

OHLONE COMMUNITY COLLEGE DISTRICT
MEMORANDUM

TO: Board of Trustees

FROM: Douglas Treadway

DATE: February 9, 2005

SUBJECT: Approval of Resolution No. 28/05-06 Approving an Energy Service Contract with PowerLight Corporation

Approval of Resolution No. 28/05-06 will authorize the District to enter into an Energy Service Contract with PowerLight Corporation for a lump sum amount of \$4,097,000. The Energy Services contract is allowed under Government Code section 4217.

The contract will provide a Photovoltaic System on the roof of the Ohlone College Newark Center for Health Sciences and Technology. This system will reduce energy costs and will pay for itself over a period of 20 years.

The District solicited bids for the Photovoltaic System to compare prices and systems available. Two bids were received on February 16, 2006. The system provided by PowerLight offered the highest number of Kilowatt Hours and was found to best fit the design of the new center.

Alpha Tech, the electrical engineer/subconsultant to Perkins and Will Architects analyzed the system proposed and provided the attached savings analysis.

This project will be funded with \$1,000,000 from the Bond Budget, \$1,474,395 from the P.G. & E. Self Generation Incentive Program (SGIP) and the balance of \$1,622,605 from Bookstore reserves. However, the intent of staff is to raise funds to eliminate the need for Bookstore funding.

RECOMMENDATION:

The President/Superintendent recommends that the Board of Trustees approve: 1) Resolution No. 28/05-06, approving an Energy Services Contract with PowerLight Corporation for \$4,097,000.00.

Attachment: Resolution # 28/05-06
Contract #244-0206-001
Savings Analysis

**RESOLUTION OF THE BOARD OF TRUSTEES
OF THE OHLONE COMMUNITY COLLEGE DISTRICT**

**APPROVING AN
ENERGY SERVICE CONTRACT PURSUANT TO
GOVERNMENT CODE SECTIONS 4217.10 *ET SEQ.***

RESOLUTION NO: 28/05-06

1. What this Resolution Does.

Pursuant to Government Code Sections 4217.12, this Resolution makes various findings regarding a proposed Energy Service Contract with PowerLight Corporation and approves that proposed contract.

2. Authority and Reasons for Adopting Resolution.

- a. Public Resources Code 25008 states that it is the policy of the State and the intent of the Legislature to promote all feasible means of energy and water conservation and all feasible uses of alternative energy and water supply sources; and
- b. Government Code Section 4217.10 states that in order to extend that policy to facilities of local governments, a public agency may, *inter alia*, enter into an energy service contract as defined in Government Code Section 4217.11(f) pursuant to Government Code Section 4217.12;
- c. District owns and is currently constructing the Newark Center for Health Sciences & Technology located at 39399 Cherry Street, Newark, California (“Center”).
- d. District has adopted an Energy Resources Conservation Policy which recognizes the need and the responsibility of the District to conserve energy resources. It is the policy of the District to reduce energy consumption to as minimal a level as is consistent with the basic mission of the District without compromising the health, safety, and welfare of the personnel working in and using the facilities of the District.
- e. On February 16, 2006, District solicited bids for a photovoltaic system to be designed and installed at the Center (Bid Number 244-0206). Two bids were submitted and, though neither bid was fully responsive to the Bid Invitation, the bid submitted by Contractor identified a system which, with minor revision, would fully meet both the operational and energy conservation objectives of that Invitation and would require only minor modification of the plans and specifications already developed for the Center to include that system in the Center.

- f. On June 2, 2006, DSA approved the plans for a Photovoltaic System (“Project”), incorporating the equipment and other features of the system proposed by Contractor (“Project”).
- g. District understands that, the Project will reduce the consumption of energy used for Center and mitigate rising energy costs, especially natural gas prices. The work performed pursuant to the Contract will result in a reduction of energy costs for the District totaling approximately \$5,464,562.00, over the course of thirty (30) years, as set forth in Exhibit “A”, Financial Analysis, attached hereto and incorporated herein.
- h. Based on g above, District and Contractor understand that the Project will result in the installation of a system constituting "Conservation measures" as that term is used in Government Code section 4217.11(c) and "Energy conservation facilit[ies]" as that term is used in Government Code section 4217.11(e). Based on this, District and Contractor understand that a contract to carry out the Project would be an “Energy service contract” as that term is used in Government Code section 4217.11(f).
- i. District and Contractor understand that Government Code Section 4217.12. provides, in relevant part, that notwithstanding any other provision of law, a public agency may enter into an energy service contract on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds that the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases.
- j. Based on Exhibit A, District’s governing body finds that the anticipated costs to the District for the electrical energy and conservation services provided by Contractor pursuant to this Contract will be less than the anticipated marginal costs to the District of electrical energy that would have been consumed by the District in the absence of those services.
- k. As required by Government Code Section 4217.12, notice was given at least two weeks in advance of this meeting that a public hearing on the possible award of the proposed Energy Service Contract would be conducted at this meeting; and
- p. After receiving a report from District staff and a representative of Contractor regarding the Energy Service Contract, a public hearing was held at which members of the public were given an opportunity to address the Board.

3. Approval of the Energy Service Contract

- a. This Board finds and determines that the facts stated in paragraph 2 are true.
- b. Based on all of the above, this board finds that the anticipated cost to the District for conservation services provided under the proposed Energy Service Contract will be less than the anticipated marginal cost to the District of thermal, electrical, or other energy that would have been consumed by the District in the absence of the purchase of those services.
- c. Based on all of the above, this Board further finds that it would be in the best interest of the District to enter into proposed Energy Service Contract and approves the proposed Energy Service Contract.

4. Superintendent Authorized to take Necessary and Appropriate Action.

The Board directs and authorizes its President/Superintendent and/or Designee to execute the Energy Service Contract on its behalf and to take such further action as may be necessary and appropriate to effectuate this Resolution.

5. Certification of Resolution.

I, _____, _____ of the Governing Board of the Ohlone Community College District of Alameda County, State of California, certify that this Resolution proposed by _____, seconded by _____, was duly passed and adopted by the Board, at an official and public meeting this _____ day of _____, 2006, by the following vote:

AYES: _____
 NOES: _____
 ABSENT: _____

 _____ of the Board
 of the Ohlone Community College District
 of Alameda County, California

ENERGY SERVICE CONTRACT

Number 244-0206-001

APPROVED BY THE OHLONE COMMUNITY COLLEGE DISTRICT BOARD

THIS ENERGY SERVICE CONTRACT made and entered into pursuant to Government Code Section 4217.10 *et seq.* this fourteenth day of June, 2006 in the State of California, by and between Ohlone Community College District (“District”), through its duly elected and appointed, qualified and acting Governing Board, and PowerLight Corporation (“Contractor” or “Trade Contractor”).

RECITALS:

- A. District and Contractor understand that the Project will result in the installation of a system constituting "Conservation measures" as that term is used in Government Code section 4217.11(c) and "Energy conservation facilit[ies]" as that term is used in Government Code section 4217.11(e). Based on this, District and Contractor understand that a contract to carry out the Project would be an “Energy service contract” as that term is used in Government Code section 4217.11(f).
- B. District and Contractor understand that Government Code Section 4217.12. provides, in relevant part, that notwithstanding any other provision of law, a public agency may enter into an energy service contract on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds that the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases.
- C. The District’s Governing Board has found that the anticipated costs to the District for the electrical energy and conservation services provided by Contractor pursuant to this Contract will be less than the anticipated marginal costs to the District of electrical energy that would have been consumed by the District in the absence of those services.
- D. After a properly noticed public hearing, the District’s Governing Board authorized execution of this Contract.

AGREEMENT:

Based on the foregoing recitals and for and in consideration of the covenants, conditions, agreements, and stipulations of the other parties, District and Contractor hereby agree as follows:

Contractor to provide all labor, supplies, equipment, and transportation necessary for the **Newark Center for Health Sciences and Technology Project** for Photovoltaic System described herein in accordance with the Contract Documents, any addenda thereto, the Plans, Drawings, Specifications, and Project Proposal Documents, Attachment “A” - List of Specification Documents, Attachment “B” - Trade Contractor Scope of Work, Attachment “C” - Project Schedule, Attachment “D” - Trade Contractors Procedures Manual Dated October 3, 2005, Attachment “E” - Formula for Changes Dated April 3, 2005, Attachment “F” - Project Safety Manual Dated March 27, 2005, Attachment “G” - Noise Mitigation Plan, Attachment “H” – Revised Proposal Document, Dated June 1, 2006, which are by this reference made a part of this Contract.

Work is to be completed per the timeframes and durations prescribed within the “Project Schedule”. The Starting date of the Contract shall be the day listed by the District in the Notice to Proceed and the Contractor shall fully complete all the work as per the schedule provided in the specification documents for Bid #244-0206. Liquidated damages for Contractor’s failure to complete the Contract within the time fixed for completion are established in the amount of \$1500 per calendar Day.

The total amount of this Contract shall not exceed **Four Million, Ninety Seven Thousand Dollars (\$4,097,000.00)**, which includes all applicable taxes. Payment shall be made, less 10 % retention, after receipt of invoice in duplicate and upon approval by Simon Barros, Director of Facilities, Ohlone Community College District, 43600 Mission Blvd., Fremont, CA 94539-0390. Final payment shall be made 35 days after final completion of the project in accordance with the provisions in this contract.

Relationship

ARTICLE I. With respect to the Work to be performed and furnished by the Trade Contractor, the Trade Contractor agrees to be bound to Turner Construction Company ("Turner" or the "Construction Manager") by each and all of the terms and provisions of the CM Services Agreement dated August 25, 2004 (attached) and the other Contract Documents, and to assume toward Turner all of the duties, obligations and responsibilities that Construction Manager by those Contract Documents assumes toward Ohlone Community College District (the "District"), and the Trade Contractor further agrees that Turner shall have the same rights and remedies as against the Trade Contractor as the District under the terms and provisions of the CM Services Agreement dated August 25, 2004 and the other Contract Documents, has against Construction Manager with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full.

The Trade Contractor acknowledges and agrees (i) that the role of Turner is to function as agent solely on behalf of and for the benefit of the Owner and to have the exclusive right to provide administrative, management and related services necessary to administer the Trade Contracts and to schedule, require and coordinate Work of the Trade Contractors, (ii) that the Trade Contractor waives all claims, whether in contract, tort or otherwise, that it may now or hereafter have against the Construction Manager, (iii) that the Construction Manager shall be an additional insured on the insurance policies of the Trade Contractor and that all such policies shall contain a waiver of subrogation in favor of the Construction Manager and (iv) that the Trade Contractor shall defend, indemnify and hold harmless Owner and Construction Manager from any and all claims, demands, and suits (including, but not limited to suits for bodily injury and property damage) in any way arising out of or related to their respective contracts or alleged failure of Trade Contractor to perform its responsibilities or obligations.

The Trade Contractor further acknowledges that the Construction Manager shall be entitled to performance of the obligations of the Trade Contractor intended for the Construction Manager's benefit and to enforcement thereof and that the Trade Contractor must, at its own expense, work cooperatively with all other Trade Contractors on site to coordinate its work with the work of such Trade Contractors, including modifying its schedule and activities. To further such coordination it must, when requested by the Construction Manager, submit to the Construction Manager, a current updated copy of its detailed schedule to demonstrate the status of such coordination and, if the Construction Manager deems it necessary, to modify its schedules and operations as and in the manner required by the Construction Manager and to execute its work in the manner shown on the revised schedule, at the Trade Contractor's own cost and expense. It is agreed that any such modifications required by the Construction Manager or any resulting work shall not result in any claims against the Construction Manager or the Owner and all such claims are waived. While the Construction Manager may have the right to take such action, in no respect shall the Owner or the Construction Manager be obligated to do so.

The Contract Documents shall not be construed to create a contractual relationship of any kind between Turner and the Architect, or between Turner or the Architect and the Contractor, or any subcontractor or supplier to the Project.

Turner and the Architect, however, shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof, but nothing contained herein shall be deemed to give the Contractor or any third party any claim or right of action against Turner or the Architect which does not otherwise exist without regard to this Contract. The Contractor and its subcontractors shall not be deemed to be beneficiaries of any of the acts or services of Turner, which are performed for the sole benefit of the Owner. Contractor shall forward all communications to the Owner and Architect through Turner and hereby acknowledges and agrees that any instructions, reviews, advice, approvals, orders or directives that are rendered to it by Turner are specifically authorized and directed by the Owner to the Contractor through Turner acting on behalf of the Owner.

The Contractor shall supervise and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Work and hereby agrees with respect hereto that neither Turner nor the Architect will be responsible therefor or have control or charge thereof. Contractor further assumes entire responsibility for the acts and omissions of its agents or employees, subcontractors, suppliers, any of their agents or employees, or any other persons performing any of the Work and agrees that neither Turner nor the Architect will be responsible for or have control or charge over any such acts or omissions. Contractor further agrees that neither Turner or the Architect will be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents.

Contract Documents

ARTICLE II. The Plans, Specifications, General Conditions, Special Conditions, and Project Proposal Attachment A: List of Specification Documents, Attachment B: Trade Contractor's Scope of Work, Attachment C: Project Schedule, Attachment D: Trade Contractors Procedures Manual, Attachment E: Formula for Changes, Attachment F: Project Safety Program, Attachment G: Site Logistics Plan, Attachment H: Remedial Action Work Plan and Addenda hereinabove mentioned, are available for examination by the Subcontractor at all reasonable times at the office of the Construction Manager, Turner Construction Company (hereinafter referred to as Turner); all of the aforesaid, including this Contract, and the completed Bond and Insurance Forms, being hereinafter sometimes referred to as the Contract Documents. The Contractor represents and agrees that it has carefully examined and understands this Contract and the other Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed and that it enters into this Contract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Turner, or of the Owner, or of any of their respective officers, agents, servants, or employees.

This Contract and the other Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Contract irreconcilably conflicts with a provision of the other Contract Documents, the provision imposing the greater duty or obligation on the Contractor shall govern.

The parties recognize that problems and disputes between them may occur and that it is preferable for them to reach an amicable resolution of same without the need to resort to formal dispute resolution procedures. In that regard, they each pledge to participate in good faith in voluntary and non-binding Alternate Dispute Resolution (ADR) procedures. However, in the event that such disputes are not resolved by mediation or another ADR procedure as Owner and the Contractor may agree then such disputes shall be resolved at Owner's sole option according to law. Furthermore, the Contractor agrees that Owner shall have the exclusive right to join the Contractor as a party in any dispute resolution procedure (including without limitation ADR procedures, binding arbitration or other

judicial or non-judicial proceeding) between the Owner and such other Contractors or parties as may be appropriate, where in the judgment of Owner the issues in dispute are related to the work or performance of the Contractor. Furthermore, the Contractor expressly agrees to waive its right to trial by jury in case Owner elects to resolve the dispute in litigation.

***Time of
Completion***

ARTICLE III. The Contractor shall commence the Work when notified to do so by Owner and shall diligently and continuously prosecute and complete the Work and coordinate the Work with the other work being performed on the Project, in accordance with those project schedules as may be issued from time to time during the performance of the Work, and any other scheduling requirements listed in this Contract, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project.

The Contractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work providing information for the scheduling of the times and sequence of operations required for its Work to meet Owner's overall schedule requirements, shall continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the project schedule including any revisions thereto.

Should the progress of the Work or of the Project be delayed disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to the Owner or Turner including legal fees and disbursements incurred by Owner or Turner (whether incurred in defending claims arising from such delay or in seeking reimbursement and indemnity from the Contractor and its surety hereunder or otherwise) or any damages or additional costs or expenses for which Turner or the Owner may or shall become liable, the Contractor and its surety shall and does hereby agree to compensate the Owner and Turner for and indemnify them against all such costs, expenses, damages and liability.

The Owner or Turner, if the Owner deems necessary, may direct the Contractor to work overtime and, if so directed, the Contractor shall work said overtime and, provided that the Contractor is not in default under any of the terms or provisions of this Contract or of any of the other Contract Documents, the Owner will pay the Contractor for such actual additional wages paid, if any, at rates which have been approved by the Owner and Turner plus taxes imposed by law on such additional wages, plus workers' compensation insurance, liability insurance and levies on such additional wages if required to be paid by the Contractor.

If, however, the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Contractor shall, in addition to all of the other obligations imposed by this Contract upon the Contractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay. Should the Contractor fail to make up for the time lost by reason of such delay, the Owner shall have the right to cause other Contractors to work overtime and to take whatever other action it deems necessary to avoid delay in the completion of the Work and of the Project, and the cost and expense of such overtime and/or such other action shall be borne by the Contractor.

Price

ARTICLE IV. The sum to be paid by the Owner to the Contractor for the satisfactory performance and completion of the Work and of all of the duties, obligations and responsibilities of the Contractor under this Contract and the other Contract Documents shall be (hereinafter called the Price) subject to additions and deductions as herein provided.

The Price includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including but not limited to sales, use and personal property taxes payable by or levied or assessed against the Owner, Turner or the Contractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Price.

***Monthly
Estimate***

On or before the last day of each month the Contractor shall submit to the Owner, in the form required by Owner, a written requisition for payment showing the proportionate value of the Work installed to that date, from which shall be deducted: a reserve of ten per cent (10%); all previous payments; and all charges for services, materials, equipment and other items furnished by Turner to or chargeable to the Contractor; and the balance of the amount of such requisition, as approved by Owner, Turner and the Architect, shall be due and paid to the Contractor on or about the fifteenth (15th) day of the succeeding month or in accordance with the Contract Documents.

The Contractor shall submit with its first requisition for payment a detailed schedule showing the breakdown of the Price into its various parts for use only as a basis of checking the Contractor's monthly requisitions.

Owner reserves the right to advance the date of any payment (including the final payment) under this Contract if, in its sole judgment, it becomes desirable to do so.

The Contractor agrees that, if and when requested to do so by the owner or Turner, it shall furnish such information, evidence and substantiation as the Owner or Turner may require with respect to the nature and extent of all obligations incurred by the Contractor for or in connection with the Work, all payments made by the Contractor thereon, and the amounts remaining unpaid, to whom and the reasons therefor.

**Final
Payment**

Final payment to the Contractor shall be made only with funds received by the Owner, or the Owner's Agent as final payment for Work under the General Contract. In addition, final payment by the Owner to the Contractor shall not become due and payable until the following other express conditions precedent have been met: (1) the completion and acceptance of the Work by the Owner, Turner and the Architect; (2) provision by the Contractor of evidence satisfactory to the Owner that there are no claims, obligations or stop notices outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished, or incurred for or in connection with the Work; and (3) execution and delivery by the Contractor, in a form satisfactory to the Owner of a general release running to and in favor of the Owner. Should there prove to be any such claim, obligation or stop notice after final payment is made, the Contractor shall refund to the Owner or Turner all monies that the Owner or Turner shall pay in satisfying, discharging or defending against any such claim, obligation or lien or any action brought or judgment recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith. The final payment shall be due within thirty five (35) days after all of these express conditions precedent have been met.

**Payments
Withheld**

If any claim or stop notice is made or filed with or against Turner, the Owner, the Project, the Premises or the Project funds by any person claiming that the Subcontractor or any subcontractor or other person under subcontract has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there shall be evidence of such nonpayment or of any claim or stop notice for which, if established, Turner or the Owner might become liable and which is chargeable to the Contractor, or if the Contractor or any subcontractor or other person under subcontract causes damage to the Work or to any other work on the Project, or if the Contractor fails to perform or is otherwise in default under any of the terms or provisions of this Contract, the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the Owner or Turner for and indemnify and hold them harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection therewith. The Owner shall have the right to apply and charge against the Contractor so much of the amount retained as may be required for the foregoing purposes. If the amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the Owner.

**Payments
etc., non
Acceptance**

No payment (final or otherwise) made under or in connection with this Contract shall be conclusive evidence of the performance of the Work or of this Contract, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Contractor from any of its obligations under this Contract; nor shall entrance and use by the Owner constitute acceptance of the Work or any part thereof.

**Substitution
of Securities**

Pursuant to Public Contract Code section 22300, Contractor may request in writing that it be allowed at its own expense to substitute securities for moneys withheld by District to ensure performance under this Contract. Only securities listed in Government Code Section 16430 and bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts standby letters of credit, or any other security mutually agreed to by Contractor and District shall qualify under this Article. Securities equivalent to the amount withheld shall be deposited with the District or with a state or federally chartered bank in California as the escrow agent. Upon satisfactory completion of the Contract and on written authorization by District, said securities shall be returned to Contractor. Contractor shall be the beneficial owner of said securities and shall receive any interest thereon.

The Contractor may alternatively request District to make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for above for securities deposited by Contractor. Upon satisfactory completion of the contract, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District. The Contractor shall pay to each subcontractor, not later than 20 days of receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention.

Any escrow agreement entered into pursuant to this Article shall comply with Public Contract Code section 22300 and shall be subject to approval by District's counsel.

**Extension
of Time**

ARTICLE V. Should the Contractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by any cause including but not limited to any act, omission, neglect, negligence or default of the Owner or Turner or of anyone employed by the Owner or Turner or by any other contractor or subcontractor on the Project, or by the Architect, the Owner or their contractors, subcontractors, agents or consultants, or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no wise chargeable to the Contractor, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Contractor, its officers, agents, employees, subcontractors or suppliers, then except where the Contract Documents has specific requirements at variance with the foregoing, in which case the requirements of the Contract Documents shall govern, the Contractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Contractor shall not be entitled to any such extension of time unless the Contractor (1) notifies the Owner and Turner in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof. Notwithstanding the foregoing, if the Contract Documents are at variance with granting such time extension, then the provisions of the Contract Documents shall control.

The Contractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, obstruction, hindrance or interference to the Work.

***Freight
Charges and
Shipments***

ARTICLE VI. The Contractor in making or ordering shipments shall not consign or have consigned materials, equipment or any other items in the name of the Owner or Turner. The Owner and Turner is under no obligation to make payment for charges on shipments made by or to the Contractor but may, at its option, pay such charges, in which case the Contractor shall reimburse the Owner or Turner for the amount of such payments plus a service charge of twenty-five percent (25%) of the amount so paid.

Dimensions

ARTICLE VII. Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents it shall be the obligation and responsibility of the Contractor to take such measurements as will insure the proper matching and fitting of the Work covered by this Contract with contiguous work.

***Shop
Drawings***

The Contractor shall prepare and submit to the Architect through Turner such shop drawings as may be necessary to describe completely the details and construction of the Work. Approval of such shop drawings by the Architect and/or Turner shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Plans, Specifications, the Additional Provisions hereof and the other Contract Documents, nor of its responsibility for the proper matching and fitting of the Work with contiguous work and the coordination of the Work with other work being performed on the site, which obligation and responsibility shall continue until completion of the Work.

The Contractor's submission of a shop drawing to the Architect or Turner shall constitute the Contractor's representation, upon which the Architect and Turner may rely, that the Contractor has reviewed the submission for accuracy and compliance with all Contract Documents and that wherever engineering is required to be performed, same has been performed by a qualified and licensed engineer. Furthermore, the review of the Shop Drawing by the Architect and/or Turner shall not constitute an undertaking by them to identify deficiencies in the submission, that being an undertaking within the sole responsibility of the Contractor.

***Contiguous
Work***

Should the proper and accurate performance of the Work hereunder depend upon the proper and accurate performance of other work not covered by this Contract, the Contractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use all means necessary to discover any defects in such other work, and before proceeding with the Work hereunder, report promptly any such improper conditions and defects to the Owner and Turner in writing and allow the Owner a reasonable time to have such improper conditions and defects remedied.

***Interpretation
of Plans and
Specifications***

ARTICLE VIII. The Work hereunder is to be performed and furnished under the direction and to the satisfaction of the Owner, the Architect and Turner. The decision of the Architect as to the true construction, meaning and intent of the Plans and Specifications shall be final and binding upon the parties hereto. The Owner will furnish to the Contractor such additional information and Plans as may be prepared by the Architect to further describe the Work to be performed and furnished by the Contractor and the Contractor shall conform to and abide by the same.

The Contractor shall not make any changes, additions and/or omissions in the Work except upon written order of the Owner or Turner as provided in Article IX hereof.

***Change
Orders, additions
deductions***

ARTICLE IX. The Owner reserves the right, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to the Contractor. The value of the work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price.

The value of the work to be changed, added or omitted shall be determined by the lump sum or unit prices, if any, stipulated herein for such work. If no such prices are stipulated, such value shall be determined by whichever of the following methods or combination thereof the Owner or Turner may elect:

1. By adding or deducting a lump sum or an amount determined by a unit price agreed upon between the parties hereto.
2. By adding (1) the actual net cost to the Contractor of labor in accordance with the established rates, including required union benefits, premiums the Contractor is required to pay for workmen's compensation and liability insurance, and payroll taxes on such labor, (2) the actual cost to the Contractor of materials and equipment and such other direct costs as may be approved by Turner less all savings, discounts, rebates and credits, (3) an allowance of for overhead on items (1) and (2) above. (See Trade Contractor Procedures Manual).

Should the parties hereto be unable to agree as to the value of the work to be changed, added or omitted, the Contractor shall proceed with the work promptly under the written order of the Owner or Turner from which order the stated value of the work shall be omitted, and the determination of the value of the work shall be referred to the Architect whose decision shall be final and binding upon the parties hereto.

In the case of omitted work the Owner shall have the right to withhold from payments due or to become due to the Contractor an amount which, in the Owner's or Turner's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or by the Architect as hereinabove provided.

All changes, additions or omissions in the Work ordered in writing by the Owner or Turner shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all of the terms and provisions of this Contract and the other Contract Documents. Contractor accepts the responsibility to keep its surety informed of all such modifications to its contract. The obligations of Contractor's Surety shall not be reduced, waived or adversely affected by the issuance of such change orders, additions or deductions even if the Owner or Turner fails to inform surety of same and the Owner or Turner shall not be required to obtain consent of the surety to such modifications.

**Inspection
and Defective
Work**

ARTICLE X. The Contractor shall at all times provide sufficient, safe and proper facilities for the inspection of the Work by the Owner, Turner, the Architect, and their authorized representatives in the field, at shops or at any other place where materials or equipment for the Work are in the course of preparation, manufacture, treatment or storage. The Contractor shall, within twenty-four (24) hours after receiving written notice from the Owner or Turner to that effect, proceed to take down all portions of the Work and remove from the premises all materials whether worked or unworked, which the Architect and/or the Owner or Turner shall condemn as unsound, defective or improper or as in any way failing to conform to this Contract or the Plans, Specifications or other Contract Documents, and the Contractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof.

**Failure to
Prosecute, etc.**

ARTICLE XI. Should the Contractor at any time refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage, impede, obstruct, hinder or delay of or interference with or damage to the work of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Contract or of the other Contract Documents, or should the Architect determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Contractor a petition in bankruptcy or for an arrangement or reorganization, or should the Contractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Contractor's part, then Owner shall have the right, in addition to any other rights and remedies provided by this Contract and the other Contract Documents or by law, after three (3) days written notice to the Contractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for the Work and to deduct the cost thereof from any monies due or to become due to the Contractor under this Contract, and/or (b) to terminate the employment of the Contractor for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Contractor hereby transfers, assigns and sets over to the Owner for such purpose, and to employ any person or persons to complete the Work and provide all the labor, services, materials, equipment and other items required therefor. In case of such termination of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Contract until the Work shall be wholly completed to the satisfaction of the Architect, the Owner and Turner and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the cost and expense incurred by the Owner in completing the Work, such excess shall be paid by the Owner to the Contractor; but if such cost and expense shall exceed such unpaid balance, then the Contractor or its surety shall pay the difference to the Owner. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of the Owner, Turner and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefor, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with reprocurement, in defending claims arising from such default and in seeking recovery of all such cost and expense from the Contractor and/or its surety), and disbursements sustained, incurred or suffered by reason of or resulting from the Contractor's default.

It is recognized that if the Contractor institutes or has instituted against it a case under Title 11 of the United States Code (Bankruptcy Code), such event could impair or frustrate the Contractor's performance of this Contract. Accordingly, it is agreed that upon the occurrence of any such event, the Owner shall be entitled to request of Contractor or its trustee or other successor adequate assurances of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle the Owner in addition to any other rights and remedies provided by this Contract or by law, to terminate this Contract. Pending receipt of adequate assurances of performance and actual performance in accordance herewith, the Owner shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment for the Work as may be necessary to maintain the progress of the Work and to deduct the cost thereof from any monies due or to become due to the Contractor under this Contract. In the event of such bankruptcy proceedings, this Contract shall terminate if the Contractor rejects this Contract or if there has been a default and the Contractor is unable to give adequate assurance that it will perform as provided in this Contract or otherwise is unable to comply with the requirements for assuming this Contract under the applicable provisions of the Bankruptcy Code.

**Loss or
Damage to
Work**

ARTICLE XII. The Owner or Turner shall not be responsible for any loss or damage to the Work to be performed and furnished under this Contract, however caused, until after final acceptance thereof by Owner and the Architect, nor shall the Owner or Turner be responsible for loss of or damage to materials, tools, equipment, appliances or other personal property owned, rented or used by the Contractor or anyone employed by it in the performance of the Work, however caused.

**Fire
Insurance**

The Owner shall effect and maintain fire insurance (with extended coverage, if specified or otherwise required) upon all Work, materials and equipment incorporated in the Project and all materials and equipment on or about the Premises intended for permanent use or incorporation in the Project or incident to the construction thereof, the capital value of which is included in the cost of the Work, but not including any contractors' machinery, tools, equipment, appliances or other personal property owned, rented or used by the Contractor or anyone employed by it in the performance of the Work.

The total value of the property described above as insurable under this Article and as shown on the approved monthly requisition provided for in Article IV, plus the total value of similar property incorporated in the Project or delivered on the Premises during the month but not included in said requisition, as reported by the Contractor to the Owner or Turner for insurance purposes only, shall determine the total value of the Contractor's work, materials and equipment to be insured under this Article.

The maximum liability to the Contractor under this insurance shall be for not more than that proportion of any loss which the last reported value of the insured property bore to the actual value of said property at the time of such last report, and in no event for more than the actual loss.

In the event of a loss insured under this Article, the Contractor shall be bound by any adjustment which shall be made between the Owner and the insurance company or companies. Loss, if any, shall be made payable to the Owner and/or the Contractor, as their interests may appear, for the account of whom it may concern.

**Cleaning
Up**

ARTICLE XIII. The Contractor shall, at its own cost and expense, (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in locations or containers as designated by the Owner or Turner from which it shall be removed by the Owner or Turner from the Premises without charge, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should the Contractor fail to perform any of the foregoing to the Owner's satisfaction, the Owner shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Contractor.

**Compliance
with Law
and Permits**

ARTICLE XIV. The Contractor shall obtain and pay for all necessary permits and licenses pertaining to the Work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including but not limited to those relating to safety, discrimination in employment, fair employment practices or equal employment opportunity, and whether or not provided for by the Plans, Specifications, General Conditions, or other Contract Documents, without additional charge or expense to the Owner and shall also be responsible for and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. The Contractor shall at any time upon demand furnish such proof as the Owner or Turner may require showing such compliance and the correction of such violations. The Contractor agrees to save harmless and indemnify the Owner and Turner from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Contractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations therefore resulting from or in connection with the performance of Work.

PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted, and this contract shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this contract, and any later changes which do not materially and substantially alter the positions of the parties.

**Labor to be
Employed**

ARTICLE XV. The Contractor shall not employ men, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workers employed by the Contractor, Turner or other contractors or subcontractors on or in connection with the Work or the Project or the location thereof. The Contractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done and that it shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Should the Contractor fail to carry out or comply with any of the foregoing provisions, the Owner shall have the right, in addition to any other rights and remedies provided by this Contract or the other Contract Documents or by law, after three (3) days written notice mailed or delivered to the last known address of the Contractor, to terminate this Contract or any part thereof or the employment of the Contractor for all or any portion of the Work, and, for the purpose of completing the Work, to enter upon the Premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in Article XI of this Contract.

**Taxes and
Contributions**

ARTICLE XVI. The Contractor for the Price herein provided, hereby accepts and assumes exclusive liability for and shall indemnify, protect and save harmless the Owner and Turner from and against the payment of:

1. All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the Unemployment Insurance Law of any State, Federal Social Security Act, Federal, State, County and/or Municipal Tax Withholding Laws, or any other law, measured upon the payroll of or required to be withheld from employees, by whomsoever employed, engaged in the Work to be performed and furnished under this Contract.
2. All sales, use, personal property and other taxes (including interest and penalties thereon) required by any Federal, State, County, Municipal or other law to be paid or collected by the Contractor or any of its subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work.
3. All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work to be performed and furnished under this Contract.

In furtherance of, and in addition to the agreements, duties obligations and responsibilities of the Contractor with respect to the payment of sales, use, personal property and other taxes set forth in Articles IV and XVI of this Contract, the Contractor agrees to reimburse and otherwise indemnify the Owner and Turner for any expenses, including legal fees and litigation arising from, or related to the Contractor's failure to pay any sales, use, personal property or other taxes based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for or in connection with the Work.

Patents

ARTICLE XVII. The Contractor hereby agrees to indemnify, protect and save harmless Turner and the Owner from and against any and all liability, loss or damage and to reimburse Turner and the Owner for any expenses, including legal fees and disbursements, to which the Owner or Turner may be put because of claims or litigation on account of infringement or alleged

infringement of any letters patent or patent rights by reason of the Work or materials, equipment or other items used by the Contractor in its performance.

***Stop Notice
Claims
Or Actions***

ARTICLE XVIII. If any subcontractor, laborer, materialman or supplier of the Contractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a stop notice claim against the Project or Premises or any part thereof or any interests therein or any improvements thereon or against any monies due or to become due from the Owner to the Contractor, for or on account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any change order or supplemental agreement for extra or additional work in connection with the Project, the Contractor agrees to cause such stop notice claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of the filing thereof, and upon its failure to do so the Owner shall have the right, in addition to all other rights and remedies provided under this Contract and the other Contract Documents or by law, to cause such stop notice claims to be satisfied, removed or discharged by whatever means Owner chooses, at the entire cost and expense of the Contractor (such cost and expense to include legal fees and disbursements). The Contractor agrees to indemnify, protect and save harmless Turner and the Owner from and against any and all such stop notices claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Turner and/or the Owner may sustain or incur in connection therewith.

***Assignment
and
Subletting***

ARTICLE XIX. To the fullest extent permitted by law, Contractor agrees that it shall not assign, sell, transfer, delegate or encumber any rights, duties or obligations arising under this Contract including, but not limited to, any right to receive payments hereunder, without the prior written consent of the Owner in its sole discretion and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event Contractor assigns, sells, encumbers or otherwise transfers its right to any monies due or to become due under this Contract as security for any loan, financing or other indebtedness (hereafter "Assignment"), notification to the Owner of such Assignment must be sent by certified mail, return receipt requested, and the Assignment shall not be effective as against the Owner until the Owner provides its written consent to such Assignment. Contractor agrees that any such Assignment shall not relieve the Contractor of any of its agreements, duties, responsibilities or obligations under this Contract and the other Contract Documents and shall not create a contractual relationship or a third party beneficiary relationship of any kind between the Owner and such assignee or transferee. Contractor further agrees that all of the Owner's defenses and claims arising out of this Contract with respect to such Assignment are reserved unless expressly waived in writing by a duly authorized corporate officer. Contractor hereby agrees to indemnify and hold harmless the Owner and Turner from and against any and all loss, cost, expense or damages the Owner or Turner has or may sustain or incur in connection with such Assignment.

***Termination
for Convenience***

ARTICLE XX. The Owner shall have the right at any time by written notice to the Contractor, to terminate this Contract without cause and require the Contractor to cease work hereunder, in which case, provided the Contractor be not then in default, the Owner shall indemnify the Contractor against any damage directly resulting from such termination. In the event of such a termination for convenience, the Contractor shall be entitled to payment pursuant to the terms of the contract for all Work performed as of the date of termination, together with reasonable costs of demobilization and such other reasonable costs as may be encountered by the Contractor and directly attributable to such termination. However, the Contractor shall only be entitled to profit on that portion of the work actually performed and approved for payment to the date of termination together with retainages held upon payments made prior thereto. Contractor waives any claim for loss of anticipated profits in the event the Owner exercises this clause.

Guarantees

ARTICLE XXI. The Contractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents.

The Contractor shall remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents.

Without limiting the generality of the foregoing, the Contractor warrants to the Owner, the Architect and Turner, and each of them, that all materials and equipment furnished under this Contract will be of first class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Contract will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Contract and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law.

***Accident
Prevention***

ARTICLE XXII. The Contractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the Work is its responsibility. The Contractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the Work, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards established during the progress of the Work by Contractor, Turner or the Owner. When so ordered, the Contractor shall stop any part of the Work which the Owner or Turner deems unsafe until corrective measures satisfactory to the Owner and Turner have been taken, and the Contractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should the Contractor neglect to take such corrective measures, the Owner or Turner may do so at the cost and expense of the Contractor and may deduct the cost thereof from any payments due or to become due to the Contractor. Failure on the part of the Owner or Turner to stop unsafe practices shall in no way relieve the Contractor of its responsibility therefor.

This Contractor acknowledges the receipt of the Owner's or The Turner Corporation's policies on "Safety", "Drug and Alcohol Abuse and "Sexual Harassment". Subject to applicable law this Contractor further agrees to be bound to these policies as a part of the supplemental and special conditions to the contract for construction of the project.

In the event that hazardous substances of a type of which an employer is required by law to notify its employees are being used or stored on the site by the Contractor, the Contractor's subcontractor and anyone directly or indirectly employed or otherwise retained by them or either of them, the Contractor shall immediately provide written notice of the chemical composition thereof (including, without limitation, a copy of the applicable Material Safety Data Sheet) to the Owner in sufficient time to permit compliance with such laws by the Owner, other subcontractors and other employers on the site. In the event that the Contractor encounters on the site material reasonably believed to be hazardous substances (including, without limitation, asbestos or polychlorinated biphenyl) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and immediately report the condition to the Owner in writing. Work in the affected area shall resume when such hazardous substances has been rendered harmless or removed as determined by the Owner in its sole and absolute discretion. To the extent of Contractor's responsibilities hereunder, Contractor does indemnify and save harmless the Owner and Turner from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, cost and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Contractor in regard to such hazardous substances.

***Liability
for Damage
and Personal
Injury***

ARTICLE XXIII. The Contractor hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of any tier of the Contractor or otherwise, and to all property caused by, resulting from, arising out of or occurring in connection with the execution of the Work, or in preparation for the Work, or any extension, modification, or amendment to the Work by change order or otherwise. Except to the extent, if any, expressly prohibited by statute and excluding from this indemnity such acts or omissions, if any, of the party indemnified for which it is not legally entitled to be indemnified by the Contractor under applicable law, should any claims for such damage or injury (including death resulting therefrom) be made or asserted, whether or not such claims are based upon Turner's or the Owner's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of Turner or the Owner, the Contractor agrees to indemnify and save harmless Turner and the Owner, their officers, agents, servants and employees from and against any and all such claims and further from and against any and all loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, that Turner and the Owner, their officers, agents, servants or employees may directly or indirectly sustain, suffer or incur as a result thereof and the Contractor agrees to and does hereby assume, on behalf of Turner and the Owner, their officers, agents, servants and employees, the defense of any action at law or in equity which may be brought against Turner and/or the Owner, their officers, agents, servants or employees upon or by reason of such claims and to pay on behalf of Turner and the Owner, their officers, agents, servants and employees, upon demand, the amount of any judgment that may be entered against Turner and/or the Owner, their officers, agents, servants or employees in any such action. In the event that any such claims, loss, cost, expense, liability, damage, penalties, fines or injury arise or are made, asserted or threatened against Turner and/or the Owner, their officers, agents, servants or employees, the Owner shall have the right to withhold from any payments due or to become due to the Contractor an amount sufficient in its judgment to protect and indemnify Turner and the Owner, their officers, agents, servants and employees from and against any and all such claims, loss, cost, expense, liability, damage, penalties, fines or injury, including legal fees and disbursements, or the Owner in its discretion may require the Contractor to furnish a surety bond satisfactory to the Owner guaranteeing such protection, which bond shall be furnished by the Contractor within five (5) days after written demand has been made therefor.

In addition to Turner and the Owner, the Indemnified Parties throughout this Contract shall include: and any of their respective officers, agents, servants, or employees, and affiliates, parents and subsidiaries.

Nothing contained in Article XXIII of this Contract shall be deemed to obligate the Contractor to indemnify Turner, the Owner or any of the other Indemnified Parties, their officers, agents, servants or employees, and affiliates, parents and subsidiaries, against liability for damages or any other loss, damage or expense sustained, suffered or incurred on account of death or bodily injury to active persons or injury to property caused by the sole negligence or willful misconduct of Turner, the Owner or any of the other Indemnified Parties, their officers, agents, servants, or employees, and affiliates, parents and subsidiaries, or other Contractors directly responsible to the Owner. Therefore, if it is determined by legal proceedings or agreement, that the Contractor has no direct contributory or incidental negligence or other obligation to Turner, the Owner, or any Indemnified Party, and that the Contractor is in no way a proper party to a particular claim, then the Contractor shall not be obligated to hold Turner, the Owner or any Indemnified Party harmless with respect to said claim. However, until such determination is made by legal proceedings or agreement, or if the Contractor is found to have any degree of direct or contributory negligence or if it is determined that the Contractor is in any way or to any degree a proper party to said claim, then the Contractor's obligations under all of the terms and provisions of Article XXIII shall remain in full force and effect except to the extent caused by the negligence of Turner, the Owner or any Indemnified Party.

Nothing in this provision, or elsewhere in this Contract, shall be deemed to relieve the Contractor of its duty to defend Turner, the Owner, or any Indemnified Party, as specified in Article XXIII of this Contract, pending a determination of the respective liabilities of the Contractor, Turner, the Owner, or any Indemnified Party, by legal proceeding or agreement.

In furtherance to but not in limitation of the indemnity provisions in this Contract, Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save harmless as provided in this Contract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

**Compensation
and Liability
Insurance**

The Owner has elected to provide an Owner Controlled Insurance Program (OCIP). The Contractor, before commencing the Work, shall procure and maintain, at its own expense, until completion and final acceptance of the Work at least the following insurance from insurance companies satisfactory to the Owner, except for those coverages provided by the OCIP as described in the OCIP Manual:

1. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE in accordance with laws of the State in which the Work is situated.
2. COMPREHENSIVE GENERAL LIABILITY INSURANCE INCLUDING COMPLETED OPERATIONS, CONTRACTUAL LIABILITY INSURANCE AGAINST THE LIABILITY ASSUMED HEREINABOVE, and including INDEPENDENT CONTRACTORS LIABILITY INSURANCE if the Contractor sublets to another all or any portion of the Work, Personal Injury Liability, Broad Form Property Damage (including completed operations), and Explosion, Collapse and Underground Hazards, with the following minimum limits:

Combined Single Limit (See Project Insurance Manual)
3. COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits:

Bodily Injury (including death) \$1,000,000 per accident
and Property Damage

Before commencing the Work, the Contractor shall furnish a certificate, satisfactory to the Owner from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability thereunder, and further providing that the insurance will not be canceled or changed until the expiration of at least thirty (30) days after written notice of such cancellation or change has been mailed to and received by the Owner. Turner, the Owner and other entities as may be reasonably requested shall be named as an additional insured under these policies of insurance. It is expressly agreed and understood by and between Contractor and the Owner that the insurance afforded the additional insureds shall be primary insurance and that any other insurance carried by the Owner or Turner shall be excess of all other insurance carried by the Contractor and shall not contribute with the Contractor's insurance. Contractor further agrees to provide endorsements on its insurance policies which shall state the foregoing; however, Contractor's failure to provide such endorsement shall not affect Contractor's agreement hereunder.

If the Contractor fails to procure and maintain such insurance, the Owner shall have the right, but not the obligation, to procure and maintain the said insurance for and in the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or at the Owner's option, the Owner may offset the cost incurred by the Owner against amounts otherwise payable to Contractor hereunder.

Bonds

ARTICLE XXIV. The Contractor shall furnish to the Owner a performance bond in the amount of and a separate payment bond in the amount of 100% of the contract total, the form and contents of such bonds and the Surety or Sureties thereon to be satisfactory to the Owner. Such bonds shall be furnished to the Owner within ten (10) calendar days after Contractor has executed this Contract or within such other time period agreed to by the Owner in writing. In the event Contractor fails to furnish such bonds to the Owner within the time period as hereinabove provided, such failure shall constitute a default under this Contract in which event the Owner shall have all of the rights and remedies provided in Article XI hereof with respect to default on the part of Contractor including, without limitation, the right to terminate this Contract.

Without limiting the responsibilities of Contractor and its Surety under the terms of this Contract, Contractor and its Surety hereby agree to promptly pay all lawful claims of subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used or consumed in connection with the prosecution of the Work provided for in said Contract and any and all modifications thereof, and shall indemnify and save harmless the Owner and Turner of and from all liability loss, damage and expense, including interest, costs and attorney fees, which the Owner and Turner and/or its Surety may sustain by reason of Contractor's or its Surety's failure to do so.

Severability

ARTICLE XXV. In the event that any provision or any part of a provision of this Contract shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**Entire
Agreement**

ARTICLE XXVI. This Contract constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by the Owner or Turner except as stated in the Contract. This Contract may not be changed in any way except as herein provided, and no term or provision hereof may be waived by the Owner except in writing signed by its duly authorized officer or agent. The marginal descriptions of any term or provision of this Contract are for convenience only and shall not be deemed to limit, restrict or alter the content, meaning or effect thereof.

**Additional
Conditions**

ARTICLE XXV. The following terms and conditions apply to this Contract:

1. **Governing Law and Venue.** In the event of litigation, the bid documents, specifications and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in Alameda County, California.
2. **Provisions Required By Law Deemed Inserted.** Every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted, and this contract shall be read and enforced as though it were included, and if through mistake or otherwise any provision is not inserted or is not correctly inserted, upon application of either party the contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this contract, and any later changes which do not materially and substantially alter the positions of the parties.
3. **Resolution Of Construction Claims.** Public work claims of \$375,000 or less between Contractor and District are subject to the provisions of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 2 of the Public Contract Code. For purposes of this section and Article 1.5, "public work" has the same meaning as set forth in sections 3100 and 3106 of the Civil Code; "claims" means a separate demand by Contractor for a time extension or payment of money or damages arising from work done by or on behalf of Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to or the amount of the payment which is disputed by the District.

Each claim must be submitted on or before the date of the final payment and shall include all documents necessary to substantiate the claim. District shall respond in writing within 45 days of receipt of claim if the claim is less than or equal to \$50,000 ("50,000 claim") or within 60 days if the claim is over \$50,000 but less than or equal to \$375,000 ("50,000 - \$375,000 claim"). In either case, District may request in writing within 30 days of receipt of claim any additional documentation supporting the claim or relating to any defenses to the claim which the District may have against the claimant. Any additional information shall be requested and provided upon mutual agreement of the District and the Claimant. District's written response to the claim shall be submitted to claimant within 15 days after receipt of the further documentation for \$50,000 claims or within 30 days after receipt of the further documentation for \$50,000 - \$375,000 claims or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

Within 15 days of receipt of the District's response, if claimant disputes the District's written response, or within 15 days of the District's failure to respond within the time prescribed, the claimant shall provide written notification to District demanding an informal conference to meet and confer ("conference") to be scheduled by District within 30 days. Following the conference, if any claim or portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim pursuant to this section until the time that claim is denied as a result of the conference process, including any period of time utilized by the meet and confer process.

Pursuant to Public Contract Code section 20104.2(f), this section does not apply to tort claims and does not change the period for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

If a civil action is filed, within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide that both parties select a disinterested third person mediator within 15 days, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days of the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of the parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

If the matter remains in dispute, the case shall be submitted to judicial arbitration as set forth in Public Contract Code section 20104.4 (b)(1) through (b)(3).

4. **Liquidated Damages.** Should the Contractor fail to complete this Contract within the time fixed for completion, together with extensions granted by the District for unavoidable delays, Contractor shall become liable to the District in the amount specified in the Contract per calendar day for each day said Contract remains uncompleted beyond the time for completion, as and for liquidated damages and not as a penalty. Contractor shall not be charged with liquidated damages when the delay in completion of the work beyond this time for completion is due to acts of the District. It is expressly stipulated and agreed by Contractor and District that it would be impractical and extremely difficult to fix the actual amount of damages.

Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from the Contractor or Contractor's sureties, who will pay said balance forthwith.

Should the District authorize suspension of the work for any cause, the time work is suspended will be added to the time for completion. Suspension of the work by the District shall not be a waiver of the right to claim liquidated damages as set forth in this section.

The said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of all of the terms and provisions herein contained.

Contractor's California State Unemployment Insurance. No. .417-7393-8

Contractor's California License No. 749074

Contractor's California State Sales Tax Registration No. SRH99771116

IN WITNESS WHEREOF, this Contract has been executed by the parties hereto, upon the date first above written.

OHLONE COMMUNITY COLLEGE DISTRICT	<u>CONTRACTOR</u> PowerLight Corporation
<i>BY Authorized Signature:</i> X	<i>BY Authorized Signature:</i> X
<i>Printed name and title of person signing:</i> <u>Marian Castaneda</u> Director of Purchasing, Contract Administration and Auxiliary Services	<i>Printed name and title of person signing:</i>
	<i>Address</i> 2954 San Pablo Avenue Berkeley, CA 947002

OHLONE COLLEGE LIFE CYCLE COST FOR PV PLANT

Net cost	569 kW dc 38000 sf roof area
Initial Cost	\$ 4,097,000
Solar incentive	\$ 1,474,395
Net cost	\$ 2,622,605
Annual M&O Escalation	\$ 2,500.00 bi-annual cleaning/washing of PV panels 5%
PV annual kWhr output (ac)	686,833 kWhrs per year
Estimated total building annual kWhr	2,200,000 kWhrs per year
Cell loss	0.50% per year
Reduced HVAC w/roof insulation Annual savings	1.0 kWhr/sf 38,000 kWhrs
Reduced roof maintenance	0.10 \$/sf estimated
Energy cost	\$ 0.125 per kWhr Estimated annual average
Utility escalation	3.00% per year
Life expectancy	30 years
Summer peak kW demand reduction	417 kW AC Average over 6 mos. based on 454 kW peak
Winter peak kW demand reduction	331 kW AC Average over 6 mos.
Annual demand charge	\$ 38,826 for power purchased (no PV); summer and winter based on A10 \$10.93/kW summer (6 mos.) and \$5.78/kW winter (6 mos.)
Cost of money	0.00%

COST CATEGORY	YEAR OF OPERATION															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
M&O	\$ (2,500)	\$ (2,625)	\$ (2,756)	\$ (2,894)	\$ (3,039)	\$ (3,191)	\$ (3,350)	\$ (3,518)	\$ (3,694)	\$ (3,878)	\$ (4,072)	\$ (4,276)	\$ (4,490)	\$ (4,714)	\$ (4,950)	\$ (5,197)
present worth	\$ (2,500)	\$ (2,625)	\$ (2,756)	\$ (2,894)	\$ (3,039)	\$ (3,191)	\$ (3,350)	\$ (3,518)	\$ (3,694)	\$ (3,878)	\$ (4,072)	\$ (4,276)	\$ (4,490)	\$ (4,714)	\$ (4,950)	\$ (5,197)
Reduced HVAC load w/roof insulation	\$ 4,750	\$ 4,893	\$ 5,039	\$ 5,190	\$ 5,346	\$ 5,507	\$ 5,672	\$ 5,842	\$ 6,017	\$ 6,198	\$ 6,384	\$ 6,575	\$ 6,772	\$ 6,976	\$ 7,185	\$ 7,400
Reduced roof maintenance	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800
energy savings	\$ 85,854	\$ 87,988	\$ 90,174	\$ 92,415	\$ 94,711	\$ 97,065	\$ 99,477	\$ 101,949	\$ 104,483	\$ 107,079	\$ 109,740	\$ 112,467	\$ 115,279	\$ 118,160	\$ 121,114	\$ 124,142
present worth	\$ 85,854	\$ 87,988	\$ 90,174	\$ 92,415	\$ 94,711	\$ 97,065	\$ 99,477	\$ 101,949	\$ 104,483	\$ 107,079	\$ 109,740	\$ 112,467	\$ 115,279	\$ 118,160	\$ 121,114	\$ 124,142
demand savings	\$ 38,826	\$ 39,791	\$ 40,780	\$ 41,793	\$ 42,831	\$ 43,896	\$ 44,987	\$ 46,105	\$ 47,250	\$ 48,424	\$ 49,628	\$ 50,861	\$ 52,125	\$ 53,420	\$ 54,748	\$ 56,108
present worth	\$ 38,826	\$ 39,791	\$ 40,780	\$ 41,793	\$ 42,831	\$ 43,896	\$ 44,987	\$ 46,105	\$ 47,250	\$ 48,424	\$ 49,628	\$ 50,861	\$ 52,125	\$ 53,420	\$ 54,748	\$ 56,108
total present worth	\$ 130,730	\$ 133,846	\$ 137,037	\$ 140,304	\$ 143,650	\$ 147,077	\$ 150,585	\$ 154,178	\$ 157,856	\$ 161,623	\$ 165,479	\$ 169,427	\$ 173,486	\$ 177,642	\$ 181,897	\$ 186,254
Solar array peak AC output (kW)	454	452	449	447	445	443	441	438	436	434	432	430	427	425	423	421
Life cycle cost (PW)																
1. Initial cost	\$ (2,622,605)															
2. M&O	\$ (166,097)															
3. Roof insulation	\$ 225,983															
4. Roof maintenance	\$ 114,000															
5. Energy savings	\$ 3,764,067															
6. Demand savings	\$ 1,700,495															
Present value cost (income) over 30 yr life	\$ 3,015,843	positive value means income														
Payback period	~16.5	Years														
Cumulative savings at Year 17	\$2,701,785															
Cumulative savings at Year 16	\$2,511,071															
Initial Cost	\$ (2,622,605)															

OHLONE COLLEGE LIFE CYCLE COST FOR PV PLANT

														YEAR OF OPERATION													
														17	18	19	20	21	22	23	24	25	26	27	28	29	30
														\$ (5,457)	\$ (5,730)	\$ (6,017)	\$ (6,317)	\$ (6,633)	\$ (6,965)	\$ (7,313)	\$ (7,679)	\$ (8,063)	\$ (8,466)	\$ (8,889)	\$ (9,334)	\$ (9,800)	\$ (10,290)
														\$ (5,457)	\$ (5,730)	\$ (6,017)	\$ (6,317)	\$ (6,633)	\$ (6,965)	\$ (7,313)	\$ (7,679)	\$ (8,063)	\$ (8,466)	\$ (8,889)	\$ (9,334)	\$ (9,800)	\$ (10,290)
														\$ 7,622	\$ 7,851	\$ 8,087	\$ 8,329	\$ 8,579	\$ 8,836	\$ 9,101	\$ 9,375	\$ 9,656	\$ 9,945	\$ 10,244	\$ 10,551	\$ 10,868	\$ 11,194
														\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800	\$ 3,800
														\$ 127,246	\$ 130,427	\$ 133,688	\$ 137,030	\$ 140,456	\$ 143,967	\$ 147,566	\$ 151,255	\$ 155,037	\$ 158,913	\$ 162,886	\$ 166,958	\$ 171,132	\$ 175,410
														\$ 127,246	\$ 130,427	\$ 133,688	\$ 137,030	\$ 140,456	\$ 143,967	\$ 147,566	\$ 151,255	\$ 155,037	\$ 158,913	\$ 162,886	\$ 166,958	\$ 171,132	\$ 175,410
														\$ 57,503	\$ 58,931	\$ 60,396	\$ 61,897	\$ 63,435	\$ 65,011	\$ 66,627	\$ 68,282	\$ 69,979	\$ 71,718	\$ 73,500	\$ 75,327	\$ 77,199	\$ 79,117
														\$ 57,503	\$ 58,931	\$ 60,396	\$ 61,897	\$ 63,435	\$ 65,011	\$ 66,627	\$ 68,282	\$ 69,979	\$ 71,718	\$ 73,500	\$ 75,327	\$ 77,199	\$ 79,117
														\$ 190,714	\$ 195,280	\$ 199,954	\$ 204,738	\$ 209,636	\$ 214,650	\$ 219,781	\$ 225,034	\$ 230,409	\$ 235,911	\$ 241,541	\$ 247,302	\$ 253,198	\$ 259,230
														419	417	415	413	411	409	407	405	403	401	399	397	395	393