

## Contract

This public works contract ("Contract") is entered into by and between City of Santa Clara ("City") and \_\_\_\_\_ ("Contractor"), for work on the Northern Receiving Station (NRS) to Kifer Receiving Station (KRS) 115 kilovolt (kV) Transmission Line Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On \_\_\_\_\_, 2026, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.

- 1.1 **Alternate(s).** City has elected to include the bid alternate(s) identified below in the Contract. Contractor will not begin performing the Work for an alternate until the City issues a written notice to proceed with the alternate Work.

Alternate No.1 - Furnish, Excavate and Construct 5' Diameter Reinforced Concrete Pier Foundation (Only Anchor Bolt Cages Supplied by City)

Alternate No. 2 - Furnish, Excavate and Construct 9' Diameter Reinforced Concrete Pier Foundation (Only Anchor Bolt Cages Supplied by City)

Alternate No. 3 - Furnish and Install FAA light, solar panel, and battery pack (Pole locations To Be Determined)

Alternate No. 4 - Furnish and Install marker balls (Span Locations To Be Determined)

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and consist of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all Contract Documents, including this Contract.

- 2.1 Notice Inviting Bids;
  - 2.2 Instructions to Bidders;
  - 2.3 Addenda, if any;
  - 2.4 Bid Proposal and attachments thereto;
  - 2.5 Contract;
  - 2.6 Payment and Performance Bonds;
  - 2.7 General Conditions;
  - 2.8 General Requirements;
  - 2.9 Special Conditions;
  - 2.10 Project Plans and Specifications;
    - NORTHERN RECEIVING STATION TO KIFER RECEIVING STATION 115 kV TRANSMISSION LINE (*NRS-KRS 115kV TLINE DWGS.pdf*)
    - NRS-KRS 115kV TRANSMISSION LINE, UG ELECTRICAL DISTRIBUTION RELOCATIONS (*UG ELECT DIST RELOCATION DWGS.pdf*)
    - UTILTIY RELOCATION PACKAGE FOR THE NRS-KRS 115kV TRANSMISSION LINE PROJECT DRAWINGS (*UG WATER AND SEWER RELOCATION DWGS.pdf*)
    - TECHNICAL PROVISIONS FOR CONSTRUCTION OF NORTHERN RECEIVING (NRS) TO KIFER RECEIVING STATION (KRS) 115 KILOVOLT TRANSMISSION LINE PROJECT
      - Cover Page, Seals Page, and Table of Contents (*TECH SPEC COVER-SEALS-TOC.pdf*)
      - 115 kV Transmission Line (*TECH SPECS 1 OF 2 - 115kV TRANSMISSION LINE.pdf*)

- Underground Utility Relocations (*TECH SPECS 2 OF 2 - UG UTILITY WORK.pdf*)

- 2.11 Change Orders, if any;
- 2.12 Notice of Award;
- 2.13 Notice to Proceed; and
- 2.14 City's Standard Details, as applicable; and
- 2.15 The following:

3. **Contractor's Obligations.** Contractor shall perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, services, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$\_\_\_\_\_ ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** The Project must energize and put into service the 115kV Transmission Line from NRS to KRS within 529 Calendar Days from the start date set forth in the Notice to Proceed, and the Project must be fully completed within 574 Calendar Days from the start date set forth in the Notice to Proceed. By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$11,500 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.
7. **Labor Code Compliance.**
  - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
  - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
  - 7.3 **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the DIR to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to

undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

9. **Conflicts of Interest.** Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
11. **Notice.** Any notice required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

**City:**

831 Martin Avenue  
Santa Clara, CA 95050  
Attn: Allie Jackman, Electric Division Manager  
AJackman@SantaClaraCA.gov

Copy to: Ryan Maher, Contracts Manager  
rmaher@santaclaraca.gov

**Contractor:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Copy to: \_\_\_\_\_

12. **General Provisions.**

- 12.1 **Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

The parties agree to this Contract as witnessed by the signatures below:

**CITY:**

Approved as to form:

s/ \_\_\_\_\_

s/ \_\_\_\_\_

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Name, Title

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

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

Attest:

s/ \_\_\_\_\_

\_\_\_\_\_  
Name, Title

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

**CONTRACTOR:**

\_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

Seal:

\_\_\_\_\_  
Name, Title

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

Second Signature (See Section 12.8):

s/ \_\_\_\_\_

\_\_\_\_\_  
Name, Title

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

\_\_\_\_\_  
Contractor's California License Number(s) and Expiration Date(s)

## Payment Bond

City of Santa Clara ("City") and \_\_\_\_\_ ("Contractor") have entered into a Contract for Work on the Northern Receiving Station (NRS) to Kifer Receiving Station (KRS) 115 kilovolt (kV) Transmission Line Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety ("Surety"), are bound to City as obligee in an amount not less than \$\_\_\_\_\_, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:  
  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

*[Signatures are on the following page.]*

**7. Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 20\_\_.

**SURETY:**

\_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**CONTRACTOR:**

\_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

**APPROVED AS TO FORM:**

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

END OF PAYMENT BOND

## Performance Bond

City of Santa Clara ("City") and \_\_\_\_\_ ("Contractor") have entered into a Contract for Work on the Northern Receiving Station (NRS) to Kifer Receiving Station (KRS) 115 kilovolt (kV) Transmission Line Project Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety ("Surety"), are bound to City as obligee for an amount not less than \$\_\_\_\_\_ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
  - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
  - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
  - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

Email: \_\_\_\_\_

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Santa Clara County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
9. **Effective Date; Execution.** This Bond is entered into and effective on \_\_\_\_\_, 20\_\_\_\_.

**SURETY:**

\_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**CONTRACTOR:**

\_\_\_\_\_  
Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

**APPROVED AS TO FORM:**

s/ \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name, Title

END OF PERFORMANCE BOND

## **General Conditions**

### **Article 1 Definitions**

**Definitions.** The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

**Allowance** means a specific amount that must be included in the Base Bid set forth in the Bid Proposal form, for a specified purpose.

**Article**, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

**Change Order** means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

**Chief Electric Utility Officer** means the director of the Electric Utility Department, also known as Silicon Valley Power, and his or her authorized delegee(s).

**City** means the City of Santa Clara, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

**City Council** means the City Council of the City of Santa Clara and its authorized delegee(s).

**City Engineer** means the City Engineer for City and his or her authorized delegee(s).

**Claim** means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; a written demand by Contractor disputing a unilateral Change Order or a portion thereof; or a written demand by Contractor objecting to the amount of Final Payment.

**Contract** means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

**Contract Documents** means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal and attachments thereto; the Contract; the Notice of Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the General Requirements; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided “For Reference Only,” or documents that are intended solely to provide information regarding existing conditions.

**Contract Price** means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies, or equipment following submission of the Bid Proposal.

**Contract Time** means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

**Contractor** means the individual, partnership, corporation, or joint-venture that has signed the Contract with City to perform the Work.

**Day** means a calendar day unless otherwise specified.

**Design Professional** means the licensed individual(s) or firm(s) retained by City to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

**DIR** means the California Department of Industrial Relations.

**Director** means the director of the Department of Public Works and his or her authorized delegee(s).

**Drawings** has the same meaning as Plans.

**Engineer** means, for a Project administered by the City's Department of Public Works, the City Engineer and his or her authorized delegees; for a Project administered by the City's Water & Sewer Utilities, the Director of Water and Sewer Utilities and his or her authorized delegees; and for a Project administered by Silicon Valley Power, the Chief Electric Utility Officer and his or her authorized delegees.

**Excusable Delay** is defined in Section 5.3(B), Excusable Delay.

**Extra Work** means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

**Final Completion** means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items and any required commissioning or training, and has provided the City with all required submittals including the instructions and manuals, product warranties, and as-built drawings.

**Final Payment** means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

**Furnish** means to purchase and deliver for the Project.

**Government Code Claim** means a claim submitted pursuant to California Government Code § 900 et seq.

**Hazardous Materials** means any substance or material identified as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

**Including**, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

**Inspector** means the individual(s) or firm(s) retained or employed by City to test and/or inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

**Install** means to fix in place for materials, and to fix in place and connect for equipment.

**Laws** means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

**Non-Excusable Delay** is defined in Section 5.3(D), Non-Excusable Delay.

**Plans** means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

**Project** means the public works project referenced in the Contract, as modified by any Project alternates elected by City, if any.

**Project Manager** means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegate(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

**Recoverable Costs** is defined in Section 5.3(F), Recoverable Costs.

**Request for Information** or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

**Section**, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

**Shop Drawings** means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

**Specialty Work** means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

**Specifications** means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

**Standard Details** means the latest version of the City's standard details and technical standards, including the City of Santa Clara Standard Details, available at <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/engineering/technical-documents>, and the Silicon Valley Power Technical Standards, which may be available at <https://www.siliconvalleypower.com/svp-and-community/rules-and-regulations> and/or provided by City upon request.

**Standard Plans** means the latest version of the State of California Department of Transportation Standard Plans.

**Subcontractor** means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

**SVP** means Silicon Valley Power, the City's municipal electric utility.

**Technical Specifications** has the same meaning as Specifications.

**Work** means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

**Work Day** or **Working Day**, whether or not capitalized, means a weekday when the City is open for business, and does not include the following holidays observed by the City. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.

- (A) New Year's Day, January 1;
- (B) Martin Luther King Jr.'s Birthday, third Monday in January;
- (C) Presidents' Day, third Monday in February;
- (D) Spring Holiday, the Friday before Easter Sunday;

- (E) Memorial Day, last Monday in May;
- (F) Independence Day, July 4;
- (G) Labor Day, first Monday in September;
- (H) Admission Day, September 9;
- (I) Indigenous Peoples' Day, second Monday in October;
- (J) Veterans' Day, November 11;
- (K) Thanksgiving Day;
- (L) The Day following Thanksgiving Day;
- (M) Christmas Day and City Closure, December 25-31; and
- (N) Each day appointed by the Governor of California and formally recognized by the City Council as a day of mourning, thanksgiving, or special observance.

**Worksite** means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

## **Article 2 Roles and Responsibilities**

### **2.1 City.**

- (A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.
- (B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.
- (C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.
- (D) **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

### **2.2 Contractor.**

- (A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.
- (B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely

completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft, subject to the limitations of Laws, including Public Contract Code § 7105.

- (C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers, email address, and emergency contact information, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.
- (D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor shall be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. Contractor must also provide emergency contact information for the superintendent. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, and receive City's approval, before replacing the superintendent.
- (E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, all rules and regulations of public utilities, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.
- (F) **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must conduct and/or attend, as applicable, the meetings specified in this subsection. For each meeting, Contractor must prepare meeting minutes and submit the meeting minutes to City following the meeting.
  - (1) **Pre-Construction Conference.** Contractor, its project manager, superintendent, authorized representative responsible for scheduling, and any primary Subcontractors and/or key personnel requested by City, must attend a pre-construction conference. City will designate a date and time for a pre-construction conference with Contractor following Contract execution. The parties will discuss coordination between City and Contractor and Project administration procedures, including, but not limited to, schedules, personnel and vehicle permit procedures, use of premises, location for temporary facilities at the Project site,

security, submittal procedures, utility shutdown procedures, inspection and testing procedures, control and reference point survey procedures, and Contractor's safety program. Contractor must present City with the following information or documents at the conference for City's review and acceptance before the Work commences:

- (a) Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
  - (b) List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
  - (c) Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
  - (d) Contractor's traffic control and detour plan and any other traffic control plans associated with the staging plans, that are signed and stamped by a licensed engineer (if required);
  - (e) Contractor's initial schedule, if applicable, and draft baseline schedule for the Work as required under Section 5.2;
  - (f) Submittal schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
  - (g) Draft schedule of values as required under Section 8.1, to be finalized prior to Contractor's submission of the first application for payment;
  - (h) Letter of authorization to execute Change Orders on behalf of Contractor; and
  - (i) Any other documents specified in the Special Conditions or Notice of Award.
- (2) *Weekly Progress Meetings.* Contractor, its project manager, superintendent, and any Subcontractors and/or key personnel requested by City, must attend weekly Project progress meetings scheduled with City. The progress meetings will be held at Contractor's office at the Project site unless otherwise directed by City. The subjects for discussion at the weekly progress meetings may include, but are not limited to, any meeting minutes from a previous meeting; review of progress of the Work since the previous meeting; Work schedules, including progress schedules, delivery schedules, and adjustments thereto; the status of submittals, RFIs, or Change Orders; the Contractor's safety program activities and results, including reports on any serious injuries and/or damage accidents; and any other items affecting the progress of Work. Contractor shall prepare an agenda for progress meeting(s). If there are any questions from City at a progress meeting that require further response from Contractor, Contractor must respond to those questions in writing within five days following the meeting.
- (3) *Special Meetings.* At any time during the progress of the Work, City may schedule special meetings with the Contractor, including, but not limited to, meetings in emergency situations. Contractor, its project manager, superintendent, and any Subcontractors and/or key personnel requested by City, must attend any such special meetings, as directed by City.

- (4) **Safety Meetings.** At a minimum, Contractor must conduct monthly safety committee meetings and weekly toolbox safety talks with its workers.
- (5) **Coordination Meetings.** In order to fulfill its coordination obligations, Contractor shall hold coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners. Contractor shall plan, coordinate, and schedule any such meetings with utility companies and City forces installing utilities. At least five days in advance of any such meeting, Contractor shall notify the Engineer and invite the Engineer to attend the meeting. Contractor shall be responsible for presiding over these meetings, as well as preparing and distributing meeting minutes within three working days following any such meeting.
- (G) **Construction Records.** Contractor shall maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers by trade at the Project site, including the hours worked by each worker with title; the equipment used to perform the Work; identification of Subcontractors performing Work; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor must submit the daily job reports to the City either at the close of the same day to which the daily job report pertains or the following morning. Contractor shall take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor shall maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor shall permit inspection of and/or provide copies of any of these construction records.
- (H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents. Contractor shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Project site.
- (I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts, or equipment, as well as any Work that is impacted by deficient or defective Work. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting Work contemplated by this paragraph within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from payment otherwise due to Contractor. If City elects to correct the Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost

to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct Work under these circumstances. Alternatively, City may elect to retain the Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph also applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

- (1) Contractor shall also be responsible for the costs to correct other work that is being performed on or adjacent to the Project site that is impacted by the defective Work of Contractor and the City may deduct those costs from payment otherwise due Contractor.
- (2) Contractor is responsible for all claims, costs, losses, damages, expenses, and liabilities incurred or sustained by City or Contractor related to City's investigation, assessment, and/or remedy of defective Work.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
- (2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project, as set forth in Section 11.1(C), or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

(L) **Quality Control.** Contractor is responsible for implementing quality control activities to ensure that all materials, products, equipment, services, and workmanship meet the quality requirements of the Specifications and Plans, and that the Work complies with the Contract Documents. The quality control activities must include, at a minimum, identification of quality standards and references, procedures to ensure activities and the Work comply with the quality standards, and testing and inspection to verify quality of

materials and workmanship. When no quality basis is prescribed in the Contract Documents, the quality and testing procedures shall be in accordance with the best acceptable practices of the construction industry for the locale of the Project, for projects of this type, or standards set by engineering or technical societies, whichever is more stringent. Contractor must employ and assign knowledgeable and skilled personnel to perform quality control functions to ensure that the Work complies with the requirements of the Contract Documents.

## 2.3 Subcontractors.

- (A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business license before performing any Work.
- (B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor shall provide that the rights that each Subcontractor may have against any manufacturer, distributor, or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.
- (C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.
- (D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor shall immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code § 4107, as applicable.

## 2.4 Coordination of Work.

- (A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from

or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

- (B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

## 2.5 Submittals.

Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, reports, Shop Drawings, samples, test specimens, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the General Requirements and Specifications. At the pre-construction conference, Contractor must submit a submittal schedule to the Engineer that lists each submittal required by the Contract Documents and the scheduled date of submission, consistent with any specified deadlines for submission set forth in the Contract Documents, and that accounts for City review and processing, as required by Document 01 33 00 of the General Requirements.

- (A) **General.** Contractor is responsible for ensuring that all submittals are accurate and conform to the Contract Documents.
- (B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.
- (C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).
- (D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.
- (E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

- (F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.
- (G) **Excessive RFIs.** A RFI will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.
- (H) **Availability of Samples.** Contractor must make available to City all approved samples on a continuous basis and at a convenient location.

## 2.6 Shop Drawings.

When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

## 2.7 Access to Work.

Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

## 2.8 Personnel.

Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

# Article 3 Contract Documents

## 3.1 Interpretation of Contract Documents.

- (A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require

everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

- (B) ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer, using an RFI form acceptable to the City, and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue, specify the affected Work activity per the progress schedule, specify the time criticality of the RFI, and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor shall be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Contractor must submit time critical RFIs at least 30 days in advance of the scheduled start date of the affected Work. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)
- (C) ***Figures and Dimensions.*** In the event of a conflict between figures and scaled dimensions, figures control over scaled dimensions.
- (D) ***Technical or Trade Terms.*** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.
- (E) ***Measurements.*** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.
- (F) ***Compliance with Laws.*** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws. If Contractor believes that a requirement in the Contract Documents conflicts with Laws, then Contractor shall submit an RFI to City, in accordance with Section 3.1(B), above. Unless otherwise specified by City, in the event of a conflict or inconsistency among (1) the Contract Documents and Laws or (2) among different Laws, Contractor must comply with the most stringent requirement. If the Plans or Specifications require or describe products or execution of better quality, higher standard, or greater size than required by Laws, the Plans and Specifications will take precedence, provided the requirements therein comply with Laws. If there are no specific requirements for compliance with Laws in the Plans or Specifications, Contractor must nonetheless comply with the requirements of Laws.

- (G) ***Manufacturer's Recommendations; Standards and Code Compliance.*** Unless more stringent requirements are set forth in the Plans or Specifications, Contractor must comply with manufacturer's instructions and recommendations, reference standards and building code research report requirements in preparing, fabricating, erecting, installing, applying, connecting, and finishing the Work. Contractor must secure City's advanced written consent for any proposed deviations from reference standards and building code research report requirements and manufacturer's instructions and recommendations. Contractor must document and explain all such deviations to City and provide an acknowledgement by the manufacturer that such deviations are acceptable and appropriate for the Project, if applicable.

### 3.2 Order of Precedence.

Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Attachment for Caltrans Contract Requirements (only if used);
- (F) Special Conditions;
- (G) General Conditions;
- (H) General Requirements;
- (I) Payment and Performance Bonds;
- (J) Specifications;
- (K) Plans;
- (L) Notice of Award;
- (M) Notice Inviting Bids;
- (N) Attachment for Caltrans Bidding Requirements (only if used);
- (O) Instructions to Bidders;
- (P) Contractor's Bid Proposal and attachments;
- (Q) the City's Standard Details, as applicable; and
- (R) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Standard Plans.

### 3.3 Caltrans Standard Specifications.

Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications:

- (A) ***Limitations.*** The "General Provisions" of the Caltrans Standard Specifications, i.e., Division I (sections 1 through 9), do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

- (B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.
- (C) **Meanings.** Terms used in the Caltrans Standard Specifications are to be interpreted as follows:
- (1) Any reference to the "Engineer" is deemed to mean the City Engineer.
  - (2) Any reference to the "Special Provisions" is deemed to mean the Contract Documents.
  - (3) Any reference to the "Department" or "State" is deemed to mean City.

### **3.4 For Reference Only.**

Contractor is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only. Geotechnical data, reports, and analyses of any kind are "For Reference Only" documents, whether or not they are attached to the Contract Documents.

### **3.5 Current Versions.**

Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code, or regulation in effect on the date that bids were due.

### **3.6 Conformed Copies.**

If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets, if requested, and one copy of the electronic file in PDF format. It is Contractor's responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor's sole expense.

### **3.7 Ownership.**

No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

## **Article 4 Bonds, Indemnity, and Insurance**

### **4.1 Payment and Performance Bonds.**

Within 10 days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the

Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

- (A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- (B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within 10 days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

#### 4.2 Responsibility and Indemnity.

- (A) **Limitation on Liability.** City and each of its officers, employees, consultants and agents including, but not limited to, the City Council and Engineer, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- (B) **Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code § 2782), Contractor shall assume defense of, and indemnify and hold harmless, City and each of its officers, employees, consultants, and agents, including, but not limited to, the City Council and Engineer, from claims, suits, actions, losses and liability of every kind, nature and description, including, but not limited to, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of City or by any person or entity required to be indemnified hereunder, except as set forth in subsection (E), below. This indemnity requirement applies to any liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract.
- (C) **Third-Party Claims.** City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City and each of its officers, employees, consultants, and agents, including, but not limited to City, the City Council, and Engineer.
- (D) **Continuing Obligations.** To the fullest extent permitted by law (including, without limitation, Civil Code § 2782), the indemnities, releases of liability, and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence, fault or strict liability of the party or parties indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or

indemnity obligations, City may in its discretion back charge Contractor for City's costs and damages resulting therefrom and deduct such sums from payments due to Contractor.

- (E) **Exceptions.** The indemnities in this Section 4.2 shall not apply to City or other indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to City or other indemnified party to the extent of its active negligence.

#### 4.3 Insurance.

No later than 10 days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by the Contract Documents in the form of certificates and endorsements acceptable to City. (See Section 1 of the Special Conditions.) The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of City's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VI" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. The procurement of insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

### Article 5 Contract Time

#### 5.1 Time is of the Essence.

Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

- (A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.
- (B) **Advanced Contract Time.** Contractor may request an earlier (advanced) time for completion, which City may decide to accept or reject, in its sole discretion. Contractor is not entitled to any extra compensation in the event that it fails to complete the Project within the advanced Contract Time, but within the original time specified for completion.
- (C) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.
- (D) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress, and it may exclude Contractor from the Project site, or portions of the Project

site, or from certain elements of the Work, if necessary. Contractor shall remain responsible for any resulting delay, including any liquidated damages, and indemnification of City from claims of others. Alternatively, City may terminate the Contract based on Contractor's default.

## 5.2 Schedule Requirements.

Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic form (PDF and native files) as requested by the Engineer. Each schedule must be divided into Work activities of durations of approximately 21 days or less, except for non-field construction activities or as otherwise deemed acceptable to City, and must show the critical path in red. In addition to the general scheduling requirements set forth herein, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

- (A) **Initial Schedule.** If the Contract Time for the Project is greater than 235 Working Days, at the pre-construction conference, Contractor must submit to City for review and acceptance an initial schedule that addresses the first 30 days following the start date set forth in the Notice to Proceed. The initial schedule must include a detailed plan for the Work to be completed in the first 30 days; details of planned mobilization of plant and equipment; sequence of early operations; procurement of materials and equipment; and a summary of the Work beyond the first 30 days.
- (B) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, predecessor and successor activities, and the duration of the activity.
- (C) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.
- (D) **Progress Schedules.** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery

dates for the Project. In addition, Contractor must submit a three-week look-ahead schedule at each weekly progress meeting.

- (1) **Float.** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.
  - (2) **Failure to Submit Schedule.** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.
- (E) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date. The recovery schedule must include a written narrative for each action necessary to complete the Work within the Contract Time. If sequence changes are necessary, Contractor shall provide a schedule diagram comparing the original sequence to the revised sequence of the Work. If requested by City, Contractor shall also show the intended critical path; secure appropriate Subcontractor and supplier consent for the recovery schedule; submit a narrative explaining trade flow and construction flow changes, duration changes, added or deleted activities, and critical path changes; and identify all near critical paths and man hour loading assumptions for Subcontractors.
- (F) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.
- (G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.
- (H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, between the hours of 7:00 AM and 5:00 PM, except as provided in the Special Conditions or as authorized in writing by City in response to a written request from Contractor. Contractor must make such written request at least two Working Days in advance of the proposed Work to be performed on days or during hours not expressly authorized in the Contract Documents. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

### 5.3 Delay and Extensions of Contract Time.

- (A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must notify the Engineer within 24 hours in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.
- (B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, or diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.
- (C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 50% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-accepted schedule. Contractor shall be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day.
  - (1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
  - (2) Contractor shall not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
  - (3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.
- (D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, or diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
  - (1) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
  - (2) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
  - (3) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;

- (4) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
  - (5) performance or non-performance by Contractor's Subcontractors or suppliers;
  - (6) the time required to respond to excessive RFIs (see Section 2.5(G));
  - (7) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
  - (8) time required for repair of, re-testing, or re-inspection of defective Work;
  - (9) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
  - (10) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.
  - (11) City's right to sequence the Work in a manner to avoid disruption to City's tenants and their contractors or other City contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination obligations under the Contract Documents.
- (E) **Compensable Delay.** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to Weather Delay Days is not Compensable Delay and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.
- (F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.
- (G) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within 14 days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all requirements of Article 5 and Article 6 will be deemed waived.

- (1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.
- (2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.
- (3) **Supporting Documentation.** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City. The time impact analysis must include (a) schedule diagrams comparing the current activities and sequences to the revised activities and sequences and (b) analysis that clearly demonstrates impact(s) to the critical path activities. The time impact analysis must utilize the most current schedule update information that accurately reflects progress on the Project at the time of the schedule impact. The schedule logic for future activities must accurately reflect the approved plan for completing the remaining Work.
- (4) **Burden of Proof.** Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.
- (5) **Legal Compliance.** Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.
- (6) **No Waiver.** Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.
- (7) **Dispute Resolution.** In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

#### 5.4 Liquidated Damages.

It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, City will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.

- (A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay or Compensable Delay, as set forth above.
- (B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.
- (C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.
- (D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.
- (E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, lost revenues, interest expenses, cost of substitute facilities, claims and fines of regulatory agencies, or other liability caused by Contractor.

### Article 6 Contract Modification

#### 6.1 Contract Modification.

Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order (Attachment A), including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

- (A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Prior to directing any such changes, City may request information from Contractor regarding the impact of any such City-directed changes on the Contract Price or Contract Time. Contractor will respond to any such request within 10 days following City's issuance of the request. Contractor's response, including anticipated impacts, must be consistent with requirements of the Contract Documents, including Sections 6.3 and 6.4, below. Contractor must promptly comply with City-directed changes in the Work, when directed by City, in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to

adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code § 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

- (B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.
- (C) **Extra Work.** City may direct, in writing, Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.
- (D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.
- (E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its

own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

## 6.2 Contractor Change Order Requests.

Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

- (A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within 14 calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.
- (B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.
- (C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.
- (D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.
- (E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

## 6.3 Adjustments to Contract Price

The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

- (A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the extent

applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

- (B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.
- (C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation will include allowed markup for overhead, profit, and other indirect costs as follows:
  - (1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
  - (2) All direct material costs provided by the Contractor, plus 15% markup (except markup will not be applied to the sales tax component of direct material costs);
  - (3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
  - (4) All actual direct labor, material, and equipment costs incurred for Work performed by Subcontractors, plus Contractor's markup on those actual direct costs, which markup shall not exceed 10% of the aggregate amount of those actual direct costs and shall not be applied to any Subcontractor markup. A Subcontractor retained directly by Contractor may apply a markup to its actual direct labor, material, and equipment costs for Work it self-performs, provided that such markup shall not exceed 10% of the aggregate amount of those actual direct costs. No lower-tier Subcontractor shall be entitled to markup, no Subcontractor may apply markup to lower-tier Subcontractor costs, and no markup may be applied more than once to the same cost; and
  - (5) Increased bond and insurance premium costs are deemed included in the above markups.

#### 6.4 Limitations on Allowable Costs

Allowable costs in connection with City-authorized time and materials Work or as otherwise authorized by the Contract Documents are subject to the following:

- (A) **Labor.** Costs are allowed for labor, including forepersons when authorized by City, used in the actual and direct performance of the Work directed by Change Order, excluding superintendence, project management, and administrative costs. Allowable labor costs include (1) the actual and direct payroll costs to Contractor, consisting of actual wages and any employer payments to, or on behalf of, workers (other than actual wages) for health and welfare, pension, vacation, training, or other State- or federal-recognized fringe benefit payments, and (2) the labor surcharge percentage, in effect during performance of the Work, as set forth in the publication titled *California Department of Transportation Labor Surcharge and Equipment Rental Rates*, which is intended to cover worker's compensation insurance, social security, Medicare, federal unemployment insurance, State unemployment insurance, and State training taxes.
- (B) **Materials.** Costs are allowed for the actual cost to Contractor for materials directly required for performance of the Work directed by Change Order. The cost of materials may include the costs of transportation, sales tax, and delivery, if necessarily incurred. If a cash or trade discount by the supplier of the materials is available to Contractor, it will be credited to City, regardless of whether the discount is actually taken. If the materials

are obtained from a supply or source owned wholly or in part by Contractor, payment therefor will not exceed the current wholesale price for such materials. Costs for consumed materials may be charged on a reasonably estimated basis but may not be a percentage of labor. If, in the opinion of City, the cost of materials is excessive, or if Contractor fails to furnish satisfactory evidence of the cost from the supplier thereof, then the cost of the materials will be deemed to be the lowest wholesale price at which similar materials are available in the quantities required and at the time needed. City reserves the right to furnish materials, and Contractor will have no claim for costs or profits on City-furnished material. If materials are salvaged upon completion, the salvage value will be deducted from the cost of materials.

- (C) **Equipment.** Costs are allowed for the actual cost to Contractor for the use of equipment directly required in the performance of the Work directed by Change Order. For Contractor- or Subcontractor-owned equipment, costs will be allowed based on rental rates listed for equipment in the California Department of Transportation's Labor Surcharge and Equipment Rental Rates publication in effect at the time the Work is performed, unless there is no applicable rate for an item of equipment, in which case cost will be based on the rental rate listed in the most recent edition of the Association of Equipment Distributors ("AED") book. For rented equipment, costs will be allowed based on actual rental invoices. The equipment used for Work in a Change Order must be of proper size and type. If equipment of an unwarranted size or type is used, the allowable costs for use of such equipment will be calculated at the rental rate for equipment of a proper size and type, as determined by City. The rental rates to be paid to Contractor shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to Contractor incidental to the use of such equipment. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment having a replacement value of \$500 or less will be considered to be small tools or small equipment, and no payment therefor will be made unless it has been rented specifically for the Work directed by Change Order. No payment will be made for time while equipment is inoperative due to breakdowns or for non-Work days.
- (1) For equipment at the Project site, rental time to be paid for equipment shall be time equipment is in operation on Work being performed or on standby as approved by City. The following shall be used in computing rental time of equipment: (a) When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation; (b) When daily rates are listed, less than four hours of operation shall be considered to be ½ day of operation.
  - (2) For equipment that must be brought to the Project site to be used exclusively on Work directed by Change Order, the rental time may include the time required to move the equipment to the Project site from the nearest available source for rental of such equipment, and to return it to the source, as follows: (a) Costs of loading and unloading equipment are allowable; (2) Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers; (c) Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission; and (d) City will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than on Work directed by Change Order.
  - (3) Rental period may begin at time equipment is unloaded at Project site and terminate at end of the performance of the Work directed by Change Order or day on which City directs Contractor to discontinue use of equipment, whichever

occurs first. Rental time to be paid per working day shall be four hours for zero hours of operation, six hours for four hours of operation, and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less the number of hours equipment is inoperative due to breakdowns.

- (D) **Specialists.** If Work in a Change Order requires the services of a specialist, as determined by City, costs will be allowed for the services of the specialist based on the actual itemized invoice to Contractor for the specialist's services required in the performance of the Work, after deduction of any cash or trade discount available to Contractor, regardless of whether such discount is actually taken. If it is impracticable and not in accordance with established practice of the specialist's industry to provide a complete itemization of its services, then costs will be allowed based on the current market price rate for such services. If the Work in a Change Order requires a fabrication or machining process in a fabrication or machine shop facility off-site, the cost of such off-site Work may be included in allowable costs, if City is notified in writing in advance and approves such costs.
- (E) **Markup.** The following non-exclusive list identifies items that are deemed included in markup for overhead, profit, and other indirect costs, whether incurred by Contractor, Subcontractors, or suppliers, and Contractor shall not invoice or receive payment for these costs separately:
- (1) Drawings and submissions of drawings, including field drawings, Shop Drawings, and sketches;
  - (2) Employee vehicle and gas expenses;
  - (3) Estimating;
  - (4) Final cleanup;
  - (5) General administration and preparation of cost proposals, schedule analyses, Change Order requests, and other supporting documentation as necessary;
  - (6) General superintendence;
  - (7) Handling and disposal fees;
  - (8) Home office expenses;
  - (9) Parking expenses of any field labor, foreman, office personnel, and superintendents;
  - (10) Procurement and use of vehicles and fuel used in Work;
  - (11) Routine field inspection of Work;
  - (12) Salaries of project management personnel, superintendent, timekeeper, storekeeper, administrative assistants, and secretaries;
  - (13) Small tools and equipment valued at less than \$500;
  - (14) Insurance and bond premiums and costs;
  - (15) Temporary on-site facilities, including, but not limited to, electrical (power, lighting), fencing, offices, platforms, plumbing, telephones, internet, and water;
  - (16) Travel expenses; and
  - (17) Other incidental Work.

## 6.5 Unilateral Change Order

If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

## 6.6 Non-Compliance Deemed Waiver

Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

## Article 7 General Construction Provisions

### 7.1 Permits, Fees, Business License, and Taxes.

- (A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work. Contractor must comply with all permit requirements and conduct all necessary permit coordination activities. Contractor will be responsible, at its sole cost, for any fines, costs, damages, or other liabilities incurred by City resulting from violations or threatened violations of permit requirements or other legal or regulatory requirements, or from City's loss of use of any permit, due to Contractor's activities.
- (B) **Taxes.** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

### 7.2 Temporary Facilities

Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

- (A) **Project within Public Right-of-Way.** Contractor shall provide any and all temporary facilities, including, but not limited to, sanitary facilities, barricades, walkways, ramps, project signs, changeable message boards, and any other temporary structure or facility necessary to provide access to the public and to safely perform the Work.
- (B) **Utilities.** Contractor must install and maintain, at Contractor's sole expense, the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and Wi-Fi connections, and any related equipment necessary to maintain the temporary facilities. Contractor is responsible for the cost of utility services necessary to perform the Work.
- (C) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

### 7.3 Noninterference and Site Management

Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must perform the Work in a manner that does not interrupt or otherwise adversely impact any City operations, including the City's franchise hauler for solid waste. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with

affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

- (A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.
- (B) **Offsite Staging Area and Field Office.** Contractor shall make arrangements with the nearby property owner(s) as needed to secure space for Contractor's staging and/or field office. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.
- (C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.
- (D) **Circularizing Businesses and Residences.** At least 48 hours in advance of any Work that may affect businesses or residents, Contractor must notify, by circular, all businesses and residents with street frontage or property that may be affected by the Work. The circular must include Contractor's name, address, and telephone number; the starting time and date of the Work; the nature and extent of the Work; and the approximate date upon which Contractor expects to complete the Work. The circular must be submitted to the Engineer for approval at least two full Working Days in advance of the proposed distribution date.

#### 7.4 Signs

No signs may be displayed on or about City's property, except signage which is required by Laws or by the Contract Documents, without City's prior written approval as to size, design, and location.

#### 7.5 Project Site and Nearby Property Protections.

- (A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.
  - (1) Subject to City's approval, Contractor shall provide and install safeguards, including, but not limited to, security fencing, barricades, lighting, and any other security measures necessary to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections. If instructed by the Engineer, Contractor must, at a minimum, install a temporary

chain-link fence with locking gate surrounding the Project site and maintain a lock on the access gate at all times.

- (2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.
- (3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location. Any such objects or material must be delivered by Contractor in good condition to City's Street Corporation Yard at 1700 Walsh Avenue, Santa Clara, CA 95050 or, for an SVP Project, 1705 Martin Avenue, Santa Clara, CA 95050.
- (4) If directed by Engineer, Contractor must remedy all damage, injury, loss or interruptions as specified by the Engineer. However, acting in its sole discretion, City may elect to have the damage, injury, loss or interruptions remedied otherwise, and may deduct the cost from payment otherwise due to Contractor.
- (5) Contractor will not permit any structure, pavement, or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure, pavement, or infrastructure.
- (6) Contractor will not make any arrangements with any person to permit occupancy or use of any land, structure, or building at the Project site, for any purpose other than performance of the Work, unless specifically required or authorized by the Contract Documents.
- (7) All fire hydrants and water control valves must be kept free from obstruction and available for use at all times.
- (8) Contractor must shield all welding operations from public view with solid barrier(s).
- (9) Contractor must provide protective measures to adequately protect workers and the public from hazards resulting from the Work and to exclude unauthorized persons from the Work.
- (10) No attempt has been made by City to locate private utilities on private property such as irrigation systems or electrical conduits.

**(B) *Project Site Access and Securing Project Site.*** Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

- (1) *Project with a Defined Fence Perimeter.* If the Project has a defined fence perimeter, Contractor must at all times limit access to the Project site to necessary personnel only. All personnel associated with construction of the Project must enter the site through Contractor's access gate, at the location indicated on the Plans. Access for construction personnel will be limited to the hours set forth in Section 5.2(H) or as otherwise specified by City. All mail and deliveries must be sent to a separate address (at Contractor's gate), specifically arranged by Contractor for the Project. Contractor is responsible for providing adequate signage to alert delivery persons to the new address.

- (2) **Project within Public Right-of-Way.** If the Project is within the public right-of-way, after completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates.
- (C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.
- (D) **Support and Protection.** Contractor shall be responsible for determining where sloping, shoring, bracing, and/or underpinning is necessary and the adequacy of the design, installation, and maintenance of all sloping, shoring, bracing, and/or underpinning for all excavations, including any excavation less than five feet in depth. Contractor must provide, install, and maintain all such sloping, shoring, bracing, and underpinning. The sloping, shoring, bracing, and underpinning must be sufficient to provide support to City's property and adjacent properties and improvements thereon and protect the Work, adjacent property and improvements, workers, and the public from accidents, injuries, or damage. Contractor shall be solely responsible for any damage or injuries that may result from excavating or trenching. City's acceptance of any drawings showing the shoring or bracing design or schedule shall not relieve Contractor of its responsibilities under this Section. Contractor must also protect the Work with lights, guardrails, temporary covers, and barricades. Contractor must enclose excavations with proper barricades. Contractor must brace and secure all parts of the Work against storm and accident. Contractor must also provide additional forms of protection as may be necessary under the circumstances. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.
- (E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor shall provide a copy of the report to City.

## 7.6 Materials and Equipment.

- (A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the

manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

- (B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.
- (C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights.
- (D) **Standards To Apply Where Specifications Are Not Furnished.** The following general specifications will apply wherever in the Specifications, or in any directions given by City in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or will do Work for which no detailed specifications are provided. Materials or manufactured articles will be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles must conform to industry standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work will conform to the usual standards or codes for first-class work of the kind required. Contractor shall specify in writing to City the materials to be used or Work to be performed under this Section 7.6 ten Working Days prior to furnishing such materials or performing such Work.

## 7.7 Substitutions.

- (A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.
- (B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier. A separate request for substitution must be submitted for each item

or service proposed for substitution. Contractor must submit a digital copy of each request.

- (C) **Substantiation.** Contractor must substantiate each written request for substitution with the following: (1) product identification, (2) manufacturer's literature, (3) test results or samples, if applicable, (4) name and address of similar projects on which the item has been used and the date of installation, (5) the name, address, and telephone number of manufacturer's representative or sales engineer, (6) a detailed description of the proposed construction method and drawings illustrating the construction method, (7) an itemized comparison of the proposed substitution with the product specified that lists all variations, including, but not limited to, dimensions, weights, service requirements, and functional differences, (8) available maintenance, repair, and replacement service for the proposed item, (9) any required approvals or other information for the proposed substitute that are necessary for compliance with regulatory agency requirements, (10) any schedule impacts associated with use of the proposed substitute, and (11) any other available data substantiating the proposed substitute as an equal item or service. Contractor must also state whether the substitute will require any changes to the Contract Documents, or any other separate contract the Contractor may have with the City, and whether use of the proposed substitute requires the payment of any license fee or royalty. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review. If a variation from the product specified is not identified in the submittal, the variation may be rejected by City even if the submittal was favorably reviewed.
- (D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.
- (E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.
- (F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. If an approved substitution requires any redesign, Contractor must reimburse City for any associated redesign costs. Such costs may be deducted from payments otherwise due Contractor. In the event Contractor makes an unauthorized substitution, Contractor shall be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

## 7.8 Testing and Inspection.

- (A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers' application or installation instructions must be provided to the Inspector at least 10 days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection and must provide, at its sole cost, all information and assistance as required by City, including information and assistance from Subcontractors, fabricators, material suppliers and manufacturers, to perform the testing or inspection. Contractor must provide incidental labor and facilities to provide safe access to Work for testing and inspection, to obtain and handle samples at the Project site or at the source of the products to be tested, and to store and cure test samples. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

- (B) ***Scheduling and Notification.*** Contractor must cooperate with City in coordinating the inspections and testing. At least fifteen days in advance of a first test or inspection of each type, Contractor must submit a schedule of tests or inspections to City, indicating the types of tests or inspections and their scheduled dates. Contractor must deliver adequate samples of materials, proposed mix designs, and/or test specimens to a laboratory or location designated by City, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must also notify the Engineer at least three full Working Days before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least three Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.
- (C) ***Responsibility for Costs.*** City will bear the initial cost of inspection and testing to be performed by City staff or independent inspection and testing consultants retained by City, subject to the following exceptions:
- (1) Contractor shall be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
  - (2) Contractor shall be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
  - (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor shall bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
  - (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
  - (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.
  - (6) Contractor is responsible for testing and inspection costs due to the following: changes in source or supplier of materials or products after original testing and inspection; changes in means, methods, techniques, sequences and procedures of construction that necessitate additional testing and inspection; and changes in mix designs after review and acceptance of submitted mix designs.
- (D) ***Contractor's Obligations.*** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or testing of the Work by City does not in any way relieve Contractor of its obligations to perform the Work as specified. Contractor has an independent duty to test and inspect its Work to ensure that it is safe, complies with the requirements of the Contract Documents, and that it is in proper condition to accommodate or interface with subsequent Work. Any Work done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by City.

- (E) ***Distant Locations.*** If required off-site testing or inspection must be conducted at a location more than 50 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.
- (F) ***Final Inspection.*** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.
- (G) ***Governing Authorities and Other Public Agencies.*** If any governing authorities or other public agencies with jurisdiction over the Work, or a portion thereof, require any inspection, testing, or approval of the Work, or a portion thereof, Contractor must schedule, conduct, and pay for any such inspection or testing and obtain any required approvals. These governing authorities and agencies may include, but are not limited to, City's Building Department, Public Works Department, and Fire Department, the Office of Statewide Health Planning Department (OSHPD), and other similar agencies. Contractor must submit any such certificates of inspection or testing or approvals to the City.
- (H) ***Inspections and Tests by Serving Utilities.*** Contractor must schedule, conduct, and pay for all tests and inspections required by serving utilities for the Work.
- (I) ***Inspections and Tests by Manufacturer's Representatives.*** Contractor must, at its sole cost, schedule, coordinate, and ensure the performance of all tests and inspections specified to be conducted by materials or systems manufacturers, including those required by materials or systems manufacturers as a condition of warranty or certification Work.

## **7.9 Project Site Conditions and Maintenance**

Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. If toilets of the chemically treated type are used, Contractor must furnish at least one toilet for each 20 persons. Contractor shall enforce the use of such sanitary facilities by all personnel at the Project site. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

- (A) ***Air Emissions Control.*** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).
- (B) ***Dust and Debris.*** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must protect buildings and operating facilities from dust and must use suitable dust screens to protect existing and new machinery, motors, instrument panels, or similar equipment from dust. Contractor must include proper ventilation with dust screens. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor shall only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from payment otherwise due to Contractor. Contractor shall immediately remove any excess excavated material from the Project site and any dirt deposited on public streets. (See also Document 01 50 00 of the General Requirements.)

- (C) **Hazards Control.** Contractor must prevent the accumulation of wastes that may create hazardous conditions. Contractor must store volatile waste in covered metal containers and remove such waste from the premises daily. Contractor must provide adequate ventilation during the use of volatile or noxious substances.
- (D) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.
- (1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.
  - (2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.
  - (3) Contractor shall also, on a daily basis, remove any dust, debris, mud, fill, and spoils from private property, unless the private property owner has requested otherwise in writing.
- (E) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system. All excess soil from performance of Work shall be disposed at a Class I, II, or III landfill at sites to be chosen by Contractor in accordance with Laws. Contractor must review and comply with any such regulations and requirements of the agency having jurisdiction over any contemplated disposal site, as applicable. Contractor shall recycle all debris and waste materials with feasible re-use including concrete, asphalt concrete, pavement base materials, steel, and wood. A Project that includes 5,000 square feet or more of building construction, demolition or renovation shall comply with the City of Santa Clara Construction and Demolition Debris Recycling Program per Santa Clara Code Section 8.25.285.
- (F) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must clean or replace the filters of any mechanical equipment operated during construction and clean the ducts, blowers, and coils of mechanical equipment operated without filters during construction. Contractor must also mechanically sweep paved areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, utility poles, guy wires, underground pipes, conduits, drains, street surfaces, structures, and landscaping (sod, groundcover, shrubs, trees, and the like). Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. All replacements must be made with new materials. Contractor must restore to original condition all property or items that are

not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

- (G) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

#### 7.10 Instructions and Manuals

Contractor must provide to City three hard copies and a digital copy of each instruction and manual required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

- (A) **Submittal Requirements.** The instructions and manuals, along with any required guarantees, must be delivered to City for review prior to requesting final inspection pursuant to Section 11.1(A), unless otherwise specified.
- (B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

#### 7.11 As-Built Drawings

Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

- (A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.
- (B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

#### 7.12 Existing Utilities and Facilities.

- (A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Underground utilities are inherent in Work involving digging of trenches or other excavations and Contractor is to apply its skill and industry to verify the information available. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation,

or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor shall be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7. Contractor shall take immediate action to restore any service installation damaged by Contractor's operations. If City determines that Contractor has not responded to damaged service installations in a timely manner or has not diligently pursued restoration of damaged service installations, City may restore service installations and deduct the cost from payments otherwise due to Contractor.

- (B) **Unidentified Utilities.** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor shall be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of such utility facilities.
- (C) **Service Laterals or Appurtenances.** In accordance with Government Code § 4215, nothing herein will be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project site can be inferred by Contractor from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Project site.
- (D) **Locating Utilities.** Contractor is responsible for all of the following activities to locate identified or reasonably identifiable utilities and the cost thereof is included in the Contract Price: (a) reviewing and checking all available information and data provided in any "For Reference Only" documents, the Plans, and Underground Services Alert (USA) information; (b) locating all identified or reasonably identifiable utilities, including utilities shown or indicated in the Contract Documents or any other available information and utilities indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; and (c) coordination of the Work with the owners of such utilities during construction. Contractor shall notify City of any conflict between information provided in any "For Reference Only" documents, the Plans, and USA information.
- (E) Except as required by applicable law, Contractor shall bear the risk that utilities not owned or built by City may differ in nature or locations shown in information provided in the "For Reference Only" documents, the Plans, and USA information, or otherwise reasonably available to Contractor.

### 7.13 Notice of Excavation

- (A) Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein.

#### 7.14 Trenching and Excavations of Four Feet or More

As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

- (A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:
  - (1) Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;
  - (2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or
  - (3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.
- (B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.
- (C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

#### 7.15 Trenching of Five Feet or More

- (A) As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance at least five days in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

#### 7.16 New Utility Connections

Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that Contractor can coordinate connections and services in accordance with the Project schedule.

#### 7.17 Lines and Grades

Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all

construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

#### **7.18 Historic or Archeological Items.**

- (A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").
- (B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

#### **7.19 Environmental Control**

Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

- (A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").
- (B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

#### **7.20 Noise Control**

- (A) Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor. (See also Document 01 50 00 of the General Requirements.)

#### **7.21 Mined Materials**

Pursuant to Public Contract Code § 20676, Contractor will not purchase any sand, gravel, or other minerals for the Work from an operation subject to the Surface Mining and Reclamation Act

of 1975 (Public Resources Code § 2710 et seq.) unless the Contractor certifies, under penalty of perjury, that the minerals are from a mining operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>.

## **7.22 Compliance with Laws Pertaining to Disability Rights**

The Work, and Contractor's performance of the Work, must comply with all Laws, including the Americans with Disabilities Act (ADA) and all Laws pertaining to disability rights. Contractor shall not discriminate against disabled persons in the performance of the Work or provision of benefits or activities under the Contract and further agrees that any violation of this prohibition by Contractor, its employees, agents, assigns, or Subcontractors will constitute a material breach of the Contract.

## **Article 8 Payment**

### **8.1 Schedule of Values**

Prior to submitting its first application for payment and allowing for City's review and comment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid. The schedule of values must include line items for Project scheduling and preparation and submission of Project Record Documents, as defined in the General Requirements. Where more than one Subcontractor performs the Work for a particular Work item or activity on the schedule of values, the schedule of values must show a separate line item for each subcontract. City will reject any attempt to increase the cost of early activities (i.e., "front loading") resulting in a complete reallocation of money until such "front loading" is corrected in the schedule of values. Repeated attempts at front loading may result in suspension or termination of the Work for default, or a withholding from progress payments, as set forth in Section 8.3, below, until the schedule of values is acceptable to City.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents. If there are no specified methods, measurement will be made in any manner deemed appropriate by City for the class of Work at issue (e.g., pre-assigned values, percentage completion, units completed, or incremental milestones). Any conflict between quantities shown in the Contract Documents and the actual quantities required to complete the Work will be resolved in favor of the actual quantities, as determined by City. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, unless and only to the extent that the City agrees to adjust the price for unit price work pursuant to subsection (A)(1), below. Contractor must immediately inform City of any disagreement with City's measurement of actual quantities and must immediately supply City with documentation to support measurements of actual quantities.

(1) **Adjustments for Increases or Decreases in Unit Price Work.** If the actual quantity for a bid item is increased or decreased by more than 25% of the estimated quantity on the Bid Schedule, the City may, but is not obligated to, make price adjustments for the excess or decreased quantity. Any such price adjustment will be determined by the Engineer pursuant to Section 6.3. The Engineer will determine whether a given increase or decrease in quantity exceeds 25%, and the Engineer's determination is final. No adjustment in pricing will be made until

after all Work involving that bid item is completed, and the final quantity has been determined by the Engineer.

- (B) ***Deleted or Reduced Work.*** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

## 8.2 Progress Payments

Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, or as agreed upon by City and Contractor, Contractor shall submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

- (A) ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work (less any previous payments for the same); materials and equipment delivered to the Project site if the conditions in subsection (1) below are satisfied; and authorized and approved Change Orders, including the Change Order number(s), a description of the Work activities, and a Change Order status log. The application must also show the accumulated retainage to date. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values, the percentage of completion claimed for each activity, and any other substantiating data required by the Contract Documents.

- (1) If Contractor requests payment on the basis of materials and equipment not incorporated into the Work, Contractor must satisfy the following conditions: the materials and/or equipment must be delivered and suitably stored at the Project site or at a local Worksite agreed to, in writing, by City; full title to the materials and/or equipment will vest in City at the time of delivery to the Project site or agreed upon Worksite; Contractor must obtain a negotiable warehouse receipt, endorsed over to City for materials and/or equipment stored in an off-site Worksite; materials and/or equipment must be segregated and labeled or tagged to identify the Project; and Contractor's application for payment must be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City's interest therein, all of which must be satisfactory to City. If these conditions are satisfied, the application for payment may include up to 75% of the cost of equipment not yet incorporated into the Work and up to 50% of the cost of materials not yet incorporated into the Work.

- (B) ***Payment of Undisputed Amounts.*** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

## 8.3 Adjustment of Payment Application

City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City

may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

- (A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.
- (B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work, any failure to protect the Project site, or any failure to protect equipment or materials from weather or damage, City may deduct an amount based on the estimated cost to repair or replace. (See, e.g., Sections 7.5, 7.6, 7.9, and 7.12.)
- (C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.
- (D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.
- (E) For any unreleased stop notice, City may withhold 125% of the amount claimed.
- (F) For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, City may withhold an amount equal to ten percent of the total amount requested until Contractor complies with its schedule submittal obligations.
- (G) For Contractor's failure to maintain or submit as-built documents or any other Project Record Documents, as defined in the General Requirements, in the manner specified or within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts or other Project Record Documents.
- (H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.
- (I) Subject to applicable law, for Contractor's and/or Subcontractor's failure to submit certified payroll records to the City, as required by Article 9 of the General Conditions, City may withhold payment under the Contract.
- (J) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.
- (K) For fines, charges, or penalties assessed against the City due to Contractor's acts or omissions, including violations of Laws, City may withhold or deduct such amounts from payment otherwise due to Contractor.
- (L) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.
- (M) Subject to applicable law, City may, at its option, withhold such moneys due under the Contract Documents as City deems necessary until any and all suits or claims against

Contractor for injury to persons, property or operations are resolved and City receives satisfactory evidence thereof.

#### **8.4 Early Occupancy**

Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

#### **8.5 Retention**

City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's recordation of the Notice of Completion, subject to the terms of Public Contract Code § 7107.

(A) ***Substitution of Securities.*** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Contractor must use the City's escrow agreement form (Attachment B), unless otherwise specified by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).

#### **8.6 Payment to Subcontractors and Suppliers**

Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

- (A) ***Withholding for Stop Notice.*** Pursuant to Civil Code § 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.
- (B) ***Joint Checks.*** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

## **8.7 Final Payment**

Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

## **8.8 Release of Claims**

City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release. Final Payment will be contingent upon Contractor furnishing Attachment C, Agreement and Release of Any and All Claims.

## **8.9 Warranty of Title**

Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

# **Article 9 Labor Provisions**

## **9.1 Discrimination Prohibited**

Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

## 9.2 Labor Code Requirements.

- (A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
- (B) **Penalty.** Pursuant to Labor Code § 1813, Contractor shall forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
- (C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- (D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

## 9.3 Prevailing Wages

Each worker performing Work under this Contract that is covered under Labor Code §§ 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

- (A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- (B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

## 9.4 Payroll Records

Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR, if applicable.

- (A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (1) The information contained in the payroll record is true and correct; and
  - (2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.
- (B) **Submittal of Records.**

- (1) As a condition to receiving progress payments, Final Payment, and payment of retention, Contractor must furnish to City, with its application for payment, all applicable and necessary certified payroll records (for itself and all applicable Subcontractors) for the time period covering the application for payment. City may withhold any portion of a payment, including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed, and found to be in full compliance with applicable Laws. If the certified payroll records do not comply with the requirements of Labor Code § 1720 et seq., City may continue to withhold sufficient funds to cover estimated wages and penalties under the Contract.
  - (2) Contractor must submit certified payroll through LCPTracker or similar system as directed by the City. Contractor will be provided log-in credentials to access the City's LCPTracker system. The term "certified payroll" includes all required documentation to comply with the mandates set forth in Labor Code §1720 et seq, as well as any additional documentation requested by the City or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2, if applicable), and apprenticeship forms such as DAS-140 and DAS-142. In addition to submitting the certified payrolls and related documentation to City, Contractor and Subcontractors must submit certified payroll and related documents electronically to the Labor Commissioner, in accordance with Labor Code § 1771.4. Failure to submit payrolls to the DIR may also result in the withholding of progress payments, Final Payment, and/or retention payment.
- (C) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement and/or Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.
- (D) **Enforcement.** Contractor or Subcontractor has 10 days in which to comply with the requirements of Labor Code § 1776 following receipt of a written notice requesting certified copies of payroll records pursuant to Labor Code § 1776. If Contractor or Subcontractor fails to comply within the 10-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

## 9.5 Labor Compliance

Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

## Article 10 Safety Provisions

### 10.1 Safety Precautions and Programs

Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

- (A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor shall provide a copy of the report to City.
- (B) **Safety Program.** If requested by City, Contractor must submit a Project-specific safety program to City. Contractor's safety program must include: (1) an injury and illness prevention program and (2) a site-specific health and safety plan that describes the health and safety procedures that Contractor shall implement during the Work to ensure the safety of the public and workers. Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.
- (C) **Safety Representative.** Contractor shall designate a qualified and experienced safety representative at the Project site whose duties and responsibilities will include: (1) the prevention of accidents; (2) maintenance and supervision of safety precautions and programs; (3) compliance with applicable health and safety Laws, including Occupational Safety and Health Act ("OSHA") requirements; and (4) implementation and enforcement of Contractor's traffic control and detour plan, security plan, program for temporary structures, construction site management plan, demolition program, and environmental safety and health plan. Contractor's safety representative will also be responsible for submitting any changes to these plans to City for review.
- (D) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- (E) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.
- (F) **Protective Gear.** Contractor must supply a sufficient number of hard hats to properly equip all personnel and visitors and must ensure that all personnel and visitors at the Project site wear hard hats at all times. Contractor must also supply personal protective equipment ("PPE") to all of Contractor's personnel and ensure that, if an exposure exists, all affected personnel use the PPE.

## 10.2 Hazardous Materials

Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. Contractor's notice to City must indicate whether the material believed to be Hazardous Materials

was shown or indicated on the Contract Documents to be within the scope of Work and whether the material was brought to the Project site by Contractor, its Subcontractors, a supplier, or any other individual. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

### 10.3 Material Safety

Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

- (A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.
- (B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

### 10.4 Hazardous Condition

Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Contractor must notify City, in writing, of the existence of any hazardous conditions, property or equipment at the Project site. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

### 10.5 Emergencies

In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

## Article 11 Completion and Warranty Provisions

### 11.1 Final Completion.

- (A) **Final Inspection and Punch List.** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The City may also specify a date for a follow up inspection of the punch list items. If additional

inspections are required after the follow up inspection, Contractor shall reimburse the City for its costs associated with subsequent inspections. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item. When required by City, Contractor must also schedule and coordinate a final inspection with City Building Inspectors.

- (B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including return of all personnel identification media, vehicle permits, and keys issued to Contractor for the Project; submission to City of any written requests from private property owners pursuant to Section 7.9(D)(4); any startup or commissioning required under the Contract Documents; and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11 and other Project Record Documents, as defined in the General Requirements, all to City's satisfaction. See also Section 8.8, Release of Claims.
- (C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list. See also Section 8.8, Release of Claims.
- (D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete any of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

## 11.2 Warranty.

- (A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear or improper use or maintenance.
- (B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

- (C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers. Contractor must submit draft warranty forms to City for approval prior to execution. The warranty forms must be consistent with the requirements in the Contract Documents and will not detract from or confuse those requirements. City reserves the right to reject unsolicited and coincidental product warranties that detract from or confuse the requirements of the Contract Documents. The City may require that the warranties are countersigned by Subcontractors, manufacturers, and installers, as applicable. Contractor must assemble the warranty and guarantee documents in an 8½ inch by 11 inch three-ring binder with a durable plastic cover; separate and organize the documents in the same order as the Specifications; and include a table of contents. The binder must also include contact information, including names and phone numbers, for those individuals that the City may contact during the Warranty Period. Contractor must also provide City with a digital copy of all warranty and guarantee documents.
- (D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.
- (E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction or to the expiration of any extended warranty period (if applicable), whichever is later.
- (F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within 10 days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.
- (G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.
- (H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs City incurs to correct the defective Work.

### 11.3 Use Prior to Final Completion

City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion.

- (A) **Non-Waiver.** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.
- (B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

#### 11.4 Substantial Completion

For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to City acceptance of the Project, except for warranty work performed under this Article.

### Article 12 Dispute Resolution

#### 12.1 Claims

This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

- (A) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.
- (B) **Scope of Article.** This Article provides the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.
- (C) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.
- (D) **Informal Resolution.** Contractor shall make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.
- (E) **Contractor Costs.** Contractor is responsible for its costs to prepare and submit a Claim.

#### 12.2 Claims Submission

The following requirements apply to any Claim subject to this Article:

- (A) **Substantiation.** The Claim must be submitted to City in writing by registered or certified mail with return receipt requested and clearly identified as a "Claim" submitted pursuant to this Article 12. The Claim must include all of the documents necessary to substantiate

the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract or other costs, consistent with the limitations on allowable costs set forth in Section 6.4. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) ***Claim Format and Content.*** A Claim must be submitted in the following format:

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
- (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.
- (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:
  - (a) A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
  - (b) Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
  - (c) A chronology of relevant events; and
  - (d) Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.
- (4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.
- (5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) ***Submission Deadlines.***

- (1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 21 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 21 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.
- (2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.
- (3) A Claim disputing the amount of Final Payment must be submitted within 21 days of the effective date of Final Payment, under Section 8.7, Final Payment.
- (4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

### 12.3 City's Response

City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code § 9204. For a Claim subject to Public Contract Code § 20104 et seq., if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

- (A) ***Duty to Update Estimated Amounts.*** If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.
- (B) ***Non-Waiver.*** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

### 12.4 Meet and Confer

If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

- (A) ***Schedule Meet and Confer.*** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

- (B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.
- (C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
- (D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

## 12.5 Mediation and Government Code Claims.

- (A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor shall mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.
- (B) **Government Code Claims.**
  - (1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.
  - (2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

## 12.6 Tort Claims

This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

## 12.7 Arbitration

It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

## 12.8 Burden of Proof and Limitations

Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including

home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor, lower tier subcontractor, supplier, or any other person or organization, or to any surety for, or employee or agent of, any of them.

## **12.9 Legal Proceedings**

In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

## **12.10 Other Disputes**

The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

# **Article 13 Suspension and Termination**

## **13.1 Suspension for Cause**

In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

- (A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.
- (B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within 10 days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.
- (C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

- (D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

### 13.2 Suspension for Convenience

City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

### 13.3 Termination for Default

City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

- (A) **Default.** Events giving rise to a declaration of default include:

- (1) Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time;
- (2) Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage;
- (3) Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project;
- (4) evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time;
- (5) suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration;
- (6) dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity;
- (7) unauthorized assignment of Contractor's rights or duties under the Contract;
- (8) any material breach of the Contract requirements; or
- (9) the occurrence of any of the following, when committed by Contractor's owner or co-owners (if Contractor is a sole proprietorship), a general partner (if Contractor is a partnership), a principal (if Contractor is a joint venture), a person who owns more than 10% of the outstanding stock of a corporation (if Contractor is a corporation), or any officer, director, shareholder, partner, employee, or agent of Contractor:
  - (a) a conviction of operating a business in violation of any Laws;

- (b) a conviction of a crime punishable as a felony involving dishonesty;
- (c) a conviction of an offense involving dishonesty or conviction of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- (d) a conviction of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Contractor or a Subcontractor; or
- (e) the making of any false statement(s) or representation(s) with respect to the Contract.

For purposes of this subsection (A)(9), a “conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five years. The term “dishonesty” includes, without limitation, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

- (B) **Notice of Default and Opportunity to Cure.** Upon City’s declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within 10 days of City’s notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable. The City may also require that the Contractor submit a realistic and achievable written plan describing how it will cure the breach, including evidence of necessary resources, Subcontractor commitments, and schedules and recovery schedules, as applicable, for review and acceptance by City. Contractor must then diligently cure the breach according to the written plan.
- (C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, including submission of a written plan (if required by the City), or if City determines that the default is not curable, City may issue written notice to Contractor and its performance bond surety of City’s termination of the Contract for default.
- (D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor’s surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where “additional cost” means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.
- (E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City’s rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking

charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

- (F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

### 13.4 Termination for Convenience

City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

- (A) **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:
- (1) **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;
  - (2) **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and
  - (3) **Termination Costs.** Reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, plus 5% markup thereof.
- (B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

### 13.5 Actions Upon Termination for Default or Convenience

The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

- (A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor shall transfer title to and deliver all completed Work and all Work in progress to City.
- (B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, cost data, manufacturer warranties, manuals,

and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

- (C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:
- (1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).
  - (2) Comply with City's instructions to protect the completed Work and materials, including property in which City has or may acquire interest, using best efforts to minimize further costs.
  - (3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.
  - (4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.
  - (5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.
- (D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor shall submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.
- (E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

## Article 14 Digital Data Protocol

### 14.1 E-Builder

With the exception of a Claim submitted pursuant to Article 12, Contractor must use e-Builder for submission of all submittals and other data and documents to City. E-builder is a web-based construction management application hosted by e-Builder, Inc. E-builder will be the primary means of Project information submission and management unless otherwise approved by City in writing.

#### **14.2 Access to E-Builder**

Contractor must use the City-provided license(s) to access e-Builder. Contractor's designated users will be required to set up their computers/systems to use e-Builder in accordance with the e-Builder User Training Guide. City reserves the right to limit the licenses issued to Contractor at any time.

#### **14.3 E-Builder Training**

Contractor must obtain all necessary training to use the e-Builder software. Contractor must participate in a classroom training or a web-based seminar, as determined by City. A training session is approximately 1-2 hours.

#### **14.4 Connectivity to E-Builder**

E-builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. Contractor is responsible for its own connectivity to the Internet. E-Builder's response time is dependent on the Contractor's equipment, including processor speed, Internet access speed, and current traffic on the Internet. City will not be liable for any delays associated with Contractor's use of e-Builder, including, but not limited to, slow response time, down time periods, connectivity problems, or loss of information. Contractor must ensure connectivity to the e-Builder system whether at a home office or the Project site. Under no circumstances will use of e-Builder be grounds for a time extension or cost adjustment to the Contract.

#### **14.5 Acceptance of Information in E-Builder**

Contractor is responsible for managing, tracking, and documenting the Work as provided in the Contract Documents. The City's acceptance of documentation in e-Builder via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute validation of the Contractor's submitted information.

#### **14.6 Format of Project Documents**

City reserves the right to require submission of Project documents in hard copy format, or both electronic and hard copy format.

#### **14.7 Project Communication**

While regular email may still be used for communication when requested by City, e-Builder should be used as much as possible in connection with all document and information management required in the performance of the Project. Contractor shall be responsible for scanning or otherwise converting to electronic format all Project submittals, correspondence, drawings, sketches, and other documents, and uploading them to the e-Builder website. Contractor shall be responsible for the validity of its information placed in e-Builder. Contractor shall use the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, Contractor may include a form of its own or one provided by the City (if available) as an attachment to a submittal or process.

#### **14.8 Types of Documents**

Unless otherwise specified by City, documents and information to be submitted electronically by Contractor using e-Builder include, but are not limited to, correspondence; meeting minutes; submittals; Shop Drawings; RFIs; Change Order requests; payment applications; reports, including daily job reports, quality control reports, commissioning reports; quality control documentation; operation and maintenance manuals; close out documentation; testing results; and any other documentation or information required to be submitted to the City under the Contract Documents.

#### **14.9 Archive Copies**

Contractor shall keep an archive copy of all digital data created, submitted, or received by Contractor on E-Builder and data submitted or received via e-mail pertaining to the Project. (See also General Conditions, Section 2.2(J).)

#### **14.10 Alternate Project Management Tools**

If the City replaces e-Builder with a different project management tool, Contractor will be required to use the new project management tool selected by the City.

### **Article 15 Miscellaneous Provisions**

#### **15.1 Assignment of Unfair Business Practice Claims**

Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

#### **15.2 Provisions Deemed Inserted**

Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

#### **15.3 Waiver**

City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.

#### **15.4 Titles, Headings, and Groupings**

The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

#### **15.5 Statutory and Regulatory References**

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

#### **15.6 Survival**

The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6, of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Responsibility and Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS