sender (by absence of notice of undeliverability, out-of-office reply, or other failure of transmission) or by the recipient as having been successfully transmitted, deemed effective the date of such receipt if received before 5:00 P.M. on a Business Day, otherwise deemed effective on the next business day.

To Owner: THE STATE BAR OF CALIFORNIA  
Attn: Procurement  
845 S. Figueroa St.  
Los Angeles, CA 90017  
\_\_\_\_\_ With copies to:

SSL Law Firm LLP  
505 Montgomery St., Ste. 620  
San Francisco, CA 94111  
Attn: Daniel Dersham (ddersham@sslfirm.com)

To Architect: REVEL ARCHITECTURE & DESIGN  
417 Montgomery Street, 7th Floor  
\_\_\_\_\_ San Francisco, CA 94104

To Contractor: [\*\*contact]

**§ 7.9.2 Notice of Claims** Notwithstanding the foregoing, a Notice of Dispute shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the ~~party~~ Party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

...

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all~~

times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 7.10.1 Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and Owner's Representative and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Contractor warrants that it and its personnel, employees, and Subcontractors have the education, qualifications, expertise, experience, and ability necessary to perform the Work in a diligent, timely, professional, and workmanlike manner consistent with the highest industry standards for similar services. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

**PAGE 10**

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately. The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site. Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall conduct its own diligence and investigations, and exercise proper precautions relating to the safe performance of the Work.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

~~§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.~~

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, then without prejudice to Owner's available rights and remedies including without limitation those set forth under Article 20, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect have including without limitation those set forth under Article 20, and during or after the term of this Contract, correct such default or neglect at Contractor's sole cost and expense. Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, and the Owner shall be entitled, without prejudice to other available rights and remedies, to recover from Contractor or deduct from payments then and thereafter due the Contractor, to the extent reasonably necessary to reimburse the Owner for the reasonable cost Owner, all reasonable costs of correcting such deficiencies, including without limitation the Owner's expenses and compensation for the Architect's additional services additional services of Architect or Owner's



Representative, or of Owner's Separate Contractors, architects, engineers, or consultants, made necessary by such default, neglect, or failure, or failure, and the cost of materials and labor for necessary removal, uncovering, replacement, and reconstruction of nonconforming Work. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner within 10 days after written demand. If the Contractor disagrees with the actions of the Owner, Architect, or the Architect, Owner's Representative, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21. Notice of Dispute pursuant to Article 21. The provisions of this Section shall survive completion and termination of this Agreement.

**§ 8.4 Owner as Tenant.** The Parties acknowledge that Owner is a tenant in the Project, and that Landlord is the owner of the building containing the Project ("Building"). In Landlord's Building Rules & Regulations, Owner is referred to as "Tenant". Contractor acknowledges that all Work contemplated under the Contract Documents, including the Construction Schedule and Contractor's insurance coverage, is subject to Landlord's prior written consent pursuant to the terms of the Lease, and Contractor covenants to reasonably cooperate, at no additional cost to Owner, with providing notices, requests for consent, and other efforts applicable to obtaining Landlord's consent at any stage of the Work.

...

### **§ 9.1**

#### **Review of Contract Documents and Field Conditions by Contractor Review of Contract Documents and Field Conditions by Contractor; Preconstruction and Bidding Services**

**§ 9.1.1** Execution of the Contract by the Contractor is a representation that the shall be deemed an irrefutable representation by Contractor that Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed-performed, and correlated personal observations with requirements of the Contract Documents, including, without limitation, (A) the location, condition, layout, and nature of the Project site and surrounding areas, (B) generally prevailing climatic conditions, (C) anticipated labor supply and costs, (D) availability and cost of materials, tools, and equipment, and (E) other similar issues. The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (X) take field measurements and verify field conditions, and Building systems standards and conditions; (Y) carefully compare this and other information known to the Contractor with the Contract Documents; and (Z) promptly report any and all observed, discovered, reasonably apparent, or suspected errors, defects, inconsistencies, or omissions in the Contract Documents to the Owner; provided, however, that Contractor is not responsible for the negligence of any contracted professional or consultant of Owner who prepared the Drawings and Specifications. In addition, the Contractor hereby specifically acknowledges and declares that the Contract Documents are sufficient to have enabled it to determine the cost of the Work and that the Drawings and Specifications and all addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with Applicable Requirements (defined below), and otherwise to fulfill all of its obligations under the Contract Documents. Owner assumes no responsibility or liability for the physical condition or safety of the Work site. Contractor shall be solely responsible for providing a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any breach of the representations in, or failure by Contractor to have complied with the requirements of, this Section.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any-note any reasonably apparent conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect-Architect and Owner's Representative any errors, inconsistencies, or omissions discovered by or made known to or which are reasonably apparent to the Contractor as a request for information in such form as the Architect-Architect or Owner's Representative may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Notwithstanding the foregoing, if the Contractor performs or causes the performance by any Subcontractor of any construction activity or other work with knowledge that any of the Contract Documents contains an error, inconsistency or omission, the Contractor shall be solely responsible for such performance at its sole cost and shall bear the sole cost for correction hereof.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities,~~ Applicable Requirements (unless Contractor is also serving as Architect or the Owner's design professional), but the Contractor shall promptly report to ~~the Architect any nonconformity discovered by Architect and Owner's Representative any nonconformity discovered by,~~ reasonably apparent to, or made known to the Contractor as a request for information in such form as ~~the Architect may require.~~ Architect or Owner's Representative may require.

§ 9.1.4 Preconstruction Services. Contractor's Work shall include all necessary or reasonably appropriate preconstruction services associated with the Project.

§ 9.1.4.1 Contractor shall assist, at no additional cost to Owner, in preparation of building site survey reports in conjunction with Architect. Evaluation reports will include, but not necessarily be limited to:

- .1 Building conditions.
- .2 Proximity to sources of vibration.
- .3 Condition of existing walls, windows, slab heights, doors & hardware, window coverings, etc.
- .4 Accessibility issues, path of travel, restrooms, etc.
- .5 Assist with building mechanical systems evaluation – system type, age of equipment, distribution, specialty systems.
- .6 Assist with building electrical systems evaluation – service capacity, electrical distribution, existing code violation, etc.
- .7 Building Fire & Life Safety Systems – condition of existing sprinklers system, fire alarm annunciation, pull stations, strobes & horns, areas of refuge, etc.
- .8 Technology & Data Infrastructure – riser closet condition and capacity, fiber status, MPOE condition.

§ 9.1.4.2 Additional Contractor preconstruction obligations shall include, without limitation:

- .1 Review test fit plans.
- .2 Prepare a conceptual budget for the project based on the test fit plan, space program, and available project information.
- .3 Prepare preliminary procurement and construction schedules, budgets and value engineering recommendations based on Architect's pricing plans which will indicate millwork, glass, floor & wall finish selections, AV systems, video-teleconferencing, special detailing and special/above standard items (as applicable).
- .4 Assist Architect and Owner's design team with the development of specifications, alternatives and budgets during the engineering and architectural design development process.
- .5 Review proposed details and specifications to identify pricing options, lead times and generally assist in "value engineering".
- .6 Develop and revise project budgets and schedules.
- .7 Coordinate the work of outside (N.I.C.) vendors as may be required to maintain the Project schedule (e.g., telecommunications/data equipment and cabling contractors, audio-visual equipment installers, furniture installers, security system installers, etc.).
- .8 Confirm project "constructability", by ensuring that all specified materials are available when needed, that drawings and details are appropriate and buildable, and that all project information is complete and in a satisfactory format for sub trade bidding.
- .9 Conduct periodic constructability reviews, value engineering, phasing strategies, updated construction schedules, budgets, labor rates, and unit costs based on design development documents.
- .10 Meet to review Project scope and plan check/permit procedures with municipal agencies.
- .11 If deemed necessary by Owner or Architect, identify pre-purchase material or equipment as required by lead-time or availability and as directed by Architect prior to the selection of subcontractors.

§ 9.1.5 Bidding and Permit Phase Services. Contractor's Work shall include all necessary or reasonably appropriate bidding phase and permit phase services associated with the Project, including without limitation the following:

- .1 Submit plans to governmental agencies (other than initial plan check) as required for approval and provide follow-up as necessary to receive permits inspections, and/or certificates of occupancy on an expedited basis.
- .2 Prepare scope of work and phasing for major trades.
- .3 Develop subcontractor/supplier bid list and invitations in accordance with, inasmuch as possible, DEI goals and objectives of Owner, i.e., the State Bar of California.
- .4 Conduct job walks of the existing and new premises.
- .5 Obtain competitive bids from approved Subcontractors.
- .6 Assist in coordinating bids from Owner's vendors into the procurement project schedule.
- .7 Provide Subcontractor bid analysis, recommendations, and construction agreement. Bid pricing shall be in CSI format including all labor, materials, temporary work including protection of existing improvements, and anything else necessary for construction, completion and warranties for the works in accordance with the Agreement.

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**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 9.2.2** The Contractor shall be responsible to the Owner for intentional or negligent acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. Contractor shall retain control of its employees, Subcontractors, and other Contractor Parties it assigns to the Work of the Project; provided, however, that if Owner becomes dissatisfied with the performance of any Contractor Parties performing the Work, Owner may notify Contractor of the details of the unsatisfactory performance and the Parties will cooperate to remedy the problem as soon as reasonably possible. If Owner makes such a request, the problem is not timely remedied to Owner's satisfaction, Contractor shall reassign any Contractor Parties who are the subject of the State Bar's dissatisfaction and instead perform the Work through replacement Contractor Parties that are satisfactory to Owner.

**§ 9.2.3** Contractor shall provide a full-time foreman or superintendent who shall be on site at all times during the performance of the Work; and shall provide Owner, Architect, Owner's Representative, and Landlord with the cell phone number, email address, and other contact information of such foreman or superintendent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Architect, and Owner's Representative, the name and qualifications of a proposed superintendent. The Contractor shall not employ a proposed superintendent to whom the Owner, Architect, or Owner's Representative has made reasonable and timely objection. In addition, Contractor shall designate an employee of sufficient management rank to act as its representative in dealing with Owner ("Contractor's Representative"), which person may also serve as owner's foreman or superintendent. Contractor's Representative must represent Contractor and have responsibility for ensuring that Contractor performs its obligations under the Agreement and for communicating with Owner regarding Project status and issues. The Contractor shall not change or remove the foreman or superintendent, Contractor's Representative, or any other Subcontractor or employee (except in the case of employee termination) performing any Work at the Project, without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 9.2.4** Contractor shall make itself available to meet Owner, Architect, and Owner's Representative at least once per week at the Work site (or, at Owner's option, by videoconference) and such additional times as may be reasonably requested by Owner, Architect, and/or Owner's Representative, in order to review the progress and status of the Work. Contractor's or Contractor's Representative's attendance at such meetings is included in the Work but shall not cause any increase to the Contract Sum. Contractor will be responsible for taking notes during all meetings, documenting said notes in meeting minutes and distributing the meeting minutes within 72 hours of said meeting. Landlord or its designee shall have the right to attend any such meetings and Contractor shall include Landlord on its distribution list for all meeting minutes.

§ 9.2.5 Contractor shall maintain at the site for the Owner, Architect, and Owner's Representative one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved shop drawings, product data, samples and similar required submittals. All of the aforementioned items, along with the following described items (together, the "Project Close-Out Documentation") shall be delivered to Owner no later than thirty (30) days after Substantial Completion of the Work as a record of the Work as constructed:

- .1 Two (2) hard copies and one (1) electronic copy of actual permit drawings, with original municipal approval stamps and red lines.
- .2 Two (2) hard copies and one (1) electronic copy of A copy of the Temporary Certificate of Occupancy when applicable.
- .3 Project close-out binders, in two (2) hard copies and one (1) electronic copy, to include:
  - (a) As-Built drawings for the Work as completed, including architectural, Mechanical/Plumbing, Electrical, Fire Protection, and Life Safety trades to the extent applicable, in hard copy full size set and electronic PDF copies, and CAD Files of As-Built, on portable thumb drive, CDs, or via secure shared electronic data room (e.g., Dropbox);
  - (b) All approved submittals, with separate sections for all finishes, including samples with manufacturers' color and style numbers; for doors, frames and hardware; for ceiling grid and tile information, and for electrical and mechanical submittals;
  - (c) All approved submittals for specialty construction items, such as audio-visual equipment.
  - (d) All warranty information, including instruction manuals for installed equipment, including audio-visual equipment, as well as operation and maintenance instructions;
  - (e) All Requests for Information and responses as well as all Change Orders and Construction Change Directives; and
  - (f) All balancing reports.

§ 9.2.6 Contractor shall at all times comply and shall cause all Subcontractors and other Contractor Parties to comply with Landlord's rules and regulations governing construction at the Project site, a copy of which is attached hereto and incorporated herein by reference), which may be amended, from time to time ("Building Rules & Regulations"). References to "Tenant" in the Building Rules & Regulations shall be interpreted as "Contractor" for purposes of compliance therewith.

§ 9.2.7 As part of the Work, Contractor shall provide production and server relocation assistance and downtime minimization planning, as well as equipment move-in planning, scheduling, and post-move assistance.

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§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, supervision, materials, equipment, tools, supplies, construction equipment and machinery, water, heat, cooling, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall not contract or continue to contract with any Subcontractor to whom the Owner makes a timely and reasonable objection.

§ 9.3.3 The Contractor may make a substitution only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Modification. Contractor shall personally investigate each proposed substitute material or product and advise Owner if it is not equal or superior in all respects to the materials or product(s) originally specified.

§ 9.3.4 Contractor shall be solely responsible for timely scheduling all inspections in relation to the Work. The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. The Contractor shall provide the Owner, Architect, Owner's Representative, and Landlord access to the Work in preparation and progress at any time and wherever located, whether for purposes of observation, inspection for compliance or otherwise.

§ 9.3.5 The Contractor shall promptly review, approve in writing, and submit to the Owner shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents. By submitting shop drawings, product data, samples and similar submittals, the Contractor represents to the Owner, Architect, and Owner's Representative that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been reviewed and approved by Architect. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by Architect's approval thereof. The Contractor shall review for compliance with the Contract Documents, approve and submit to Architect shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the Construction Schedule approved by Architect, or in the absence of an approved Construction Schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Separate Contractors or the Owner's own forces. The Contractor shall cooperate with the Architect in the coordination of the Contractor's shop drawings, product data, samples and similar submittals with related documents submitted by other Separate Contractors.

§ 9.3.6 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs, including all those required by Applicable Requirements in connection with performance of the Contract and the Work. The term "**Applicable Requirements**" as used herein means (A) all applicable laws, statutes, codes, ordinances, rules, regulations, orders, judgments, or governmental or quasi-governmental orders, rulings, notices, directives, or guidelines of any kind, whether existing now or at any time hereafter; (B) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters); (C) building material and equipment manufacturers' specifications; and (D) all rules and procedures communicated to Contractor in writing by Owner, including those related to safety, security, and confidentiality. The Contractor shall take and observe reasonable precautions to prevent damage, injury, or loss to employees and other workers on the Work site and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the Project or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable. The Contractor shall take and observe necessary measures and precautions for the safety and protection of all property and persons in connection with the performance of the Work.

§ 9.3.7 Contractor represents and warrants to Owner that it presently holds and shall at all times continue to hold a valid, current California contractor's license. Contractor is, and shall at all times remain, fully bonded as required by Applicable Requirements. Contractor represents and warrants that it has or it will obtain in a timely manner, all permits, licenses, registrations, or approvals necessary or applicable to Contractor's performance of the Work. Contractor represents and warrants that it has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its organization, and is duly qualified to do business in and is in good standing in the State of California. Contractor represents and warrants that to the knowledge of Contractor (after reasonable inquiry and investigation), no litigation is pending or threatened against or affecting Contractor or any Contractor Parties that will have a material adverse effect on Contractor's ability to perform the Work. Contractor represents and warrants that it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform its obligations under this Agreement. All representations and warranties of Contractor in this Agreement are essential inducements on which Owner relies in awarding and performing under the Agreement. Except where a different survival period is stated in this Agreement, all of Contractor's representations and warranties under this Agreement will survive the termination or expiration of the Agreement, without any time limitation. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSING BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

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The Contractor warrants to the ~~Owner and Architect~~ Owner, Architect, and Owner's Representative that: (A) all materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. ~~The Contractor further warrants that~~ otherwise; (B) the Work will be free from defects (including, without limitation, free from leaks in all roofs, ceilings, walls, windows, fixtures, systems, lines, floors, and foundations, and all aspects of the foregoing); (C) the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work ~~the Contract Documents require or permit~~ in all respects; and (D) all Work shall be completed in a good and workmanlike manner and in compliance with Applicable Requirements. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, ~~improper or insufficient maintenance, improper operation or normal or ordinary wear and tear under normal usage. All other warranties required by~~ Any material or equipment warranties required by or provided under the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3 and shall commence, and shall be assigned to Owner, upon Substantial Completion of the Work. The Contractor shall assemble and deliver to Owner before final payment all operating and maintenance information (including, without limitation, manuals, receipts and warranties) from all manufacturers whose materials or equipment is or will be installed in the Work by the Contractor. The Contractor shall secure and deliver to the Owner written warranties and guarantees from the Contractor's Subcontractors bearing the date of Substantial Completion or other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its Subcontractors at any tier.

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The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect at its sole cost and expense all unemployment insurance, social security insurance, withholding taxes, sales and use taxes, or any other local, state or federal taxes or royalties related to the Work or to Contractor's performance of the Work.

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**§ 9.6.1** Unless otherwise provided in the Contract Documents, the ~~Contractor shall secure and~~ Owner shall pay for the building permit as well as other permits, fees, licenses, government approvals, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded; ~~provided, however, that Contractor shall be solely responsible for applying for, securing, scheduling, and arranging for all such permits, government approvals, and inspections, and, pursuant to Section 9.3.7 above, Contractor shall remain solely responsible for maintaining all licenses and certifications of Contractor and its respective agents and employees that are required by Applicable Requirements for Contractor's performance of the Work as required by the Contract Documents.~~

**§ 9.6.2** The Contractor shall at all times observe and comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable ~~Applicable Requirements, including those applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate~~ that is contrary to Applicable Requirements, the Contractor shall assume sole responsibility for such Work and shall bear the costs attributable to correction. In the event Contractor is notified of any violations of Applicable Requirements by the jurisdictional authorities or by Owner, Architect, or Owner's Representative, Contractor shall correct such violations within seven (7) calendar days from such date of notification.

**§ 9.6.3** As part of Contractor's obligation to comply with Applicable Requirements, Contractor shall observe and comply at all times with the Fair Employment and Housing Act (California Government Code, section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Contractor will include the nondiscrimination and compliance provisions of this **Section 9.6.3** in all subcontracts with any Subcontractors that will perform any portion of the Work.

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~~§ 9.8.1~~ The Contractor, promptly after being awarded the Contract, shall submit within three (3) Business Days after execution and delivery of this Agreement and before the first Application for Payment, shall submit, for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule and written approval, is a construction schedule covering the entire Work ("**Construction Schedule**"). The Construction Schedule shall not exceed time limits current under the Contract Documents, Documents and shall be related to the entire Work and shall provide for expeditious and practicable execution of the Work. At all times, the Construction Schedule shall contain detail appropriate for the Work and the Project, including (A) the Date of Commencement of the Work, interim schedule milestone dates, and the Scheduled Substantial Completion Date; (B) an apportionment of the Work by trade and construction activity; and (C) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work and Project. In addition, The Construction Schedule shall (W) include all Punch List, final inspections and close-out activities, (X) be produced and updated using software reasonably approved by Owner (Y) be updated once weekly, and (Z) cover all basic construction sequences, tasks and milestone events in a critical path method format indicating both planned and actual duration and completion percentages and dates for each sequence, task and milestone event. The Construction Schedule shall be subject to Owner's reasonable approval, including, without limitation, any proposed changes to the planned projections for completing portions of the Work. At each scheduled Work meeting, Contractor shall report whether the Work is on schedule, and if not, the reasons therefor and a detailed plan for completing the Work on schedule. In addition, Contractor shall maintain and distribute to Owner and Architect a log of submittals, requests for information, Change Orders and Construction Change Directives. The Contractor shall perform the Work in accordance with the most recent Construction Schedule submitted to the Owner and Architect. In no event shall Contractor be permitted to extend the Contract Time or delay the Scheduled Substantial Completion Date without first requesting and obtaining a Change Order, which Owner shall have no obligation to approve.

~~§ 9.8.2~~ The Contractor shall perform the Work in general accordance with the most recent schedule submitted to Construction Schedule approved by the Owner and Architect.

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~~§ 9.9.1~~ The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, Owner and the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule Construction Schedule and in such sequence as to allow the Owner and Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, shop drawings, product data, samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

~~§ 9.9.2~~ Shop Drawings, Product Data, Samples drawings, product data, samples and similar submittals are not Contract Documents.

~~§ 9.9.3~~ The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor is providing such services under separate agreement with Owner or needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Applicable Requirements. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect or Owner's designated design professionals will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept

expressed in the Contract Documents. ~~In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.~~

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The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. § 9.10.1 The Contractor shall confine operations at the site to areas permitted by Applicable Requirements, and shall not unreasonably encumber the site with materials or equipment.

§ 9.10.2 Contractor shall keep all materials, equipment, and goods involved in Contractor's Work stored in appropriate, secured containers or at adequately marked and secured stations. Additionally, Contractor shall be responsible for providing and installing any shelters, equipment, or materials required to protect the Work and the Project from the elements of weather.

§ 9.10.3 Contractor shall at all times throughout performance of the Work clean the jobsite of all unsightly debris (including paper, cans, bottles, and trash) on a daily basis, and shall keep noise levels to a minimum and shall not unreasonably disturb occupants or neighboring properties of the Project. Contractor shall clear all dirt and building materials from the streets and adjacent properties. Waste cans shall be provided by Contractor for disposal of refuse. Clean and regularly maintained restroom facilities shall be provided by Contractor for use by workers at the Project site, and workers shall not use Owner's or Landlord's restroom facilities without the prior written consent of Owner and Landlord. Contractor shall use only authorized entrances and storage areas, as designated by Owner, Architect, or Owner's Representative. Contractor will be responsible for ensuring that all workers at the Project site comply with any State, City, or County mandates regarding COVID-19 distancing, masking, and other health and safety protocols. Contractor shall perform all work as tidily as is consistent with correct and professional performance in Contractor's specialty. Contractor shall promptly remove all equipment and materials on completion of each applicable phase of the Work, and will leave the Project free from all refuse. The Contractor shall confine operations at the site to areas permitted by Applicable Requirements, the Contract Documents, and the Owner. The Contractor shall keep the Project and surrounding area free from accumulation of debris and trash related to the Work.

§ 9.10.3 Contractor and the Contractor Parties will not be allowed to post any signage containing the name or advertising of their firm to any part of the Project, Building, or surrounding property at any time. Owner and Landlord reserve the right to post Notices of Non-Responsibility on any entry into space as required by Owner's Lease. Owner and Landlord may post any additional signs or notices they deem necessary for the benefit of the Project or the Building.

§ 9.10.4 Contractor and Subcontractors are prohibited from consuming or being under the influence of alcohol, cannabis, or any other intoxicant while on Landlord's property (including but not limited to the Project, Building, eating areas, or vehicles parked on property). No smoking or vaping of any substance is permitted in any part of the Project or Building or in any adjacent areas.

§9.10.5 At Owner's, Architect's, or Owner's Representative's request, Contractor must provide additional ventilation to the Project when necessary.

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The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner's own forces or by other Separate Contractors except with written consent of the Architect, Owner and such other Separate Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Separate Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

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The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, facilities, portable restroom facilities, machinery, and surplus material from and about the Project.the Project, and shall properly dispose of waste materials, leaving the Project in a neat and clean condition.

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~~The Contractor shall provide the Owner and Architect~~ Unless a different procedure is required by Landlord, keys/access cards may be issued to the Contractor's superintendent on a daily basis from the Building's security desk at check-in. Superintendent is responsible for the returning the keys/cards at the end of each day, or as otherwise required by Landlord. Contractor is required to notify Landlord at least 48 hours in advance for access to the Project and provide a Subcontractor directory reflecting trade, project manager and contact information. Contractors and Subcontractors are required to check-in upon arrival at the Building security desk and will be allowed access, if previously authorized by Contractor. The Contractor shall provide the Owner, Architect, Landlord, and Owner's Representative with access to the Work in preparation and progress wherever located.

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The Contractor shall pay all royalties and license fees. ~~The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss fees pertaining to the Work and any materials, products, processes, designs used in the course of performing or incorporated into the Work. The Contractor shall defend at its sole cost and expense all suits or claims for misuse or infringement of copyrights, patent rights, and other intellectual property rights used in the course of performing or incorporated into the Work and shall indemnify, defend, and hold the Owner and Owner's Related Parties (defined below) harmless from any Claims (defined below) on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, Architect or Owner other design professionals; provided, however, that the foregoing exception to Contractor's liability shall not apply where Contractor has provided or is providing architectural, engineering, or design services or consulting to Owner under separate agreement. Notwithstanding the foregoing, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss~~ any Claims relating thereto unless the information is promptly furnished to the Architect. ~~Owner and Architect. The foregoing indemnification obligation shall survive completion and termination of this Agreement.~~

### **§ 9.15 Indemnification**

~~§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to 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 (other than the Work itself), but only to the extent 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. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.~~

~~§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~

### **§ 9.15 Indemnification**

**§ 9.15.1** The term "**Owner's Related Parties**" shall collectively mean Owner, Architect, Owner's Representative, Landlord, Owner's Board of Trustees, and each of their respective affiliates, lenders, consultants, direct and indirect members, managers, partners, shareholders, beneficial owners, principals, lenders, mortgagees, employees, agents, officers, directors, beneficiaries, and trustees and their respective successors, heirs, legal representatives and assigns.

**§ 9.15.2** To the fullest extent permitted by law, including without limitation California Civil Code Sections 2782 and 2782.05, if applicable, the Contractor shall, at its sole cost and expense, indemnify, reimburse, defend (with counsel reasonably approved by Owner) and hold harmless Owner and Owner's Related Parties from and against any and all accounts, actions, acts, adjudications, allegations, awards, causes of action, citations, claims, costs, damages, deaths, debts, defects, defenses, delays, demands, expenses (including, without limitation, attorneys' fees, expert witness fees, and court costs), fees, fines, harm, infections, injuries, judgments, liabilities, liens (including mechanic's, materialman's, design professionals', or construction liens), losses, maintenance, obligations, orders, penalties, proceedings, promises, property damage, repairs, remediations, sicknesses, stop notices, suits, taxes, and violations of every kind and character (collectively, "**Claims**"), whether actual or alleged, whether direct Claims or third-party Claims, and whether or not litigation or arbitration is commenced, based upon, arising out of or resulting in whole or in part from: (a) any negligence (whether by error, omission, or act), recklessness, or intentional wrongdoing or misconduct of the Contractor, any Subcontractor, Contractor's Representative, the Contractor Representatives, and any of their respective direct or indirect agents or employees, or anyone for whose acts they may be liable (collectively, including Contractor, the "**Contractor Parties**"), in the performance of the Work, the preparation or delivery of the Work Product or other deliverables contemplated under this Agreement, or otherwise, including specifically without limitation: (i) any Claims for personal injury, including bodily injury, sickness, disease, or death, sustained by any person whomsoever; (ii) any damage or loss to or loss of use of property (including the property of Owner, Owner's Related Parties, Landlord (including without limitation any property adjacent to the Project or Building), Contractor, or any Contractor Parties); and (iii) any increase in the cost of the Work or the additional cost of remedial or substitute work caused thereby; (b) any default or breach of this Agreement or any of the representations and warranties in this Agreement by Contractor or caused by any Contractor Parties, including without limitation any delays in Contractor's completion of the Work; (c) any infringement of any claimed copyright, patent or other property right arising out of performance of the Work or use by any of the Owner's Related Parties of the Work or the Project, or of any Work Product or Contract Documents produced by Contractor in connection herewith; (d) any Claims made by any Contractor Parties; (e) any failure by Contractor or any Contractor Parties to comply with Applicable Requirements in the performance of the Work or Contractor's other obligations under the Agreement; (f) breach or potential breach of data or privacy; or (g) any Claims arising under **Section 9.14** or **Section 16.2.3**. The indemnity obligations of this **Section 9.15.2** shall be deemed to include, and shall not be construed to negate, abridge, or otherwise reduce, any other rights or obligations of indemnity which would otherwise exist as to any party or person described in this **Section 9.15.2** or elsewhere in this Agreement. The indemnification obligations under this **Section 9.15.2** shall include Claims arising in whole or part from the ordinary negligence of any Owner's Related Parties; provided, however, that nothing in this **Section 9.15.2** shall be interpreted to require Contractor to indemnify the Owner's Related Parties to the extent of the sole or active negligence or willful misconduct of such parties. The terms and provisions of this **Section 9.15.2** shall survive completion and termination of this Agreement.

**§ 9.15.3** Regarding any Claims against any person or entity indemnified under **Section 9.15.2** or **Section 9.15.4** by any Contractor Parties, the indemnification obligations under **Section 9.15.2** and **Section 9.15.4** shall not be limited or reduced by: (A) a limitation on amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts; or (B) any insurance policies required to be maintained by Contractor or any Subcontractors under this Contract, regardless of whether such coverage is actually maintained.

**§ 9.15.4** In addition to the foregoing, provided that Owner has paid Contractor all amounts then due and owing hereunder, Contractor further expressly agrees to indemnify, defend (with counsel reasonably approved by Owner), reimburse, and hold harmless Owner and Owner's Related Parties, at Contractor's sole cost and expense, from and against any Claims asserted against or incurred by such indemnitees as a result of the filing of any lien (including without limitation any liens filed or asserted by Contractor, or any Subcontractors, or other Contractor Parties) or the service of any stop notice against or relating to the Work, the site of the Work, the Project site or any improvement thereon, any payment owing to the Contractor, or any funds or other property of such Owner's Related Parties. Without limiting the foregoing, if any such lien is filed or any such stop notice is served, the Contractor shall cause it to be released, by bonding or otherwise, within 10 days after written demand from the Owner. If the Contractor fails to cause such release within such 10-day period, the Owner shall have the right to cause such release, by payment to the claimant, by bonding, or by such other means as the Owner determines in its sole discretion is the most economical or advantageous method, in which event the Contractor shall reimburse the Owner for the cost of such release, plus Owner's reasonable attorneys' fees, within 10 days after written demand from the Owner and such cost shall not be part of, or cause any adjustment to, the Contract Sum. The foregoing indemnification obligation shall survive

completion and termination of this Agreement.

**§ 9.15.5 Indemnification Procedures.**

**§ 9.15.5.1** If any third-party Claim is commenced against Owner or any of the other Owner's Related Parties entitled to indemnification under this **Section 9.15**, Owner will promptly give written notice thereof to Contractor, and Contractor will immediately assume the defense of such claim with counsel satisfactory to Owner. Owner's failure to provide a notice to Contractor under this section does not relieve Contractor of any liability that Contractor may have to Owner. The indemnified party will cooperate, at the sole cost of Contractor, in all reasonable respects with Contractor and its attorneys in the investigation, trial, and defense of such claim, and in any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost and expense, participate, through its attorneys (including, but not limited to, the State Bar's Office of General Counsel) or otherwise, in such investigation, trial, and defense of such claim, and any appeal arising therefrom. Contractor will coordinate the defense of any third-party claim with Owner, including any investigation and trial, and any appeal therefrom. Contractor will not enter into a settlement of any Claim without the prior written consent of Owner. If Contractor does not assume an immediate defense of a Claim that Contractor is obligated to defend, Owner will have the right to defend the Claim in such manner as it may deem appropriate, at the sole cost and expense of Contractor.

**§ 9.15.5.2** Notwithstanding anything to the contrary in this **Section 9.15.5**, Owner may select its own legal counsel to represent its interests, and Contractor will: (a) reimburse Owner for its costs and attorneys' fees immediately upon request as they are incurred; and (b) remain responsible to Owner for any Claims indemnified under this section.

**§ 9.15.5.3** If any legal work reasonably necessary to Owner's defense as described herein is performed by the State Bar's Office of General Counsel, Owner will determine the value of such work at a reasonable hourly rate for comparable outside counsel and it will be promptly paid by Contractor; provided, however, the Parties hereby confirm that such fees will be recoverable with respect to legal work performed by the Office of General Counsel only to the extent that such work is not duplicative of legal work performed by outside counsel paid for by Contractor and representing Owner in such matter.

**§ 9.15.5.4** Contractor will be liable to Owner for all costs (including but not limited to reasonable attorneys' fees, costs, and expenses) incurred by Owner for the purposes of enforcing the provisions of this **Section 9.15.5**.

**§ 9.15.6 Survival.** All of Contractor's obligations under this **Section 9.15** shall survive the expiration or termination of the Agreement.

**§ 10.1** ~~The~~ Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date ~~the~~ Architect issues the final Certificate for Payment. ~~The~~ Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 10.2** Duties, responsibilities, and limitations of authority of ~~the~~ Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Architect, Contractor, and ~~Architect~~ Owner's Representative. Consent shall not be unreasonably withheld.

**§ 10.3** ~~The~~ Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, ~~the~~ Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ~~The~~ Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, ~~the~~ Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. ~~The~~ Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The~~ Architect will not

have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 10.5** ~~Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify~~ certify, as appropriate, the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 10.6** ~~The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.~~

**§ 10.7** ~~The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~

**§ 10.8** ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.~~ sound professional judgment.

**§ 10.9** ~~The Architect's decisions~~ Architect decisions, with Owner's prior written approval, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 10.10** The Owner's Representative referenced on the first page of this Agreement is an individual or entity that Owner may designate in its sole direction to serve as a point of contact between Owner and Contractor. Owner's Representative shall owe no duties or obligations to Contractor whatsoever, is acting in connection with the performance of this Agreement solely as an agent for Owner, and shall not be liable for any Disputes that may accrue to Contractor in connection with this Agreement or the performance of the Work or the Contract.

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**§ 11.1** A Subcontractor "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform or supply a portion of the Work at the ~~site.~~

site, including without limitation subcontractors, sub-subcontractors, consultants, vendors, manufacturers, suppliers, distributors, and materialmen. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized agent, employee, or representative of the Subcontractor. The term "Subcontractor" does not include other Separate Contractors (defined below) or subcontractors of other Separate Contractors.

**§ 11.2** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after ~~award~~ execution of the Contract, shall notify the Owner and Architect of the Subcontractors ~~or suppliers proposed for each of the principal portions of the Work, proposed for each of the portions of the Work.~~ Contractor shall not retain or contract with any Subcontractor without Owner's prior written approval. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection ~~within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work.~~ objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made timely and reasonable objection.

**§ 11.3** Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.

§ 11.4 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders. Contractor shall carefully monitor all costs and expenses (both as to the Work and as to all contracts with Subcontractors), and shall verify labor, material, and equipment requirements for all subcontracts. Owner shall have no responsibility for payments to any Subcontractor not directly retained by Owner. Any payment to Contractor for subcontracted work will be made only upon Owner's receipt of conditional lien waiver and release forms signed by each Subcontractor involved in that portion of the Work for which payment is to be made by Contractor, and unconditional lien waiver and release forms signed by each Subcontractor involved in that portion of the Work for which payment has been previously made by Contractor.

§ 11.5 Before commencing the Work, and thereafter at all stages of performance of the Work, Contractor shall provide Owner with a full, current, and complete list of the names, business addresses, email addresses, and phone numbers of all Subcontractors on the Project at any given time (including any Subcontractors retained directly by Owner). For any required payments to Contractor for Work that is subcontracted, Owner may issue joint checks for payment, made out to both Contractor and any Subcontractors involved in such Work.

§ 11.6 Contractor warrants that all Subcontractors engaged by Contractor who are required by law to be licensed, shall be duly licensed by all applicable governmental agencies having or asserting jurisdiction, and shall have and exercise the same standards of professionalism, ability, skill, and expertise as are required of Contractor under this Agreement.

§ 11.7 Contractor shall obtain from each Subcontractor, prior to the time it makes a payment to such Subcontractor, an executed conditional waiver of lien and release. Nothing contained in any waiver of lien and release shall limit any defenses Owner may have to any open claims listed in such waiver of lien and release. If any Subcontractor files a lien against the Project or makes a claim against Owner, Contractor shall, within two (2) Business Days after Owner's request, deliver to Owner a copy of Contractor's contract with the Subcontractor, supplier, or materialman. If one or more liens is filed by any Subcontractor with respect to the Work as to which Owner has made a payment to Contractor, in addition to Contractor's indemnifications in **Section 9.15** and without prejudice to Owner's other available rights and remedies, Contractor at its own cost and expense shall cause such lien or liens to be discharged of record, by bonding or otherwise, within ten (10) days after Owner's written demand, and such obligations shall survive completion and termination of this Agreement.

§ 11.8 Contractor acknowledges that Owner is a public corporation, allowing only union contractors to work on the Project. Without limiting the other requirements of this Article 11, Contractor, each of its Subcontractors, and all other Contractor Parties performing or supplying any Work to the Project must be approved in writing by Landlord and Owner. Pursuant to California Public Contracts Code Section 16001(a), Contractor and all Subcontractors shall comply with state prevailing wage rate requirements as set forth in California Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771, and Contractor and each Subcontractor shall otherwise comply with all Applicable Requirements that apply to "public works" projects as defined in California Labor Code Section 1720. All of such parties shall be licensed in the State of California, capable of being bonded and shall in each such case be union contractors. Contractor is advised that bids for certain sub-contracted portions of the Work shall be subject to pre-qualified subcontractors, either designated or approved by Owner, Landlord, or Architect. Contractor must bid all subcontracted work to at least three bidders to obtain competitive pricing. For trades bid by Contractor, Contractor must attempt to use small business enterprises (SBE) for subcontracted work in as much as possible. SBE subcontractors will receive a 5% pricing differential over non-SBE contractors. Contractor shall submit records to Owner and Architect to show/document such SBE outreach efforts when subcontracting with SBEs is not feasible due to non-responsiveness or unavailability of SBEs to perform the Work.

§11.9 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that: (1) assignment is effective only after termination of the Contract by the Owner for cause pursuant to **Section 20.2** and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract. Upon such assignment to the Owner under this Section, the Owner may further assign the subcontract to a successor Contractor or other entity.

§11.10 Contractor shall provide comprehensive management and coordination of all Subcontractor work, activity, and scheduling, and shall hold weekly meetings with all Subcontractors as appropriate for each stage of the Work.

**§ 12.1** The term "**Separate Contractor(s)**" shall mean other ~~contractors~~ contractors, vendors, consultants, and suppliers retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract terms and conditions satisfactory to Owner in its sole discretion, including those provisions related to insurance and waiver of subrogation. When separate contracts are awarded for different portions of the Work or other construction or operations on the Project, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Owner-Contractor Agreement. The term "Separate Contractors" as used herein shall also include Landlord's contractors and subcontractors that may perform any work at the Project.

**§ 12.2** The Contractor shall ~~afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.~~ reimburse the Owner for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective Work or construction of the Contractor. The Contractor shall promptly remedy at its sole cost and expense any damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate contractors.

**§ 12.3** The Owner shall be ~~reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.~~ Contractor shall afford the Owner's own forces, Architect, Owner's Representative, and other Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall not create or permit any interference with or delay of the work of any Separate Contractors.

**§ 12.4** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Separate Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 12.5** If a dispute arises among the Contractor, other Separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project premises and surrounding areas free from waste materials and rubbish, the Owner may clean up and Architect will allocate the cost among those responsible.

**§ 13.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted ~~accordingly~~ accordingly as provided below. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, Owner and Contractor, or by written Construction Change Directive signed by the Owner and Architect. Any material changes from or additions or reductions to the Work covered in this Contract shall be set forth in a written change order using the AIA Document G701 Change Order ("Change Order") signed by both Owner and Contractor before the changed or additional work is required to be performed. "Material" for purposes of this section means that the proposed changes would materially increase the scope, nature, or cost of Work as described in the Contract Documents, or would materially increase the Contract Time. Architect shall review any proposed changes to the Work and reasonably determine whether the changes would constitute a Change Order or a Construction Change Directive, and the Architect's determination shall be binding on the Parties. Any Party's challenge to Architect's determination shall be subject to dispute resolution as provided in Article 21. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.2 In the absence of a fully executed written Change Order, Contractor will have no cause of action against Owner for failure to compensate Contractor for work deviating from the terms of this Contract on the basis of an alleged oral or written contract or otherwise, and, accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Owner, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. If the Parties execute a written Change Order, its terms will govern over those of any prior contract in this transaction, and it will be automatically incorporated along with all prior Modifications into the Contract Documents. Owner shall have no obligation to execute a Change Order under any circumstances whatsoever, regardless of the cause necessitating the Change Order. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. After review of the proposed change or addition or reduction to the Work covered in this Contract, Contractor shall promptly advise Owner as to whether the Contract Sum, Schedule of Values, or Contract Time would be increased, decreased or unchanged as a result of an applicable Change Order. Contractor shall provide Owner with either a fixed cost quote estimate or a time and materials estimate, depending on the nature of the proposed change at Contractor's reasonable discretion, which shall include: (A) the actual, out of pocket cost, without administrative expense or other "extras," including labor costs, material costs and equipment rental costs ("**Actual Cost**") plus (B) overhead and (C) profit as allowed herein. Contractor covenants that it shall provide Owner with accurate and complete information on all of its Actual Costs for the Change Order in question. All Change Order proposals shall meet the following requirements: (V) labor: cost for labor shall be fair and reasonable in accordance with industry standards; (W) materials: cost for material shall be fair and reasonable in accordance with industry standard and paid at fair market value, (X) equipment: cost for equipment rental shall be in accordance with industry standard rates; (Y) overhead: based on a percentage of the labor + material + equipment; (Z) profit: based on a percentage of the labor + material + equipment; provided that overhead and profit shall collectively not exceed 15% of the Actual Cost. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from such proposed changes, Architect (or, at Owner's option, the Contractor) will prepare a Change Order for the Parties' review and approval. Upon completion by Contractor of the portion of the Work subject to the Change Order, Contractor may submit in the next scheduled Application for Payment the full agreed cost of the change or addition, less Retainage, provided that all required conditional and unconditional waivers and lien release forms are executed and delivered to Owner concurrent with such Application for Payment, and Contractor shall thereafter deliver to Owner executed unconditional waivers and lien release forms, in accordance with the payment process and terms of this Contract. Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment as it concerns the proposed changes, additions, or reductions to Work. Notwithstanding anything to the contrary in this Agreement or in the Contract Documents, the Owner and Contractor acknowledge and agree that the Contractor shall not be entitled to any additional compensation or extensions of the Contract Time, including, without limitation, any additive Change Orders, resulting from the errors, omissions, misconduct, or negligent acts of Contractor or any Contractor Parties.

~~§ 13.4~~ If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

§13.4 Notwithstanding the foregoing, Owner or Architect may order in writing from time-to-time changes to the Work that would not materially increase the cost of materials or labor in the Schedule of Values or materially alter the Construction Schedule, and would otherwise not be unreasonably inconsistent with the general nature and scope of the Work as it existed prior to such requested change. Such requested changes shall be a "**Construction Change Directive**" and shall not constitute Change Orders. Construction Change Directives shall be prepared by Architect and signed by Architect and Owner, and shall be binding on Contractor. Contractor shall promptly accommodate and implement such Construction Change Directives into the Work without increase to the Contract Sum or added cost or expense to Owner, and without alteration to the Contract Time.

§ 13.5 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor in a Change Order, provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed. Notwithstanding the foregoing, no adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed or discovered by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or reasonably should have performed in connection with the Project.

~~§ 14.1~~ ~~Time limits stated in~~ All time limits stated in this Agreement and the other the Contract Documents are of the essence of the Contract. By executing this ~~Agreement~~ Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

~~§ 14.2~~ Unless otherwise provided, ~~Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work, specifically indicated to the contrary, the word "days" as used in this Agreement shall mean and refer to calendar days. "Business Day" means a day other than a Saturday, Sunday, or other day on which commercial banks in San Francisco, California are authorized or required by law to close.~~

~~§ 14.3~~ The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.3 Except where a different period is stated in this Agreement, all amounts due to Owner from Contractor shall be due and payable within ten (1) Business Days after Owner's written demand, and may, at Owner's option, be offset against any amounts otherwise owed to Contractor.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with ~~Section 15.6.3-~~15.6.

~~§ 14.5~~ If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

#### **Force Majeure**

§ 14.5.1 Except as provided in the following **Section 14.5.2** hereof, Contractor shall be liable to Owner for any loss, costs, expenses, liabilities, damages, or other Claims sustained by or alleged against Owner for delays in performance of the Work hereunder, other than those resulting from Force Majeure, for which Contractor shall have timely requested a reasonable extension of time, depending on the nature of the delay. An event of "**Force Majeure**" is an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent or foresee provided that event or circumstance is not preexisting as of the execution of this Contract, and is expressly limited to the following:



- A. riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- B. explosions; ionizing radiation or contamination; radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; radioactive, toxic, explosive, or other hazardous properties of any explosive assembly or nuclear component;
- C. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- D. earthquakes, flood, fire or other extreme and widespread physical natural disaster, but excluding weather conditions regardless of severity;
- E. events of mass contagion that are classified as a pandemic by the World Health Organization, and related government orders and restrictions (provided, the Parties acknowledge that the COVID-19 pandemic, the virus known as SARS-CoV-2 and any variants thereof, and related government orders and restriction all preexist the execution of this Contract and are therefore excluded from the definition of Force Majeure); and
- F. strikes at State or national level or industrial disputes at a State or national level, and which affect an essential portion of the obligation to be performed by the affected Party but excluding any industrial dispute which is local (i.e. limited to the city, county, or region where the Project is located) in nature or is specific to Contractor's business or employees.

**§ 14.5.2** Neither Party is responsible for any failure to perform its obligations under this Contract, if it is prevented or delayed in performing those obligations by an event of Force Majeure. Where there is an event of Force Majeure, the Party prevented from or delayed in performing its obligations under this Contract must immediately notify the other Party giving full particulars of the event of Force Majeure, the period of time the Force Majeure event is expected to continue, and describing the impact on performance of the Work and other obligations under the Contract and the reasons for the event of Force Majeure preventing that Party from, or delaying that Party in performing its obligations under this Contract, and that Party must use its reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract. Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Contract. An event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event. The Parties hereby waive all applicable laws, including the provisions of Civil Code Section 1511, to the extent they are inconsistent with this Section. In any event, extension of time shall be Contractor's sole remedy for any event of Force Majeure. Changes, regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Work, or requirements of correction or re-execution of any defective Work, shall not under any circumstances be construed as events of Force Majeure in Contractor's performance of the Work. Owner's payment obligations hereunder are expressly included as being subject to events of Force Majeure as provided in this Section 14.5, including by way of example and without limitation any certifications or payments whose approval or issuance relies on reviews or inspections by Architect that are delayed by events of Force Majeure. Notwithstanding the foregoing, no event of Force Majeure shall excuse Contractor under any circumstances for its obligation under Section 3.5 to pay Owner's damages for delay.

**§ 15.1 Schedule of Values** ~~Schedule of Values~~. The Contractor shall submit to the Owner and Architect within three (3) Business Days after the execution and delivery of this Agreement and before the first Application for Payment and prior to commencement of any Work, 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 Architect may require, to include a detailed breakdown by trade of each portion of the Work to be performed by Contractor and any Subcontractors ("**Schedule of Values**"). The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by Architect, and shall require the prior written approval of Owner and Architect. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

~~§ 15.1.1~~ Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

~~§ 15.1.2~~ The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

**§ 15.2 Control Estimate** ~~[Intentionally Omitted]~~.

~~§ 15.2.1~~ Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

~~§ 15.2.2~~ The Control Estimate shall include:

- ~~1~~ the documents enumerated in Article 6, including all Modifications thereto;
- ~~2~~ a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- ~~3~~ a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- ~~4~~ a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- ~~5~~ a list of any contingency amounts included in the Control Estimate for further development of design and construction.

~~§ 15.2.3~~ When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

~~§ 15.2.4~~ The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

~~§ 15.2.5~~ The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

~~§ 15.3.1~~ At least ten (10) days before the date established for each progress payment, payment under the Construction Schedule (but in no event more frequently than once every month), the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; Owner and Architect an itemized and signed AIA Document G702 "Application and Certificate for Payment" (or form substantially similar thereto), prepared in accordance with the Schedule of Values, for Work completed in accordance with the Contract Documents ("Applications for Payment"). Each Application for Payment shall be notarized, if required by Owner or Architect; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. ~~may require; and shall reflect reduction for Retainage.~~ Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor ~~does not intend to pay a Subcontractor or supplier, has not performed,~~ unless such Work has been performed by others whom the Contractor intends to pay. Each Application for Payment (including for final payment and any Change Orders) must include:

- A. copies of all paid invoices and other data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, including without limitation payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to

- demonstrate that cash disbursements already made by the Contractor equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment;
- B. for Work performed by the Contractor with its own forces, the Contractor's statement of the scheduled value, the amounts previously paid to Contractor for such Work, the amount due Contractor for such Work as of the end of the period covered by the Application For Payment, the percentage of completion of such Work, Retainage, and the balance remaining to be paid for such Work;
  - C. a statement of the Contractor giving the names and trades of all Subcontractors furnishing materials or labor to the Work to be performed under the Contract Documents and, with respect to all Work performed by Subcontractors, a breakdown of Work by trade category, the portion and percentage of the Contract Sum or scheduled value of the Work to be performed by such Subcontractors, the amounts previously paid on account of such Work, the amounts due on account of such Work as of the end of the period covered by the Application for Payment, Retainage, the balance of Work to be performed, and the balance remaining to be paid;
  - D. fully executed conditional lien waiver and release forms signed by Contractor and each Subcontractor involved in that portion of the Work for which payment is requested (including, without limitation, all persons or entities providing preliminary 20-day notices in respect of the Project); and
  - E. fully executed unconditional lien waiver and release signed by Contractor and each Subcontractor involved in that portion of the Work that has been completed and for which payment was made.
  - F. All lien waivers and releases provided or required pursuant to this Contract shall meet the form requirements of California Civil Code Sections 8132-8138.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee. Each Application for Payment shall cover the previous month beginning from the cut-off date of the previous Application for Payment. For each payment made for the Work, Owner may withhold the Retainage. Architect shall issue Certificates for Payment for amounts not in dispute, provided that no payment shall be due for any Application for Payment that does not satisfy each of the requirements of this Agreement, including without limitation **Article 4** and this **Article 15**.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing. All lien releases and waivers required or issued pursuant to this Agreement shall meet the form requirements of California Civil Code Sections 8132-8138. The lien releases and waivers required by this Agreement, when signed and submitted, shall also constitute a release and waiver of any right that the submitting entity (or person, if a sole proprietorship) may have to file a design professionals lien under California Civil Code Sections 8300-8319. Each lien release and waiver shall be on the letterhead of the entity or person submitting the lien release and waiver. Each lien release and waiver is effective as against the entity submitting the lien release and waiver if it is signed by any employee, representative or agent of the entity. All lien releases and waivers shall identify the address of the released Project.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.5 The Contractor warrants that title to all Work and Work Product covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments

received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

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§ 15.4.1 ~~The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.~~

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by ~~the Architect~~ to the Owner, based on ~~the Architect's~~ evaluations of the Work and the data in the Application for Payment, that, to the best of ~~the Architect's~~ knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by ~~the Architect~~. However, the issuance of a Certificate for Payment will not be a representation that ~~the Architect~~ has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors ~~and suppliers~~ and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 ~~The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including without limitation any loss resulting from acts and omissions described in Section 9.2.2, because of:~~

...

- .3 failure of the Contractor to timely and properly make payments ~~properly~~ to Subcontractors ~~or suppliers~~ for labor, materials or equipment;

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated-stipulated damages for the anticipated delay; or
- .7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

Payments (including progress payments and final payment) may be withheld up to 150% of the amount in dispute.

§ 15.4.4 When either party ~~disputes the Party~~ disputes Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim-Notice of Dispute in accordance with Article 21.

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§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

...

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6.1 ~~Substantial Completion~~ **"Substantial Completion"** is the stage in of the progress of the Work when (A) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, and (B) if applicable and required by Applicable Requirements, the governmental entity or officer having jurisdiction over the Project has issued a "signed-off" notice of final inspection (or its equivalent in a form acceptable to Owner) for the Project approving the Work. If any additional corrective work that is the responsibility of Contractor is required to obtain the necessary final approvals, then Owner may withhold 200% of the reasonable cost of those corrective items from any final payment.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is ~~substantially complete~~, **Substantially Complete**, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, ~~the Architect~~ Architect or Owner's other designee will make an inspection to determine whether the Work or designated portion thereof is ~~substantially complete~~. ~~When the Architect determines that Substantially Complete~~. If Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof is ~~substantially complete~~, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item at Contractor's sole cost and expense upon notification by Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by Architect to determine Substantial Completion.

§ 15.6.4 When Architect and Owner determine that the Work or designated portion thereof is **Substantially Complete**, Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall include a **"Punch List"** describing any remaining items identified by the Owner or Architect to be completed by Contractor as part of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents such Certificate. Contractor and Owner will then execute the Punch List, and shall fix the date by which the Punch List must be fully performed, which shall in no event be more than fifteen (15) days after the date of the Certificate of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

~~§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

~~§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.~~

§15.7.1 "Final Completion" shall occur on the date when: (1) Contractor and Architect have each certified in writing that to the best of their knowledge, information and belief on the basis of their on-site observations and inspections, the Work and the Project have been completed in accordance with the terms and conditions of the Contract Documents; (2) Contractor and Architect have certified in writing that all Punch List items have been finally completed; (3) the Owner has agreed and accepted Contractor's certifications; and (4) Owner has accepted the Work in writing. The Contractor shall achieve Final Completion not later than thirty (30) calendar days following the date of Substantial Completion, unless such date is extended in accordance with the Contract Documents, and subject to any delays in inspections, approvals, or sign-off procedures by the City of San Francisco that are not due to the fault of Contractor or any Contractor Parties. Notwithstanding the certification by Owner or Architect or any other party that Final Completion has occurred, Contractor shall be responsible for remedying all defects in the Work in accordance with the Contract Documents.

§15.7.2 The Contractor and Owner expressly agree that in the event the Contractor is behind the Construction Schedule to such an extent that Contractor, in the judgment of the Owner or Architect, will not be able to achieve Substantial Completion of the Work, or the applicable portion thereof by the applicable dates set forth above, or to achieve Final Completion by the date set forth above, as such dates may be extended in accordance with the Contract Documents; Contractor, at a cost which shall not cause an adjustment to the Contract Sum, shall employ such additional forces or pay such additional overtime wages and salaries as may be required to place the progress of the Work in conformance with the Construction Schedule required to achieve timely Substantial Completion and Final Completion. At Owner's or Architect's request, Contractor shall deliver to Owner and Architect a written recovery plan describing measures the Contractor will take to achieve timely Substantial Completion and Final Completion.

~~§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from~~  
~~.1 — liens, claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~  
~~.3 — terms of special warranties required by the Contract Documents; or~~  
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~  
Upon receipt of the Contractor's notice that it believes it has achieved Final Completion of the Work, and that the Work ready for final inspection and acceptance, and upon receipt of a final Application for Payment, Architect will promptly make such inspection and, when Architect finds that the conditions in Section 4.2.1 have been fully and completely satisfied and that the Work is acceptable under the Contract Documents and the Contract fully performed, Architect will promptly issue a final Certificate for Payment stating that to the best of Architect's knowledge, information and belief, and on the basis of Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is payable.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier 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. Without limiting the other requirements in this Agreement, final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the

Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.5 The making of final payment shall constitute a waiver of known claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.6 Acceptance of final payment by the Contractor or a Subcontractor 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.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work site and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and Contractor or a Subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§16.1.2 The Contractor shall at all times observe and comply with, and give notices required by, Applicable Requirements, including those bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy at its sole cost and expense damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by or acting on behalf of any of them, or by anyone for whose acts they may be liable. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the sole or active negligence or willful misconduct of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable in whole or in part to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.1.3 The safety and adequacy of the methods and means employed by the Contractor in performing its Work are solely the responsibility of the Contractor, and it shall provide such supervision and take all such steps as are necessary to ensure that the Work is performed in a safe and adequate manner. Neither the activities of the Owner nor the presence of the Owner's employees and/or other contractors shall be construed by any party to imply that the Owner

has any responsibility for any of the Contractor's methods of work performance, procedures, superintendence, sequencing of operations or safety in, on or about the Project site. Contractor and its Subcontractors shall conduct the Work in conformance with all Applicable Requirements, and with all safety procedures promulgated by Owner or its property manager. THE PRESENCE OF OWNER PERSONNEL ON THE PROJECT SITE CARRYING OUT PROFESSIONAL ACTIVITIES DOES NOT MEAN THAT THE OWNER UNDERTAKES TO OVERSEE THE CONTRACTOR'S COMPLIANCE RESPONSIBILITIES.

§ 16.1.4 The Contractor shall promptly report in writing to the Owner and Architect all accidents and/or claims whatsoever arising out of, or in connection with the performance of the Work, giving full details and statements of witnesses. If death or serious injury or serious damage is caused, the accident shall be reported immediately by telephone or messenger to the Owner. The Contractor shall immediately report to the Owner any unsafe conditions in their work area which the Contractor cannot properly and adequately correct on its own and shall immediately stop work in that portion of the Project site and not proceed until written direction is received from the Owner.

§ 16.1.5 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 16.1.6 Contractor shall make best efforts to minimize dust and obstruction of access to the Project site caused by the performance of the Work. In addition, Contractor shall make best efforts to minimize noise associated with the implementation of the Work; provided, however, should the noise level be such that the Work generating such noise is required to be suspended or deferred to an alternate time, Contractor shall advise Owner as to the schedule and cost impact of such deferral.

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§ 16.2.1 Except only for such of its employees, if any, as are fully qualified to do so, Contractor shall not direct, suffer or permit any Contractor Parties to at any time handle, use, manufacture, store or dispose of any flammable, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation, including without limitation those defined at 40 CFR 302.4 (collectively "**Hazardous Materials**") by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments thereto, and all rules and regulations issued pursuant to any of the foregoing (collectively "**Environmental Laws**") in or about the Project or the Building, nor shall Contractor suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws or the Project or Building or surrounding areas to become contaminated with any Hazardous Materials. Notwithstanding the foregoing and subject to Owner's prior written consent, Contractor may handle, store, use, or dispose of Hazardous Materials to the extent customary and necessary for the performance of Contractor's duties hereunder, provided that Contractor shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Project or the environment. The Contractor is responsible for compliance with the requirements of any requirements included in the Contract Documents regarding hazardous materials or substances. ~~If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and substances (as defined in 40 CFR 302.4) ("**Hazardous Material**") and shall exercise the utmost caution to avoid disturbing encapsulated asbestos containing material or concealed Hazardous Materials. The Contractor shall not be required to perform without its consent any Work relating to the removal or abatement of asbestos or polychlorinated biphenyl (PCB), unless otherwise specified in the Contract Documents. If the Contractor encounters Hazardous Materials not addressed in the Contract Documents or otherwise made known to Contractor and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon~~



written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up report the condition to the Owner and Architect in writing. Contractor acknowledges receipt of Landlord's Asbestos Notification, a copy of which is attached hereto and incorporated herein by reference.

**§ 16.2.2** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them Contractor and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, to the extent arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents Hazardous Materials present the risk of bodily injury or death as described in **Section 16.2.1** and has not been rendered harmless, 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 (other than the Work itself), except and only to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity-negligence of Owner. The Owner shall not be responsible under this **Section 16.2.2** for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

**§ 16.2.3** If, without negligence or fault on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by and in accordance with the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. Notwithstanding the foregoing, Contractor shall indemnify, defend, and hold harmless the Owner's Related Parties (as part of Contractor's indemnification obligations under **Section 9.15.2**) for all Claims relating to: (1) remediation of a material or substance the Contractor or any Contractor Parties bring to the site and negligently handles, stores, transports, disposes of, emits, or releases; or (2) where the Contractor fails to perform its obligations under **Section 16.2.1**, except to the extent that the cost and expense are due to the Owner's sole or active negligence or willful misconduct. The indemnification obligations in this **Section 16.2.3** shall survive completion and termination of this Agreement.

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**§ 17.1.1** The Contractor shall purchase and maintain Without in any way limiting Contractor's liability pursuant to **Section 9.15** of this Agreement, the Contractor shall purchase and maintain at all times, for the joint benefit of Contractor and Owner, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this **Section 17.1** or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located-located and with an A.M. Best minimum financial strength rating of A:X, according to the most recent edition of Best's Key Rating Guide (Property-Casualty). The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in **Section 18.4**, unless a different duration is stated below:

below.

**§ 17.1.2** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, providing coverage for claims including

**1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

**§ 17.1.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than \$2,000,000 each occurrence, \$5,000,000 general aggregate, and \$5,000,000 aggregate for products-completed operations hazard, providing coverage for claims including, without limitation:

- 1** Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- 2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 2** personal and advertising injury;**4** Claims for damages insured by usual personal injury liability coverage;

- ~~.3~~ ~~damages because of physical damage.~~ .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including the loss of use of such property; loss of use resulting therefrom;
- ~~.6~~ Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- ~~.4~~ ~~.7~~ Claims for bodily injury or property damage arising out of operations or completed operations; and
- ~~.5~~ ~~.8~~ broad form contractual liability for the Contractor's indemnity obligations under **Section 9.15**.

§ 17.1.2.2 Contractor's Commercial General Liability policy under this Section 17.1.2 shall not contain an exclusion or restriction of coverage for any of the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under **Article 9** arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.3 Comprehensive Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than (\$—)\$2,000,000 per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Such coverage must be for (A) "any auto" or (B) "all owned autos, hired autos and non-owned autos".

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under ~~Section~~ **Sections 17.1.2 and 17.1.3**, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits as required by the State of California, with Statutory Limits, covering liability for injuries to all persons employed by the insured in the conduct of its operations, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease, and each policy shall be endorsed with a waiver of subrogation in favor of Owner for all work performed by Contractor, its employees, and agents; and Employers' Liability with policy limits not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit.

§ 17.1.6 Employers' Liability with policy limits not less than (\$—) each accident, (\$—) each employee, and (\$—) policy limit. Umbrella/Excess Liability Insurance providing coverage with limits of not less than Ten Million Dollars (\$10,000,000) each occurrence for bodily injury and property damage, and Ten Million Dollars (\$10,000,000) general aggregate and products and completed operations aggregate. Policies shall be excess to the primary commercial general liability, employers liability and business automobile liability coverage and shall be written as follow form or alternatively with a form that provides coverage that is at least as broad as the primary insurance policies.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$—) per claim and (\$—) in the aggregate. \$2,000,000 per claim and \$4,000,000 in the aggregate. Such policies may be claims-based, provided the policy coverage is maintained for at least ten (10) years after the Final Completion Date.

**§ 17.1.8** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~(\$ →)~~ \$2,000,000 per claim and ~~(\$ →)~~ \$4,000,000 in the aggregate.

**§ 17.1.9** Coverage under **Sections 17.1.7** and **17.1.8** may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$ →)~~ \$2,000,000 per claim and ~~(\$ →)~~ \$5,000,000 in the aggregate.

**§ 17.1.10** The Contractor shall provide ~~certificates of insurance acceptable to the Owner in form acceptable to the Owner original certificates and amendatory endorsements or copies of the applicable policy language effecting all coverages required by this Section 17.1~~ certificates of insurance acceptable to the Owner in form acceptable to the Owner original certificates and amendatory endorsements or copies of the applicable policy language effecting all coverages required by this Section 17.1 evidencing compliance with the requirements in this **Section 17.1** at the following times: (1) prior to commencement of the ~~Work; Work and before Contractor's equipment is moved to the Project site;~~ Work; Work and before Contractor's equipment is moved to the Project site; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the ~~Owner's written request; written request of Owner, Landlord, or Architect from time to time.~~ Owner's written request; written request of Owner, Landlord, or Architect from time to time. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by **Section 17.1.1**. ~~The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.~~ The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy. Failure to obtain the required documents prior to the Work beginning shall not waive Contractor's obligation to provide them.

**§ 17.1.11** The Contractor shall disclose to the Owner any deductible or ~~self-insured~~ self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ 17.1.12** To the fullest extent permitted by law, the Contractor shall cause ~~the commercial liability each insurance policy and coverage required by this Section 17.1~~ the commercial liability each insurance policy and coverage required by this Section 17.1 to include (1) the Owner, the ~~Architect, and the Architect's Consultants~~ Architect, and the Architect's Consultants State Bar and its Board of Trustees, directors, officers, and employees, Architect, Owner's Representative, Landlord, and their direct and indirect subsidiaries, affiliated entities, joint venture entities (whether defined by written contract as Owner, Client, Company, Landlord, Lessor, Licensor, Customer or similar) associated with the Building, and any other parties designated by Owner to Contractor in writing (collectively, the "**Additional Insureds**") as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. ~~The additional insured coverage acts, errors, or omissions during (1) the Contractor's operations, and (2) during completed operations.~~ The additional insured coverage acts, errors, or omissions during (1) the Contractor's operations, and (2) during completed operations. All coverage that Contractor is required to carry under this Agreement shall be primary and non-contributory to ~~any of the Owner's general liability insurance policies~~ any insurance coverage maintained by the Owner or any of the Additional Insureds listed herein and shall apply to both ongoing and completed operations; operations; and shall reference the Owner's name and the address of the Building. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04; Architect, CG 20 32 07 04. Upon renewal or replacement of Contractor's commercial general liability, automobile liability, and umbrella or excess liability policies, Contractor shall cause the Additional Insureds listed in this paragraph to be added as additional insureds under such policies, as required herein. Additionally, Contractor shall cause Owner and Landlord to be the named certificate holders on all insurance policies that Contractor and any Subcontractor is required to carry hereunder.

**§ 17.1.13** ~~Within three (3) business days~~ Each insurance policy required in this Section 17.1 shall state that coverage shall not be canceled or reduced, except with no less than 30 days' notice to Owner. Within three (3) Business Days of the date the Contractor becomes aware of an impending or actual ~~cancellation~~ cancellation, reduction, or expiration of any insurance required by this **Section 17.1**, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. Prior to commencement of the Work, Contractor shall deliver to Owner certificates evidencing compliance with each of the insurance requirements under this Section 17.1 to:

The State Bar of California  
Attention: Risk Management  
845 S. Figueroa Street  
Los Angeles, CA 90017

**§ 17.1.14 Other Insurance Provided by the Contractor**

~~(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)~~ **Other Insurance Provided by the Contractor:** Contractor and each Subcontractor shall maintain all-risk Property Insurance providing full replacement cost coverage for property in which Contractor/Subcontractor retains the risk of loss including their own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by Contractor/Subcontractor. If Contractor/Subcontractor chooses to self-insure the property described under this Section, it is agreed that Contractor/Subcontractor shall hold Owner harmless for any loss or damage to that property. Contractor shall also maintain Privacy Security Liability/Cyber Insurance coverage for a minimum limit of One Million Dollars (\$1,000,000) per claim and annual aggregate.

**17.1.15 Subcontractors Insurance.** Contractor shall ensure that all Subcontractors of every tier also carry insurance with the coverage terms and limits of liability specified in this **Section 17.1**. Contractor is also required to ensure that all Subcontractors comply with the other insurance provisions described above including naming the Additional Insureds as additional insureds on each of their insurance policies (liability, automobile, and excess) and having each insurance policy include a waiver of subrogation in favor of the Additional Insureds for all work performed.

**§ 17.1.16** Promptly following Owner's or Landlord's request, Contractor will cause any lender and/or financial institution and/or any trustee designated by Owner or Landlord to be added as Additional Insureds under the insurance policies required under this **Section 17.1**. If Contractor fails to carry or provide evidence of insurance provided for herein, Owner may, but shall not be obligated to, procure the same and charge the cost thereof, along with all associated costs and expenses, to Contractor. Should any required insurance lapse during the term of the Agreement, then without prejudice to Owner's other rights and remedies under this Agreement, requests for payments originating after such lapse will not be processed until Owner receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. Contractor shall carry sufficient comprehensive insurance covering the replacement cost of its equipment at the Work site and en route to or from the Work site as may be necessary to fully protect itself and Contractor acknowledges that Owner shall have no responsibility or liability therefor.

**Coverage**

**Limits**

**§ 17.1.17** No insurance required under this **Section 17.1** shall be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit.

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**§ 17.2.2.1** The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project Work on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. ~~The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.~~ This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. ~~This insurance shall include the interests of Owner, Landlord and its mortgagees as loss payees.~~

**§ 17.2.2.2** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by **Section 17.2.2.1** or, if necessary, replace the insurance policy required under **Section 17.2.2.1** with property insurance written for the total value of the Project-Work that shall remain in effect until expiration of the period for correction of the Work set forth in **Section 18.4**.

**§ 17.2.2.3** If the insurance required by this **Section 17.2.2** is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or ~~retentions-retentions~~, except for

deductibles or retentions relating to claims or losses resulting from the negligent acts or omissions of the Contractor or any Contractor Parties, which such deductibles shall be paid by the Contractor.

**§ 17.2.2.4** ~~If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, cause to be purchased and maintained, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

**§ 17.2.2.5** ~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements and, upon the Contractor's reasonable request, provide evidence of the coverage required under this Section 17.2.2.~~

**§ 17.2.2.6** ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. **Waiver of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Landlord; (3) Architect and its consultants; and (4) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss or damage, to the extent those losses or damages are covered by property insurance required by this Agreement or other property insurance applicable to the Project or the Building, except such rights as they have to proceeds of such insurance. By endorsement or otherwise, Contractor shall cause each of its insurance policies to contain such waivers in favor of Owner, and shall require similar written waivers in favor of Owner from the Subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.6 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

#### **§ 17.2.2.7 Waiver of Subrogation**

**§ 17.2.2.7.1** ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

**§ 17.2.2.7.2** ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all~~

rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

~~§ 17.2.2.8~~ A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

~~§ 17.2.3 Other Insurance Provided by the Owner~~

~~(List below any other insurance coverage to be provided by the Owner and any applicable limits.)~~

**Coverage**

**Limits**

~~§ 17.3.1~~ The Owner shall have the right to require the Contractor to Contractor and each Subcontractor performing any aspect of the Work shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract, thereunder, in accordance with California Civil Code Section 9550, et seq., or as may be further stipulated in bidding requirements or specifically required in the Contract Documents.

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~~§ 18.1~~ The Contractor shall promptly correct Work rejected by the Architect or at its sole cost and expense promptly correct Work that fails to conform to the requirements of the Contract Documents or that is rejected by the Owner or Architect for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such nonconforming or rejected Work, including without limitation additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work as well as the services and expenses of Owner's architects, engineers, and other professional consultants, all at the Contractor's sole cost and expense. The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

~~§ 18.2~~ In addition to the Contractor's obligations under **Section 9.4**, if, within ~~one year~~ two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under **Section 15.6.3**, or by terms of an applicable special warranty required by the Contract Documents, any of the Work (whether labor, workmanship, materials, or otherwise) is found to be not in accordance with Contractor's warranty under Section 9.4 or otherwise not in conformance with the requirements of this Agreement or any of the other Contract Documents, the Contractor shall at its sole cost and expense correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. ~~or Architect to do so.~~ The Owner shall give such notice promptly after discovery of the condition. During the ~~one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the period for correction of Work (as the same may be extended), if the Owner notifies the Contractor of the defect or nonconformity requiring correction, Owner shall have preserved its rights to require correction by the Contractor and to make a claim for breach of warranty.~~

~~§ 18.3~~ If the Contractor fails to correct nonconforming Work within a reasonable time, during or after the term of this Contract, the Owner may correct it in accordance with **Section 8.3**.

~~§ 18.4~~ The ~~one year~~ period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

~~§ 18.5~~ The ~~one year~~ period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

§ 18.6 The provisions of this **Article 18** apply to Work done or provided by Contractor, any Subcontractors, as well as to Work done or provided by any of their respective agents or employees or any other Contractor Parties. Owner shall not have any obligation to pay for the cost of any defective or non-conforming Work performed, and, if such defective or non-conforming Work is not promptly repaired, replaced or corrected, then Owner shall have the right to repair, replace or correct such Work and charge Contractor for the cost thereof (which charge may be offset in whole or in part against any amounts still owing to Contractor under the Contract Documents).

§ 18.7 Nothing contained in this **Article 18** shall be construed to establish a waiver of implied warranties established by Applicable Requirements or a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period described in **Section 18.2** relates only to the express warranty of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 18.8 The acceptance by Owner of, or failure of Owner to object to, any Work performed by or for Contractor shall not supersede or diminish any obligation or duty of Contractor herein with respect to such Work or render Owner or any Owner's Related Parties responsible for any injury or damage suffered by any party arising out of any act or omission of Contractor or any Subcontractor in or about the performance of such Work.

§ 18.9 Contractor's obligations and warranties under this Article 18 shall survive completion and termination of this Agreement.

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~~Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. Contractor has been selected to perform the Work covered by this Contract on the basis of Contractor's personal service and, without Owner's prior written consent which may be withheld at Owner's sole and absolute discretion, may not delegate any duties or responsibilities imposed by this Contract. By consenting to any assignment, Owner will not waive any cause of action against Contractor arising out of circumstances preceding the assignment. Owner may assign its rights, obligations and benefits under this Contract, including any warranties hereunder and the right to receipt of Contractor's performance, to any party and for any reason, without the requirement of Contractor's consent.~~

...

~~The Contract shall be governed by the law of the place where the Project is located, State of California, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern **Section 21-6-21.5**.~~

...

~~Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 19.4 The Owner's representative:  
(Name, address, email address and other information)

~~§ 19.5 The Contractor's representative:  
(Name, address, email address and other information)~~

~~§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.~~

§ 19.3.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by Applicable Requirements shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give Architect and Owner timely notice of when and where tests and inspections are to be made so that Architect and Owner may be present for such procedures. Contractor shall coordinate and expedite, as necessary, all inspections and testing. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where Applicable Requirements or regulations so require.

§ 19.3.2 If Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 19.3.1, Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to Architect of when and where tests and inspections are to be made so that Architect and Owner may be present for such procedures. Such costs except as provided in Section 19.3.3, shall be at the Owner's expense.

§ 19.3.3 If such procedures for testing, inspection or approval under Section 19.3.1 or Section 19.3.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 19.3.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to Owner and Architect.

§ 19.3.5 If Architect is to observe tests, inspections or approvals required by the Contract Documents, Architect will do so promptly and, where practicable, at the normal place of testing.

§ 19.3.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

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If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such



~~termination, and damages. Owner fails to make payment for a period of forty-five (45) days after the same becomes due and payable, and the Parties have not otherwise agreed to a mutually acceptable payment schedule, Contractor may, upon delivering fourteen (14) additional days' written notice and opportunity to cure to Owner and Architect, stop the Work until payment of the amount owing has been received. In the case of a suspension authorized hereunder, before resuming services, the Contract Time shall be equitably adjusted, and Contractor shall be paid all sums due for Work properly performed prior to suspension and any reasonable expenses actually incurred in the interruption and resumption of Contractor's Work but only to the extent directly resulting from Owner's failure to make payment as and when due under this Agreement, and further provided that Contractor shall have an affirmative duty to reasonably anticipate, avoid, and mitigate damages resulting from Owner's nonpayment. If Owner fails to cure such nonpayment within thirty (30) days after Contractor's additional 7-day written notice, Contractor may terminate this Agreement by written notice to Owner, subject to **Article 21**.~~

...

~~§ 20.2.1 The Owner may terminate the Contract if the Contractor or suspend the Agreement upon written notice to the Contractor, and without prejudice to any other remedy the Owner may have, if Contractor:~~

- ~~.1 repeatedly or persistently refuses or fails to supply enough properly skilled workers or proper materials;~~
- ~~.2 fails to make payment to Subcontractors for materials or labor or other services in accordance with the respective agreements between the Contractor and the Subcontractors;~~
- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; fails to comply with or disregards Applicable Requirements;~~
- ~~.4 causes or permits repeated material deviations from the Construction Schedule;~~
- ~~.5 fails to properly perform or correct the Work or any portion thereof when and as required under the Contract Documents;~~
- ~~.6 repeatedly fails to communicate with the Owner or Architect regarding material aspects of the Work;~~
- ~~.7 causes or permits any Work stoppage not authorized by this Agreement;~~
- ~~.8 fails to comply with the Landlord's Building Rules & Regulations or any terms, requirements, or conditions thereof;~~
- ~~.9 otherwise defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract Documents; or~~
- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents. **10** otherwise is guilty of a substantial breach of any provision of the Contract Documents.~~

~~"Repeated" or "repeatedly" for purposes of this Section shall mean two (2) or more times in a one (1) month period, regardless of cure.~~

~~§ 20.2.2 When any of the reasons described in **Section 20.2.1** exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, Owner may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and immediately upon giving the Contractor written notice, suspend the Work or any portions thereof, or terminate or suspend the Contract in whole or in part, and: (A) exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may Contractor; (B) accept assignment of subcontracts pursuant to **Section 11.9**; and (C) finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

~~§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in **Section 20.2.1**, the Contractor shall not be entitled to receive further payment due (if any) until the Work is finished.~~

~~§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, costs of finishing or correcting the Work (during or after the term of this Contract) exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, Owner within 30 days after Owner's written demand, and this obligation for payment shall survive termination of the Contract.~~

§ 20.2.5 This Agreement will terminate automatically in the event of the bankruptcy or insolvency of either Party.

**§ 20.3 Termination by the Owner for Convenience**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

*(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)*

**Suspension by the Owner for Convenience**

§ 20.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine in its sole discretion.

§ 20.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 20.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent:

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

**§ 20.4 Termination by the Owner for Convenience**

Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause and for any reason or no reason. In such event, Contractor waives any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of Contractor, the Owner shall pay Contractor in accordance with this Section 20.4. The provisions of the Contract, which expressly or by their nature survive final acceptance of the Work or termination of the Agreement, shall remain in full force and effect after such termination to the extent provided in such provisions. 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 Contractor prior to the date of termination. Upon termination, Contractor shall be entitled to be paid the reasonable cost of all Work properly done by Contractor (and not in dispute by Owner) to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed. If at the date of such termination Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for the reasonable cost of such goods or materials. Notwithstanding, Contractor shall not be entitled to any compensation that has not been previously approved by Owner in writing.

§ 20.5 Upon receipt of any notice of termination regardless of cause, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on that date and to the extent specified in the notice; place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work, and exercise reasonable efforts to preserve and protect Work already completed or in progress and to protect materials, plants and equipment on the site or in transit thereto. In addition, within seven (7) calendar days after any expiration, cancellation, or termination of the Agreement, and otherwise at any time upon Owner's written request, Contractor shall: (a) deliver to Owner all deliverables (whether complete or incomplete), Work Product and all materials, equipment, and other property provided for Contractor's use by Owner; (b) deliver to Owner all tangible documents and other media, including any copies, containing, reflecting, incorporating, or based on the Confidential Information; (c) permanently erase, and cause all Contractor Parties to permanently erase, all Confidential Information their respective computers, files, file storage systems, data storage systems, and phone systems; and (d) certify in writing to Owner that Contractor and each of the Contractor Parties has complied with the requirements of this Section 20.5.

§ 20.6 Without limiting any of the foregoing in this Article 20, if the term of the Agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of the Agreement is subject to an authorization of sufficient funding for such purpose by the California State Legislature and the Governor of the State of California. If sufficient funds are not so authorized, the Parties mutually agree that the Agreement may be

terminated by Owner or amended as appropriate in response to such occurrence. If the Agreement is terminated, Contractor agrees to relieve Owner of any further obligations, except for Owner's obligation to pay for the Work already properly performed up to the date of termination pursuant to the terms of the Agreement.

**§ 21.1 Claims, disputes, and other matters in question Definition.**

A "**Dispute**" is a demand or assertion by one of the Parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Dispute" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution the Contract. The responsibility to substantiate Disputes shall rest with the party claiming the Dispute.

**§ 21.2 Notice of Claims Notice of Disputes**

**§ 21.2.1** ~~Claims~~ Disputes by either the Owner or Contractor, where the condition giving rise to the ~~Claim~~ Dispute is first discovered prior to expiration of the period for correction of the Work set forth in **Section 18.2**, shall be initiated by notice to the Architect within ~~21 days~~ a reasonable period of time after occurrence of the event giving rise to such ~~Claim~~ or within ~~21 days~~ Dispute or within a reasonable period of time after the claimant first recognizes the condition giving rise to the ~~Claim~~, whichever is later. Dispute, whichever is later ("**Notice of Dispute**").

**§ 21.2.2** ~~Claims~~ Disputes by either the Owner or Contractor, where the condition giving rise to the ~~Claim~~ Dispute is first discovered after expiration of the period for correction of the Work set forth in **Section 18.2**, shall be initiated by notice to the other party. ~~Party.~~

**§ 21.3 Time Limits on Claims**

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

**Initial Decision.**

**§ 21.3.1** Disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by Owner's Representative but excluding those arising under **Section 16.2**, shall be referred initially to Architect for decision. Such matters, except those waived as provided for in **Section 21.9.3**, shall, after initial decision by Architect or 30 days after submission of the matter to Architect with no decision being rendered or subsequent action being taken (subject to extension for events of Force Majeure), be subject to mediation as a condition precedent to binding dispute resolution.

**§ 21.3.2** Architect will review Disputes and within ten days of the receipt of a Dispute take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other Party, (2) reject the Disputes in whole or in part, (3) approve the Disputes, (4) suggest a compromise, or (5) advise the Parties that Architect is unable to resolve the Disputes if Architect lacks sufficient information to evaluate the merits of the Dispute or if Architect concludes, in its sole discretion, that it would be inappropriate for Architect Representative to resolve the Dispute.

**§ 21.3.2** In evaluating Disputes, Architect may, but shall not be obligated to, consult with or seek information from either Party or from persons with special knowledge or expertise who may assist Architect in rendering a decision.

§ 21.3.3 If Architect requests a Party to provide a response to a Dispute or to furnish additional supporting data, such Party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise Architect when the response or supporting data will be furnished or (3) advise Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, Architect may reject or approve the Dispute in whole or in part.

§ 21.3.4 Architect will render an initial decision approving or rejecting the Dispute in whole or in part, or indicating that Architect is unable to resolve the Dispute. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the Parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the Parties but subject to mediation and, if the Parties fail to resolve their dispute through mediation, to binding dispute resolution in the method selected under **Section 5.1**.

~~§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~ **Mediation.**

Disputes not resolved by initial decision of Architect shall be submitted to mediation in accordance with this Section as a condition precedent to binding dispute resolution. The Parties shall endeavor to resolve their disputes by mediation which, unless the Parties mutually agree otherwise, shall be administered in San Francisco, California by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. If an arbitration is stayed pursuant to this Section, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**Arbitration.**

§21.5.1 If the Parties have selected arbitration as the method for binding dispute resolution in this Agreement, any Disputes, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Parties mutually agree otherwise, shall be administered in San Francisco, California by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other Party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Requirements in any court having jurisdiction thereof.

§ 21.5.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either Party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.5.3 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any Party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 21.5.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under the Federal Arbitration Act in any court having jurisdiction thereof.

~~§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~Continuing Contract Performance

Pending final resolution of a claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments as they become due and payable in accordance with the Contract Documents.

~~§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~Time Limits on Claims.

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by Applicable Requirements.

~~§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.~~Exclusions.

The following matters are excluded from mediation and arbitration: any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to preserve a statute of limitations shall not constitute a waiver of the mediation and arbitration provisions.

~~§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

#### Liability Limitations

§ 21.9.1 Other than the contractual obligations of the entity constituting Owner as defined under this Agreement, none of Owner's Related Parties shall be personally liable for the performance of Owner's obligations under this Agreement or any of the other Contract Documents. Contractor shall not seek recourse for such enforcement or satisfaction against any of Owner's Related Parties.

§ 21.9.2 Contractor acknowledges that Architect is acting in connection with the performance of this Agreement solely as an agent for Owner, and shall not be liable for any Disputes that may accrue to Contractor in connection with this Agreement or the performance of the Work.

§ 21.9.3 Contractor and Owner shall not be liable to each other for and hereby waive all claims against each other for any consequential, indirect, or punitive damages arising out of or relating to this Contract. Owner specifically reserves all other rights and remedies at law and in equity. Nothing contained in this Section 21.9.3 shall be deemed to preclude an award of, or limit Contractor's obligation to pay, damages for delay when applicable, in accordance with Section 3.5 or the requirements of the Contract Documents.

## ARTICLE 22 ADDITIONAL PROVISIONS

§ 22.1 Captions. The captions and section headings used in this Agreement are for the purposes of convenience

only. They shall not be construed to limit or extend the meaning of any part of this Agreement, or be used to interpret specific sections.

**§ 22.2 Binding Effect.** Subject to any provisions hereof restricting assignment by Contractor, all of the provisions hereof shall bind and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and permitted assigns; provided, however, that the obligations contained in this Agreement to be performed by Owner shall be binding on Owner and its successors and assigns only during their respective periods of leasehold interest in the Project.

**§ 22.3 Choice of Law; Choice of Venue.** This Agreement is deemed to have been made and entered into by the Parties at San Francisco, California. This Agreement shall be governed by and interpreted and enforced exclusively under the laws of California, without regard to any conflicts of law principles. Any civil action arising out of or relating to the performance, enforcement, or interpretation of this Agreement, shall be submitted to and heard in the Superior Court of San Francisco, California. The Parties waive all challenges to personal jurisdiction or claims of inconvenient forum or improper venue in the Superior Court of San Francisco, California.

**§ 22.4 No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to render Owner in any way or for any purpose a partner, joint venturer, or associate in any relationship with Contractor, nor shall this Agreement be construed to authorize either to act as agent for the other. The Contractor and Owner agree that in performing its obligations under the Agreement and the Contract Documents, the Contractor is at all times acting as an independent contractor and not as an agent or employee of Owner. Contractor is not eligible to participate in any vacation benefits, group medical or life insurance, disability benefits, retirement benefits, or any other fringe benefits or benefit plans offered by Owner to its employees. Owner will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes. Owner will not be responsible for making any insurance contributions, including for unemployment, disability, or workers' compensation insurance on Contractor's or any Contractor Parties' behalf. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of any Contractor Parties, including workers' compensation coverage as required, all federal, state, and local income taxes, unemployment and disability insurance, Social Security, or other applicable withholdings. Neither Contractor nor any Contractor Parties will perform any act or acts that might lead others to believe that they are representatives of Owner. Contractor has no authority (and will not hold itself out as having authority) to bind Owner and Contractor will not make any agreements or representations on Owner's behalf without Owner's prior written consent. Owner will not control or direct the manner or means by which Contractor, or any Contractor Parties, perform the Work. The Parties agree that the Work to be performed is outside the usual course of Owner's business. Contractor represents that it is customarily engaged in an independently established trade, occupation, or business of the same nature as the Work to be performed hereunder.

**§ 22.5 Waiver.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**§ 22.6 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original as against any Party whose signature appears thereon, and all of which will together constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, will bear the original signatures, which may include facsimile or electronic signatures, of all the Parties reflected hereon as the signatories. All provisions contained in this Agreement will be binding on, inure to the benefit of and be enforceable by the respective successors and assigns of the Parties to the same extent as if each such successor and assign were named as a Party hereto.

**§ 22.7 Interpretation.** The Parties hereby waive California Civil Code Section 1654, or any successor statute, that provides that ambiguities are to be construed against the drafter of a contract. This Agreement shall be interpreted so as to give the fullest effect to its terms as expressed herein, without any ambiguities being construed against a Party or its agents. This Agreement shall be deemed jointly drafted and agreed to by the Parties.

**§ 22.8 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 22.9 Patriot Act.** Contractor warrants that: (1) Contractor is not in violation of any Anti-Terrorism Law; (2) Contractor is not, as of the date hereof: (A) conducting any business or engaging in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (B) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (C) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in, any Anti-Terrorism Law; and (3) neither Contractor nor any of its affiliates, officers, directors, shareholders, or members, as applicable, is a Prohibited Person. As used herein, "Anti-Terrorism Law" is defined as any law relating to terrorism, anti-terrorism, Executive Order No. 13224, and Title 3 of the USA Patriot Act, and any regulations promulgated under any of them. As used herein "Executive Order No. 13224" is defined as Executive Order No. 13224 on Terrorist Financing effective September 24, 2001, and relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism", as may be amended from time to time. "Prohibited Person" is defined as (1) a person or entity that is listed in the Annex to Executive Order No. 13224, or a person or entity owned or controlled by an entity that is listed in the Annex to Executive Order No. 13224; (2) a person or entity with whom Owner is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (3) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the United States Treasury Department Office of Foreign Assets Control. "USA Patriot Act" is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56), as may be amended from time to time.

**§ 22.10 OFAC Certification.** Contractor represents that: (a) Contractor is not now and has never been listed or named as a Blocked Person, and (b) Contractor is not now and has never been acting directly or indirectly for, or on behalf of, any Blocked Person. "Blocked Person" means any person, group, entity or nation designated by the United States Treasury Department as a terrorist or a "Specially Designated National and Blocked Person," or that is a banned or blocked person, entity, nation under any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. With regard to any employees or contractors of Contractor that perform any part of the Work, Contractor represents that: (a) such person(s) or entity(ies) is/are not now and has/have never been listed or named as a Blocked Person, and (b) such person(s) or entity(ies) is/are not now and has/have never been acting directly or indirectly for, or on behalf of, any Blocked Person.

**§ 22.11 No Third-Party Beneficiaries.** This Agreement does not create and shall not be construed as creating any rights enforceable by any person who is not a Party to this Agreement.

**§ 22.12 Independent Judgment; Advice of Counsel.** Each Party represents and warrants that he or she has relied wholly upon his or her own judgment, belief and knowledge in entering into this Agreement and each has had adequate opportunity to seek the advice of its, his, or her own attorney prior to entering into this Agreement.

**§ 22.13 No Offer.** Preparation of this Agreement by either Party or their attorney or agent and submission of same to the other Party shall not be deemed an offer to Agreement to the other Party. This Agreement is not intended to be binding until executed and delivered by all Parties hereto.

**§ 22.14 Additional Documents.** From time to time, and without any further consideration, the Parties agree to execute, acknowledge and deliver all such additional addenda, amendments, instruments, notices, and other documents, all in accordance with Applicable Requirements, as may be necessary to more fully and effectively carry out the purposes and intent of this Agreement.

**§ 22.15 Audit.** Owner reserves the right from time to time and at any time to have an independent audit conducted of Contractor's compliance with the terms of the Agreement, if the Owner reasonably believes such audit is necessary to ensure confidentiality, or financial or program accountability or integrity. Contractor will retain all records associated with the Work performed for a period of four years from the expiration, cancellation, or termination of the Agreement.

Accordingly, Contractor agrees that Owner or its designated representative will have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement. Contractor agrees to allow interviews of any Contractor Parties who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of Owner to audit in any subcontract related to the performance of the Agreement.

§ 22.16 Survival. The provisions of Articles 9, 20, 21, 22, 23, 24, 25. (Warranties and Representations, Indemnity, Confidentiality, Intellectual Property Rights, Dispute Resolution, Termination of Agreement, Conflict of Interest, Audit, Assignment and General Provisions), and any other terms of this Agreement that by their terms expressly survive, will survive the cancellation, termination, or expiration of this Agreement.

§ 22.17 Owner Furnished Information. If Owner is required to furnish any information in connection with this Agreement, Owner shall furnish this material for informational purposes only, and Owner does not warrant or guarantee that such material or information is accurate in all respects, and Contractor shall perform, and/or recommend to Owner, such verification of data and additional investigation as may be necessary to properly perform the Work.

## **ARTICLE 23 CONFIDENTIALITY**

§ 23.1 Contractor agrees to maintain in strictest confidence any non-public, proprietary, or confidential information, or material disclosed or provided by Owner to Contractor or any of Contractor's agents, employees, Subcontractors, attorneys, and accountants ("Contractor Representatives"), either orally, in writing, electronically or in any other form or medium, or that Contractor or any Contractor Representatives may otherwise receive access to in connection with the Work or the Contract, concerning any aspect of the affairs of Owner, and regardless of whether marked as confidential, including by way of example and without limitation any information or material pertaining to Owner's operations, processes, plans, policies, procedures, Board of Trustees, leadership, management, employees, personnel, contractors, volunteers, legal and regulatory affairs, financial data, licensees (former and current), applicants, and relationships with third-parties ("Confidential Information"). Confidential Information also includes any notes, analyses, compilations, studies or other material, Work Product, deliverables or documents prepared by Contractor or any Contractor Representatives which contain, reflect, or are based, in whole or in part, on the Confidential Information. Confidential Information also includes any confidential or proprietary information of any third-party who may disclose such information to Owner in the course of Owner's affairs. Confidential Information will also include the existence and terms of this Agreement. Confidential Information does not include information that: (a) is or becomes generally available in the public domain through no act or omission of Contractor or any Contractor Parties; (b) is lawfully disclosed to Contractor or the Contractor Representatives by a third-party without restrictions on disclosure; or (c) was in Contractor or the Contractor Representatives' lawful possession, as established by documentary evidence, prior to the disclosure by the Owner.

§ 23.2 Contractor will safeguard such Confidential Information, will not disclose or use such Confidential Information without Owner's prior written consent at Owner's sole and absolute discretion, and will take all necessary steps to protect such Confidential Information. Contractor will only use and disclose Confidential Information to Contractor Representatives requiring such Confidential Information to perform the Work pursuant to this Agreement. Contractor will require each of the Contractor Representatives to execute a written agreement containing obligations of confidentiality substantially equivalent to those in this Agreement. All Confidential Information furnished to Contractor by Owner is the sole and exclusive property of Owner or, where applicable, other third-parties. Contractor will notify Owner immediately of any unauthorized use, access, or disclosure of Confidential Information and take all commercially reasonable steps to prevent further use, access, or disclosure.

§ 23.3 Contractor will not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third-party without the prior written consent of Owner in each instance. If any person or entity requests by a subpoena or court order any information or materials relating to this Agreement which is within the possession, custody, or control of Contractor (or the possession, custody, or control of any Contractor Representatives), then prior to any disclosure of Confidential Information, Contractor will promptly inform Owner of such request and cooperate with Owner to the extent Owner objects or moves to quash such request or subpoena. Notwithstanding any contrary provision contained herein, Contractor may disclose Confidential Information to the extent that such disclosure is required by law or regulation, or is pursuant to a valid order of a court of competent jurisdiction or an authorized governmental authority; provided that Contractor: (a) immediately notifies Owner in writing of the disclosure request



and, to the extent not prevented from doing so by an applicable government authority, provides Owner a copy of the order by the applicable court or governmental authority so Owner may seek a protective order or another appropriate remedy; (b) cooperates with Owner if Owner seeks a protective order or other appropriate remedy preventing or limiting disclosure; and (c) seeks confidential treatment of any Confidential Information required to be disclosed before disclosure. If Owner cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, Contractor will work with Owner to disclose the requested Confidential Information only to the extent required by such law, regulation, or order.

§ 23.4 Contractor acknowledges that irreparable harm can result to Owner and to third parties by disclosure or threatened disclosure of Confidential Information that cannot be adequately relieved by money damages alone. Accordingly, Owner may seek equitable remedies including a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction, without the necessity of showing actual damages and without the necessity of posting any bond or other security. The equitable relief will be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief. If Owner incurs any loss or liability arising out of disclosure or use of any Confidential Information by any one or more Contractor Representatives other than as authorized herein, that disclosure or use will be deemed to have been by Contractor for purposes of determining whether Contractor breached any of its obligations under the Agreement.

§ 23.5 Contractor will not issue any public announcements or statements related to this Agreement or the Work performed for Owner, or engage in any publicity or advertising related to the same without obtaining the prior written consent of Owner.

§ 23.6 Without the prior written permission of Owner at its sole and absolute discretion, Contractor shall not include any information about the Work, the Project, the Property, the Building, Landlord, or Owner, or other work done in connection with this Agreement (including without limitation representations, drawings, photographs, videos, etc., of any design or work based on that design) among Contractor's promotional and professional materials, including Contractor's website. Such permission may be granted (at Owner's sole discretion) on a case-by-case basis after receiving from Contractor a written request for such permission that includes (1) the proposed representations, illustrations, photos, etc., and (2) a description regarding in which promotional and/or professional materials Contractor proposes to include the representations. Contractor shall not have the right to place any promotional signs of any kind at the Building or Project. If Contractor reasonably requests, Owner shall provide professional credit for Contractor in Owner's promotional materials that include the Project.

§ 23.7 Without limiting the other requirements of this Agreement pertaining to Subcontractors, Contractor shall not retain or contract with any Subcontractor to furnish Work and access Confidential Information without meeting all requirements of this Section 23.7. All Subcontractors must be approved in advance in writing by Owner, such approval to be granted in Owner's sole discretion. In advance of performing any Work or receiving any Confidential Information, all Subcontractors shall execute a written agreement reasonably satisfactory to Owner: (a) sufficient to secure compliance by such Subcontractors with the obligations of confidentiality concerning Confidential Information as set forth in this Article 23; (b) in accordance with Article 24, acknowledging such Subcontractor's obligation to transfer and/or assign any rights, title, and interest to all materials and Work Product in connection with performance hereunder; and (c) effecting assignments of all Intellectual Property Rights concerning the Work Product to Owner as set forth in Article 24. Owner, upon request, may review such agreements at any time before or after execution by such Subcontractors to ensure compliance with this Agreement.

§ 23.8 The provisions of this Article 23 shall survive the expiration or termination of this Agreement.

## **ARTICLE 24 INTELLECTUAL PROPERTY RIGHTS**

**§ 24.1 Intellectual Property Rights Defined.** For purposes of this Agreement, the term "**Intellectual Property Rights**" means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, authorship, integrity and other similarly

afforded "moral" rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

## **§ 24.2 Work Product.**

**§ 24.2.1** Contractor recognizes and agrees that all right, title, and interest, including all Intellectual Property Rights, which may be prepared, procured, or produced in whole or in part in, or resulting from, the Work rendered by Contractor pursuant to this Agreement, including, without limitation, any and all deliverables, designs, specifications, drawings, instructions, directions, analysis, research, proposals, materials, reports, plans, other writings, and other work product (collectively referred to as "**Work Product**") will be owned by Owner. Contractor warrants that all Work Product is and will be Contractor's original work (except for material in the public domain or provided by Owner, and except as otherwise agreed to by Owner in the Contract Documents) and does not and will not violate or infringe upon the intellectual property rights or any other rights of any person, firm, corporation, or other entity. If any Work Product or other deliverable fails to conform to the standard specified above, Contractor, at its sole expense, shall promptly correct the defective deliverable, and this obligation shall survive expiration or termination of this Agreement. This remedy is cumulative of any and all other remedies to which Owner Bar may be entitled pursuant to this Agreement and Applicable Requirements.

**§ 24.2.2** To ensure that the Work Product becomes the sole property of Owner, in consideration of the mutual promises contained in this Agreement, Contractor hereby agrees to transfer, in perpetuity, to Owner all of the right, title, and interest in the Work Product, in the United States of America and throughout the world, and hereby assigns any and all renewals and extensions of each such copyright that may be secured under the laws now or hereafter. Contractor will execute, at Owner's request and expense, during and after the term of this Agreement, all further actions including execution and delivery of documents reasonably required to perfect the foregoing rights in Owner. In the event Contractor fails to execute any documents, Contractor appoints Owner as its attorney-in-fact to execute such documents on Contractor's behalf (which appointment shall be deemed coupled with an interest). Contractor hereby waives or transfers any and all moral rights, including without limitation any right to attribution, identification, integrity, disclosure, authorship or any other rights that may be known as "moral rights," or limitation on a subsequent modification that Contractor (or any Contractor Representatives) has or may have in the Work Product or any part thereof.

**§ 24.3 No Transfer of Title in and to Contractor's Pre-Existing IP.** Notwithstanding the foregoing, Owner acknowledges that independent of this Agreement, Contractor has created, acquired, or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, or techniques (collectively, "**Pre-Existing IP**"). Contractor warrants that (a) Contractor owns all right, title, and interest in, or otherwise has full right and authority to permit the use of any Pre-Existing IP; (b) the Pre-Existing IP does not infringe the rights of any third party, and use of the Pre-Existing IP as well as any of Contractor's intellectual property rights in connection with the Work does not and will not violate the rights of any third parties; (c) Contractor will comply with the terms and conditions of any licensing agreements which govern the use of third party materials; and (d) Contractor will comply with all Applicable Requirements as they relate to the Work, Work Product, and other deliverables contemplated under this Agreement. Owner and Contractor intend that Contractor's interests in or title to such Pre-Existing IP will remain vested in Contractor; provided, however, that to the extent that the Work or the Work Product incorporates any Pre-Existing IP, Contractor hereby grants to Owner a worldwide, perpetual, non-exclusive, fully paid-up, royalty-free, irrevocable right and license to use such Pre-Existing IP as incorporated into such Work or Work Product to enable Owner to have full use of the Project and such Work Product as contemplated by this Agreement, including, without limitation, the right to run, execute, copy, modify, create derivative works, display, distribute, and sublicense such rights. Contractor represents that its rights to any Pre-Existing IP are sufficiently broad to meet the requirements of this section.

**§ 24.4 No Transfer of Title in and to State Bar's Pre-Existing IP.** As between Contractor and Owner, Owner is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, Confidential Information and other materials provided to Contractor by Owner ("**Owner Materials**"), including all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any Owner Materials except solely during the term of this Agreement to the extent necessary to perform Contractor's obligations under this Agreement. All other rights in and to Owner Materials are expressly reserved by Owner. Contractor has no right or license to use Owner's trademarks, service marks, trade names, logos, symbols, or brand names.

**§ 24.5 Third Party Materials.** As used in this Agreement, "Third Party Materials" means proprietary third-party materials which are incorporated into the Work or the Work Product. All Third-Party Materials are the exclusive property of their respective owners. Contractor must inform Owner of all Third-Party Materials that may be required to perform the Work or otherwise integrated into the Work Product. Under such circumstances, Contractor will inform Owner of any need to license and unless otherwise agreed to in writing by Owner, Contractor will obtain the license(s) necessary to permit Owner's use of the Third-Party Materials consistent with the usage rights granted herein. In the event Contractor fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third-Party Materials, Vendor hereby indemnifies, saves and holds harmless Owner and the Owner's Related Parties from any and all Claims arising out of any claim, demand, or action by a third party arising out of Contractor's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Work or the Work Product.

**§ 24.6 Survival.** All of Contractor's obligations under this Article 24 shall survive the expiration or termination of the Agreement.

#### **ARTICLE 25 - CONFLICT OF INTEREST**

Contractor understands and acknowledges that Owner is a public corporation and, consequently, certain Owner employees and volunteers are subject to government-mandated conflict-of-interest provisions. These provisions concern, among other things, accepting gifts or gratuities from potential contracting entities and contracting with entities owned or controlled by Owner, certain persons associated with Owner, or its employees. With this understanding, Contractor will not take any action which creates a situation which would or which could appear to result in a violation of the conflict-of-interest code provisions by any Owner employee or volunteer. Contractor represents that Contractor has been provided an adequate opportunity to review the conflict-of-interest code adopted by Owner, available at: <https://www.calbar.ca.gov/Portals/0/documents/Conflict-of-Interest-Code-State-Bar.pdf>. Further, Contractor certifies that its employees and officers of its governing body will avoid any actual or potential conflicts of interest and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement has or will have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name and title)

**§ 21.10 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 21.11 Waiver of Claims for Consequential Damages**

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

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This Agreement entered into as of the day and year first written above.

# **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:33:46 PT on 03/25/2024 under Order No. 4104241134 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

## EXHIBIT D

### BUILDING RULES AND REGULATIONS

1. The sidewalks, doorways, halls, stairways, vestibules and other similar areas shall not be obstructed by Tenant or used by it for any purpose other than ingress to and egress from the Leased Premises, and for going from one part of the Building to another part. Corridor doors, when not in use, shall be kept closed. Before leaving the Building, Tenant shall ensure that all doors to the Leased Premises are securely locked and all water faucets and electricity are shut off.
2. Plumbing fixtures shall be used only for their designated purpose, and no foreign substances of any kind shall be deposited therein. Damage to any such fixtures resulting from misuse by Tenant or any employee or invitee of Tenant shall be repaired at the expense of Tenant.
3. Nails, screws and other attachments to the Building require prior written consent from Landlord, except for the routine hanging of pictures and diplomas or certifications. Tenant shall not mar or deface the Leased Premises in any way. Tenant shall not place anything on or near the glass of any window, door or wall which may appear unsightly from outside the Leased Premises.
4. All contractors and technicians rendering any installation service to Tenant shall be subject to Landlord's approval and supervision prior to performing services. This applies to all work performed in the Building, including, but not limited to, installation of telephones, wiring of any kind, and electrical devices, as well as all installations affecting floors, walls, woodwork, windows, ceilings and any other physical portion of the Building.
5. Movement in or out of the Building of furniture, office equipment, safes or other bulky material which requires the use of elevators, stairways, or the Building entrance and lobby shall be restricted to hours established by Landlord. All such movement shall be under Landlord's supervision, and the use of an elevator for such movements shall be restricted to the Building's freight elevator. Arrangements shall be made at least 24 hours in advance with Landlord regarding the time, method, and routing of such movements. Tenant shall pay for the services of the employees of the elevator service company employed when safes and other heavy articles are moved into or from the Building, and Tenant shall assume all risks of damage and pay the cost of repairing or providing compensation for damage to the Building, to articles moved and injury to persons or property resulting from such moves. Landlord shall not be liable for any acts or damages resulting from any such activity.
6. Landlord shall have the right to limit the weight and size of, and to designate the location of, all safes and other heavy property brought into the Building.
7. Tenant shall cooperate with Landlord in maintaining the Leased Premises. Tenant shall not employ any person for the purpose of cleaning the Leased Premises other than

the Building's cleaning and maintenance personnel. Window cleaning shall be done only by Landlord's agents at such times and during such hours as Landlord shall elect. Janitorial services will not be furnished to individual offices on nights when such offices are occupied after 7:00 P.M.

8. Deliveries of water, soft drinks, newspapers or other such items to the Leased Premises shall be restricted to hours established by Landlord and made by use of the freight elevator if Landlord so directs.

9. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds, fish or animals of any kind shall be brought into or kept in, on or about the Leased Premises, with the exception of service animals where necessary.

10. No cooking shall be done in the Leased Premises except by and for the sole use of employees and guests (on a non-commercial basis) in a manner which complies with all of the provisions of the Lease and which does not produce fumes or odors, including, but not limited to the use of microwaves, toasters, electric water kettles, coffee machines, dishwashers, refrigerators or convection ovens.

11. Food, soft drink or other vending machines shall not be placed within the Leased Premises without Landlord's prior written consent.

12. Tenant shall not install or operate on the Leased Premises any electric heater, stove or similar equipment without Landlord's prior written consent. Tenant shall not use or keep on the Leased Premises any kerosene, gasoline, or inflammable or combustible fluid or material other than limited quantities reasonably necessary for the operation and maintenance of office equipment utilized at the Leased Premises. Tenant shall not keep, use, or permit to be used in or brought into the Leased Premises or Project at any time, by Tenant or any of its employees, agents or invitees, any gun, firearm, weapon, explosive device, ammunition or explosive.

13. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice. Tenant shall not tamper with or attempt to adjust temperature control thermostats in the Leased Premises; Landlord shall make reasonable adjustments in thermostats upon request from Tenant.

14. The Building air conditioning system is designed for operation only with all outside Building windows closed; accordingly, if applicable, Tenant shall not open or allow any outside window to be opened at any time. Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord except upon Landlord's prior written approval.

15. Tenant, its employees, agents and invitees shall each comply with all requirements necessary for the security of the Leased Premises, including, if implemented by Landlord, the use of service passes issued by Landlord for after-hours movement of office equipment/packages, and the signing of a security register in the Building lobby after hours. Landlord reserves the right to refuse entry to the Building after normal business hours to Tenant, its employees, agents or invitees, or any other person without satisfactory identification showing his or her right of access to the Building at such time. Landlord shall not be liable for any damages resulting from any error in regard to any such identification or from such admission to or exclusion from the Building. Landlord shall not be liable to Tenant for losses due to theft or burglary, or for damage by unauthorized persons in, on or about the Project, and Tenant assumes full responsibility for protecting the Leased Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed.

16. With respect to any portion of the Leased Premises that Tenant does not currently occupy, prior to such occupancy, Landlord will furnish Tenant with a reasonable number of initial keys for entrance doors into such portion of the Leased Premises, and may charge Tenant for additional keys thereafter. All such keys shall remain the property of Landlord. No additional locks are allowed on any door of the Leased Premises without Landlord's prior written consent and Tenant shall not make any duplicate keys; provided, however, Landlord acknowledges that the Leased Premises contains a room housing California Bar Exam materials, to which only certain admissions staff of The State Bar of California have access, and pursuant to which Landlord shall be provided a key solely to have supervised access during either an emergency or no emergency. To the extent supervision is not available during the event of an emergency, Landlord shall be permitted to access such California Bar Exam material room; provided, however, that within 24 hours after such access Landlord shall provide written notice to Tenant of all individuals who accessed such room and what actions, if any, were taken in such room during said access. Upon termination of this Lease, Tenant shall surrender to Landlord all keys to the Leased Premises, and give to Landlord the combination of all locks for safes and vault doors, if any, in the Leased Premises.

17. Tenant shall not bring into (or permit to be brought into) the Building any bicycle (except in areas as may be designated by Landlord) or other type of vehicle; provided, however, until such time as Landlord designates the existing bicycle room on the third (3<sup>rd</sup>) floor of the Building for other uses (which Landlord may do in its sole discretion, including, without limitation, in connection with any construction or reconfiguration of the third (3<sup>rd</sup>) floor of the building, whether for third-party tenants or otherwise), Tenant may continue to use such bicycle room (provided that bicycles may only be transported in the freight elevator, and not in passenger elevators). If Landlord does Landlord designate the existing bicycle room on the third (3<sup>rd</sup>) floor of the Building for other uses, then Tenant shall be permitted to store bicycles within the Premises as designated by Tenant (provided that bicycles may only be transported in the freight elevator, and not in passenger elevators). Subject to the foregoing, Landlord acknowledges that Tenant and its employees shall have the right to access the third (3<sup>rd</sup>) floor bicycle room during normal Business Hours and that Tenant shall not be charged any Rent for



the use of such space. In no event may a hoverboard or similar type of motorized device be charged in the Leased Premises or in the Project.

18. Landlord retains the right at any time, without liability to Tenant, to change the name and street address of the Building, except as otherwise expressly provided in the Lease with respect to signage.

19. Canvassing, peddling, soliciting, and distribution of handbills in or at the Project are prohibited and Tenant will cooperate to prevent these activities.

20. The Building hours of operation are 7:00 a.m. to 6:00 p.m., Monday through Friday, excluding holidays. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building on non-Building hours, and during such other hours as Landlord may deem advisable for the protection of the Building and the tenants thereof.

21. The requirements of Tenant will be attended to only upon application to the Project manager. Employees will not perform any work or do anything outside of their regular duties unless under specific instruction from the Project manager.

22. Tenant shall cooperate fully with the life safety program of the Building as established and administered by Landlord. This shall include participation by Tenant and its employees in exit drills, fire inspections, life safety orientations and other programs relating to fire and life safety that may be established by Landlord.

23. No smoking shall be permitted in the Building.

24. Tenant shall comply with all health, safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency, and shall take reasonable measures to assure that Tenant's employees comply with such procedures and regulations. Health procedures and regulations include, but are not limited to, any protection measures in response to the COVID-19 pandemic or other public health-related condition. Tenant shall comply with requests by Landlord concerning the informing of their employees of items of importance to the Landlord, including but not limited to promptly informing employees of any measure employees will be required to comply with in connection with health, safety, fire protection and evacuation procedures and regulations.

25. Tenant shall provide Landlord at least 48 hours prior written notice of all contractors, contractor's representatives and installation technicians performing work in the Building (except in case of emergency, in which case Tenant shall provide as much notice as reasonably possible), and such contractors, contractor's representatives and installation technicians shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld. All such contractors, contractor's representatives and installation technicians shall be required to comply with Landlord's reasonable standard rules, regulations, policies and procedures, which may be revised from time to time.

26. Landlord shall have the right to approve the weight, size, or location of heavy equipment or articles in and about the Leased Premises, which approval shall not be unreasonably withheld, conditioned or delayed. Damage to the Building by the installation, maintenance, operation, existence or removal of Tenant's property shall be repaired by Tenant at Tenant's sole expense.

27. Tenant shall not take any action which causes a work stoppage, picketing, labor disruption or dispute or interfere with Landlord's or any other tenant's or occupant's business or with the rights and privileges of any person lawfully in the Building ("**Labor Disruption**"). Tenant shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of Landlord, immediately terminate any work in the Leased Premises that gave rise to the Labor Disruption, until Landlord gives its written consent for the work to resume. Tenant shall have no claim for damages against Landlord nor shall the Term Commencement Date be extended as a result of the above actions.

28. Landlord reserves the right to rescind any of these rules and regulations and to make future rules and regulations required for the safety, protection and maintenance of the Project, the operation and preservation of the good order thereof, and the protection and comfort of the tenants and their employees and visitors. Such rules and regulations, when made and written notice thereof given to Tenant, shall be binding as if originally included herein. Landlord shall not be responsible to Tenant for the non-observance or violation of these rules and regulations by any other tenant of the Building. Landlord reserves the right to exclude or expel from the Project any person who, in Landlord's judgment, is under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these rules and regulations.

## EXHIBIT E

### ASBESTOS NOTIFICATION

#### ASBESTOS DISCLOSURE STATEMENT AND PROPOSITION 65 WARNING:

CALIFORNIA LAW REQUIRES LANDLORDS AND TENANTS OF COMMERCIAL BUILDINGS CONSTRUCTED PRIOR TO 1979 TO NOTIFY CERTAIN PEOPLE, INCLUDING EACH OTHER AND THEIR RESPECTIVE EMPLOYEES WORKING WITHIN SUCH BUILDING, OF ANY KNOWLEDGE THEY MAY HAVE REGARDING ANY ASBESTOS-CONTAINING MATERIALS ("**ACM**") IN SUCH BUILDING.

LANDLORD HAS PREPARED (OR WILL PREPARE) A WRITTEN ASBESTOS OPERATIONS AND MAINTENANCE PLAN (THE "**ASBESTOS MANAGEMENT PLAN**") FOR EACH BUILDING COVERED BY THIS NOTICE. EACH TENANT IN THE BUILDING AND ANY OTHER PERSON (INCLUDING A CONTRACTOR) PERFORMING WORK IN THE BUILDING IS REQUIRED TO REVIEW THE ASBESTOS MANAGEMENT PLAN LOCATED IN THE MANAGEMENT OFFICE AT 180 HOWARD STREET, SAN FRANCISCO, CA.

California law also requires persons in the course of doing business where activities may result in exposure to asbestos and other substances regulated under the Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65, to be provided a clear and reasonable warning. Accordingly, you are advised as follows:

**WARNING:** Areas of the Building contain a substance known to the State of California to cause cancer, or reproductive toxicity.

Landlord has prepared and implemented (or will prepare and implement) an Asbestos Management Plan, which, among other things, sets forth the responsibilities of Landlord, Landlord's industrial hygienist, building tenants, and contractors and workers performing work in or to areas of the building where ACM is located. The description below is not intended to be a substitute for review of the Asbestos Management Plan.

**ACM has been found in floor tiles on the sixth (6<sup>th</sup>) and eleventh (11<sup>th</sup>) floors of the Building, as well as in the floor tile mastic on the sixth (6<sup>th</sup>) floor of the Building. ACM may be present in other areas in the Building.**

We have no reason to believe, based upon the Asbestos Management Plan that ACM in the Building is currently in a condition to release asbestos fibers that would pose a significant health hazard to the Building's occupants. You should take into consideration that our knowledge as to the absence of health risks is based solely upon general information and the information contained in the Asbestos Management Program, and that we have no special knowledge concerning potential health risks resulting from exposure to asbestos in the Building. We encourage you to contact local or state public agencies if you wish to obtain a better understanding of the potential impacts resulting from exposure to asbestos.

Because any tenant alterations or other work at the Building could disturb ACM and possibly release asbestos fibers in the air, we must require that you obtain our written approval prior to beginning such projects. This includes major alterations, but might also include such activities as drilling or boring holes, installing electrical, telecommunications or computer lines, sanding floors, removing ceiling tiles or other work which disturbs ACM. In many cases, such activities will not affect ACM, but, nevertheless you must check with the property manager, in advance, because any release of ACM due to any of these activities may present a health risk. You should check with the property manager at the address set forth above. **In the areas specified in Asbestos Management Plan, you should avoid touching or disturbing the ACM in any way. An individual or contractor who is not qualified to handle ACM should not attempt any work in such areas. If you observe any activity that has the potential to disturb the ACM, please report the same to the property manager immediately.**

Please contact the Building property manager with any questions regarding the contents of this **Exhibit E**.