



# UNIVERSITY OF LA VERNE

## MASTER VENDOR AGREEMENT

### PART A – UNIVERSITY INFORMATION

Full Legal Name of Owner	University of La Verne
Business Address	1950 Third St. La Verne, CA 91750
Business Telephone Number(s)	
Business Facsimile Number(s)	
Business Electronic Mail Address	
Contact Person	

### PART B – VENDOR INFORMATION

Full Legal Name of Vendor	
Business Address	
Business Telephone Number(s)	
Business Facsimile Number(s)	
Business Electronic Mail Address	
Contact Person	
California Contractors License Number (if applicable)	
Master Vendor Number	

## PART C –AGREEMENT PROVISIONS

**This AGREEMENT** ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between Owner (defined below) and Vendor (defined below) as follows:

1.0 **DEFINITIONS.** As used in this Agreement, the following terms have the meanings indicated:

1.1 **"Agents"** means Vendor's employees, subcontractors, suppliers, laborers, materialmen, or any Person performing any of the Work or supplying materials to Vendor in relation to the Work, whether or not performed on any Construction Site.

1.2 **"Change Order"** means any change in the Work under this Agreement authorized in writing by an authorized representative of Owner in accordance with the terms of this Agreement.

1.3 **"Site"** means any property, project, lot, or other location where Vendor is performing any of the Work.

1.4 **"Contract Documents"** means the following collection of documents: (1) this Agreement and all modifications and amendments thereto, (2) Task Orders, (3) the specifications, (4) all plans and drawings, (5) responses to requests for information, and (6) change orders.

1.5 **"Contract Price"** means the contract sum payable to Vendor, as provided in Section 6.1.1 below.

1.6 **"Contract Time"** means the total time in which Vendor must complete all Work under the Agreement.

1.7 **"Governmental Agency"** means any government, municipality, or political subdivision thereof, or any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body.

1.8 **"Laws"** means, collectively, all federal, state and local statutes, ordinances, and codes (including, without limitation, any building code(s) applicable to the Work), all rules and regulations issued by any Government Agency pursuant to any of the foregoing (including, without limitation, those of CAL-OSHA, HUD, VA, FHA, EPA, and California and Federal Equal Employment Opportunity Commissions), and all applicable decisions, judgments, requirements, orders, or decrees of any Government Agency or court.

1.9 **"Nonconformance"** means a failure of the Work to conform to the Contract Documents, plans, specifications, standards, drawings, requirements of applicable Laws, or any other requirement of this Agreement.

1.10 **"Owner"** means University of La Verne, and its successors and assigns.

1.11 **"Person"** means a natural person, corporation, partnership, limited liability company, trust, association, or other legal entity.

1.12 **"Project"** means the work of improvement upon which Vendor will perform the Work, as identified in the Task Order.

1.13 **"Substantial Completion"** means the point at which the following conditions have occurred with respect to the entire Work:

1.13.1 Such Work is sufficiently and entirely complete in accordance with the Contract Documents so that the Project can be fully enjoyed and beneficially occupies and utilized by Owner for its intended purpose;

1.13.2 All permits, approvals and certificates by any Governmental Agency, including but not limited to, a permanent or temporary certificate of occupancy, have been issued free of any conditions that are the result of any act or omission by Vendor or any of its subcontractors; and

1.13.3 All building systems are fully operational and all designated or required inspections and certifications by any Governmental Agency have been made and issued.

1.14 **"Task Order"** means a writing issued by Owner to Vendor setting forth the Work to be performed by Vendor subject to the terms and conditions of this Agreement and any Contract Documents, in substantial form as Addendum "A" attached hereto. Any such Task Order shall be executed by Vendor and Owner in order to be binding on the Parties hereto.

1.15 **"Vendor"** means the Vendor identified in Part B of this Agreement.

1.16 **"Work"** means all labor, materials, equipment, services, permits, licenses and taxes and all other things necessary for Vendor to perform its obligations under the Agreement, the Contract Documents, drawings, plans and specifications, including, without limitation, any changes requested by Owner.

## 2.0 **WORK AND WORK PERFORMANCE.**

### 2.1 **Work to be Performed.**

2.1.1 Vendor shall provide and perform the Work as required under any Task Order issued hereunder and subject to the terms and conditions of this Agreement. Vendor shall furnish at its own cost and expense all labor, equipment, utilities, materials, services, and/or other items required to complete the Work. Vendor and its Agents shall perform all Work in a first-class, good, and workman-like manner according to the highest standards of its industry. Whether or not shown by any plans, specifications, standards, drawings, or listed in any applicable Task Order, the Work shall include, but is not limited, to any item of labor, equipment, utility, material, or service that is:

2.1.1.1 Reasonably implied or customarily furnished by a Vendor performing work of the type described on the Task Order;

2.1.1.2 Required to comply with all applicable Laws; and

2.1.1.3 Necessary to obtain any inspections or approvals being obtained by Owner, including regulations of the CAL-OSHA, EPA, City of La Verne, County of Los Angeles or those pertaining to Equal Employment Opportunity.

2.1.2 The description of the Work to be performed and materials to be furnished by Vendor by reference to any section of any applicable plans shall not be deemed to limit the obligations of Vendor to perform only such Work or furnish only such material described in such section, if the Work coming within the general description of such section is required by another provision or section of the plans. If a conflict arises between any plans and the applicable Task Order(s), Vendor shall immediately advise Owner of the nature of such conflict.

2.1.3 If Vendor's Work, as identified in the applicable Task Order, requires installation or use of materials, equipment, or utilities furnished by others, Vendor shall be responsible for

examining such items so provided, and to handle, store, use, and/or install such items with the skill and care that will ensure satisfactory installation or use. Any loss or damage to such items shall constitute a material breach of this Agreement.

2.1.4 Should Vendor or its Agents use Owner's equipment or facilities, Vendor shall reimburse Owner at a rate agreed upon prior to use thereof. Vendor and its Agents shall hold harmless and indemnify Owner against all claims, costs, damages, expenses, liabilities, and losses of every nature arising from Vendor's or its Agents' use of Owner's equipment or facilities, including, but not limited to, injury to any of Vendor's Agents, or injury to Persons or property of others.

## **2.2 Changes in Work.**

2.2.1 Changes in the Work, whether ordered by Owner or otherwise arising or permitted, regardless of their number, size, scope or complexity, shall not invalidate the Agreement or give rise to any right on the part of Vendor to seek recovery of any loss, claim or damage from Owner other than pursuant to the contractual processes for adjustment of the Contract Price and/or Contract Time that are expressly provided for herein. Vendor's overhead and profit shall be included on all Change Orders as follows: Overhead & Profit – Ranges from 2%-10%, will be based upon the scope of the job, shall be set forth in the project task order and negotiated by the project manager and vendor. Time and material costs associated with the administration of the changes shall be billed at actual rates not to exceed 4% of the aggregate total of the change.

2.2.2 Vendor hereby agrees and acknowledges that it shall not be entitled to a Change Order, which increases either the Contract Price or the Contract Time, due to any of the following: (1) the negligence of Vendor and/or its Agents, (2) an act or omission of Vendor and/or its Agents, (3) the willful misconduct of Vendor and/or its Agents, (4) foreseeable or avoidable events, (5) conflicts in any of the Contract Documents that Vendor and/or its Agents knew or should have known at the time of entering into this Agreement based upon a review of the Contract Documents, and (6) the conditions of the Project and Site based upon a thorough evaluation and inspection.

2.2.3 Vendor shall submit prior written notice to Owner of any event that Vendor believes will result in a change in either the Contract Price or Contract Time. Such written notice shall be provided by Vendor to Owner within ten (10) calendar days after Vendor's discovery of such event. Vendor recognizes and acknowledges that timely submission of a formal written notice, in the form of a fully prepared and executed Change Order request, whether or not the circumstances of the event may be known to Owner or available to Owner through other means, is not a mere formality but is of crucial importance to the ability of Owner to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. In addition to the executed Change Order request, Vendor must include in the notice to Owner the following:

2.2.3.1 A general narrative statement of the circumstances giving rise to the event that Vendor believes constitutes a change in the Work;

2.2.3.2 A reasonable estimate of any Contract Price adjustment; and

If the circumstances involve an asserted right to adjustment of the Contract Time, Vendor's notice to Owner shall include the following as to each anticipated delay event: (a) a narrative description of the delay event and its impact on the critical path to achieve Substantial Completion of the Work, (b) the number of days of extension to the Contract Time sought by Vendor, and (c) Vendor's recommendations for re-ordering or re-sequencing the Work to avoid or minimize any further delay.

Any form of informal notice, whether verbal or written (including, without limitation, statements at job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of the Agreement, including this provision, shall accordingly be deemed insufficient. Vendor hereby acknowledges and agrees that it is an express condition precedent for its entitlement to additional compensation and/or time extension that it provide timely notice, comply with the content requirements above, and provide all substantiating documentation in conformity with the foregoing.

**2.2.4 Prior Written Authorization for Change Order of the Essence.** Adjustments to the Contract Price or Contract Time shall only be permitted by way of a fully executed written Change Order or amended Task Order, executed by an officer of Vendor and Owner's authorized agent. No oral statement or agreement shall permit any adjustment to either the Contract Price or Time. All adjustments to either the Contract Price or Contract Time shall be in writing.

IT IS OF THE ESSENCE TO THE AGREEMENT BETWEEN OWNER AND VENDOR THAT ALL ADJUSTMENTS TO THE CONTRACT PRICE OR CONTRACT TIME MUST BE AUTHORIZED, IN ADVANCE, IN WRITING, AS REQUIRED BY THIS AGREEMENT. ACCORDINGLY, NO VERBAL DIRECTIONS, COURSE OF CONDUCT BETWEEN THE PARTIES, OR EXPRESS OR IMPLIED ACCEPTANCE OF CHANGES OR OF THE WORK, AND NO CLAIM THAT OWNER HAS BEEN UNJUSTLY ENRICHED (WHETHER OR NOT THERE HAS BEEN SUCH ENRICHMENT) SHALL BE THE BASIS FOR AN ADJUSTMENT TO THE CONTRACT PRICE OR CONTRACT TIME, IF VENDOR HAS NOT OBTAINED ADVANCE WRITTEN AUTHORIZATION IN THE MANNER REQUIRED BY THIS AGREEMENT.

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VENDOR'S INITIALS

**2.2.5** Any change, extra or modification performed by Vendor pursuant to any direction other than a duly authorized and executed Change Order shall be deemed performed at Vendor's own expense and shall not give rise to any right to recovery from Owner.

**2.2.6** The signing of a Change Order by Vendor and Owner shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all claims, damages, and losses claimed by Vendor related to the subject matter of the change order, including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, unabsorbed home office overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related losses and damages.

**2.2.7** Unless specifically stated otherwise in the Change Order, execution by Owner of a Change Order shall not be interpreted as a waiver, release or settlement of any rights or claims that Owner may have for either: (1) defective work; (2) liquidated damages; or (3) recoupment by Owner (by way of withholding of funds, set off or recovery from Vendor) of amounts paid by Owner to Vendor.

**2.2.8** No dispute or disagreement with respect to any changes or delay, including, without limitation, disputes over Vendor's right to or the amount of any adjustment to the Contract Price or Contract Time, shall relieve or excuse Vendor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed changes.

2.3 **Warranty.** In addition to other warranties and guaranties expressly or impliedly required by the Agreement and the Contract Documents (including, without limitation, the implied warranties of merchantability and fitness for a particular purpose or use), Vendor shall, and hereby does, warrant and guarantee that: (1) all labor, installation, materials and equipment used, employed or performed in connection with the Work and/or incorporated into the Work, is of first-class quality, new, free of defects and free of liens, claims and security interests of third parties; and (2) the Work conforms with the requirements of the Agreement, the Contract Documents, and applicable Laws. If required by Owner, Vendor shall furnish satisfactory evidence as to the kind and quality of labor, installation, materials and equipment used.

2.3.1 Without limitation upon Owner's other rights or remedies under the Agreement, any and all Work that is not in conformance with the foregoing general warranty or other warranties or guaranties expressly or impliedly required by the Agreement and the Contract Documents, shall be immediately repaired or replaced by Vendor, together with the repair or replacement of any other property that was damaged. Vendor shall notify Owner in writing upon completion of such repair or replacement. In the event of failure by Vendor to commence and pursue with diligence said replacements, repairs or other Work within ten (10) calendar days after being notified in writing by Owner, Owner is hereby authorized to proceed, at the full expense and cost of Vendor, with such repairs or replacement as Owner deems necessary and expedient and Owner shall have the right to withhold such incurred expense from Vendor, or if there is not a sufficient amount due and owing to Vendor, Owner shall have the right to pursue Vendor for recovery of such incurred costs and expenses.

2.4 **Compliance with Law.** Vendor is aware of and understands all Laws applicable to the Work. In the performance of the Work, Vendor shall give all notices required by, and shall otherwise fully comply with, all applicable Law. All Work shall be performed so that all approvals and all inspections of any Government Agency having jurisdiction over the Work can be obtained without delay or additional expense to Owner. VENDOR SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH THE PROVISIONS OF ALL APPLICABLE LOCAL, STATE AND/OR FEDERAL, SOCIAL SECURITY, UNEMPLOYMENT COMPENSATION, WORKER'S COMPENSATION, SALES AND USE TAX, WITHHOLDING TAX AND OTHER TAX LAWS NOW OR HEREAFTER IN EFFECT, AND SHALL PAY ALL TAXES, CONTRIBUTIONS AND PREMIUMS REQUIRED THEREUNDER. Additionally, Vendor certifies that it has complied with and shall at all times during the term of this Agreement comply with the provisions of the Immigration Reform and Control Act of 1986, as amended. Vendor shall require all Persons employed by Vendor to complete and sign Form I-9 (or substitutes as prescribed by law) verifying their identities and authorization for employment.

2.5 **Work, Inspection of Construction Site Conditions, and Safety.** Vendor acknowledges that it has ascertained the Work and Project conditions to be encountered in the performance of its obligations hereunder. Vendor's commencement of Work under any Task Order constitutes its representation, acknowledgement and agreement that it had sufficient time and access to the Site to conduct a careful and thorough examination to its satisfaction of all visible conditions at the Site and its surroundings and their existing uses by Owner or the public, routes of ingress and egress, the status of construction at the Site and adjacent properties, and the relevant visible and concealed conditions above and below the surface of the ground at the Site (including, without limitation, surveys, reports, data, as-built drawings and utility sources, capacities and locations) that was either (i) provided by Owner to Vendor; or (ii) reasonably available to Vendor by review of the public records. Before commencing Work on the Project, Vendor will have examined and thereafter will continue to thoroughly examine the Site where the Work is to be performed. Vendor represents and warrants that it is entering this Agreement solely in reliance upon its own information

and investigations, and not upon any statement or representation made by Owner concerning the Work or Site conditions. Vendor shall take and comply with all reasonable safety precautions with respect to the Work.

## **2.6 Plans and Specifications.**

2.6.1 Vendor represents that it has thoroughly examined all Contract Documents, including but not limited to, all plans, specifications, standards, and drawings relating to the Work before entering into this Agreement. It shall be Vendor's responsibility to obtain the most recently revised set of plans, specifications, standards, and drawings applicable to each portion of the Work for the jurisdiction in which the Work is to be performed. Vendor shall immediately notify Owner in writing of any discrepancy in the Contract Documents.

2.6.2 Vendor shall perform the Work in accordance with the Contract Documents, including all plans, specifications, drawings, the latest edition of the Uniform Building Code, the latest edition of any applicable Code relevant to Vendor's Work, building code requirements in effect in the jurisdiction in which the Work is to be performed and the written standards of Owner as such standards may be modified from time to time. If any such plans, specifications, standards, and drawings are in conflict, Vendor shall immediately inform Owner in writing, and unless otherwise directed in writing by Owner, Vendor shall perform the Work in accordance with the plan, specification, standard, drawing, or code which calls for the highest standard of workmanship and/or materials. Vendor's Work in compliance with the Contract Documents shall be performed according to the highest standard in the industry for similar projects.

2.6.3 Details of the Work which are not specifically covered herein or on the Contract Documents, but which are reasonably implied or normally considered part of the Work for Vendor's trade, shall be furnished at no extra cost. Vendor shall prepare and obtain approval from Owner as required for all shop drawings, scale models, submittals, details, and samples. Vendor shall furnish Owner any plans, drawings, calculations, diagrams, or other information that Vendor is using, has used, or plans to use for the performance of the Work.

2.7 **Confidentiality and Ownership of Plans.** Any information, including without limitation, plans, specifications, standards, drawings, and cost data, made available to Vendor pursuant to this Agreement are, and shall at all times remain, the exclusive property of Owner. Vendor or its Agents shall not use this information for any purpose other than for the performance of the Work and shall return such to Owner upon its request. Vendor and its Agents shall keep all information covered by this section confidential. Vendor shall take all steps necessary to ensure that its Agents understand and comply with the requirements of this section. If Vendor fails to maintain the confidentiality of any information covered by this section, Owner retains the right to pursue any and all remedies available with respect to the misuse, misappropriation, or unauthorized dissemination of such information, by Vendor or its Agents.

2.8 **Permits and Licenses.** Vendor shall procure and pay for all licenses, permits, approvals, certificates and authorization necessary for the prosecution and completion of the Work and deliver evidence of same to Owner unless otherwise noted; provided, however, that Owner shall have the sole discretion to procure any and all permits or approvals as it may deem necessary or beneficial to maintain the Project schedule.

2.9 **Material.** All materials to be furnished by Vendor shall be new, the best of their respective kinds, and from the same manufacturer, unless otherwise specified in writing by Owner. Materials shall be clean, free from Nonconformances, delivered in appropriate containers, and contain all manufacturers' information. Vendor shall store materials in compliance with Law and this Agreement. Once materials are

delivered to the Construction Site, Vendor shall take all precautions to protect the materials for damage and exposure to the elements. Materials must not contain asbestos.

**2.10 Skilled Workers.** Vendor shall supply a sufficient and competent workforce with the skills necessary to perform and complete the Work in accordance with the Contract Documents, the schedule, this Agreement, and the applicable Task Order. If Owner determines that any Agent of Vendor is incompetent, disorderly, unreliable, or such Person's conduct is otherwise detrimental to the satisfactory performance of the Work, and notifies Vendor thereof, Vendor shall immediately remove such Person from the Site. Vendor shall, if requested by Owner, furnish to Owner a list of all Agents used by the Vendor in connection with Work performed on each Site.

**2.11 Vendor's Superintendent.** During all times while performing the Work, Vendor shall have a competent and reliable superintendent or foreman on the Site as Vendor's representative. Vendor's representative shall be authorized to receive instructions from Owner and to make such decisions as may be necessary for the prompt and efficient performance of the terms of this Agreement. In the event Vendor replaces its representative, Vendor shall notify Owner of the identity of the new representative prior to the effective date of the replacement.

**2.12 Deviations, Discrepancies, and Deficiencies.** Before proceeding with the Work and at any time during the performance of the Work, Vendor shall immediately notify Owner of any deviations or discrepancies between the Contract Documents and any Work already installed or performed. Vendor shall also notify Owner of any deficiencies in any Work performed by it or its Agents. If Vendor covers or otherwise disregards any of its own Work or the work of any of its Agents, which Vendor knew or should have known was improperly installed or is otherwise determined by Owner to be Nonconforming, Vendor shall be responsible for the cost to repair or replace the improper work.

**2.13 Inspections.** Owner and/or its agents shall be entitled to inspect all materials and workmanship at all times at the Project, at Vendor's shop or place of business or at any other place where materials to be furnished under this Agreement are in process, fabrication, or manufacture. Upon satisfactory completion of the Work, or a portion of the Work for which Vendor is requesting payment, Owner shall be entitled to inspect such Work and approve payment. Inspection by Owner is not (and shall not be deemed) a representation or acknowledgment that the Work has been performed correctly and does not relieve Vendor of any obligations under this Agreement. IF OWNER OR ITS SITE FAILS WHOLLY OR PARTIALLY ANY INSPECTION, INCLUDING THAT OF ANY GOVERNMENT AGENCY, AS A RESULT OF VENDOR'S WORK, VENDOR SHALL BE RESPONSIBLE FOR CORRECTING THE DEFICIENCIES AND SHALL BE RESPONSIBLE FOR PAYING ALL FINES AND REINSPECTION FEES.

**2.14 Means, Methods.** Vendor shall be solely responsible for and have control over the means, methods, techniques, sequences, safety and procedures and for coordinating all portions of the Work. If Vendor believes that such means, methods, techniques, sequences or procedures may not be safe or adequate, Vendor shall give written notice to Owner's representative in writing and shall not proceed with that portion of the Work without further written instruction from Owner. In response to such notice, Owner may order Vendor to improve the character or increase efficiency of the means, methods, techniques, sequences or procedures employed, and Vendor shall conform to such order; but the failure of Owner to order such improvement or increase of efficiency will not relieve Vendor from its sole responsibility for safety at the Project site nor shall it relieve Vendor from its obligation to perform the Work in accordance with the Agreement and Task Order, applicable Laws and within the Contract Price and Contract Time.



2.15 **Payment of Agents.** Vendor shall promptly and timely pay all of its Agents. Vendor shall, if requested by Owner, furnish written evidence satisfactory to Owner that all claims or demands of Vendor and of its Agents have been paid. If requested by Owner, Vendor shall furnish written evidence satisfactory to Owner that all wages, benefits, and sums withheld pursuant to Law have been paid. Written evidence shall be furnished upon such forms and in such manner as may be requested by Owner. All statements made by Vendor relative thereto shall be made by sworn affidavit. Vendor shall defend, indemnify and hold Owner harmless from all claims by any of its Agents relating to the Work, including any disputes associated with non-payment of its Agents.

2.16 **Clean Site.** AT THE END OF EACH DAY WHEN VENDOR HAS PERFORMED ANY OF THE WORK ON THE SITE, VENDOR SHALL REMOVE ALL WASTE MATERIAL AND RUBBISH RELATING TO SUCH WORK. With the exception of hazardous materials and other materials as designated by Owner, waste material and rubbish may be deposited in dumpsters or trash receptacles provided by Owner or other such locations as Owner may from time to time designate. Immediately after completing the Work, Vendor shall remove all of its tools, equipment, and excess material and shall leave its workplace "broom clean" or in such other state of cleanliness as required by the Task Order. In the event of a dispute between Vendor and any of its Agents or between one or more of Vendor's Agents as to the responsibility for removal of rubbish, surplus material, tools, or equipment from the Site, Owner may remove any such disputed item and charge the cost of such removal (including Owner's reasonable overhead, and any damages suffered by Owner) to Vendor. Such charge shall be binding upon Vendor. The cost of removal shall be immediately due and payable by Vendor to Owner and may be offset by Owner against amounts otherwise due Vendor.

2.17 **Protection of Property.** Vendor shall protect materials that have been supplied to it from any source and the Work performed by it. Vendor shall protect the property adjacent to that upon which it is performing Work. During the performance of the Work, Vendor shall protect the property, materials, and/or work of others. Vendor shall at all times be responsible for any Nonconformance in the Work, damages to material, or damages to property caused by or resulting from its failure or the failure of its Agents to exercise due care in protecting the work, material, or property of Owner or others at the Site.

2.18 **Storm Water Permitting and Protection.** If and to the extent storm water permitting, control, mitigation or discharge control is required for Vendor's Work by applicable Laws, Vendor shall: (1) file and obtain the Storm Water Permit, unless previously obtained by Owner; (2) furnish all notices required under the Storm Water Permit; (3) prior to starting any Work at the Construction Site prepare the Storm Water Management Plans and Storm Water Pollution Prevention Plans; and (4) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Los Angeles Region Water Quality Control Board and municipal storm water management programs. Vendor represents and warrants that it has included in the Contract Price all costs of compliance with the requirements of this Section. Compliance with this Section shall be a condition precedent to Vendor's right to payment under its application for payment.

2.19 **Storage.** Owner may, in its sole discretion, allow Vendor to store materials, tools, or equipment on the Site. Owner's decision to allow temporary storage must be evidenced by written approval by Owner's project manager for the Project. Owner takes no responsibility for Vendor's materials, tools, equipment, goods, or facilities. Owner will not provide utilities for storage facilities. Vendor shall store materials off the ground, protected from the weather, and shall maintain storage areas in a neat, safe, and

sanitary condition. Under no circumstances shall Vendor store hazardous materials on any of Owner's Sites or in any permitted storage areas. Any permitted storage area shall be maintained in compliance with all Law, including without limitation OSHA and Federal and State environmental protection and water quality laws. Vendor agrees to defend, indemnify and hold harmless Owner from any claims, losses, damages, or expenses, including reasonable attorney's fees and costs, incurred in connection with the use of a permitted storage area. Owner may revoke Vendor's use of a permitted storage area at any time, and in such event, Vendor shall remove all materials, tools, equipment, goods, and facilities and restore the site to its original condition within five (5) business days of such notice of revocation.

2.20 **Losses.** Until all materials have been fully and completely installed and the Work has been completely performed in accordance with this Agreement and the Contract Documents and accepted by Owner, Owner shall not be responsible for loss or damage to the Work or loss or damage to materials belonging to, supplied to, or under the control of Vendor. Losses from theft, vandalism, or events of force majeure are the responsibility of Vendor until the Work has been completely performed by Vendor and accepted by Owner. Vendor shall hold harmless, defend, and indemnify Owner from any loss or damage to the Work or to materials belonging to, supplied to, supplied by, or under the control of Vendor.

2.21 **Shortages.** To avoid delay in the work schedule, Vendor shall give Owner no less than fourteen (14) calendar days' written notice of any shortage or insufficiency of any materials, labor, supplies, equipment, and other items necessary for Vendor to complete the Work within the Contract Time. The giving of such notice shall not excuse Vendor from its duty to follow the Work Schedule and complete the Project within the Contract Time. Any substitute materials, equipment, or supplies must be approved by Owner in writing and, as determined by Owner in its sole discretion, shall be equal to or better than those originally required as part of the Work.

### 3.0 **TIMING OF WORK.**

3.1 **Schedule.** Upon execution of a Task Order hereunder, Vendor shall furnish to Owner a project schedule for the Owner's approval. The schedule shall in all respects conform to and be consistent with the Contract Time.

3.1.1 For all Work involving the performance of construction that will exceed thirty (30) days, activities shown in the schedule shall be in sufficient detail to demonstrate a practical plan to complete the Work within the Contract Time and shall, at a minimum, include the following:

- 3.1.1.1 The start and finish date of each activity;
- 3.1.1.2 The anticipated percent of completion at the end of each month;
- 3.1.1.3 The anticipated purchase and delivery of major materials and equipment;
- 3.1.1.4 The Owner's occupancy requirements;
- 3.1.1.5 Owner review periods and review dates that are acceptable and approved by Owner; and
- 3.1.1.6 The activities identified as being on the critical path to completion.

3.1.2 Compliance with the foregoing schedule requirements is an express condition precedent to Owner's obligation to make any payment to Vendor. The failure by Owner to assert a right of withholding due to noncompliance by Vendor with the schedule requirements shall not waive or diminish

the Owner's right to withhold or disapprove of future payments on account of such prior or any other past or future noncompliance.

3.2 **Start of Work.** Vendor shall commence the Work within forty-eight (48) hour's receipt of Owner's notification to proceed under the executed Task Order. Vendor shall perform no Work without prior written notification from Owner or from Owner's authorized representative. Vendor shall verify that it has the most recent drawings, plans and specifications prior to commencing with any Work.

3.3 **Completion of Work.**

3.3.1 Vendor shall complete the Work expeditiously with adequate forces and within the Contract Time.

3.3.2 Vendor shall coordinate its Work with Owner and other contractors or agents of Owner so that there will be no delay or interference with other work being performed. If Vendor falls behind in performance of the Work or furnishing the necessary materials in accordance with the Work schedule, then Vendor shall take whatever action is necessary, including, without limitation, increasing its work force, number of shifts, or overtime operations, working on weekends, and/or obtaining additional equipment, at Vendor's expense, to conform its portion of the Work to the work schedule. If a delay is caused by the failure of Vendor to furnish labor and/or materials as required pursuant to this Agreement, and such delay (whether or not caused in part by others) causes Owner to incur any loss, damage, or any liability then in addition to all other remedies available to Owner hereunder, Owner may withhold from any payment to Vendor the cost incurred by Owner for such portion of the loss, damage, or liability incurred by Owner in connection therewith as may be attributable to Vendor's delay in performance.

3.4 **Delays and Extensions of the Contract Time.**

3.4.1 **Adjustments Extending Contract Time.** If Vendor is delayed in its achieving completion of the Work within the Contract Time and such delay is excusable by Vendor, then the Contract Time for Substantial Completion may be extended, for such reasonable time as Owner may determine. The Contract Time shall not be extended for delays caused by Vendor or any of its subcontractors.

3.4.2 **Notice of Delay.** Vendor shall submit written notice of delay to Owner if, in Vendor's opinion, any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that Vendor considers constitutes an excusable delay or other matter that Vendor believes may involve or require an adjustment extending or contracting the Contract Time. Such notice shall be provided prior to performance of the Work affected or involved and no later than seven (7) calendar days after the discovery of such circumstances.

3.4.3 **Content.** Each notice of delay by Vendor in order to be considered complete shall include a description of the circumstances giving rise to the notice of delay; and a reasonable estimate by Vendor of any related adjustments extending the Contract Time.

3.4.4 **Waiver by Vendor.** Failure by Vendor to provide a complete and timely notice of delay in accordance with this Section shall constitute a waiver by Vendor of the right to any adjustment to the Contract Time.

3.4.5 **Formal Notice of Essence.** Vendor recognizes and acknowledges that timely submission of formal notice of delay, whether or not the circumstances of a delay may be known to Owner or available to Owner through other means, is not a mere formality but is of crucial importance to the ability of Owner to promptly identify, prioritize, evaluate and mitigate the potential effects of any delay. Any form of informal notice, whether verbal or written (including, without limitation, statements at regular job

meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal notice requirements of a notice of delay set forth herein shall accordingly be deemed insufficient.

3.4.6 **Excusable Delay by Vendor.** An excusable delay by Vendor means a delay to Vendor's ability to complete the Work within the Contract Time that is not caused, in whole or in part, by the negligence, willful misconduct, or any act or omission by Vendor or its Agents or the failure of Vendor or its Agents to comply with the Contract Documents and/or the terms of this Agreement, and is unforeseeable, unavoidable and beyond the control of Vendor or its Agents. The bankruptcy, insolvency or financial inability of Vendor or its Agents, or any failure by Vendor or its Agents to perform any obligation imposed by the Agreement, applicable Task Order(s), the Contract Documents or applicable Laws, shall not constitute grounds for an excusable delay. All other delays to the Project shall constitute non-excusable delays by Vendor.

#### 4.0 **VENDOR'S ACCOUNTING AND OWNER'S AUDIT RIGHTS**

4.1 **Accounting.** Vendor shall exercise accounting controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to Owner and shall include preservation of records for a period of seven (7) years after final completion of the Work. In addition, Vendor shall keep, and shall require provisions to be included in all contracts with its subcontractors, full and detailed books, records, information, materials and data, of every kind and nature that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, including without limitation, agreements, contracts, purchase orders, change orders, leases, commitments, arrangements, notes, estimates, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, checks, accounting records, job cost reports, job cost files, back charges, general ledgers, and other documents relating in any way to any claims, charges or time extensions asserted by Vendor or any of the subcontractors.

4.2 **Owner's Inspection.** Vendor shall allow, and shall require the same provisions to be included in all contracts with subcontractors, allowing Owner and its authorized representatives, auditors, attorneys, and accountants, upon twenty-four (24) hours' notice to Vendor, full access to inspect and copy all of its books and records at a location within Southern California.

4.3 **Noncompliance by Vendor.** Vendor's compliance with this Section shall be a condition precedent to maintenance of any legal action by Vendor against Owner. In addition to and without limitation upon Owner's other rights and remedies for breach, including any other provisions for withholding set forth in this Agreement and the Contract Documents, Owner shall have the right to withhold from any payment to Vendor an additional sum of up to ten percent (10%) of the total amount of any payment until such time as this Section is complied with by Vendor or any of its subcontractors. Vendor agrees that any failure by Vendor or any of its subcontractors to provide access to books and records as required by this Section shall be specifically enforceable, by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based upon affidavits submitted to such court and without the necessity of oral testimony, to compel Vendor to permit access, inspection, audit and/or reproduction of such books and records and to require delivery of such books and records to Owner for inspection, audit and/or reproduction.

#### 5.0 **INSURANCE.**

5.1 **Insurance Obtained by Vendor.** Vendor shall, at its sole cost and expense, obtain and maintain the following insurance coverage:

5.1.1 **Commercial General Liability insurance:** Vendor shall provide commercial general liability insurance, and shall include, but not be limited to, coverage for bodily injury or death, completed operations and broad form property damage coverage, and coverage for all liabilities assumed by Vendor and/or its consultants and sub-contractors pursuant to this Agreement, with coverage limits of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate, annually (this coverage shall also include, and there shall be no endorsement or modification limiting the scope of coverage for, liability arising from explosion, collapse, or underground property damage (XCU).

5.1.2 **Automobile Liability Insurance:** \$1,000,000 per accident for bodily injury and property damage.

5.1.3 **Workers' Compensation Insurance:** Workers Compensation insurance as statutorily required with Employer's Liability insurance.

5.1.4 **Builder's Risk (Course of Construction) Insurance:** Contractor shall provide evidence of Builder's Risk coverage in the form of Course of Construction insurance coverage naming Owner as the loss payee for the entire cost of the project for improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, or new construction projects during the performance of the Work, including and during transit, installation and testing. Such insurance shall be written on an "All Risk" (Special Perils) coverage form including Earthquake and Flood, with limits equal to the completed value of the project with no coinsurance penalty provisions. Contractor shall be responsible for the deductible covering the work, however, such deductible shall not exceed \$10,000 dollars.

5.1.5 **Professional Liability Insurance:** If Vendor's Work hereunder involves the performance of professional services, professional liability insurance with coverage limits of not less than \$1,000,000 per occurrence of claim, and \$2,000,000 policy aggregate.

5.1.6 **Vendor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions Insurance:** This coverage is required when, or if necessary, by the University of La Verne Management. When necessary, limits of \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate are required but may be increased at the discretion of the University's management. The respective Task Orders for each project will reflect whether the coverage is required.

5.1.7 **Deductibles and Self-Insured Retentions.** All deductible and Self-Insured Retention amounts pertaining to any insurance procured by Vendor pursuant to this Agreement must have deductibles or self-insured retentions not to exceed \$10,000 dollars per occurrence.

5.1.8 **Certificate Holder.** The Certificate Holder should read as follows: University of La Verne, Attn: Risk Management, 1950 Third Street, La Verne, CA 91750.

5.1.9 **Additional Insureds.** All policies of insurance that Vendor is to maintain under this Agreement, with the exception of the Professional Liability and Workers' Compensation - Employer's Liability and Automobile Liability policies, shall name Owner and its directors, officers, trustees, president, employees, volunteers, and agents as additional insureds, using Insurance Services Offices Form B (version CG 20 10 11 85 or equivalent acceptable to Owner). The additional insureds shall be provided the same coverage as provided Vendor, and such additional insured coverage shall include completed operations

coverage. All policies shall provide that the additional insured coverage shall be primary and that any other insurance coverage carried by or otherwise available to the additional insureds will be excess and will not contribute with this additional insured coverage. The following should be included in the "Description of Operations" of the certificate of insurance: "It is agreed that the Certificate Holder, University of La Verne, is included as an Additional Insured, as its interests may appear with respect to the operations of the Vendor for services rendered to the Certificate Holder." All endorsements and exclusions affecting such additional insured coverage must be provided to, reviewed by, and found acceptable by Owner.

5.1.10 **Vendor's Insurance is Primary.** All policies of insurance required to be procured by Vendor under this Agreements shall state that such policy is primary and noncontributory with any insurance carried by Owner. The following should be included in the "Description of Operations": "The insurance provided by the Vendor is primary and non-contributory to any insurance maintained by the University of La Verne."

5.1.11 **Completed Operations Coverage.** The Commercial General Liability Insurance coverage referenced above, including additional insured coverage for Owner, shall be maintained in force until expiration of the applicable statute of limitations for claims related to latent defects and construction improvements for real estate.

5.2 **Insurer Requirements.** All policies of insurance required to be procured by Vendor under this Agreement shall be issued by an insurance company acceptable to Owner, licensed to do business in the State of California, with a rating classification of "A-" or better and a financial size category rating of "IX" or better according to the latest edition of the A.M. Best Company Key Rating Guide.

5.3 **Proof of Coverage.** Prior to executing this Agreement, Vendor shall give Owner a certificate of insurance issued by the insurance carrier providing coverage, accompanied by the endorsements (CG 20 10 11 85 or equivalent acceptable to Owner) showing the required additional insured coverage, a copy of each insurance policy, and evidence of premium payments. These documents must be satisfactory to Owner in substance and form. Throughout the term of this Agreement, Vendor shall furnish Owner with the documentation described in the preceding sentence: (i) with respect to the insurance first obtained after the date of this Agreement, within thirty (30) days after such insurance is first obtained; and (ii) evidencing renewal of all insurance required to be maintained by Vendor pursuant to this Agreement not less than thirty (30) days prior to the expiration of the insurance being renewed. The failure of Vendor to provide such proof or Owner's failure to request the same shall not act as a waiver of any of Vendor's insurance requirements under this Agreement.

5.4 **Waiver of Subrogation.** Vendor for itself and on behalf of its insurers, to the extent legally possible without voiding the insurance required under this Agreement, hereby waives and releases Owner and all additional insureds from liability for loss, damage, or loss of property, which loss or damage is covered by said insurance. Vendor shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by such insurance. The following should be included in the "Description of Operations": "Waiver of Subrogation included is in favor of the University of La Verne, its officers, officials, employees, and volunteers for general liability, auto liability, and workers' compensation."

5.5 **Notification of Cancellation.** Vendor hereby agrees to immediately notify (or cause its insurers or insurance broker to notify) Owner of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which provides coverage to the additional insureds or otherwise may impact the ability of Vendor to fully perform its obligations hereunder and such insurance

shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification except with thirty (30) calendar days prior written notice to Owner.

**5.6 Vendor's Duty to Obtain Insurance.** Should Vendor subcontract any portion of its Work, including the obtaining of materials or equipment from any source other than Owner, or directs any other Person in the course of the Work, Vendor shall require such Person to purchase and maintain insurance coverage of the same type, requirements and limits as provided in this section. Vendor shall give Owner all documents evidencing that such insurance provides additional insured coverage to the additional insureds, pursuant to Form CG 20 10 11 85 or its substantial equivalent acceptable to Owner prior to commencement of any work by such sub-Contractor.

**5.7 Owner's Right to Obtain Insurance.** In the event Vendor fails to maintain the insurance coverage required by this Agreement, such action shall constitute a material breach of this Agreement entitling Owner to exercise any and all rights and remedies under this Agreement. In addition, Owner may, at its option and in its sole discretion (but with no obligation to do so), purchase such coverage and backcharge the expense to Vendor.

**5.8 Waiver of Insurance Requirements.** Notwithstanding anything to the contrary, waiver of any of these insurance requirements, including the amount or extent of coverage, may only be obtained upon Owner's written consent.

**5.9 Default.** Vendor understands and hereby agrees that any failure to comply with the insurance requirements of this Agreement constitutes a default and material breach of this Agreement.

## **6.0 PERFORMANCE AND PAYMENT BONDS.**

**6.1 Bonds.** Within fourteen (14) calendar days after issuance of Owner's notice of award to Contractor and prior to commencing the Work, Contractor shall file with Owner good and sufficient labor and material payment bond (Payment Bond) and performance bond (Performance Bond) in the form of AIA 312.

**6.2 Amount.** The Performance Bond and Payment Bond shall each be issued for a penal amount of one hundred percent (100%) of the Contract Price. The penal amounts of the Payment Bond and Performance Bond shall be increased as, when and in the amount of any Change Orders that are executed increasing the Contract Price, Contractor shall, upon request by Owner, provide evidence of such increases.

**6.3 Insufficiency.** If a Payment Bond or Performance Bond, or surety issuing same, is determined by Owner to be insufficient, then such Payment Bond or Performance Bond shall be replaced within ten (10) calendar days with a Payment Bond or Performance Bond issued by a surety that fully complies with the requirements of this Section.

**6.4 Duration.** The Payment Bond shall remain in effect until formal written acceptance of all Work and the Project by Owner and payment of all stop notices and claims by Contractor or the subcontractors have been satisfied. The Performance Bond shall remain in effect and assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive final completion or termination, such as, but not limited to, Contractor's warranty, commissioning and indemnity obligations.

**6.5 Surety.** At the time the Agreement is signed and at all times thereafter until final payment has been made by Owner, the Surety on the Payment Bond shall be an admitted surety and the surety on the Performance Bond shall be an admitted surety having an A.M. Best's Insurance Rating of not less than A-.

**6.6 Premiums.** The premiums for all bonds are included in the Contractor's bid and the Contract Price and shall be paid by Contractor. The costs of all bonds that Contractor requires be provided by any subcontractor shall be deemed to be at Contractor's sole cost and expense.

**6.7 Obligee.** The Payment Bond and Performance Bond shall each name Owner as obligee. All bonds purchased by the subcontractors shall name Contractor and Owner as dual obligees.

**6.8 Payment.** No payments or further payment to Contractor for Work performed shall be made or due unless and until Contractor has fully complied with the requirements of this Section.

**6.9 No Exoneration.** Neither changes, change orders, unilateral change orders, modifications nor any adjustments to the Contract Price or Contract Time shall in any way release or exonerate a surety from its obligations, and notice thereof shall be waived by the surety. The foregoing provision shall be included in the terms of the Payment Bond, Performance Bond, as well as in any performance or payment bonds obtained by the subcontractors relating to the Work.

**6.10 Communications.** Owner shall have the right to communicate with any surety with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor shall be provided with a copy of all such written communications. Such communications shall not create, or be interpreted as creating, any contractual relationship between Owner, on the one hand, and the surety, on the other hand.

**6.11 No Limitation.** The requirements of this Section pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations Contractor may have under applicable Law to provide bonding for the benefit of, and to assure payment to the subcontractors performing the Work for, the Project.

**6.12 Subcontractor Bonds.** Each performance bond, if any, furnished by a subcontractor shall include a provision whereby the surety consents to the contingent assignment of Contractor's rights under such bond to Owner.

## **7.0 PRICE AND PAYMENT.**

### **7.1 Contract Price.**

**7.1.1** Vendor shall furnish all Work required by any Task Order for the Contract Price set forth in such Task Order, or as it may be amended or adjusted through approved change orders. Although Vendor's cost to perform the Work, including labor and materials, may increase during the term of this Agreement or the duration of the Work under a Task Order, Vendor shall not be entitled to any increase in the Contract Price except as provided by an approved Change Order. Vendor acknowledges and agrees that the Contract Price includes: (i) the cost to complete all of the Work within the agreed to Contract Time, and in compliance with all Contract Documents, (ii) the cost of compliance with all Laws; (iii) the cost of complying with the requirements of any Governmental Agency having jurisdiction over the Work; and (iv) all applicable sales and use taxes, state and local license fees, permits, and other fees of any kind or nature whatsoever related to Vendor's Work. Vendor hereby acknowledges and agrees that, subject to a fully executed Change Order, the Contract Price is its sole and exclusive compensation for performance of the Work under this Agreement.

**7.1.2** The Contract Price as stated in the Task Order, including adjustments authorized by Change Order, is the total amount payable by Owner to Vendor for performance of the Work under the Contract Documents. The Owner is under no obligation, under any circumstances whatsoever, to pay any portion above and beyond the Contract Price to Vendor.



## 7.2 Applications for Payment.

7.2.1 **Submission by Vendor.** Applications for payment shall be properly prepared by Vendor and submitted to Owner in accordance with the Task Order. Applications for payment shall include the amount of payments previously made under the Task Order, the amount of the payment sought by the application, the purchase order number assigned to the Task Order, and the percentage of Work Vendor claims to have completed on the Project as of the date of the application for payment.

7.2.2 **Timing of Payment.** Subject to Owner's rights of withholding, Owner shall make payment to Vendor of all undisputed sums within thirty (30) calendar days after Owner approves Vendor's application for payment.

7.2.3 **Disagreement.** In the event of a disagreement between Owner and Vendor over the accuracy or reasonableness of the Vendor's statement of the percentage completion of each line item in the schedule of values for each application of payment, Owner shall make a good faith estimate of the percentage completion, which percentage completion shall be inserted by Vendor in the application for payment and the application for payment shall then be resubmitted by Vendor incorporating such revised percentage completion.

7.2.4 **Disputed Payment.** No dispute or disagreement between Owner and Vendor shall relieve or excuse Vendor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

7.2.5 **Title.** Vendor warrants that title to all the Work covered by an application for payment will pass to Owner no later than the time of payment. Vendor further warrants that upon submittal of an application for payment all Work for which certifications for payment have been previously issued and payments received from Owner shall, to the best of Vendor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Vendor, the subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment for the Work.

7.2.6 **No Waiver by Owner.** No payment made to Vendor pursuant to this Agreement shall be deemed to operate as an acceptance by Owner of any part of or all of the Work, and shall not be construed as a waiver by Owner as to Work later found defective, nor shall it release Vendor from liability for Nonconformances, warranty work, repairs, and/or replacements.

7.3 **Grounds for Owner to Withhold Payment to Vendor.** Owner may decline to approve any of Vendor's application for payment and withhold payment requested under any application for payment, in whole or in part, on any of the grounds set forth in this Section or elsewhere in the Contract Document and the Agreement:

7.3.1 Third party claims, mechanic's liens, stop notices, or reasonable evidence indicating the probable filing of such claims, mechanic's liens, or stop notices.

7.3.2 Defective work or Nonconforming Work not remedied by Vendor.

7.3.3 Failure of Vendor to make proper payments to a subcontractor, materialman or other vendor for services, labor, materials or equipment or other Work.

7.3.4 Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Price or within the Contract Time.

7.3.5 Failure of Vendor or any of its subcontractors to comply with applicable Laws.

7.3.6 Any penalty assessed against the Owner by virtue of Vendor and/or one of its subcontractors failure to comply with any applicable Laws.

7.3.7 Failure by Vendor to maintain progress in accordance with the Project schedule.

7.3.8 Additional professional, consultant or inspection services required due to Vendor's failure to comply with the Contract Documents.

7.3.9 Loss or damage caused to Owner or any other Person or entity by Vendor or any of its subcontractors.

7.3.10 Cleanup performed by Owner and chargeable to Vendor pursuant to the terms of the Contract Documents.

7.3.11 Failure of Vendor to submit on a timely basis, proper and complete documentation required by the Contract Documents, including but not limited to, schedule updates, pricing information, certification and other required reports or documentation.

7.3.12 A breach by Vendor of any obligation or term of this Agreement and the Contract Documents.

7.4 **Additional Rights.** The Owner's rights of withholding are in addition to and not a limitation upon any other rights the Owner may have under this Agreement and the Contract Documents.

7.5 **Retainage.** As security for the performance of the Work, Vendor agrees to have the following amounts withheld from payments due to Vendor: Five Percent of the Contract Price (5%). Owner shall hold this retention amount from each progress payment until Vendor has satisfied all of its obligations under this Agreement. In addition to any other rights or remedies Owner may have, Owner may apply any or all of such retention amounts to defray costs and/or damages resulting from Vendor's failure to satisfy any of its obligations under this Agreement.

7.6 **Retention upon Termination.** If this Agreement is terminated for any reason, Owner shall have the right to retain any monies then due Vendor, except as provided herein. Such monies shall be used in the following manner: (i) as security for Vendor's obligation to perform warranty work; (ii) to provide for the payment of amounts claimed by third parties (including Vendor's Agents) for work and materials provided to Vendor; and (iii) to provide for the payment of amounts necessary to correct Nonconformances or repair any damage resulting from the Work performed by Vendor. The right to retain any monies shall not prejudice any other rights and remedies available to Owner. The retention of any monies shall not relieve Vendor of its obligations to perform its obligations hereunder, including warranty work. Retained monies, less expenditures incurred by Owner to complete warranty work and pay claims, shall be released to Vendor when all of Vendor's obligations under this Agreement have been satisfied, all claims under this Agreement have been paid, and all warranties given herein covering any portion of the Work have expired.

7.7 **Evidence of Payment of Claims.** As a condition precedent to any obligation of Owner to make payments to Vendor under this Agreement, Vendor shall furnish written evidence satisfactory to Owner (e.g., conditional and unconditional waivers for progress and final payments) that all claims or demands from Vendor of its Agents, including, without limitation, payment to employees, trustees of health and welfare pension plans, vacation savings plans, apprenticeship training plans and union dues, payroll sums to be withheld pursuant to Law, and other items and matters used by Vendor in its performance of this Agreement have been paid. Such written evidence shall be furnished upon such forms and in such manner as may be requested by Owner and all statements made by Vendor relative thereto shall be made by affidavit or under penalty of perjury. Owner may, at its sole discretion (but with no obligation so to do), on Vendor's

behalf, pay and satisfy any Agent furnishing labor or materials to Vendor in the performance of the Work, including any Person who may have a cause of action against any surety of Owner or lien rights against the Project or any part thereof. Such payment, in Owner's sole discretion, may be made directly to any Agent or jointly to Vendor and such Agent. Direct payment may at Owner's option include Vendor's payroll obligations incurred or to be incurred in performance of this Agreement and any such payments shall be deducted from the next monies due or to become due to Vendor pursuant to this Agreement. Nothing contained in this section specifically, or in this Agreement generally, shall be construed to be for the benefit of any Person not a party to this Agreement, and no third-party beneficiary rights are created hereby.

**7.8 Release of Stop Notices and Mechanic's Liens.** If any stop notice or mechanic's lien, whether invalid or valid, is made, filed with, served upon, recorded or asserted against Owner or the Project by any subcontractor, laborer, material supplier or any other party, or their agent or employee, for money claimed due for Work of any kind provided to the Project, then Vendor shall within five (5) calendar days after written notice by Owner and at Vendor's sole cost and expense, procure, furnish and record appropriate releases or other instruments which will fully release, extinguish and remove such stop notice or mechanic's lien and any resulting encumbrance on the Project. Unless and until such stop notice or mechanic's lien is fully released and any encumbrance removed from the Project, Owner shall have the right to retain from any payment then due, or thereafter to become due, an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop notice or mechanic's lien and any action or proceeding thereon which may be brought to judgment or award. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop notice, mechanic's lien and any action or proceeding thereon, then Vendor shall be liable for the difference and upon written demand shall immediately deposit the same with Owner. Vendor shall defend, indemnify and hold harmless Owner and all Indemnified Parties (as defined in Section 10.1.1) from any mechanic's lien, stop notice, or bond action recorded, served or commenced by any of its Agents, at its sole cost and expense, including but not limited to, all in-house legal fees and attorney's fees. The provisions of this Section are in addition to such other rights as Owner may have against Vendor under the Contract Documents or applicable Laws.

## **8.0 ADMINISTRATION OF THE AGREEMENT.**

**8.1 By Owner.** Owner will provide administration of the Work as described in the Contract Documents and Task Orders.

**8.2 Review of Applications for Payment.** Owner will review and certify all applications for payment by Vendor, including applications for payment requesting progress payments and final payment. In the event of a disagreement between Vendor and Owner on the content of an application for payment, Owner shall make the determinations necessary to certify, in whole or in part, the application for payment.

**8.3 Rejection of the Work.** The Owner and any design consultant shall have authority to reject the Work which does not conform to the Contract Documents and to require additional inspection or testing, whether or not such Work is fabricated, installed or completed.

**8.4 Change Orders.** Owner will review and certify all change order proposals submitted by Vendor, including requests to increase the Contract Price and the Contract Time.

**8.5 Schedule.** Owner will review and approve all schedules submitted by Vendor and all changes to the schedule.

**8.6 Observation of the Work.** Owner and/or any design consultant will visit the Site as appropriate to the stage of the Work to observe the Work in progress. Observations shall be for the purpose of ascertaining the progress of the Work and that the character, scope, quality and detail of construction

(including workmanship and materials) comply with the Contract Documents, the design consultant's directives, approved submittals and clarifications issued by any design consultant. Observations shall be separate from any inspections which may be provided by others.

## **9.0 TERMINATION FOR CONVENIENCE.**

9.1 **By Owner.** At its sole discretion, Owner may terminate this Agreement at any time for any reason or for no reason upon thirty (30) days notice to Vendor. If Owner terminates this Agreement for a reason other than Vendor's breach of or failure to perform any obligation arising under this Agreement, Owner shall only pay Vendor the applicable price for the Work which is completed, including all materials delivered and incorporated into the Project, less amounts retained, as of the date of termination. Vendor shall not be entitled to payment for the Work not yet completed, for materials not yet incorporated into the Work and/or the Project, expected gains or profits, or any consequential damages resulting from Owner's termination. If this Agreement is terminated by Owner as a result of Vendor's breach or failure to perform any obligation arising under this Agreement, Owner shall have the right, in addition to all other remedies available to it, to retain all payments due to Vendor.

9.1.1 **Sole Compensation.** Vendor agrees to accept the compensation allowed under this Section as its sole and exclusive compensation in the event of a termination by Owner for convenience and waives any claim for any loss, damage, or harm related to Owner's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind and all consequential damages.

## **10.0 BREACH.**

10.1 **Events of Default.** Vendor shall be in material default and breach of this Agreement if any of the following events occur:

10.1.1 Vendor fails to comply with any provision of this Agreement.

10.1.2 Any Person files or threatens to file a claim of lien or any other claim against Owner as a result of Vendor's acts or omissions, including by way of illustration and not exclusion, execution or claims upon monies owed Vendor, claims upon surety of Owner, execution upon monies due Owner, or assertion or threatened assertion of lien claims by Vendor's Agents, or any other monies claimed to be owing by Vendor pursuant to this Agreement or otherwise.

10.1.3 Vendor is unable to meet its financial obligations, files for protection under the bankruptcy laws of the United States of America, or has a receiver appointed on account of insolvency.

10.1.4 Vendor and/or its Agents are negligent in the performance of the Work.

10.1.5 Vendor infringes upon or violates any patents, trademarks, copyrights, or third-party proprietary rights in the performance of the Work.

10.2 **Remedies.** In the event Vendor breaches this Agreement, Owner may terminate this Agreement without prejudice to any other rights or remedies available to it under applicable Law or in equity or Owner may, but shall not be obligated to pursue any one or more of the other remedies without terminating this Agreement:

10.2.1 Owner may require Vendor, at its own expense, to replace and correct Nonconformances, and cure such other defaults as may exist in the performance of Vendor's obligations within twenty-four (24) hours after notification from Owner.

10.2.2 Owner may, without further notice, engage other Persons to correct and repair Nonconformances or to complete the Work.

10.2.3 Owner may engage other Persons to perform such portion of the Work or may furnish any materials, services, or other items required under this Agreement, as Owner, in its sole discretion, may deem necessary to avoid delay in the progress of the Work.

10.2.4 Owner may use any of Vendor's materials or equipment on the Site to complete the Work or correct Nonconformances. Vendor shall not remove such materials and equipment from the Site unless directed in writing by Owner to do so. If Owner elects to use such materials or equipment, title thereto shall without further action vest in Owner, and the fair market value, as reasonably determined by Owner, of the materials and equipment so utilized shall be offset against amounts otherwise due Owner from Vendor.

10.2.5 Owner's election to pursue one or more of the above remedies shall not affect in any manner whatsoever Owner's rights or remedies available to it under applicable Law or in equity.

## 11.0 INDEMNIFICATION AND DEFENSE OBLIGATIONS.

11.1 **Indemnification Requirements—In General.** All Work performed by Vendor shall be at the risk of Vendor exclusively, and shall be subject to Vendor's obligation to defend, indemnify, and hold harmless Owner according to the terms of this Agreement and the Contract Documents.

11.1.1 **Duty to Defend/Indemnify/Hold Harmless.** To the fullest extent permitted by Laws, Vendor shall, immediately upon written tender of a claim from Owner, indemnify, defend, and hold harmless Owner, its directors, trustees, officers, affiliates, partners, joint venturers, representatives, members, designees, employees, agents, successors and assigns ("Indemnified Parties"), from and against any and all claims, damages (including but not limited to, bodily injury, sickness, disease, death, and injury to or destruction of property (both real property and personal property) and the loss of use resulting therefrom), losses, penalties, intellectual property law violations, and expenses, including, but not limited to, attorney's fees and court costs, which (1) arise out of or are in any way connected with the Work performed, materials and equipment furnished, or services provided under this Agreement by Vendor or its Agents, or out of Vendor or its employee's or Agents' activities conducted on the Project and (2) is caused in whole or in part by any acts, omissions or negligence of Vendor or anyone directly or indirectly employed by Vendor or anyone for whose acts Vendor may be liable, regardless of whether it is caused in part by the passive negligence of the Indemnified Parties hereunder. It is the express intent of Owner and Vendor that this Agreement is meant to comply with California Civil Code section 2782, et seq., as amended by Senate Bill 474 (Civil Code section 2782.05). To the extent this Agreement or any portion hereof does not comply with the mandates of California Civil Code section 2782, et seq., as amended by Senate Bill 474 (Civil Code 2782.05), any such term, provision, covenant, agreement, or condition held by a court of competent jurisdiction and/or arbitrator to be void, invalid, or unenforceable, shall not affect any other portion of this Agreement and the remainder shall be effective as though such term, provision, covenant, agreement, or condition had not been contained herein.

11.1.2 **Indemnification Not Limited by Insurance.** The indemnification obligations of Vendor under this Section and elsewhere in this Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Vendor is required to carry under this Agreement. The Indemnified Parties' right to indemnification from Vendor under this section shall be independent of the Indemnified Parties' rights under the insurance to be provided by Vendor under this Agreement.

11.1.3 **Duty to Defend as Separate Obligation.** Vendor's duty to defend the Indemnified Parties is entirely separate from, independent of, and free-standing from Vendor's duty to indemnify the Indemnified Parties, including, without limitation, the defense of the Indemnified Parties against claims for which the Indemnified Parties (or any of them) may be strictly liable and applies whether the issue of Vendor's liability, breach of this Agreement or other obligation, or Vendor's responsibility has been determined and whether the Indemnified Parties (or any of them) have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Vendor's performance of the Work. Such defense obligation shall arise immediately upon presentation of a claim or demand by any party which arises out of or is connected to the Work performed by Vendor or its Agents and written notice of such claim being tendered to Vendor.

11.1.4 **Survival of Defense and Indemnification Obligations.** Vendor's indemnification and defense obligations hereunder shall extend to claims and demands occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is determined by final judgment that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Law.

11.1.5 **Indemnification no Limit on Liability.** Vendor's liability for indemnification and defense hereunder is in addition to any liability Vendor may have to the Indemnified Parties for a breach by Vendor of any of the provisions of this Agreement. The indemnification obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any Indemnified Party.

11.1.6 **Reimbursement for Claims.** Vendor shall reimburse Owner for any indemnification obligation incurred by Owner within five (5) calendar days of a finding of liability by a court of competent jurisdiction and/or arbitrator. Owner may deduct payments made from any monies due or to become due to Vendor pursuant to this Agreement or any other agreement with Owner or Owner's affiliates. Owner may withhold from any monies due or to become due Vendor such sums as Owner shall deem reasonably necessary to protect Owner from any claims.

11.1.7 **Subcontractor Indemnity Agreements.** Vendor agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Agreement from each and every subcontractor, of every tier. In the event Vendor fails to do so, Vendor agrees to be fully responsible to provide such defense and indemnification on the subcontractor's behalf.

11.1.8 **Sole Negligence or Willful Misconduct.** The provisions of the above-referenced defense and indemnification provisions shall not apply to any claims or demands which arise out of the sole negligence or willful misconduct of the Indemnified Parties.

11.2 **Breach of Agreement is Breach of All.** Vendor and Owner acknowledge that during its performance of this Agreement, Vendor may also be under contract with Owner or Owner's affiliates for work at Owner's or Owner's affiliates' other projects or locations. At Owner's sole election, a breach in the performance of any of Vendor's obligations under this Agreement shall constitute a breach in Vendor's obligations under any other agreement(s) with Owner or Owner's affiliates, and a breach by Vendor of any other agreement(s) with Owner or Owner's affiliates shall constitute a breach of Vendor's obligations under this Agreement.

## 12.0 CLAIMS, WAIVER OF CONSEQUENTIAL DAMAGES, AND CLAIMS DISPUTE RESOLUTION PROCESS.

12.1 **Contents of Claim.** A Claim by Vendor must include the following:

12.1.1 a statement that it is a Claim and a request for a decision on the Claim;

12.1.2 a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;

12.1.3 if the Claim involves an adjustment to the Contract Price or Contract Time, a statement demonstrating that all requisite notices were provided, including, without limitation, timely and proper notice of any change or delay.

12.1.4 a detailed justification for any remedy or relief sought by the Claim, including without limitation: (1) a detailed cost breakdown (subject to requirement precluding calculations based on “total cost” or “modified total cost” methodology); and (2) actual job cost records demonstrating that the costs have been incurred;

12.1.5 if the Claim involves a request for adjustment to the Contract Time, written documentation demonstrating that Vendor has complied with the requirements of the Contract Documents for written substantiation (including, without limitation, a time impact analysis) of Vendor’s entitlement to an adjustment to the Contract Time under the Contract Documents; and

12.1.6 a written certification signed by a managing officer of Vendor’s organization who has the authority to sign contracts and purchase orders on behalf of Vendor and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

“I hereby certify under penalty of perjury that I am a managing officer of \_\_\_\_\_ (Vendor’s name) and that I have reviewed the Claim presented herewith on Vendor’s behalf and/or on behalf of \_\_\_\_\_ (Subcontractor’s name) and that, to the best of my knowledge after conducting a diligent inquiry into the facts of the Claim, the following statements are true and correct:

(1) The facts alleged in or that form the basis for the Claim are, to the best of my knowledge following diligent inquiry, true and accurate; and,

(2) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(3) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Vendor, and by each subcontractor that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages suffered by Vendor and/or such subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(4) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Vendor and the subcontractor that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the delays or disruption suffered by Vendor and/or such subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(5) Vendor has not received payment from Owner for, nor has Vendor previously released Owner from, any portion of the Claim.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

12.2 **Noncompliance.** Failure by Vendor to submit complete information, documentation and certifications as required by this Section shall result in the Claim being returned to Vendor without any decision.

12.3 **Submission of Claims.** Claims by Vendor shall be first submitted to Owner.

12.4 **Continuous Work.** No dispute or disagreement with respect to any Claim shall relieve or excuse Vendor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

12.5 **Time for Filing.** All claims by Vendor and supporting documentation and certifications must be filed within thirty (30) calendar days after the Claim arises. No Claims by Vendor shall be filed after Vendor's receipt of final payment.

12.6 **Condition Precedent.** Vendor's strict compliance with the requirements of this Section as to a Claim shall be considered conditions precedent to Vendor's right to initiate the Claims Dispute Resolution Process or any legal proceedings with respect to such Claim.

12.7 **Owner's Response to Claim.** Claims by Vendor shall be responded to by Owner in writing within sixty (60) calendar days of receipt of the Claim, unless Owner requests additional information or documentation of the Claim within thirty (30) calendar days of receipt of the Claim, in which case Owner shall respond to the Claim within thirty (30) calendar days after receipt of the further information or documentation or within a period of time no greater than that taken by Vendor in producing the additional information or documentation, whichever is greater. Vendor and Owner thereafter shall meet and confer in an effort to resolve the Claim.

12.8 **Waiver of Consequential Damages.** Vendor and Owner waive all rights and claims against each other for consequential damages arising out of or relating to the performance or nonperformance of any obligation under this Agreement and the Contract Documents, including, without limitation, all consequential damages due to termination or suspension by Owner. Nothing contained in this Section or stated elsewhere in the Contract Documents shall be deemed or interpreted: (1) to preclude any right or claim for liquidated damages that is permitted to Owner under the terms of the Agreement; or (2) as a limitation on or a release or waiver of any express or implied rights of Owner to indemnification.

12.9 **Resolution of Claims by Vendor.** Claims by Vendor not resolved under the above procedures, shall be resolved in accordance with the Claims Dispute Resolution Process set forth below.

12.10 **Resolution of Claims by Owner.** Claims by Owner shall be resolved in accordance with the Claims Dispute Resolution process set forth below.

12.11 **Claims Dispute Resolution Process.**

12.11.1 **By Vendor.** Vendor's right to commence the Claims Dispute Resolution Process shall arise upon Owner's written response denying all or part of a Claim. Vendor shall initiate the Claims Dispute Resolution Process by submitting a written statement of dispute to Owner within seven (7)



calendar days after the decision by the Owner. Vendor's statement of dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Claim, the dates of their occurrence, and the asserted effect, if any, on the compensation due or time of performance obligations of Vendor under the agreement. Such statement of dispute shall include adequate supporting data to substantiate the disputed Claim. Adequate supporting data for a Claim relating to an adjustment to Vendor's obligations relative to time of performance shall include a detailed, event-by-event description of the impact of each delay on Vendor's time for performance. Adequate supporting data to a statement of dispute submitted by Vendor involving Vendor's compensation shall include a detailed cost breakdown and supporting cost data in such form and including such detailed information and other supporting data as required to demonstrate the grounds for, and precise amount of, the Claim.

12.11.2 **By Owner.** Owner's right to commence the Claims Dispute Resolution Process shall arise at any time following Owner's actual discovery of the circumstances giving rise to a Claim by Owner. A statement of dispute shall be submitted by Owner to Vendor, which shall state the events or circumstances giving rise to the Claim, the dates of their occurrence and the damages or other relief claimed by Owner as a result of such events.

12.11.3 **Claims Dispute Resolution Process.** Owner and Vendor shall each participate fully and in good faith in each step and level in the Claims Dispute Resolution Process. Such good faith effort on the part of the party shall be a condition precedent to the right of such party to proceed to the next step and level in the Claims Dispute Resolution Process, including the commencement of legal proceedings.

12.11.4 **First Step: Negotiations.**

12.11.4.1 **Senior Management Level Negotiations.** Senior management representatives of Owner and Vendor (consisting of a representative at the level of owner, president, or chief executive officer) shall meet as soon as possible (no later than thirty (30) calendar days) in a good faith effort to negotiate a resolution to the Claim. Upon completion of the meeting, if the Claim is not resolved, Vendor or Owner may either continue the Senior Management Level Negotiations or either of Vendor or Owner may declare in writing the Senior Management Level Negotiations ended. All discussions that occur during the Senior Management Level Negotiations and all documents prepared solely for the purpose of the Senior Management Level Negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119, 1120, and 1152.

12.11.5 **Second Step: Mediation.**

12.11.5.1 **Mediation Procedures.** If the Claim remains unresolved after completion of negotiations above, and a party wishes to pursue the Claim further, the parties agree to submit the Claim to non-binding mediation before a mutually acceptable third party mediator in accordance with the following provisions:

12.11.5.1.1 **Qualifications of Mediator.** The parties shall endeavor to select a single mediator who is a retired judge or an attorney with at least ten (10) years of experience in construction contract law and in mediating construction disputes.

12.11.5.1.2 **Submission to Mediation and Selection of Mediator.** The party initiating mediation of a Claim shall provide written notice to the other party of its decision to mediate and include no less than five (5) proposed mediators. The party responding shall then, within ten (10) calendar days, provide its list of no less than five (5) proposed mediators, or indicate its agreement to one of the proposed mediators. In the event the parties are unable to agree upon a mediator within thirty (30) calendar days after the receipt of such written notice by the submitting party of its intent to commence mediation, then

the parties shall submit the matter to the American Arbitration Association (AAA) at its Los Angeles Regional Office for selection of a mediator in accordance with the AAA Construction Industry Mediation Rules. The parties are not required to select a mediator from AAA and are free to select any mediator which meets the requirements of this Section.

12.11.5.1.3 **Mediation Process.** The location of the mediation shall be within the County where the project is located. The costs of mediation shall be shared equally by the parties. If the Claim involves the assertion of a right or claim by a subcontractor against Vendor that is in turn being asserted by Vendor against Owner, then such subcontractor shall be considered a “party” to such mediation for purposes of allocating responsibility for the costs of the mediation. The mediator shall provide an independent assessment on the merits of the Claim and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

12.11.5.1.4 **End of Mediation.** Owner or Vendor may, if either determines in good faith that further mediation would not be productive, declare in writing the end of the mediation.

#### 12.11.6 **Third Step: Legal Proceedings.**

12.11.6.1 **Court Action.** If, at the conclusion of the Claims Dispute Resolution Process, the parties have not reached a full resolution of any Claim, either party may commence legal proceedings in a court of competent jurisdiction.

### 13.0 **VENDOR STATUS.**

13.1 **Trust and Confidence.** Vendor accepts the obligation of trust and confidence established between it and Owner by the Contract Documents, shall act in the best interests of Owner in carrying out Vendor's duties and responsibilities under the Contract Documents, including, without limitation, fully disclosing when requested all information concerning pricing and estimating, furnishing efficient business administration, utilizing sufficient senior level management and other qualified personnel to manage the Work and applying its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the best interests of Owner and within the Contract Price and Contract Time.

13.2 **Independent Contractor.** Vendor is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the manner in which it performs the obligations required of it by the terms of the Contract Documents and this Agreement. Vendor wholly and without reservation assumes the responsibility for the acts of its agents and employees and the agents and employees of each subcontractor as they relate to the Work. Vendor, its agents and employees, shall not be entitled to any rights or privileges of Owner's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between Owner and any agent or employee of Vendor or any of the subcontractors. Owner shall have the right, but not the obligation, to monitor the employment and other activities of Vendor and the subcontractors to determine compliance with the terms of the Contract Documents.

13.3 **Responsibility for Subcontractors.** Vendor shall be responsible to Owner for acts and omissions of Vendor's employees, its subcontractors of every tier and their agents and employees and other persons performing portions of the Work under a contract with Vendor.

13.4 **Responsibility Not Relieved by Approvals.** Vendor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties

of Owner, any design consultant, inspector, or by tests, inspections or approvals required or performed by persons other than Vendor.

#### 14.0 REVIEW OF CONTRACT DOCUMENTS AND SITE.

14.1 **Inspection of Project Site and Existing Conditions.** Vendor warrants and represents that it has carefully and thoroughly inspected: (1) the Project site and its surroundings, any existing improvements and their existing uses by Owner, routes of ingress and egress, and local conditions in the vicinity of the Construction Site (including, without limitation, sources and availability of labor, materials and equipment); (2) the status of any construction at the Project or Site concurrently under construction; and (3) all surveys, reports, data, as-built drawings of existing improvements and other information made available by Owner or disclosed by public records concerning visible and/or concealed conditions (including, without limitation, locations and capacities of utility sources and locations of utility lines) above and below the surface of the ground and in existing improvements, in order to fully acquaint itself with all conditions, restrictions, obstructions, difficulties and other matters which might affect Vendor's ability to complete the Work for the Contract Price and within the Contract Time and has correlated its observations with the requirements of the Agreement, the Contract Documents and the drawings, plans, and specifications. Vendor acknowledges and agrees that its execution of this Agreement constitutes a representation that it has had the opportunity, in its capacity as a contractor, and not as a design professional, prior to executing the Agreement, to thoroughly and carefully review and compare to its satisfaction the Contract Documents, including, without limitation, the drawings, plans and specifications. Based thereon, Vendor agrees that it shall not be entitled to, and hereby conclusively waives, any right to an adjustment to the Contract Price or Contract Time due to additional or unforeseen losses, damages or delays relating to information in such documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with applicable Laws.

14.1.1 Vendor agrees that it shall not be entitled to, and hereby conclusively waives, any right to an adjustment to the Contract Price or Contract Time due to additional or unforeseen losses or delays relating to information in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with applicable Laws, if prior to submission of its bid such information was either: (1) discovered by Vendor or any subcontractor of any tier and Vendor failed to seek clarification prior to submitting its bid; or (2) reasonably discoverable by Vendor or any subcontractor of any tier in the exercise of care and diligence in the capacity as a contractor. Without limitation to any other provisions of the Contract Documents, Vendor shall take steps to ensure that the provisions of this Section are incorporated into in all contracts entered into by subcontractors for performance of any portion of the Work.

14.2 **Requests for Information.** if Vendor discovers what it perceives to be discrepancies in the Contract Documents, (including, without limitation, information in the Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination, noncompliance with applicable Laws or variances between the information in the Contract Documents and field conditions), then Vendor shall, before proceeding with any portion of the Work affected and no later than three (3) days after the date of such discovery, provide to Owner written notice in the form of a Request for Information. Each Request for Information shall include the following contents

14.2.1 a detailed description of the discrepancies or variances discovered;

14.2.2 Vendor's request for clarification, further detailing or correction of the Contract Documents

14.2.3 whether the discrepancies or variations were or were not discovered by Vendor prior to executing the Task Order and, if not discovered, the reasons why the discrepancies were not reasonably discoverable by Vendor or the subcontractors in the exercise of care and thoroughness in the review and comparison of the Contract Documents and Site prior to execution by Vendor of the Task Order; and

14.2.4 a statement of whether Vendor believes it is entitled to any adjustment to the Contract Price or Contract Time by reason of such discrepancies.

14.3 **Waiver.** Failure by Vendor to provide such written notice under circumstances in which such notice was required by this Section shall result in Vendor waiving its right to an adjustment to the Contract Price and Contract Time on account of such circumstances.

## 15.0 UTILITIES AND SANITARY FACILITIES.

15.1 **Vendor Responsibility.** Vendor shall contact and arrange for obtaining all available information concerning location of subsurface utility lines prior to commencement of any digging and shall, at Vendor's own expense, pay for any damage caused and make good any loss or damage to Owner and/or any third party as a result of Vendor's failure to confirm the location of such utilities.

15.2 **Temporary Utilities.** All utilities, including but not limited to electricity, water, gas and telephone, used in performance of the Work (including, without limitation, meters and temporary distribution systems from distribution points to points on the Site where a utility is needed) shall be furnished and paid for by Vendor without adjustment to the Contract Price. Upon final completion of the Work, Vendor shall remove all temporary distribution systems. If the Work involves an addition to existing facility, Vendor may, with written permission of Owner, granted or withheld in Owner's sole discretion, use Owner's existing utilities by making prearranged payments to Owner for utilities used by Vendor. When it is necessary to interrupt any existing utility service to make connections, a minimum of two (2) working days' advance notice shall be given to Owner. Interruptions shall be of the shortest possible duration. Vendor shall bear, at Vendor's own expense any loss or damage in the event utility service is interrupted without such prior notice.

15.3 **Sanitary Facilities.** Vendor shall provide sanitary temporary toilet facilities, for the use of all the workers, in no fewer numbers than required by applicable Laws, plus such additional facilities as may be directed by Owner. Such facilities shall be maintained in a sanitary condition at all times and shall be left at the Site until removal is directed by Owner. Use of existing or permanent toilet facilities shall not be permitted except by written consent of Owner.

## 16.0 DOCUMENTATION.

16.1 **As-Built Documents.** For all Work or Task Orders involving construction, Owner will furnish to Vendor one (1) complete set of blue-line prints for creation of As-Built drawings and specifications. During the performance of the Work, Vendor shall maintain the set of As-Built drawings and specifications in a satisfactory record condition by posting, on a daily basis, thoroughly and neatly, all changes to the Work and the location of the Work, including, without limitation, the location of portions of the Work shown diagrammatically, as occurs in the actual construction of the Work. Such updated As-Built drawings and specifications shall be produced, upon and whenever requested by Owner, for review to confirm Vendor's compliance with its updating obligation. Such updated As-Built drawings and specifications shall be manually signed by Vendor's superintendent certifying that, to the best of his/her

knowledge, they are true and accurate and that the indications thereon represent the actual condition of the Work.

#### 17.0 **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

17.1 **Not Contract Documents.** Shop drawings, product data, samples and other submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which submittals are required the way Vendor proposes to conform to the designs and other information in the Contract Documents.

17.2 **Vendor Approval.** Vendor shall review, stamp "approved" and submit all submittals to Owner, in accordance with the latest submittal schedule approved by Owner. Vendor's approval and submission of submittals constitutes a representation that Vendor has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and with the submittals for related Work. Submittals without evidence thereon of Vendor's approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

17.3 **Review of Submittals.** Vendor shall, notwithstanding any review or approval thereof by Owner or any design consultant, shall be solely responsible for the content of all shop drawings, product data, samples and other submittals. Without limitation to the foregoing, deviations in submittals from requirements of the Contract Documents shall remain the sole responsibility of Vendor unless Vendor has specifically informed Owner in writing of such deviation at the time of submission of the submittal and Owner has given specific written approval thereof.

#### 18.0 **MISCELLANEOUS.**

18.1 **No Exclusive Rights.** In no event shall Owner be obligated to authorize Vendor to work on any other project or site. Owner may engage others to accomplish work of the same kind or trade at any other project or site. Vendor acknowledges that this Agreement does not grant exclusive rights to perform any work for Owner, or in any way guarantee Vendor a minimum amount or any volume or quantity of work.

18.2 **No Third Party Rights.** Nothing contained in the Contract Documents, this Agreement, or any Task Order issued hereunder shall create any contractual relationship between any of the subcontractors and Owner except when, and only to the extent, that Owner elects to accept the assignment of the contract between Vendor and such subcontractor.

18.3 **Royalties and Patents.** Vendor shall pay all royalties and license fees. Vendor shall defend suits or claims for infringement of copyright, trademark or patent rights and shall indemnify and hold Owner harmless from any claim damage or loss on account thereof. If Vendor has reason to believe that a required design, process or product is an infringement of a patent, Vendor shall be responsible for such claim, loss or damage unless such information is promptly furnished to Owner.

18.4 **Mechanic's Liens and Stop Notices.** As a condition precedent to recording a mechanic's lien or serving a stop notice by Vendor or any of its Agents arising out of or in any way related directly or indirectly to Vendor's Work, Vendor and each such Agent shall: (A) first give written notice of an intent to record a mechanic's lien or serve a stop notice to Owner, accompanied by all supporting documentation purporting to substantiate such lien or stop notice; and (B) shall meet thereafter in person with Owner to review the supporting documentation and the circumstances of such asserted lien or stop notice. Neither Vendor nor any of its Agents shall cause or permit any lien to be recorded or stop notice served unless at least ten (10) calendar days have elapsed since Vendor provided Owner with the supporting documents.

18.5       **Notices.** Any notice given to Vendor by Owner in accordance with this Agreement may, at Owner's option, be given either by personal notice to Vendor's representative in charge on the Project or by written or telefacsimile notice to Vendor at its address hereinabove set forth. Notice shall be deemed given to Vendor upon any of: (i) verbal notification to Vendor's representative; (ii) three (3) business days after deposit of such notice in the United States mail, first class, postage prepaid; or (iii) confirmation of telefacsimile transmission to Vendor of such notice.

18.6       **No Discrimination.** Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age, or disability and will ensure that employees are treated in all respects during employment without regard to their race, religion, sex, color, national origin, age, or disability.

18.7       **Health and Safety Compliance.**

18.7.1       Vendor shall assure that Vendor and all of its Agents comply with all health and safety laws, rules and regulations, including but not limited to all health and safety standards for construction under the Occupational Safety and Health Act of 1970 (OSHA), 29 Code of Federal Regulations 1926, and all health and safety policies, rules and directives issued by Owner. Specifically, Vendor agrees to:

18.7.1.1       Comply with OSHA's Hazard Communication Standard and provide Owner with a copy of its Hazard Communications Program and a copy of all Material Safety Data Sheets (MSDS) for all hazardous or toxic chemicals or substances used in connection with the Work.

18.7.1.2       Bring to the Project, information regarding any precautionary measures to be taken during normal operating conditions and foreseeable emergencies and information regarding the labeling system used on the Site, including labeling for secondary containers.

18.7.1.3       Provide Owner with a copy of its written safety and health policy or program.

18.7.1.4       Designate in writing to Owner a competent person on each Site capable of identifying unsafe hazards. Such person shall have the authority to take prompt corrective measures to correct such hazards and to receive notices of unsafe work practices, equipment, devices, or employees as provided herein.

18.7.1.5       Conduct training sessions for its employees on hazardous or toxic chemicals or substances at the Site or involved in the performance of the Work.

18.7.1.6       Immediately notify Owner of any job-related injury to or death of any person employed by or otherwise under the control of Vendor or its Agents in connection with the Work.

18.7.1.7       Immediately notify Owner of any changes in Vendor's safety program, hazardous communication program, designated competent person, and MSDS. Such changes must be acceptable to Owner and must comply with applicable Law. All forms on file with Owner must be updated by Vendor to reflect the changes.

18.7.1.8       Vendor further agrees that Vendor and its Agents shall not discharge hazardous or toxic chemicals or substances on the Site nor engage in clean-up or repair activities on the Site that would result in the discharge of such chemicals or substances, and shall remove all supplies, materials, and waste remaining on the Site which, if exposed, could result in the discharge of such chemicals or substances. Vendor shall bear full financial responsibility, as between the parties to this Agreement, for the compliance of all persons mentioned in this section. This provision includes, but is not limited to, pollutants covered under Federal and State water quality laws.

18.7.1.9 Owner reserves the right to give Vendor notice of any unsafe or potentially unsafe work practices, equipment, devices or employees employed or utilized by Vendor or its Agents. Upon receipt thereof, Vendor shall remedy such practices, equipment, or devices, or remove such unsafe employees from the Site within the time specified by Owner. Owner shall have the right to stop the Work and/or correct such practices, equipment, or devices at Vendor's expense. Further, Owner reserves all remedies available to it as a result of Vendor's failure to act in accordance with the terms and provisions of this section, including the imposition of fines for failing to comply with this section.

18.7.2 Notwithstanding anything contained herein, Owner assumes no responsibility or liability for Vendor's or its Agents' compliance with any OSHA, federal, state, or local law or regulation relating to health and safety, Vendor's health and safety policies, rules and regulations, or any notification by Owner to remedy an unsafe practice as provided herein. Vendor understands and agrees that Vendor is liable and responsible for the health and safety of its Agents and that Vendor possesses the expertise, control and means to carry out such responsibility. Vendor agrees to defend, indemnify and hold harmless Owner from all liability and damages, fines, penalties, attorney fees, and any costs due to Vendor's or any of its Agents' failure to comply with any provision of this section, including but not limited to any penalties and costs incurred by Owner as a result of OSHA citations issued to Owner. Any costs, fines, penalties, and other fees incurred by Owner as a result of Vendor's failure to comply with the provisions of this section shall be due from Vendor to Owner upon demand, and may be deducted from any monies due Vendor .

18.8 **Addenda, Integration, and Modifications.** All Addenda attached hereto are incorporated herein by reference. This Agreement, including any Task Orders and the plans, specifications, standards, and drawings for the Work, constitutes the entire Agreement between Owner and Vendor relating to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, discussions, and understandings, oral or written. Except as expressly provided herein, this Agreement may only be modified by written amendment executed by each of Owner and Vendor. No adjustment in the Contract Price will be made for modifications to addenda for Work that is deemed by Owner, in its sole and absolute discretion, to be within the scope of any Task Order. Without limiting the generality of the foregoing, the conduct of any of the parties hereto shall not be deemed a waiver or modification of this Agreement.

18.9 **Governing Law and Venue.** The laws of the State of California, without regard to conflicts of laws principles, shall govern this Agreement. The venue for any dispute, claim or litigation pertaining to this Agreement shall be in a court of competent jurisdiction in the County where the Project is located.

18.10 **Enforceability.** If a term, provision, covenant, agreement, or condition of this Agreement is held by a court of competent jurisdiction to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though such term, provision, covenant, agreement, or condition had not been contained herein.

18.11 **Assignment.** Vendor shall not assign or transfer this Agreement, or any part hereof, or make an assignment or transfer of any monies payable to Vendor pursuant to this Agreement, without the prior written authorization of Owner. Owner may assign this Agreement and its rights and obligations hereunder to any Person without Vendor's consent. This Agreement may be assumed by and shall inure to the benefit of Owner's successors and assigns without the consent of Vendor.

18.12 **Time of the Essence.** Time is of the essence in performance of the parties' obligations under this Agreement. Vendor shall continually monitor and confirm that it has the most recently revised set

of plans, specifications, standards, drawings, and reports applicable to each portion of the Work for the jurisdiction in which the Work is to be performed.

18.13 **Waiver.** Either party's failure to insist upon strict compliance with any provision hereof or its failure to enforce any rights or remedy in any instance shall not constitute or be deemed to be a waiver of such provision, right or remedy in the absence of a signed writing by such party agreeing to such waiver.

18.14 **Business Conduct.**

18.14.1 Employees, officers, and directors of Owner or its affiliates may not use their position with the University to personally benefit from the purchase of goods or services from a University supplier or Vendor. Owner's employees, officers, and directors are prohibited from utilizing the services of, or obtaining goods from, Owner suppliers or contractors for personal work, repairs, or construction exceeding \$1,000 without the prior approval of the University President. No approval is required and the President need not be notified, however, where the fees or charges involved are rates or charges fixed in conformity with Law or by a Government Agency (e.g., local utility or cable television company). Vendor acknowledges that as a material part of the consideration for Owner entering into this Agreement, Vendor has agreed that it shall not encourage or in any manner participate in any course of conduct or activities which would cause a violation of the policies described in this section.

18.14.2 All submittals, correspondence, changes, extras, payroll reports, claims, and other communications made by Vendor shall be directed to Owner. Vendor shall provide prompt, efficient, and courteous service to correct, repair, replace, or adjust the Work.

18.15 **Survival.** The provisions of the Agreement shall in all cases survive termination of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date below.

**OWNER: UNIVERSITY OF LA VERNE**

**VENDOR:**

Date		Date	
Signature		Signature	
Name		Name	
Title		Title	





# UNIVERSITY OF LA VERNE

## TASK ORDER

Project Name: \_\_\_\_\_

Date: \_\_\_\_\_

Project No.: \_\_\_\_\_

Task Order No.: \_\_\_\_\_

This Task Order incorporates by reference all terms, provisions and conditions set forth in the Master Vendor Agreement entered into by and between Owner and Vendor, dated \_\_\_\_\_. All terms, provisions and conditions set forth in the Master Vendor Agreement shall govern and apply to this Task Order. To the extent there is any conflict or discrepancy between this Task Order and the Master Vendor Agreement, the Master Vendor Agreement shall take precedence and shall govern.

Description of the Work:

Contract Price: \$ \_\_\_\_\_

Contract Time (in days): \_\_\_\_\_

DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE

\_\_\_\_\_  
Vendor

By

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
University of La Verne

By

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date