

CONSTRUCTION CONTRACT

THIS CONTRACT, made as of the ___ day of _____, 2017, by and between _____, a _____, having an office for the transaction of business at _____, California _____, as the General Contractor (the "Contractor"), and MARIN AUDUBON SOCIETY, INC., a California not-for-profit corporation having its principal place of business at 48 Ardmore Rd., Larkspur, CA 94939, as the Owner ("Owner", "Marin Audubon Society", or "MAS").

WITNESSETH:

That the Contractor and Owner, for the consideration hereinafter set forth, agree as follows:

ARTICLE I. SCOPE OF WORK AND CONTRACTOR'S DUTIES

- I.1 The Contractor shall provide all services, materials, tools, equipment and labor required to perform and complete all work described in the Contract Documents enumerated in Article 10 hereof (the "Work") for Owner's Corte Madera Ecological Reserve Expansion Project (the "Project") on property owned by the Marin Audubon Society (MAS) and on property owned by the California Department of Fish and Wildlife (CDFW).
- I.2 In furtherance of the above, the Contractor shall perform all the Work in strict accordance with and as required by the Contract Documents and in accordance with instructions as issued by Siegel Environmental (hereinafter referred to as "Representative").
- I.3 This Contract establishes a relationship of trust and confidence between the Contractor and Owner. Accordingly, the Contractor shall furnish its best skill and judgment in the performance of the Work and shall cooperate with the Representative in protecting and furthering the best interests of Owner.

ARTICLE II – COMMENCEMENT, SCHEDULING & COMPLETION OF THE WORK

- II.1 The Work to be performed under this Contract shall conform to the following major milestone schedule ("Contract Schedule"):

<u>Activity</u>	<u>To Be Completed on or Before</u>
Construction Start	_____
Substantial Completion	_____
Final Completion – Close-out complete	January 31, 2018

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II.2 Time is of the essence in the performance of the Contractor's work.

ARTICLE III – THE CONTRACT SUM

III.1 Owner will pay the Contractor for the performance of the Work, subject to additions and deductions as provided for under Article 4 of the Exhibit A, the Sum of _____ & ___/100 Dollars (\$_____) which includes all sales, consumer, use, excise and all other taxes required by law.

ARTICLE IV – PAYMENTS

IV.1 Original Applications for Payment shall be in accordance with Article 8 and Exhibit A of the General Conditions and addressed to the following:

Barbara Salzman, President
Marin Audubon Society, Inc.
48 Ardmore Road
Larkspur, CA 94939
bsalzman@att.net

With copies to:

Susan Winston, Treasurer
Marin Audubon Society
Susanwinston5@gmail.com

See Article 4 in Contract Exhibit A for invoicing and payment terms.

ARTICLE V – SUPERINTENDENCE

V.1 Contractor shall provide, as a minimum, the following personnel at the job site:

1. Title: Project Manager 15% of work week
2. Superintendent 100% of work week

V.2 The Contractor shall consult with Owner concerning the qualifications and experience of the persons filling these positions. Once assigned by the Contractor, the Project Manager and Superintendent will not be changed during the performance of the work without the consent of Owner, unless the Project Manager and/or Superintendent prove to be unsatisfactory to the Contractor. The Project Manager is authorized to act on the Contractor's behalf and to bind the

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Contractor. All directions given to them shall be as binding as if given to an officer of the Contractor. The Contractor shall provide additional supervisory personnel at the job site, if it deems it necessary, after consultation with Owner.

- V.3 Before initial work is begun, the Contractor and his/her superintendent shall file with MAS both mailing and email addresses and telephone numbers where they can be reached during non-working hours.

ARTICLE VI – PROJECT REPRESENTATIVES

- VI.1 Owner’s manager for this Project is Barbara Salzman. Owner’s Representative for this Project is Stuart Siegel of Siegel Environmental, LLC.
- VI.2 The Contractor’s authorized representative for this project is _____.

ARTICLE VII - MODIFICATIONS/WAIVERS

- VII.1 No waiver, modification, or amendment of any terms, conditions, or provisions of this Contract shall be valid or of any force or effect unless made in writing and signed and delivered by the parties, as provided in this Contract and specifying with particularity the nature and extent of such waiver, modification, or amendment. The signing of such writing or writings in any instance or instances shall in no event be construed to be a general waiver, abandonment, modification, or amendment of any of the terms, conditions, or provisions herein contained, but the same shall be strictly limited and restricted to the extent and occasions specified in such signed writing or writings.

ARTICLE VIII – NOTICES AND CORRESPONDENCE

- VIII.1 All notices and correspondence (including Applications for Payment) required to be given to Owner shall be addressed to:

Barbara Salzman
Marin Audubon Society
48 Ardmore Road
Larkspur, CA 94939
bsalzman@att.net

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VIII.2 All notices and correspondences required to be given to the Contractor shall be addressed to:

_____, California _____.

VIII.3 All notices shall be in writing and shall be considered delivered and the service thereof completed, when posted by certified U.S. mail or an express mail service, or delivered in person or via email with return receipt requested to the addressee indicated above. Either party may change its designated recipient or address for purposes of receiving notice by giving notice to such effect to the other party.

ARTICLE IX – ORDER OF PRECEDENCE

IX.1 In the event of inconsistency in or ambiguity created by the various provisions of the Contract Documents, the order of precedence shall be as follows:

1. This Contract including its Exhibit A
2. Construction Plans, Drawings, and Profiles
3. Technical Specifications

ARTICLE X – CONTRACT DOCUMENTS

X.1 The following documents, together with this Contract and its Exhibit A, form this Contract, and they are as fully a part of this Contract as if hereto attached or herein repeated:

1. Request for Proposal including all Appendices
2. Accepted Bid Schedule
3. Written addenda
4. Written amendments to the Contract signed by both parties
5. Executed Change Orders, if any
6. Notice to Proceed
7. Project Acceptance

ARTICLE XI – INSURANCE REQUIREMENTS

XI.1 GENERAL

The Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons and damages to property which may arise from or in connection

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with the performance or the work hereunder by the Contractor, his/her agents, representatives, employees or subcontractors.

XI-2. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office (ISO) Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable.
2. Automobile Liability coverage: ISO Form number CA 0001, Code 1 (any auto).
3. Workers' Compensation Insurance as required by the Labor Code of the State of California.

XI-3. MINIMUM LIMITS OF INSURANCE

The Contractor shall maintain limits no less than:

1. General Liability (including operations, products and completed operations, as applicable): \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this Contract, or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Errors and Omissions Liability: \$1,000,000 minimum general aggregate limit and \$1,000,000 minimum per occurrence.

XI-4. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insurance retention must be declared to and approved by MAS, and if above \$10,000 must be approved by Sonoma-Marín Area Rail Transit. At the Sonoma-Marín Area Rail Transit's option, the Contractor may be required to provide financial guarantees.

XI-5. INSURANCE ENDORSEMENTS

Endorsements shall name the following entities: State of California, Sonoma-Marín Area Rail Transit, Marin Audubon Society, Siegel Environmental LLC, and CLE Engineering Inc., their officers, officials, agents, employees, and volunteers.

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Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by first class mail has been given to MAS; or in the event of cancellation of coverage due to nonpayment, after ten (10) days prior written notice to MAS. The Contractor shall notify MAS within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the Contractor lapses or is cancelled, the Contractor shall provide MAS with evidence of renewal or replacement of the policy.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The State of California, Marin Audubon Society, Siegel Environmental LLC, and CLE Engineering Inc., their officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of MAS; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the Owner including materials, parts or equipment furnished in connection with the work or operations.
2. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the State of California, Sonoma-Marín Area Rail Transit, Marin Audubon Society, Siegel Environmental, and CLE Engineering and their officers, agents and employees, and not excess to any insurance or self-insurance of the State of California or Sonoma-Marín Area Rail Transit.
3. The grantee hereby grants to the State of California, Sonoma-Marín Area Rail Transit, Marin Audubon Society, Siegel Environmental, and CLE Engineering, their officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Contractor has received a waiver of subrogation endorsement from the insurer.
4. The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this Contract.
5. Commercial General Liability policy shall include a Railroads CG2427 endorsement removing the exclusion of coverage for bodily injury or property damage arising out

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of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass, or crossing, if such exclusion is included in said policy.

The worker's compensation shall be endorsed with a waiver of subrogation in favor of the Sonoma-Marin Area Rail Transit for all work performed by the Contractor and any subcontractors.

XI-6. ACCEPTABILITY OF INSURERS

Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "~~B+;VII~~" "A-;VI" or better or otherwise be acceptable to the Sonoma-Marin Area Rail Transit.

XI-7. VERIFICATION OF COVERAGE

The Contractor shall furnish Owner with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Owner before work commences. MAS reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these Specifications at any time.

XI-8. SUBCONTRACTORS

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

XI-9. PREMIUMS AND ASSESSMENTS

Neither the State of California nor the Owner are responsible for premiums and assessments on any insurance policy.

ARTICLE XII – BONDING

XII.1 Construction shall not begin until the Contractors have furnished bonds in favor of Owner and the State Coastal Conservancy, individually or as co-obligee, in the following amounts: for faithful performance, one hundred percent (100%) of the contract value; for labor and materials, one hundred percent (100%) of the contract value. This requirement shall not apply to any contract for less than \$20,000.

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- XII.2 Any bond furnished under this section shall be executed by an admitted corporate surety insurer licensed in the State of California.
- XII.3 The Contractors shall deliver the required bonds to the Owner no later than three days following the date of execution of the Contract.
- XII.4 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

ARTICLE XIII – INDEMNIFICATION

- XIII.1 To the maximum extent permitted by law, the Contractor shall indemnify, defend and hold harmless Owner, State Coastal Conservancy, Wildlife Conservation Board, Department of Fish and Wildlife, Siegel Environmental LLC, and CLE Engineering Inc. and each of their directors, officers, employees, agents, volunteers and invitees (“Indemnitees”) from and against all claims, legal or administrative proceedings, liabilities, suits, damages, losses and expenses, including attorney fees and costs arising directly or indirectly out of the performance of the work described herein, caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not well founded in fact or in law, except where caused by the active negligence or willful misconduct of MAS. The Contractor shall, by separate contractual agreement, require all subcontractors employed to similarly indemnify.
- XIII.2. Indebtedness incurred for any cause arising out of the Contractor's acts or omissions in connection with work must be paid by the Contractor; and Owner is hereby relieved at all times from any indebtedness or claim other than the contract sum.

ARTICLE XIV – RESPONSIBILITIES FOR DAMAGE OR LOSS

- XIV.1 Any loss or damage to the work or materials is at the Contractor's risk. Owner, California Coastal Conservancy, Wildlife Conservation Board, Siegel Environmental, LLC, and CLE Engineering, Inc. and each of their directors, officers, employees, agents and volunteers shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by the Contractor or his/her Subcontractors or their employees and agents.

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- XIV.2 The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.
- XIV.3 In addition to any remedy authorized by law, as much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by Owner may be retained by Owner until disposition has been made of such suits or claims for damages as aforesaid.

ARTICLE XV – PREVAILING WAGE

- XV.1 Work done under this Contract is subject to the prevailing wage and other related requirements of the California Labor Code, Division 2, Part 7, Chapter 1, sections 1720-1861. If required by law to do so, the Contractor shall pay prevailing wage to all persons employed in the performance of any part of the project and otherwise comply with all associated requirements and obligations.

ARTICLE XVI – SUBCONTRACTORS

- XVI.1 The subletting of the whole or any part of the Contract may be made only upon the formal approval of Owner's Board upon written request of the Contractor.
- XVI.2 No subcontractor shall be recognized as such, and all persons engaged on the work of construction by the Contractor shall be considered employees of the Contractor, and their work shall be subject to the provisions of the Contract.
- XVI.3 Owner and its representatives will deal only with the Contractor, who shall be responsible for the proper execution of the entire work.
- XVI.4 No subcontractor shall interfere with the work of others, and if in the judgment of Owner there is unnecessary interference, the Contractor shall adjust and arrange his/her program of work as directed by Owner.

ARTICLE XVII - ASSIGNMENT

- XVII.1 The Contractor represents that no assignment, sub-lease, or transfer of all or any part of its interest in this Contract has been made or will be made without the written consent of Owner.

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ARTICLE XVIII – THIRD PARTY BENEFICIARY

XVIII.1 The California Department of Fish and Wildlife (CDFW) is a third-party beneficiary of this Contract, with all legal rights associated with that status, including the right to enforce the Contract. The Contractor will assert no claims against CDFW in any disputes with subcontractors, material men, or Owner.

CONTRACT EXECUTION

THIS CONTRACT supersedes all previous agreements, proposals and understandings, either oral or written, between the parties hereto in connection with the work called for herein, and constitutes the entire agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto, through their duly authorized representatives have executed this Contract as of the day and year first above written.

Marin Audubon Society, INC.

WITNESS:

_____ By: _____

Title: _____

A California Corporation

WITNESS:

_____ By: _____

Title: _____

EXHIBIT A: CONTRACT TERMS AND CONDITIONS

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APPENDIX I, EXHIBIT A: CONSTRUCTION AGREEMENT TERMS AND CONDITIONS

ARTICLE 1 – GENERAL PROVISIONS AND DEFINITIONS

- 1.1 The law of the State of California shall govern this Contract.
- 1.2 The term "Work" includes all materials, labor, services, equipment and facilities necessary for the complete performance of this Contract.
- 1.3 The term "Contract" means the Contract signed by the parties for the performance of the Work and all Contract Documents referred to in the Contract.
- 1.4 As used in this Contract, the term "Dredging" means channel excavation using conventional excavating equipment based on shore as defined by the US Army Corps of Engineers.
- 1.5 The intent of this Contract is that the Contractor shall perform all the Work within the Accepted Bid Schedule and for the Contract Sum, as may be revised by approved Change Orders.
- 1.6 The Contract Documents are complementary, and a requirement of any one shall be as binding as if required by all. The organization of the Specifications into divisions, sections, and articles, and the arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade. In the event of conflicts in or between the Contract Documents, the more expensive method of Work or more expensive or greater quantity of materials shall be construed as the requirement.

ARTICLE 2 – CONTRACTOR

- 2.1 The Contractor is the person, firm, or corporation identified as such in the Contract or its authorized agent, and performs the Work as an independent contractor and not as an agent or employee of Owner. The Contractor represents and warrants that it is licensed to do business in the State of California and has the full power and authority to enter into and perform this Contract.
- 2.2 The Contractor shall, for the purpose of this Contract, designate an on-site representative as an agent authorized to act on behalf of the Contractor and to have authority to price change work and commit the Contractor to perform such changes.
- 2.3 The Contractor is responsible for subcontracting for, performing, managing, supervising, directing and coordinating the Work. Competent full-time construction supervision shall be provided continuously from commencement of construction to final completion of the Work. The Contractor shall not remove or replace personnel so provided as long as their performance is satisfactory and their services are required to properly coordinate and execute all phases of the Work. Construction supervision may include a Project Manager, Construction Superintendent, Assistant Construction Superintendents, and other personnel as required to

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adequately supervise the Work at the construction site and to maintain daily job progress. The Contractor shall at all times enforce strict discipline and good order among its employees and subcontractors and shall not permit anyone not skilled in the task assigned to be employed in the Work.

- 2.4 Prior to the commencement of construction, the Contractor shall submit to Owner and Representative for review and approval the submittals described in the Request for Proposals.
- 2.5 Services shall be performed by the Contractor in a safe, skillful and competent manner in accordance with the highest standards of the construction industry. The Contractor shall be responsible to Owner for the acts and omissions of its agents and employees, and all subcontractors, their agents and employees-performing any of the Work.
- 2.6 Construction Phase:
 - 2.6.1 The Contractor shall carefully study and compare the Contract Documents with one another and shall report at once to Owner and Owner's Representative any error, inconsistency, or omission which may be discovered and shall obtain clarifications in writing before proceeding with Work affected thereby.
 - 2.6.2 The Contractor is responsible for all construction means, methods, techniques, sequences, and procedures, including any specifically required by the specifications and drawings.
 - 2.6.3 The Contractor represents and warrants that it has inspected the site, has familiarized itself with local conditions under which the Work is to be performed, has correlated its observations with the requirements of the Contract Documents and has made all other investigations essential to a full understanding of the Work and the difficulties which may be encountered in performing the Work.
 - 2.6.4 The Contractor shall be responsible for any Work or materials which are defective or improperly performed or for errors in construction or defects, or for failure to comply with the Contract. Costs incurred in connection therewith or in correcting same including time lost correcting such Work shall be the responsibility of the Contractor.
 - 2.6.5 The Contractor shall provide and pay for all labor, material, tools, equipment, machinery, expendable utilities and their connections, transportation, and all other facilities and services necessary for the proper execution and completion of the Work, except as otherwise specified elsewhere in the Contract Documents.

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- 2.6.6 The Contractor shall pay sales, consumer, use, excise and all other taxes applicable to the Work and required by law.
- 2.6.7 The Contractor shall comply with the Grant Agreement Requirements and Permit Requirements, including the summary of permitting requirements and special provisions in the Request for Scope of Work and Budget.
- 2.6.8 The Contractor warrants to Owner that all materials incorporated in the Work shall be owned by the Contractor outright, free of all liens and encumbrances, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these standards will be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials.
- 2.6.9 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority or public utility bearing on the performance of the Work. In pricing the Work, it is not the responsibility of the Contractor to make certain that the drawings and specifications are in accordance with the applicable laws, codes, ordinances, rules and regulations and orders of authorities having jurisdiction. However, the Contractor shall not permit any Work to be performed or constructed contrary to such laws, codes, ordinances, rules, regulations and orders. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Engineer and Owner shall be promptly notified in writing and their written instructions obtained before proceeding.
- 2.6.10 The Contractor shall use the construction site only for purposes necessary to the performance of this Contract. The Contractor shall access the construction site and use the construction staging, stockpile and equipment access areas in accordance with the terms and conditions of the Access Agreements (defined below). Contractor shall, and shall cause its subcontractors to, comply with the terms and conditions of the Access Agreements, including, without limitation, the insurance requirements provided therein. The term "Access Agreements" refers collectively to that certain Right of Entry, entered into effective between the Marin Audubon Society and SMART; certain Right of Entry, Temporary Construction Staging, Stockpiling, and Material Placement entered into and effective by and granted by the California Department of Fish and Wildlife.
- 2.6.11 The Contractor shall confine any equipment, apparatus, materials and operations within limits designated or allowed by the Access Agreement and by Owner and shall not unnecessarily encumber the job site with materials.

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- 2.6.12 Whenever materials or equipment are delivered to the job site, for Owner or others involved in the construction project, the Contractor shall notify Owner and the intended recipient immediately upon arrival of the shipment; and, if required by the Contract Documents, shall be responsible for its acceptance and proper storage.
- 2.6.13 All surveys shall be performed by a licensed engineer or licensed surveyor hired by the Contractor.
- 2.6.14 The Contractor shall compare and continually check site conditions, all dimensions, elevations, lines, grades, and other information appearing on the drawings with the actual site conditions, dimensions, elevations, lines, and grades, and shall report any variances in writing to the Engineer and Owner, and obtain their direction before proceeding with the Work. The Contractor shall be liable for any failure to fully comply with this requirement.
- 2.6.15 Contractor shall keep the job site including access areas clear and clean during construction, including the removal of all waste materials, rubbish, tools, and surplus materials and equipment from the job site including access areas, and leave the site of the Work clean upon completion of construction. If, in the opinion of Owner, the Contractor fails to comply with the provisions hereof, Owner may perform such cleaning and back-charge the expense thereof to the Contractor.
- 2.6.16 The Contractor shall comply with all applicable Federal, State, and local laws, regulations, ordinances, codes, and standards concerning environmental control. Particular attention shall be given, without limitation, to:
- a) Prevention of fire and prevention of air pollution by control of refuse burning (if permitted), minimization of dust, containment of chemical vapors, and control of engine exhaust gases.
 - b) Prevention of water pollution by control of sanitary facilities, proper storage of fuels and other potential contaminants.
 - c) Minimization of noise levels.
 - d) BMPs and Erosion control measures.
- 2.7 Contractor's meetings shall be conducted at least once every week by the Contractor on-site, or more frequently as job conditions require or Owner may request. The Engineer, Owner and Owner's Representative shall be notified prior to these meetings. The Contractor shall prepare and distribute minutes to the Engineer, Owner and Owner's Representative within three (3) days following the meetings.

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- 2.8 The Contractor shall ascertain any restrictive traffic conditions and shall comply with requests of governmental authorities and Owner in the use and operation of vehicles to and from the site, as to routes, entry and exit at site, times of day, etc.
- 2.9 The Contractor shall facilitate inspection of the Work by Owner, the Engineer, and public authorities at all times.
- 2.10 The Contractor's Construction Superintendent shall submit by facsimile or e-mail a Daily Report to the Engineer's Field Representative and Owner's Project Manager at the job site. The Report shall include:
- a) Name of Project
 - b) Date of Report
 - c) Weather Conditions
 - d) Manpower status on each type of Work being performed, showing totals by trade, and site total
 - e) Overtime worked and planned work progress
 - f) Environmental problems and corrections
 - g) Other information, such as special events, occurrences, accidents, recommendations, suggestions, visitors, major equipment or materials received, tests, inspections, etc.
- 2.11 The Contractor shall record all deviations from the approved drawings and specifications as they occur, to clearly depict how the Work was actually constructed. This "as-built" record, to include descriptions, drawings, sketches, marked prints, and similar data shall be maintained at the job site and shall be kept current as the Work progresses. All "as-built" drawings and related data shall be subject to regular review by the Engineer. At the conclusion of Work, all "as-built" information shall be carefully inscribed onto a clearly legible set of Contract Drawings [DVD, CD Rom], and shall be submitted to the Owner and Owner's Representative for review for completeness and compliance with final Contract Documents, including all approved changes.
- 2.12 The Contractor shall submit dated 4x6 monthly progress photographs adequately portraying project status.

ARTICLE 3 – SUBCONTRACTORS AND SUPPLIERS

- 3.1 All portions of the Work that the Contractor's organization has not been accustomed to perform shall be performed under subcontracts. A subcontractor is a person, firm or corporation that provides labor and material, or labor only, for a portion of the Work at the site, pursuant to a separate agreement with the Contractor or another subcontractor of any tier. A supplier (or materialman) is a person, firm or corporation that furnishes material or provides labor and

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material, or labor only, for a portion of the Work at the site, pursuant to a separate agreement with the Contractor or another subcontractor of any tier. A supplier (or materialman) is a person, firm or corporation that furnishes materials or equipment only.

- 3.2 As soon as practicable after award of the Contract and prior to entering into any subcontracts, the Contractor shall furnish to Owner for approval and the Engineer in writing the names of the persons or entities proposed for subcontracts over Ten Thousand dollars (\$10,000.00), or as otherwise expressly requested by Owner. Such persons or entities shall be selected from among those named previously in the Accepted Subcontractors and Suppliers attachment to the Agreement.
- 3.3 Owner shall approve or disapprove in writing subcontractor and supplier selection. In the case of disapprovals, reason(s) for rejection shall be provided by Owner. The Contractor shall resubmit a new subcontractor/supplier for any disapproved subcontractor/supplier within five (5) working days until Owner approval is obtained. There will be no additional cost to the Contract resulting from Owner's rejections of subcontractors/suppliers.
- 3.4 Nothing herein or in agreements between the Contractor and subcontractors and suppliers shall create any contractual relationship between Owner and any subcontractor or supplier.
- 3.5 All subcontracts shall contain provisions that require all work thereunder to be performed in strict accordance with the requirements of this Contract.
- 3.6 The Contractor shall demonstrate that each subcontractor with a contract price of \$100,000 or more shall be bondable by providing a letter of surety to the amount of the subcontract plus 10%.

ARTICLE 4 – PAYMENTS

- 4.1 The Contract Sum stated in the Agreement, as adjusted by Change Orders, is the total amount payable by Owner to the Contractor for the performance of the work. References to "Contract Sum" means the then current contract amount, which includes the original contract sum plus all approved change orders through the current date.
- 4.2 Application for Payment
 - 4.2.1 The Contractor's Applications for Payment shall include invoice sheets representative of the detail required to describe work performed during the invoice period, updates to the Project Schedule, a cost tracking table following the itemized Bid Schedule of values stating total item budget, previous costs incurred, current costs, total costs to date, and remaining budget, and addressed to Owner, shall be submitted no more often than monthly to the Owner.

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4.2.2 Owner will pay to the Contractor a sum representing the cost of the Work completed to date, as measured by the percentage of Work-in-place, plus the costs of any delivered materials as previously approved in accordance with the requirements of Article 4.7, less ten percent (10%) applicable retention and previous payments.

4.2.3 Applications for payment shall be submitted via email (with hard copy optional) concurrently to:

Barbara Salzman
Marin Audubon Society
48 Ardmore Road
Larkspur, CA 94939
bsalzman@att.net

With electronic copies to:

Susan Winston
Marin Audubon Society
susanwinston5@gmail.com

4.4 Payment Processing

4.4.1 Owner will make payments against the Application for Payment within 30 working days after receipt by Owner of an original acceptable application and certification by the Owner's Representative.

4.4.2 The date of receipt by Owner is defined as the work day following the physical receipt of said Application.

4.5 Partial Payments

Upon the making of partial payments by Owner, all work, materials, and equipment covered thereby shall become the sole property of Marin Audubon Society, as the owner of Project site. Partial payments, however, shall not constitute acceptance of the Contractor's Work by Owner, nor be construed as a waiver of any right or claim by Owner.

4.6 Release of Retention

Retention in the amount of ten percent (10%) will be deducted from the Application for Payment until Substantial Completion (as defined in Article 19) of the entire Work has occurred. Owner will

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then, upon the Contractor's application therefor, release retention applicable to the cost of the Work that has been fully completed and for subcontractors that have complied with the final payment requirements of Article 4.9. Prior to Substantial Completion, Owner will consider reduction of retention amounts applicable to the Work of subcontractors which has been satisfactorily completed. Owner approved reductions may be included in the next monthly Application for Payment. The Contractor and all applicable subcontractors and suppliers shall include with Applications for Payment, partial waivers of lien for the full amounts paid by Owner through the previous payment, including reductions in retention.

4.7 Contractor's Payments to Subcontractors and Suppliers

The Contractor shall pay each subcontractor and supplier including, without limitation, firms providing transportation, utility and other services, construction equipment, tools, materials and supplies, the full amount due them for their proportional share of Work, not later than 5 working days after receipt by the Contractor of payment from Owner. If requested by Owner, the Contractor shall furnish evidence of compliance with the foregoing. The Contractor will require the subcontractors and suppliers to execute a release and waiver of lien.

4.8 Withholding of Payments

4.8.1 Owner may withhold payments otherwise due the Contractor from any Application for Payment, if the documents required by Article 4.2 above are not included, or as necessary to reasonably protect Owner against loss because of:

- a. The Contractor's failure to take prompt and adequate action to bring the Work on schedule or to correct deficiencies in the Work, or to perform any obligations.
- b. Claims by other parties filed in connection with the Work, or reasonable evidence indicating probable filing of such claims, or mechanics' or materialmen's liens filed against Owner's real property.
- c. Failure of the Contractor to make payments as required by this Contract.
- d. Damage to others caused by the Contractor, or its subcontractors or suppliers, for which Owner may be held liable.

4.8.2 Upon ten working days' prior written-notice, Owner shall have the right to correct any deficiencies in the Work or cure any default of the Contractor, and to deduct the cost thereof from payments otherwise due the Contractor, if the Contractor fails to do so.

4.9 Final Payment

4.9.1 Upon receipt of written notice from the Contractor and a certificate by the Engineer that the Work has been satisfactorily completed in accordance with the Contract Documents, that final payment should be made, and that the Work is ready for final

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inspection and acceptance, Owner will promptly make an inspection. Owner will make Final Payment to the Contractor within 30 calendar days after:

4.9.1.1 Owner's acceptance of the completed Work including:

- a. Satisfactory completion or correction of all Punch List-items.
- b. Delivery of all required guarantees and warranties.
- c. Delivery of a complete set of "as-built" drawings, approved by the Engineer.

4.9.1.2 Receipt of the Contractor's Application for Final Payment, preceded or accompanied by:

- a. Delivery of an acceptable final cost breakdown.
- b. The Contractor's affidavit that all Federal, State and Local taxes applicable to the Work, including sales, consumer, use and excise taxes, have been paid.
- c. Release of record of all liens which affect the real property.
- d. Conditional Waiver and Release, substantially in the form of Exhibit C, signed by each subcontractor and supplier who has a right to file a lien against the premises.
- e. Conditional Waiver and Release in the form of Exhibit C, signed by the Contractor.

4.9.2 The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor.

ARTICLE 5 – SCHEDULE

5.1 The Contractor shall develop a Project Schedule, consistent with the Contract Schedule contained in the Agreement, for use in scheduling and controlling the Work. The Contractor's Project Manager, Field Superintendent, Owner, Owner's Representative, and subcontractors shall participate in the development of the Project Schedule. The Contractor shall be responsible for continuous maintenance of the Project Schedule on a current basis until completion of the Work. The Project Schedule shall show the Contractor's arrangement and sequencing of all procurement, delivery and Work activities, to assure completion of the Work within the Contract Schedule. The Contractor shall provide Owner, Representative, and Engineer each with the Project Construction Schedule no more than 14 days of Contract execution. If there are no changes to the Project Construction Schedule from that submitted with Contractor proposal, then the original Schedule will be this item.

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- 5.2 The Contractor shall obtain the concurrence of each subcontractor as to the Project Schedule, revised as necessary to accurately reflect their agreement to the scheduling of manpower and material required for their Work.
- 5.3 Copies of the updated Project Schedule and manpower schedule shall be submitted to Owner, Representative, and Engineer on a monthly basis with Contractor's Application for Payment. The Application for Payment shall reflect Work progress to date. The manpower schedule shall reflect actual manpower levels each week compared to planned manpower levels.
- 5.4 If the progress of the Work is not within the Contract Schedule, the Contractor shall within five (5) working days notify and advise Owner and the Engineer and submit copies of a revised Project Schedule, and indicate the remedial actions proposed to bring the Work back on schedule.
- 5.4.1 If the Work is not within the Contract Schedule for any reason within the control or responsibility of the Contractor, the remedial actions of the Contractor shall include increasing manpower, expediting deliveries or working such overtime as is required to bring the Work back within the Contract Schedule. Such additional efforts shall not increase the Contract Sum. If the Work is not within the Contract Schedule because of excusable delays (as hereinafter defined) the remedial actions shall be presented to Owner to choose between accepting the excusable delay to the schedule or increasing the Contract Sum to pay for remedial action by the Contractor.
- 5.4.2 If the Contractor is delayed at any time in the progress of the Work by "excusable delays", meaning delays which are not the fault of nor under the control of the Contractor, and which a reasonably prudent experienced Contractor would not have foreseen, which may include labor disputes, fire, unusually severe weather conditions, unreasonable delays in transportation, unavoidable casualties, government restrictions on materials, site conditions which vary materially from conditions originally contemplated, temporary Work stoppages, conflicts or design errors in the drawings or specifications, issuance of changes to the Work and other unavoidable delays beyond the Contractor's control, then the Contract Schedule shall be deemed extended for a period equal to the delay so caused as measured by the then current Project Schedule. No such delay shall be recognized unless it alone increases the overall critical path duration of the Project Schedule. The Contractor hereby expressly assumes the risk of all excusable delays to the Work, and waives all claims for damages or additional payment for delays in excess of the direct job cost, defined as all labor, material and equipment pursuant to Article 7 plus Contractor fees.

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5.4.2.1 No such extension shall be allowed for delay commencing more than fourteen calendar days before a claim is made in writing to Owner. In case of a continuing delay, only one claim is necessary.

5.4.2.2 Extension of time of completion, if any, shall be the Contractor's sole remedy for delay.

ARTICLE 6 – CHANGE ORDERS

6.1 The Contractor shall perform changes in the Work which may increase or decrease the Contract Sum and/or the schedule.

6.2 Except in case of an emergency endangering life or property, the Contractor shall make no change in the Work without the prior written authorization of Owner.

6.3 Owner or the Representative, when authorized by Owner, will request proposals for changes in the Work by issuance of Field Orders.

6.3.1 Within five (5) working days after receipt of a Field Order, the Contractor will submit to Owner an itemized Lump Sum proposal for the Work by its subcontractors and/or the Contractor by which the Contract Sum may be increased or decreased. The proposal shall include detailed breakdown(s) of labor, material and equipment for all items of Work involved, and the effect, if any, on the scheduled Work items affected by reason of such Work.

6.3.2 Upon agreement on a price for a Field Order, the Contractor will be authorized to proceed with the Work. The Contract Sum will be formally amended by a Change Order. Change Orders will be issued as required, consolidating all Field Orders issued since the prior Change Order. Change Orders listing all approved Field Orders for said period will revise the current Contract Sum and schedule, as applicable, to cover said approved Field Orders.

ARTICLE 7 – PRICING CHANGES TO THE WORK

7.1 Unit Price Work: To the extent that Unit Prices are included in the Contract and are applicable, as determined by the Engineer and Owner, change work shall be priced and paid for or credited in accordance with such Unit Prices; except that an established Unit Price shall not apply to any portion of base contract Work covered thereby which is increased or reduced by more than 25%. Said Unit Prices shall be valid for the duration of the Contract, unless stipulated elsewhere in the Contract Documents.

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- 7.1.1 Unit Prices are for Work complete, measured in place, and cover all costs and expenses of the Contractor, and provide the total compensation to the Contractor and its subcontractors and suppliers in connection therewith, or full credit to Owner, as may be applicable. Said Unit Prices include, without limit, all conditions of the Contract and all general requirements such as layout, engineering, reproduction of Drawings and Specifications, testing and inspection, shop drawing and sample coordination, supervision (field and home office), small tools and expendable items, insurance, bonds, taxes, temporary facilities and services, including access and safety, "as-built" drawings, general and administrative overhead and profit for the Contractor and all its subcontractors.
- 7.2 Non-Unit Price Work: Pricing for Work not covered by Unit Prices shall be determined by adding a percentage markup to the sum of the following direct costs for labor and/or materials:
- 7.2.1 Direct Job Costs for Labor: The number of estimated hours, hourly rate and extended totals, for each item of Work, to arrive at the estimated cost or credit for direct jobsite labor (including working foremen), and payroll taxes, insurance, fringe benefit costs and the like, all as required to be paid by law and wage agreements without any markup of any kind.
- 7.2.2 Direct Job Costs for Materials & Equipment: The quantity, price, applicable rates for equipment and extended totals, to arrive at the estimated cost or credit for each item required by the Work or its rental or ownership cost equivalent (if a lesser amount) including transportation charges and all applicable taxes, without markup of any kind.
- 7.2.3 Markups: The Contractor's markup on Direct Job Costs shall cover all costs and expenses of the subcontractors, including, without limit, all conditions of the Contract and all general requirements such as layout, engineering, reproduction of Drawings and Specifications, testing and inspection, sample coordination, supervision (including general and non-working foremen), small tools and expendable items, insurance, bonds, taxes, temporary facilities and services, including access and safety provisions, "as-built" drawings, general and administrative overhead and profit. Markups for added and deleted Work shall be as set forth below:
- 7.3 For change Work, the maximum markups or minimum credits to be applied to direct costs shall be:
- 7.3.1 CONTRACTOR USING ITS OWN STAFF AND RESOURCES
- A. For Added Work:

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- 1) A maximum markup on the costs for direct field labor of the forces performing the added Work. 20%
- 2) A maximum markup on the costs for materials and equipment entering permanently into the Work, and for the rental of construction equipment (or ownership cost equivalent) 10%

B. For Deleted Work:

- 1) A minimum credit on the costs for the direct field labor of the forces that would normally have performed the deleted Work. 5%
- 2) A minimum credit on the costs for the materials and equipment that would normally have been required for the deleted Work. 2.5%

7.3.2 CONTRACTOR USING SUBCONTRACTOR’S FORCES

A. For Added Work:

- 1) A maximum markup on the costs for direct field labor of the forces performing the added Work. 15%
- 2) Plus, if the added Work is performed by other than a first tier subcontractor, one further markup applied separately to the direct field labor costs to cover additional costs of supervision, overhead, profit, and any other general expenses or costs of the first tier subcontractor, and other subcontractors, if any, overseeing the Work. 5%
- 3) A maximum markup on the costs for materials and equipment entering permanently into the Work, and for the rental of construction equipment (or ownership cost equivalent) for the subcontractor supplying same. 10%

B. For Deleted Work:

- 1) A minimum credit on the costs for the direct field labor of the forces that would normally have performed the deleted Work. 10%
- 2) Plus, if the deleted Work would normally have been performed by other than a first tier subcontractor, a further minimum credit applied separately to the direct field labor costs. 2.5%
- 3) A minimum credit on the costs for the materials and equipment that would normally have been required for the deleted Work. 5%

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- 7.3.4 Like Items: In the event of additions and deletions of like items of direct labor and material, the like item quantities shall be algebraically summed prior to the incorporation of applicable prices, Unit Prices and/or the markup percentage applicable to the Work.

7.4 Requirement to Proceed with Work

If Owner and the Contractor are unable to agree on the amount by which the Contract Sum will be increased or decreased and if, in the opinion of Owner, the Work must proceed before an agreement can be reached, a not-to-exceed cost shall be provided by the Contractor within two (2) weeks, and shall be mutually agreed upon. Owner will then execute the Field Order to the Contractor to proceed with the Work and the Contractor shall so comply. The Contractor and Subcontractors shall keep daily records as to all labor employed in connection with such Work and itemized records for all material and equipment used. Such records shall be submitted for daily approval by Engineer's Field Representative. If such records are not kept, all Work shall be deemed to have been performed at the Contractor's own cost.

ARTICLE 8 – MONETARY CLAIMS AND DEMANDS UPON OWNER

- 8.1 Monetary claims and demands upon Owner arising out of this Contract or in connection with the Work, for any reason whatsoever, must be presented by the Contractor to Owner in writing, within 14 calendar days from the date of the first occurrence of the cause giving rise thereto and the claim or demand shall be limited to Direct Job costs incurred by the subcontractors and/or the Contractor.
- 8.2 All such monetary claims and demands presented by the Contractor must refer to this Article and shall be fully detailed and substantiated as to the nature and extent thereof, so as to permit prompt resolution.
- 8.3 The Contractor hereby expressly waives all such claims and demands whether oral or written, and the right to present claims and demands, which are not made upon Owner in the time and manner set forth in this Article.
- 8.4 The parties hereby agree that the proper venue of any lawsuit arising out of or relating to this Contract or in connection with the Work based on a claim by the Contractor or its subcontractors, shall be the US District Court, Northern District of California.

ARTICLE 9 – GUARANTEES

- 9.1 Without limiting the Contractor's obligations under the Contract, and in addition to any specific Guarantees required by the Contract Documents, the Contractor expressly guarantees to

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perform the Work in a first class, workmanlike manner and guarantees all Work against defects in material or workmanship for a period of one (1) year from the date of acceptance of the Work, and Final Payment by Owner, as specified in these General Conditions. Acceptance means final acceptance of the entire Work.

- 9.2 All Guarantees or Warranties of equipment or materials furnished to the Contractor or Subcontractors by any Manufacturer or Supplier shall be deemed to run to the benefit of Owner. If any Manufacturer or Supplier of any equipment or material furnishes a Guarantee or Warranty for a period in excess of one (1) year from the date of acceptance, the Contractor's Guarantee, as provided in Paragraph 17.1 of this Article, shall be deemed to extend for a like period as to such equipment or material.
- 9.3 Within a reasonable time after receipt of written notice thereof, the Contractor shall correct any defects in material or workmanship which exist prior to or during the period of any Guarantee provided herein and any damage to other Work or property caused by such defects or the repairing of such defects.
- 9.4 The Guarantees shall not be construed to modify or limit, in any way, any rights or actions which Owner may otherwise have against the Contractor by law or statute, or in equity, for breach of contract or improper performance of defective Work.
- 9.5 Prior to final acceptance of the Work, the Contractor shall deliver to the Owner and Owner's Representative copies of all Guarantees and Warranties on equipment and materials furnished by all Manufacturers and Suppliers to the Contractor and all Subcontractors, with duly executed instruments properly assigning said Guarantees and Warranties to Owner. The Contractor shall bind said copies of Guarantees and Warranties together in a single volume, grouped by trade and properly indexed.

ARTICLE 10 – INSPECTIONS

- 10.1 The Contractor shall give Owner timely notice of its readiness to have the Work inspected. All inspections, tests or approvals required by the Contract Documents, laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction shall be conducted in the presence of Owner, Representative, and the Engineer, except as Owner may otherwise authorize. The Contractor shall bear all costs for such inspections, tests, and approvals, unless specifically provided otherwise in the Contract Documents.
- 10.2 If Owner, Representative, or the Engineer should require other or additional inspections, tests or approvals, not required by the above paragraph, the Contractor shall give similar notice of readiness. Such costs, except as provided in Section 18.3, shall be at the Owner's expense.

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- 10.3 If any inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents or laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, then the Contractor shall bear all costs made necessary by such failure, including those costs of repeated procedures and compensation for the Engineer's services and expenses.
- 10.4 Required certificates of inspection, testing or approval shall be secured by the Contractor and delivered to Owner. Acceptance of test data or inspection of any portion of the Work by Owner or the Engineer shall not relieve the Contractor of its obligation to perform the Work as required by the Contract. Failure of Owner, Representative, or the Engineer to discover or reject defective Work, or Work not in accordance with the Contract Documents, shall not be deemed an acceptance thereof, nor a waiver of Owner's rights to a proper execution of the Work or any part thereof. No partial or final payment, or partial or entire occupancy of the premises by Owner shall be construed to be an acceptance of Work or of material which is not strictly in accordance with the Contract, nor shall it be construed to be a waiver by Owner of any of its rights.
- 10.5 The inspection of the work shall not relieve the Contractor of any of his/her obligations to fulfill the Contract as prescribed, and defective work shall be made good, and unsuitable materials may be rejected notwithstanding that such defective work and materials have been previously overlooked by MAS or the Engineer and accepted or estimated for payment.

ARTICLE 11 – SUBSTANTIAL COMPLETION

- 11.1 The term "substantial completion" means the completion of 90% of Work-in-place as accepted by Owner and Engineer. The Contractor shall obtain all certificates or required approvals and acceptances by City, County, and State governments or other authority having jurisdiction.
- 11.2 Owner's acceptance of any substantially completed portion of the Work in accordance with the Contract Schedule shall not be the basis for any claim by the Contractor for added costs, if any, to complete the Work.

ARTICLE 12 – SAFETY AND PROTECTION

- 12.1 The Contractor shall take all safety precautions and be responsible for initiating, maintaining and supervising effective safety programs to protect Owner's personnel, the public, and all other persons on and about the construction site, from personal injury.
- 12.2 The Contractor shall comply with all applicable provisions of Federal, State and local laws relating to safety. The Contractor shall perform all Work in compliance with the requirements of the Occupational Safety and Health Act of 1970 (the "Act") as it may be amended, and all

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regulations and standards issued pursuant thereto. The Contractor is fully responsible for the safety and health of all persons engaged in the Work, and in no event shall Owner be deemed to be the employer of any of said persons.

- 12.2.1 If any person engaged in the Work on Owner's premises files a charge of non-compliance with the Act, the Contractor shall promptly notify Owner in writing upon receiving notice of such charge.
- 12.2.2 The Contractor shall notify Owner promptly upon receiving notification that a Federal or State inspector shall visit the construction site to inspect the compliance of the Contractor or any of its subcontractors with the Act.
- 12.3 The Contractor shall designate a qualified member of its organization as the Safety Engineer, whose duties shall be to develop the means and procedures to prevent accidents and injury to persons or damage to property.
 - 12.3.1 The Contractor shall prepare a Health and Safety Plan to meet all regulatory requirements for the Work. All subcontractors, including, without limitation, the marine material supply and subcontractor shall submit Health and Safety Plans for their part of the Work.
 - 12.3.2 The Contractor shall instruct all its employees on all safety rules and all safety procedures before beginning Work. The Contractor shall submit a copy of the Safety Plan to Owner and Engineer.
 - 12.3.3 The Contractor shall conduct a weekly meeting with subcontractors to review job safety and accident prevention, and shall prepare minutes that will be available to Owner and Engineer on request.
- 12.4 The Contractor is responsible for any personal injury and for loss or damage to any property of Owner or others resulting from the performance of the Work by the Contractor or its subcontractors, or from their negligence, and shall promptly repair or replace damaged or lost property, as Owner may require.
- 12.5 Mobile equipment and operable equipment at the site, and hazardous parts of new construction subject to mischief, shall be locked, or otherwise made inoperable or protected, when unattended.
- 12.6 In the event of accidents involving personal injury or property damage, the Contractor shall immediately notify Owner and furnish as much data as is available. As soon as practicable, a report shall be made to Owner in writing regarding the extent of damage or injury, the persons

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involved and their employers, the number of days persons are hospitalized, and any other pertinent information required by Owner.

ARTICLE 13 – ROYALTIES AND PATENTS

- 13.1 The Contractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patents, and shall save Owner harmless from loss on account thereof; except that Owner shall be responsible for all such loss when a particular process or product is specified by Owner unless the Contractor shall have reason to believe that the particular process or product infringes a patent, in which event it shall be responsible for loss on account thereof unless it promptly provides such information to Owner.

ARTICLE 14 – OWNER INFORMATION: OWNERSHIP AND CONTROL

14.1 Ownership of Documents

All drawings, specifications, computations, sketches, test data, survey results, photographs, renderings and other material relating to the Work, whether furnished to or prepared by the Contractor, are the property of Owner. The Contractor shall use such materials or information therefrom only in connection with the Work of this Contract. When requested, the Contractor shall deliver such materials to Owner.

14.2 Release of Information

The Contractor shall not divulge information concerning the Work (including news releases, internal house organs, applications for permits, etc.) to anyone without Owner's prior written approval, except to subcontractors and suppliers to the extent that they need such information to perform their Work. The Contractor shall require a similar agreement from each such subcontractor and supplier, requiring their compliance with the foregoing. Owner reserves the right to release all information, as well as to time its release and specify its form and content.

14.3 Confidential Information

The term "Confidential Information" means all unpublished information obtained or received from Owner during the term of this Contract which relates to Owner's affairs. The Contractor shall not disclose confidential information to any person, except to its employees and subcontractors and only to the extent that they require it in the performance of their Work, during the term of this Contract and until otherwise authorized by Owner in writing. The Contractor and its subcontractors shall hold all confidential information in trust and confidence for Owner, and shall use confidential information only for the purpose of this Contract. The Contractor and its subcontractors shall require all of their employees to whom confidential

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information is revealed to comply with these provisions. The Contractor shall have an agreement with each subcontractor, requiring their compliance with the foregoing, and shall furnish such agreements to Owner upon request.

ARTICLE 15 – TEMPORARY FACILITIES AND SERVICES

- 15.1 The Contractor shall provide all temporary facilities and services of every kind, as required by the Contractor and by its subcontractors for their performance of the Work and compliance with the Contract Documents, and shall remove such facilities and complete such services upon the completion of all other Work, or as Owner may direct.
- 15.2 The Contractor shall obtain all required permits and approvals for and shall provide, construct, or install (at locations approved by Owner), as well as operate, maintain, service and remove, the temporary facilities and services.

ARTICLE 16 – SEPARATE CONTRACTS

- 16.1 Owner reserves the right to award separate contracts in connection with the Work.
- 16.2 The Contractor shall cooperate with separate contractors so that their work may be completed expeditiously and within normal working hours. The Contractor shall afford such separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their Work, and shall properly connect and coordinate its Work with theirs.
- 16.3 The Contractor shall do all cutting, fitting, and patching, as shown upon or as reasonably implied by the drawings and specifications, that may be required to fit its Work to receive or be received by the Work of separate contractors, and to make the several parts of the Work come together properly.
- 16.4 The Contractor shall not endanger any Work of separate contractors by cutting, excavating, or otherwise altering their Work, and shall not cut or alter their Work without the written approval of Owner.
- 16.5 If any part of the Contractor's Work depends upon the Work of any separate contractor, Contractor shall carefully inspect such Work and promptly report to Owner and Engineer any apparent discrepancies or defects that render such Work unsuitable to receive the Contractor's Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's Work as fit and proper to receive its Work, except as to defects not discoverable by careful inspection.

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- 16.6 The Contractor shall indemnify and save State of California, Owner, Representative, and Engineer harmless from any liability to any separate contractor because of the Contractor's fault or negligence. The Contractor agrees to defend Owner at its cost, against suits or claims by any separate contractor on account of any damage alleged to result from the Contractor's fault or negligence.

ARTICLE 17 – OWNER'S RIGHT TO TERMINATE

- 17.1 If the Contractor is adjudged bankrupt, or makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail to supply enough properly skilled workers or proper materials, or if it should fail to make prompt payment to subcontractors for material or labor, or disregard instructions of the Engineer, or be in breach of any provision of this Contract, Owner may, without prejudice to any other right or remedy and after giving the Contractor seven (7) calendar days' written notice, terminate this Contract or any part of the Work, and take possession of the Work and of all materials and tools, and finish the Work by whatever method it may deem expedient.
- 17.1.1 In the event of the termination of this Contract under Article 25.1, the Contractor shall not be entitled to receive any further payment except as may be provided in this section. Upon completion of the Work by others, Owner shall pay to the Contractor upon submission of applicable documentation in accordance with Article 7.7 hereof, the net sum due the Contractor for unpaid costs incurred by the Contractor for Work completed subsequent to the date of the Contractor's previous invoice, and the Contractor's cost of terminating subcontracts. If the Contract is terminated as to part of the Work covered by a subcontract, upon completion of the Work by others, Owner shall pay the Contractor the net sum due for Work completed by the subcontractor subsequent to the subcontractor's previous invoice to the Contractor, and the subcontractor's costs of terminating its subcontracts. However, Owner shall not be obligated to pay the Contractor any amount for the foregoing which when added to the costs Owner incurs to complete the Work plus all sums paid to the Contractor, would exceed the Contract Sum. If the cost Owner incurs to complete the Work exceeds the Contract Sum, the Contractor shall be liable to Owner for such additional sum to compensate Owner for the damages and losses sustained by Owner as a consequence of the termination.
- 17.2 In addition to the right of Owner to terminate the Contract as provided in Article 25.1 above, in the event Owner wishes to abandon, postpone or terminate the Work or any part thereof for any other reason, including the failure of the Contractor and Owner to agree upon the pricing of Work in accordance with Article 11.1-11.6, Owner may terminate the Contract as to all or any part of the Work designated for termination by giving ten (10) calendar days' written notice to

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the Contractor of Owner's decision to terminate, and the date of such termination, and the Contract shall then terminate as to all or any part of the Work designated for termination.

17.2.1 In the event of the termination of this Contract under Article 25.2, Owner shall pay to the Contractor the net sum due the Contractor for unpaid costs incurred by the Contractor for Work completed subsequent to the date of the Contractor's previous invoice and the Contractor's cost of terminating subcontracts. If the Contract is terminated as to part of the Work covered by a subcontract, Owner shall pay the Contractor the net sum due the Contractor for the subcontractor for unpaid costs incurred by the subcontractor for Work completed subsequent to the subcontractor's previous invoice to the Contractor, and the subcontractor's cost of terminating its subcontracts.

17.3 In the event of the termination of this Contract or a part thereof by Owner, the Contractor shall then, as directed by Owner, terminate some or all of its subcontractors. As to subcontracts that Owner requires be assigned to it, the subcontract shall be deemed assigned upon notice thereof to the Contractor by Owner. The Contractor shall also deliver and transfer to Owner, in the manner and to the extent directed by Owner, all of the related right, title and interest of the Contractor in and to: (1) all supplies, materials, and other property produced as a part of, or acquired in the performance of, the Work terminated; (2) copies of all subcontracts entered into in connection with the Work terminated; and (3) all commitments entered into by the Contractor with the approval of Owner, with respect to the Work terminated. As required, the Subcontractor whose contract is deemed assigned to Owner may be assigned by Owner to another Contractor or Contractor.

ARTICLE 18 – CONTRACTOR'S RIGHT TO TERMINATE

18.1 Should the Work be stopped by a public authority or by the act or neglect of Owner for a period of three (3) months or more, through no fault of the Contractor, or should Owner without justifiable cause fail to make any approved payment within sixty (60) calendar days after it is due the Contractor, then the Contractor, upon seven (7) calendar days' written notice to Owner, may stop the Work or terminate this Contract and recover from Owner payment for all Work completed, plus a reasonable profit thereon based on Work completed to the date of termination, by submitting applicable documentation in accordance with Article 7.7 herein. Owner shall have the right, however, to make any required payment or cure any default during the seven (7) calendar day period following written notice and, in such event, the Contract shall not be terminated.

ARTICLE 19 – ACCOUNTINGS, INSPECTION AND AUDIT

19.1 The Contractor shall check all materials, labor and all other cost items entering into the Work, or incurred in connection with the Work, and Owner may verify all said items and may review all

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the Contractor's records when materials are delivered and while the workers are employed on Work and thereafter. The Contractor shall keep such full and detailed accounts as may be necessary for proper financial control under this Agreement, and the system of accounting shall be satisfactory to Owner.

- 19.2 Owner and its duly authorized representatives shall be afforded access to all of the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, memoranda, copies of all subcontractor bids, subcontracts and purchase contracts, and the like, relating to this Contract and the Work, and the Contractor shall preserve all such records for a period of four (4) years after completion of the Work.
- 19.3 The Contractor shall include a clause in its agreements with subcontractors reserving the right for audits to be performed by Owner and its duly authorized representatives, or its contracted representative from a certified public accounting firm who shall have the right to audit and to examine any cost, payment, or settlement resulting from any item set forth in its agreements.

ARTICLE 20 – GRANT AND STATUTORY REQUIREMENTS

- 20.1 The Contractor acknowledges that the Project is being funded in part by federal and state funds, including but not limited to: U.S. Fish and Wildlife Service National Coastal Wetlands Conservation Fund managed by the California Coastal Conservancy and a State grant from the Wildlife Conservation Board (collectively "Grantors"). Accordingly, Contractor agrees to comply, and to cause its subcontractors to comply, as applicable, to federal, state and local laws, statutes, rules and regulations relating to employment, construction, environmental compliance and other activities associated with federal and state grants.
- 20.2 Inspection, Records
- 20.2.1 The authorized representatives and agents of the Grantors shall, at all reasonable times, have access to the premises where any of the Work is located.
- 20.2.2 The Contractor shall make available records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form, and other supporting evidence to satisfy contract negotiation, administration and audit requirements of the Grantors and the Comptroller General for four years after final payment.
- 20.3 Nondiscrimination
- 20.3.1 The Contractor shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of race, color, religion, sex, age,

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ancestry, national origin, religious creed, physical disability, mental disability, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or denial of family care leave. The Contractor shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The Contractor and all Subcontractors shall give written notice of their nondiscrimination obligations under the Contract Documents to all labor organizations with which they have a collective bargaining or other agreement.

20.4 Debarment and Suspensions

20.4.1 The Contractor shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension".

20.4.2 The Contractor certifies to the best of its knowledge and belief that it and its principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or grantee;
- b) have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
- c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b).

20.5 Compliance with Davis-Bacon and Related Act Requirements

20.5.1 The Contractor shall be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by the Department of Labor regulations (29 CFR Parts 1, 3 and 5) which are incorporated by reference in this Contract.

20.6 Certification of Eligibility

20.6.1 By entering into this Contract, the Contractor certifies that neither the Contractor nor any person or firm who has an interest in the Contractor's firm is a person or firm

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ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

20.6.2 No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

20.7 Payroll Records

20.7.1 The Contractor shall, and cause all Subcontractors to, maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing contained in this Section shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. The records to be maintained under this Section shall be made available by the Contractor for inspection, copying or transcription by the authorized representatives of the Owner and Department of Labor, and the Contractor shall permit such representatives to interview employees during working hours on the job. The contractor shall, and cause all Subcontractors to, comply with all requirements of State of California Labor Code Section 1776. The Contractor shall, and cause all Subcontractors to, keep accurate payroll records and comply with all requirements of State of California Labor Code Section 1777.5, 1777.6, and 1777.7 and State of California Code of Regulations, Title 8, Section 200, and the applicable sections that follow, regarding apprentices.

20.8 Work Day

20.8.1 Contractor shall not permit any worker to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in accordance with conditions provided by law. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of the authorized representatives of the Owner and Department of Labor, and to the inspection of the appropriate enforcement agency of the State of California.

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20.9 Drug-Free Workplace Requirements

20.9.1 The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a) publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b) establish a Drug-Free Awareness Program to inform employees about: 1) the dangers of drug abuse in the workplace, 2) the organization's policy of maintaining a drug-free workplace, 3) any available counseling, rehabilitation and employee assistance programs, and 4) penalties that may be imposed upon employees for drug abuse violations.
- c) Every employee who works on the proposed project will: 1) receive a copy of the organization's drug-free workplace policy statement, and 2) agree to abide by the terms of the statement as a condition of employment on the project.

20.10 Lobbying

20.10.1 The Contractor agrees, to the best of his or her knowledge or belief, that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

20.11 Certification of Non-Segregated Facilities

20.11.1 As used in this Section, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom or otherwise.

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20.11.2 By entering into the Agreement to perform the Work required under the Contract Documents, the Contractor certifies that the Contractor does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor further agrees that (except where it has obtained identical certifications from proposed Subcontractors for specific time periods) the Contractor will obtain identical certifications from proposed Subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause; will retain the certifications in the Contractor's files; and will forward the following notice to such proposed Subcontractors (except if the proposed Subcontractors have submitted identical certifications for specific time periods).

***** END OF SECTION *****