

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
AND  
CONTRACT DOCUMENTS FOR**

**As-Needed Earthwork, Maintenance, General Contracting, and  
Emergency Response Services**



**CITY OF SAN RAMON**  
PUBLIC WORKS DEPARTMENT  
ENGINEERING SERVICES DIVISION

Issued: November 30, 2023

Proposals Deadline: **December 21, 2023 at 2:00 p.m.**

Class "A" Contractor's License Required

A handwritten signature in blue ink, appearing to read "M. Fierner", positioned above a horizontal line.

Maria Fierner, P.E.  
Public Works Director

**CITY OF SAN RAMON  
REQUEST FOR QUALIFICATIONS AND PROPOSALS  
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**CITY OF SAN RAMON  
REQUEST FOR QUALIFICATIONS AND PROPOSALS**

**As-Needed Earthwork, Maintenance, General Contracting, and  
Emergency Response Services**

The City of San Ramon ("**City**") hereby invites qualified contractors ("**Proposers**") to submit qualifications and proposals (collectively, "**Proposals**") in response to this Request for Qualifications and Proposals ("**RFQP**") for As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services.

**1. ABOUT SAN RAMON**

The City of San Ramon was incorporated in 1983 as a charter city and located in the San Ramon Valley of Contra Costa County, approximately 35 miles east of the City of San Francisco in the San Francisco Bay Area. The San Ramon Valley has long been considered one of the most desirable living areas in the Bay Area because of its scenic beauty, suburban charms, excellent school systems, and proximity to major employment centers. The City occupies a land area of 18.56 square miles and is surrounded by the communities of Danville and Dublin, as well as the unincorporated lands in both the Alameda and Contra Costa Counties.

The City operates under a Council-Manager form of government with over 250 employees, serving a population of approximately 81,344. Additional information about the City is available online at [www.sanramon.ca.gov](http://www.sanramon.ca.gov).

**2. SCOPE OF WORK AND TERM**

The Project involves maintenance, repair, and upgrades to public infrastructure, which may be located at various streets, trails, parks, and other facilities located throughout the City. The Work is to be performed on an on-call and as-needed basis, based on Work Orders issued by the City, as further specified in the Contract Documents (attached hereto and incorporated herein). **There is no guarantee as to the quantity of Work or number of Work Orders to be issued for the Project.** The City reserves the right to award the contract to more than one Proposer. Representative Project scope includes, but is not limited to, any or all of the items listed below. **Contractors need not be experienced or able to provide all services; contracts will be awarded based on the City's anticipated needs and the relative skills and experience of contractors in the various identified areas of need.**

- Creek bank stabilization and erosion control and repair;
- Temporary winterization of landslides;
- Landslide stabilization and repair;
- Sediment removal from flood control channels;
- V-ditch cleaning, repair, and replacement;

- Localized storm drain cleaning, repair and replacement and other storm drain work;
- Trash capture device installation;
- Minor retaining wall construction and repair;
- Sound wall repair;
- Foundation construction for signs, monuments, and art work;
- Minor concrete flatwork;
- Installation of emergency flood control measures;
- Debris removal;
- Minor structural repairs or improvements such as repair to foundations, repair to damage from floods or fire, minor upgrades or maintenance to Community Centers or other City Buildings or structures in parks;
- Construction of restrooms or shade structures;
- Demolition of structures; and
- Emergency response for the above listed items.

Any Contract awarded under this RFQP will be structured for a three (3) year term, which may be renewed by the City for up to two (2) additional one (1) year terms, subject to the limitations on the maximum Contract Price, as further discussed in Section 4, below.

### **3. CONTRACT DOCUMENTS AND DEFINED TERMS**

#### **3.1 Contract Documents.**

With the exception of documents that are incorporated by reference only, the Contract Documents for the Project, (including the Contract, General Conditions, bond forms, Special Conditions, and any addenda thereto are **solely** available by downloading via City's website at: <http://www.sanramon.ca.gov/rfpq> for **As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services**.

(A) *Addenda.* Any addenda issued prior to the deadline for submission of Proposals are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda modifying the RFQP or any Contract Documents. Each Proposer is solely responsible for accessing addenda via the City's website, as specified above.

#### **3.2 Defined Terms.**

All defined terms which are not otherwise defined in this RFQP have the meanings set forth in Article 1 of the General Conditions.

#### **4. PAYMENT AND COST LIMITATION**

The Contractor that is awarded the Contract will be paid for each properly completed Work Order, with no guaranteed total payment for the Project as a whole. Pursuant to the provisions cited in Section 1 above, the total dollar value of all Work Orders issued for this Project may not exceed \$499,999. This amount reflects the maximum compensation available under the Contract. There is no minimum compensation; however, this RFQP and the Contract Documents are drafted on the assumption that certain legal requirements, including, but not limited to, prevailing wage will be applicable to the Contract based on the potential total value, as set forth in Section 2 above. Contractors may be asked to procure the required bonds at the issuance of each work order issued as part of the contract.

#### **5. LICENSE REQUIREMENTS**

This Project requires a valid California contractor's license for the following classification(s): **Class A.**

#### **6. LABOR, PREVAILING WAGE, AND DIR REGISTRATION REQUIREMENTS**

##### **6.1 General.**

Pursuant to California Labor Code § 1720 et seq., 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.

##### **6.2 Rates.**

These prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

##### **6.3 DIR Registration.**

City may not accept a Proposal from or enter into the Contract with a contractor, without proof that the contractor is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

##### **6.4 Compliance.**

The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

## **7. BONDS AND INSURANCE REQUIREMENTS**

The selected Proposer will be required to provide the proof of ability to obtain performance and payment bonds for each Work Order and/or up to 100% of the maximum Contract Price of \$499,999, as further specified in the Contract Documents. The insurance requirements are specified in Article 4 of the General Conditions, and the selected Proposer must provide the proof of the ability to obtain the required bonds and proof of the required insurance coverage as a condition to award the Contract, within ten (10) calendar days following notification of intent to recommend award of the Contract.

## **8. RETENTION AND SUBSTITUTION OF SECURITIES**

Retention in the amount of five percent (5%) may be withheld from payment for each Work Order pending Final Payment at the end of the term or extension term to secure compliance with the Contract requirements, including repair or replacement of defective Work. Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300.

## **9. SUBCONTRACTOR LIST**

Each Subcontractor must be registered with the DIR to perform work on public projects. Each Proposal must include a completed Subcontractor List form, including the name, location of the place of business, California contractor license number, and DIR registration number for each Subcontractor. Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.

## **10. PRICE SCHEDULE**

Each Proposal must include a completed Price Schedule, using the form provided. The Price Schedule will be used in evaluating competing Proposals during the RFQP process, and following award of the Contract will be used as the basis for paying the Contractor for Work performed pursuant to a Work Order. The itemized prices must include all costs to perform each item listed in the Price Schedule as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance, overhead, and profit. Additional provisions pertaining to payment may be found in the Contract Documents, including Article 8 of the General Conditions.

## **11. QUALIFICATIONS**

The City's evaluation of contractor qualifications will include consideration of the information provided in response to Part I - Qualifications in the Qualifications and Proposal Form, including the following:

- Experience working in the public right-of-way including residential, collector, and arterial roads;
- Business organization and financial capacity to perform the Work on an on-call basis;
- Adequate full-time skilled labor and supervision to perform the Work on an on-call basis;
- Experience performing the kinds of work for which the contractor is applying;
- Quality of referenced work;
- Availability of equipment, tools, materials, and staff with emphasis on ability to respond to emergencies;
- Cost based on unit rates and referenced projects and clients;
- Experience with GIS, web based or similar incident and work order tracking; and
- Other information presented in the proposal such as special equipment, unique approaches to the Work, demonstrated ingenuity and other expertise.

**Contractors need not be qualified to complete all aspects of the anticipated work to be eligible for a contract. However, they must clearly describe what work they are willing and able to complete.**

## **12. ADDITIONAL INFORMATION**

Questions, requests for clarifications, or objections regarding the RFQP, the Project, or the Contract Documents must be submitted in writing to Shane Hsieh, Senior Civil Engineer, at [chsieh@sanramon.ca.gov](mailto:chsieh@sanramon.ca.gov). Oral responses are not authorized and will not be binding on the City. Proposers should submit any such written inquiries or objections no later than **5:00 p.m. on December 18, 2023**. Responses will be issued in the form of written addenda. Any objections to the RFQP, the RFQP procedures, or the Contract Documents will be deemed waived if not timely submitted in writing as specified in this paragraph.

## **13. PROPOSALS**

### **13.1 Proposal Form.**

All Proposals must be submitted using the Qualifications and Proposal Form accompanying this RFQP, fully completed as directed. The Qualifications and Proposal Form must be accompanied by the Price Schedule and Subcontractor List, using the forms provided and completed as directed. Each Proposer is responsible for review of the Contract Documents and any informational documents provided "For Reference Only," if any, e.g., as-builts, technical reports, test data, and the like. A Proposer is responsible for notifying City of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the City by the deadline for submission of questions or objections, set forth in section 12, above. City expressly disclaims responsibility for assumptions a Proposer might draw from the presence or absence of information provided by City.

### 13.2 Authorization and Execution.

Each Proposal must be signed by the Proposer's authorized representative. A Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Proposal, under California Corporation Code § 313.

### 13.3 Proposal Submission.

Completed Proposals, including the Qualifications and Proposal form, Price Schedule, Subcontractor List, and any attachments, must be sealed in an envelope and submitted to the City Clerk's Office at 7000 Bollinger Canyon Road, San Ramon, CA 94583, and received by the City Clerk's office no later than: **2:00 p.m. on December 21, 2023** (using the clock in the City Clerk's Office). The envelope must be addressed as follows:

*As-Needed Earthwork, Maintenance, General Contracting, and Emergency  
Response Services*  
City Clerk  
7000 Bollinger Canyon Road  
San Ramon, CA 94583

The envelope must also be clearly labeled, as follows, with the Proposer's name, address, and its registration number with the California Department of Industrial Relations ("DIR") for bidding on public works contracts (Labor Code §§ 1725.5 and 1771.1):

[CONTRACTOR COMPANY NAME]  
[STREET ADDRESS]  
[CITY, STATE, ZIP CODE]  
DIR Registration No: \_\_\_\_\_

Faxed or emailed Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. Proposals may not be modified after the deadline for submission. Each Proposer is solely responsible for all of its costs to prepare and submit its Proposal and by submitting a Proposal waives any right to recover those costs from City. All Proposals will be subject to public disclosure under the California Public Records Act (Government Code § 6250 et seq.) upon the conclusion of the City's RFQP evaluation process. No person, firm, or corporation may submit or be a party to more than one Proposal. However, a person, firm, or



corporation that has submitted a subcontract proposal or quote to a Proposer may submit subcontract proposals or quotes to other Proposers.

#### **13.4 Proposal Evaluation and Selection.**

The Proposals will be reviewed and evaluated by an evaluation panel comprised of qualified City staff and/or consultants selected by the City's Public Works Director. Proposals which are incomplete, illegible, which state exceptions to the Contract Documents, or which otherwise do not comply with the stated requirements may be rejected as nonresponsive. The evaluation panel will rank the responsive Proposals on best overall qualifications, factoring in past project references, and best overall pricing, based on the Base Price and Price Schedule.

### **14. AWARD**

City will award the Contract, if at all, to the responsible Proposer whose Proposal is determined by City, acting in its sole discretion, to be the most advantageous to City based on qualifications (which include experience and past project references), and pricing. The City reserves the right to award the Contract to more than one Proposer. If one or more contract is awarded, it is at the discretion of the Project Manager to determine the work distribution with the greater amount of work generally awarded to the highest-ranking Contractor in a given area. **Proposers need not be experienced in all areas to receive a Contract. Contract(s) may be awarded to the best-qualified Proposer(s) with selected group expertise, as determined by the City.** The selected Proposer(s) will be notified by City staff of intent to recommend that the City Council award the Contract to the Proposer(s). Within ten (10) calendar days of that notification, the selected Proposer(s) must submit the executed Contract and submit the required proof of ability to obtain bonds and required insurance certifications and endorsements to the City. City may, at any time, reject the Proposal of any selected Proposer(s) that fails to comply with these requirements, and may offer the Contract to the next highest ranked Proposer(s).

### **15. RESERVATIONS OF RIGHTS**

This RFQP is not a formal request for bids nor an offer by the City to contract with a Proposer responding to this RFQP. This RFQP does not commit City to award or enter into the Contract. City reserves the unfettered right to reject any or all Proposals at any time. City reserves the right to modify the RFQP, the deadline for submission of Proposals, the Contract Documents, or the scope of Work at any time prior to the deadline for submission of Proposals and will notify the Proposers on the Plan Holders List of any such changes by issuing an addendum. The City reserves the right to waive immaterial irregularities in a Proposal or in the RFQP procedures. City reserves the right to cancel, modify, or postpone this RFQP or the Project at any time.

## 16. TENTATIVE SCHEDULE

The following tentative schedule is provided solely for general planning based on currently available information. All dates and durations are subject to revision by City.

| ACTIVITY                         | DATE / DEADLINE               |
|----------------------------------|-------------------------------|
| Deadline for RFQP Questions      | December 18, 2023 - 5:00 p.m. |
| Proposals Due                    | December 21, 2023 - 2:00 p.m. |
| Interview (if requested by City) | January 11, 2024              |
| Notice of Intended Selection     | January 23, 2024              |
| Council Approval and Award       | February 13, 2024             |
| Initial Work Order Issuance      | March 1, 2024                 |

## 17. PROTESTS

Any protest against another Proposer must be submitted in writing and received by City of San Ramon at 7000 Bollinger Canyon Road, San Ramon, CA 94583, Attn: City Clerk or sent via email at: [cityclerk@sanramon.ca.gov](mailto:cityclerk@sanramon.ca.gov) before 5:00 p.m. no later than five days following the deadline for submission of Proposals (“**Protest Deadline**”) and must comply with the following requirements:

### 17.1 General.

Only a Proposer who has actually submitted a Proposal is eligible to submit a protest against another Proposer. Subcontractors are not eligible to submit protests. A Proposer may not rely on the protest submitted by another Proposer but must timely pursue its own protest. For purposes of this Section 17, a “Working Day” means a day that City is open for normal business, and excludes weekends and holidays observed by City. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor’s DIR registration number on the Subcontractor List form is not grounds for a protest, provided it is corrected within 24 hours of the qualification and proposal opening or as otherwise provided under Labor Code § 1771.1(b).

### 17.2 Protest Contents.

The protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Protest Deadline will not be considered. The protest must refer to the *specific* portion or portions of the RFQP or Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting Proposer and any person submitting the protest on behalf of or as an authorized representative of the protesting Proposer.

### **17.3 Copy to Protested Proposer.**

Upon submission of its protest to City, the protesting Proposer must also concurrently transmit the protest and all supporting documents to the protested Proposer, and to any other Proposer who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Protest Deadline.

### **17.4 Response to Protest.**

The protested Proposer may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within three (3) Working Days after the Protest Deadline or after actual receipt of the protest, whichever is sooner (the “**Response Deadline**”). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested Proposer if different from the protested Proposer.

### **17.5 Copy to Protesting Proposer.**

Upon submission of its response to the protest to the City, the protested Proposer must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting Proposer and to any other Proposer who has a reasonable prospect of receiving an award depending upon the outcome of the protest.

### **17.6 Exclusive Remedy.**

The procedure and time limits set forth in this Section are mandatory and are the Proposer’s sole and exclusive remedy in the event of a protest. A Proposer’s failure to comply with these procedures will constitute a waiver of any right to further pursue a protest, including filing a Government Code Claim or initiation of legal proceedings.

### **17.7 Right to Award.**

City reserves the right, acting in its sole discretion, to reject any protest that it determines lacks merit, to award the Contract to the Proposer it has determined to be the best choice for the City, and to proceed with the Project notwithstanding any pending or continuing challenge to its determination.

## **18. LICENSE(S)**

The successful Proposer and its Subcontractor(s) must possess the California contractor’s license(s) in the classification(s) required by law to perform the Work. The successful proposer must also obtain a City business license within ten (10) days following City’s issuance of the Notice

of Potential Award. Subcontractors must also obtain a City business license before performing any Work.

END OF REQUEST FOR QUALIFICATIONS AND PROPOSALS

## QUALIFICATIONS AND PROPOSAL FORM

### As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services

\_\_\_\_\_ ("Proposer") hereby submits this Qualifications and Proposal to the City of San Ramon ("City") in response to the City's Request for Qualifications and Proposals ("RFQP") for the above-referenced project ("Project") and in accordance with the Contract Documents referenced in the RFQP.

### PART I - QUALIFICATIONS

#### A. General Information

Proposer Business Name: \_\_\_\_\_

Check One:    ☐ Corporation (State of incorporation: \_\_\_\_\_)  
                  ☐ Partnership  
                  ☐ Sole Proprietorship  
                  ☐ Joint Venture of: \_\_\_\_\_  
                  ☐ Other: \_\_\_\_\_

Main Office Address and Phone: \_\_\_\_\_  
\_\_\_\_\_

Local Office Address and Phone: \_\_\_\_\_  
\_\_\_\_\_

Website address: \_\_\_\_\_

Owner of Business: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Contact Phone and Email: \_\_\_\_\_

Proposer's California Contractor's License Number(s): \_\_\_\_\_

Proposer's DIR Registration Number: \_\_\_\_\_

## B. Proposer Experience

1. How many years has Proposer been in business under its present business name?

\_\_\_\_\_ years

2. Has Proposer completed projects similar in type and size to this Project as a general contractor?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

3. Has Proposer ever been disqualified from a bid on grounds that it is not responsible, or otherwise disqualified or disbarred from bidding under state or federal law?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*If yes, provide additional information on a separate sheet regarding the disqualification or disbarment, including the name and address of the agency or owner of the project, the type and size of the project, the reasons that Proposer was disqualified or disbarred, and the month and year in which the disqualification or disbarment occurred.*

4. Has Proposer ever been terminated for cause, alleged default, or legal violation from a construction project, either as a general contractor or as a subcontractor?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*If yes, provide additional information on a separate sheet regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Proposer was under contract as a general contractor or a subcontractor, the reasons that Proposer was terminated, and the month and year in which the termination occurred.*

5. In the last five (5) years, from the Proposal Submission, has the Proposer paid liquidated damages in excess of ten thousand dollars (\$10,000) or ten percent (10%) of the value of a contract?

\_\_\_\_\_ Yes      \_\_\_\_\_ No

*If yes, provide additional information on a separate sheet regarding the amount in liquidated damages, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Proposer was under contract as a general contractor or a subcontractor, and the month and year in which the termination occurred.*

6. Briefly describe Proposer's experience with respect to items 6.a – 6.j, listed below, on separate sheet(s) labelled "Responses to Qualifications and Proposal Part I, B.6." A concise paragraph for each item is appropriate, with emphasis on neatness, clarity, and brevity.

- a. A list of the types of work that contractor is willing and able to perform;
- b. Experience working in the public right-of-way including residential, collector, and arterial roads;
- c. Business organization and financial capacity to perform the Work on an on-call basis;
- d. Adequate full-time, skilled labor and supervision to perform the Work on an on-call basis;
- e. Experience performing the kinds of work for which the contractor is applying;
- f. Quality of referenced work;
- g. Availability of equipment, tools, materials, and staff with emphasis on ability to respond to emergencies;
- h. Cost based on unit rates and referenced projects and clients;
- i. Experience with GIS, web based or similar incident and work order tracking; and
- j. Other information presented in proposal such as special equipment, unique approaches to the work, demonstrated ingenuity and other expertise.

7. List three of Proposer's recent past public projects performed as general contractor which are most similar to this Project including scope and character of the work:

Project #1: \_\_\_\_\_

Project #2: \_\_\_\_\_

Project #3: \_\_\_\_\_

Using the tables provided below, provide all of the following information for each project identified above, using "N/A" for any information that is clearly inapplicable to that project, and attaching **clearly labelled** additional pages **if** space is needed for additional explanation:

- a. Project name, location, and description;
- b. Owner (name, address, email, and phone number);
- c. Architect or engineer (name, email, and phone number);
- d. Project and/or construction manager (name, email, and phone number);
- e. Whether this was a task order or on-call contract;
- f. Initial contract price and final contract price (including change orders);
- g. Original scheduled completion date and actual date of completion;
- h. Time extensions granted (number of days);
- i. Number and amount of stop notices filed;
- j. Amount of any liquidated damages assessed against Proposer; and
- k. Nature and resolution of any project-related claim, lawsuit, mediation, or arbitration involving Proposer.

|             |                      |
|-------------|----------------------|
| Project #1: |                      |
| Item:       | Project Information: |
| a.          |                      |
| b.          |                      |
| c.          |                      |
| d.          |                      |
| e.          |                      |
| f.          |                      |
| g.          |                      |
| h.          |                      |
| i.          |                      |
| j.          |                      |
| k.          |                      |

Additional pages attached for Project #1? \_\_\_\_\_ Yes \_\_\_\_\_ No

|             |                      |
|-------------|----------------------|
| Project #2: |                      |
| Item:       | Project Information: |
| a.          |                      |
| b.          |                      |
| c.          |                      |
| d.          |                      |
| e.          |                      |
| f.          |                      |
| g.          |                      |
| h.          |                      |
| i.          |                      |
| j.          |                      |
| k.          |                      |

Additional pages attached for Project #2? \_\_\_\_\_ Yes \_\_\_\_\_ No



|             |                      |
|-------------|----------------------|
| Project #3: |                      |
| Item:       | Project Information: |
| a.          |                      |
| b.          |                      |
| c.          |                      |
| d.          |                      |
| e.          |                      |
| f.          |                      |
| g.          |                      |
| h.          |                      |
| i.          |                      |
| j.          |                      |
| k.          |                      |

Additional pages attached for Project #3? ☐ Yes ☐ No

### C. Safety

1. Provide Proposer's Experience Modification Rate (EMR) for the last three years:

| Year | EMR |
|------|-----|
|      |     |
|      |     |
|      |     |

2. Complete the following, based on information provided in Proposer's CalOSHA Form 300 or Form 300A, Annual Summary of Work-Related Illnesses and Injuries, from the most recent past calendar year:

Number of lost workday cases:

Number of medical treatment cases:

Number of deaths:

3. Has Proposer ever been cited, fined, or prosecuted by any local, state, or federal agency, including OSHA, CalOSHA, or EPA, for violation of any law, regulation, or requirements pertaining to health and safety?

☐ Yes ☐ No

*If yes, provide additional information on a separate sheet regarding each such citation, fine, or prosecution, including the name and address of the agency or owner of the project, the type and size of the project, the reasons for and nature of the citation, fine, or prosecution, and the month and year in which the incident giving rise to the citation, fine, or prosecution occurred.*

4. Name, title, and email for person responsible for Proposer's safety program:

---

Name

Title

Email

## PART II - PROPOSAL

1. **Price Schedule.** Proposer proposes to perform and fully complete each Work Order issued for the Project as specified in the Contract Documents, within the time required for full completion of each Work Order, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance, and all overhead and profit for the following price ("**Base Price**") based upon the items and estimated quantities set forth in the accompanying Price Schedule, which is incorporated herein: \$\_\_\_\_\_.
2. **Addenda.** Proposer agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Proposal. Proposer waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Proposer specifically acknowledges receipt of the following addenda:

|           |                |           |                |
|-----------|----------------|-----------|----------------|
| Addendum: | Date Received: | Addendum: | Date Received: |
| #01       | _____          | #05       | _____          |
| #02       | _____          | #06       | _____          |
| #03       | _____          | #07       | _____          |
| #04       | _____          | #08       | _____          |

3. **Proposer's Certifications and Warranties.** By signing and submitting this Proposal, Proposer certifies and warrants the following:
  - 3.1 **Examination of Contract Documents.** Proposer has thoroughly examined the Contract Documents and represents that, to the best of Proposer's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.
  - 3.2 **Local Conditions.** Proposer has had the opportunity to examine the local conditions within the City of San Ramon.
  - 3.3 **Proposer Responsibility.** Proposer is a responsible contractor, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the Work to be performed in accordance with the Contract Documents and within the Contract Time.
  - 3.4 **Responsibility for Proposal.** Proposer has carefully reviewed this Proposal and is solely responsible for any errors or omissions contained in its completed Proposal. All statements and information provided in this Proposal and enclosures are true and correct to the best of Proposer's knowledge.
  - 3.5 **Nondiscrimination.** In preparing this Proposal, the Proposer has not engaged in discrimination against any prospective or present employee or Subcontractor on

grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.

**3.6 Non-Collusion.** The undersigned has not colluded with any other Proposer to submit a sham Proposal, engage in price fixing, or otherwise contravene a fair, competitive process in violation of the terms or intent of Public Contract Code section 7106.

**4. Award of Contract.** By signing, initialing, and submitting this Proposal, Proposer agrees that if Proposer is awarded a Contract, within ten days following issuance of the Notice of Potential Award to Proposer, Proposer will do all of the following within the timeline specified in Section 16 of the RFQP, with the exception of Execute Contract:

**4.1 Execute Contract.** Within ten (10) calendar days of receipt of the draft Contract, Proposer will, in accordance with the terms of this Proposal, sign and submit to City the Contract prepared by City using the form included with the Contract Documents;

**4.2 Submit Required Proof of Ability to Provide Bonds.** Submit to City a letter from a bonding company to state that for the life of the Contract it would provide a payment bond and a performance bond for 100% of each Work Order issued under the Contract, for a cumulative payment bond amount of up to 100% of the Contract Price and a cumulative performance bond amount of up to 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

**4.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

This Proposal is hereby submitted on \_\_\_\_\_, 2023.

s/ \_\_\_\_\_  
Name and Title

s/ \_\_\_\_\_  
[See Section 13.2 of RFQP] Name and Title

\_\_\_\_\_  
Company Name License #, Expiration Date, and Classification

\_\_\_\_\_  
Address DIR Registration #

\_\_\_\_\_  
City, State, Zip Phone

\_\_\_\_\_  
Contact Name Contact Email

END OF QUALIFICATIONS AND PROPOSAL

## PRICE SCHEDULE

This Price Schedule must be completed in ink and included with the sealed Proposal. Pricing must be provided for each Item as indicated. Items marked “(SW)” are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead, for performing the Work as specified in the Contract Documents. The sum of all amounts entered in the “Extended Total Amount” column must be identical to the Base Price entered in Section 1 of Part II - Proposal of the Proposal form. **The list below is an example, the completed list should be applicable to the type of work for which the contractor is applying. The cost for obtaining bonds must be included in the price schedule.**

AL = Allowance      CF = Cubic Feet      CY = Cubic Yard      EA = Each      LB = Pounds  
 LF = Linear Foot      LS = Lump Sum      PD = Per Day      SF = Square Feet  
 TON = Ton (2000 lbs)

| ITEM NO. | ITEM DESCRIPTION                                      | UNIT | UNIT COST |
|----------|---|------|-----------|
| 1        | Laborer   | Hour |           |
| 2        | Operator  | Hour |           |
| 3        | Foreman   | Hour |           |
| 4        | Excavator   | Hour |           |
| 5        | Truck   | Hour |           |
| 6        | Bulldozer   | Hour |           |
| 7        | Performance Bond                                      | %    |           |
| 8        | Warranty Bond   | %    |           |
| 9        | Markup  | %    |           |
| 10       | Any specialized equipment appropriate to the services |      |           |
|          |   |      |           |
|          |   |      |           |

PROPOSER NAME: \_\_\_\_\_

END OF PRICE SCHEDULE

### SUBCONTRACTOR LIST FORM

For each Subcontractor that will perform a portion of the Work, the Proposer must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, and its DIR registration number.

| DESCRIPTION<br>OF WORK | SUBCONTRACTOR<br>NAME | CALIFORNIA<br>CONTRACTOR<br>LICENSE NO. | LOCATION OF<br>BUSINESS | DIR REG. NO. |
|------------------------|-----------------------|---|-------------------------|--------------|
|                        |                       |   |                         |              |
|                        |                       |   |                         |              |
|                        |                       |   |                         |              |
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|                        |                       |   |                         |              |
|                        |                       |   |                         |              |
|                        |                       |   |                         |              |
|                        |                       |   |                         |              |

END OF SUBCONTRACTOR LIST

**CITY OF SAN RAMON**

**CONTRACT DOCUMENTS**

**AS-NEEDED EARTHWORK, MAINTENANCE, GENERAL CONTRACTING,  
AND EMERGENCY RESPONSE SERVICES**

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## Contract

This public works contract ("**Contract**") is entered into by and between the City of San Ramon ("**City**") and \_\_\_\_\_ ("**Contractor**"), for work on the As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services ("**Project**").

The parties agree as follows:

- 1. Award of Contract.** In response to the City's Request for Qualifications and Proposals ("**RFQP**"), Contractor submitted a Proposal to perform the specified scope of Work, pursuant to Work Orders issued by City, including, but not limited to, creek bank stabilization; erosion control and repair; temporary winterization of landslides; landslide stabilization and repair; sediment removal from flood control channels; V-ditch cleaning, repair and replacement; localized storm drain cleaning, repair and replacement; catch basin repair and replacement; trash capture device installation; minor retaining wall construction and repair; sound wall repair; foundation construction for signs, monuments and art work; minor concrete flatwork; installation of emergency flood control measures; debris removal; minor structural repairs or improvements; and services, emergency response for the above listed items, on an on-call, as-needed basis. On \_\_\_\_\_, 2024, City authorized award of this Contract to Contractor.
- 2. Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
  - 2.1** Request for Qualifications and Proposals;
  - 2.2** Addenda, if any;
  - 2.3** Proposal, and all attachments thereto, including Price Schedule;
  - 2.4** Contract;
  - 2.5** Payment, Performance, and Warranty Bonds;
  - 2.6** Special Conditions;
  - 2.7** General Conditions;

Work Order(s);

  - 2.8** Change Orders, if any;
  - 2.9** 2018 Caltrans Standard Specifications; and
  - 2.10** Specified portions of the 2018 Caltrans Standard Plans.
- 3. Scope of Work.** The Work to be performed under this Contract will be completed through individual Work Orders on an on-call, as-needed basis, as set forth in Section 4, below. Contractor agrees to perform all of the Work required for each Work Order, as specified in the Contract Documents, all of which are fully incorporated herein. 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, plant, equipment, transportation, services, appliances, appurtenances, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to 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. **Work Orders.** When the need for Work arises under this Contract, as determined by City, City will issue a Work Order to Contractor, identifying the nature and location(s) of the specific Work to be performed and other information or instructions that may be relevant to performance of the Work encompassed in the Work Order.

- 4.1 **Time for Completion.** A Work Order may specify time for commencement and completion of the Work included in the Work Order. Contractor must immediately notify the Project Manager if Contractor believes it will not be able to commence or complete the Work within the time(s) specified in the Work Order. City reserves the right to separately contract with another contractor or to use its own forces to perform Work that Contractor is unable or unwilling to perform Work within the time specified by a Work Order.

- 4.2 **Work Order Schedule.** If required by the Work Order, Contractor must provide City with a detailed Work Order schedule for performing the specified Work. The Work Order schedule must identify "Work tasks," "start day," and "finish day" for each Work item specified in the Work Order. The schedule must comply with the requirements of Section 5.2 of the General Conditions. If City requests a Work Order meeting with Contractor prior to performance of Work specified in a Work Order, Contractor must submit the Work Order schedule at least five working days before the Work Order meeting. See General Conditions Section 5.3, regarding Delay and Extension of Contract Time.

- 4.3 **Completion of Work Order.** Once the Work specified in a Work Order is complete, Contractor must notify the Project Manager in writing. The Project Manager will inspect the Work and issue a punch list if there are any deficiencies in the Work. Contractor must complete or resolve the punch list items within the time specified by the Project Manager. If Contractor fails to complete or resolve the punch list items within the specified time, City may elect to complete or resolve the outstanding items and backcharge Contractor for the City's cost including a 25% markup, which may be deducted from any payment due or to become due to Contractor.

5. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work, including all direct and indirect costs to perform the Work, in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor for performance of each Work Order based on the itemized prices included in

the Price Schedule, and as further specified in the Contract Documents. The total compensation payable to Contractor pursuant to this Contract will not exceed \$499,999 ("**Contract Price**").

6. **Term and Extensions.** This Contract will become effective on February 1, 2024 ("**Effective Date**"), and will expire on December 31, 2027 ("**Term**"), unless (A) the Contract Price is exhausted before the end of the Term, (B) the Contract is terminated sooner in accordance with Article 13 of the General Conditions, or (C) the Contract is extended, as set forth below.

6.1 **Extension Terms.** At the City's option, to be exercised in the City's sole discretion, this Contract may be extended beyond the initial Term by up to two additional successive one-year terms (individually, an "**Extension Term**"), provided the total compensation due to Contractor under the Term and any Extension Term does not exceed the maximum Contract Price. The City may elect to extend the Contract for an Extension Term by providing written notice of intent to Contractor at least 90 days prior to expiration of the current Term or Extension Term, as applicable. If Contractor does not wish to extend the Contract, it must notify the City in writing within 21 days following the City's notice of intent to extend the Contract. Failure to timely notify the City in this regard will be deemed agreement to extend the Contract.

6.2 **Conditions.** Any Extension Term will be subject to the same terms and agreements applicable to the initial Term except that the prices set forth in the Price Schedule may be adjusted by mutual agreement of the parties, memorialized in a Change Order, for a percentage not to exceed the Consumer Price Index increase for all urban consumers for the San Francisco-Oakland-Hayward area for the immediately preceding year.

7. **Liquidated Damages.** City will assess liquidated damages in the amount of \$500 per day for each day Work remains incomplete within the applicable Contract Time for a Work Order. Any such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

8. **Labor Code Compliance.**

8.1 **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.

8.2 **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>.

- 8.3 DIR Registration.** City may not enter into the Contract with a proposer without proof that the proposer and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- 9. 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."
- 10. 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.
- 11. 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.
- 12. Notice.** Any notice, billing, or payment 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:**

City of San Ramon  
Attn: Christina Franco, City Clerk  
7000 Bollinger Canyon Road  
San Ramon, CA 94583  
[cityclerk@sanramon.ca.gov](mailto:cityclerk@sanramon.ca.gov)  
Copy to: Amy Amiri, Senior CIP Analyst  
[aamiri@sanramon.ca.gov](mailto:aamiri@sanramon.ca.gov)

**Contractor:**

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

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

### **13. General Provisions.**

- 13.1 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.
- 13.2 Third-Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 13.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Contra Costa 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 Contra Costa County, California.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 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 Corporation Code § 313.

*[Signatures are on the following page.]*



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

**CITY:**

**Approved as to form:**

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

David E. Hudson, Mayor

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

Martin Lysons, City Attorney

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

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

**Attest:**

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

Steven Spedowfski, City Manager

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

Christina Franco, City Clerk

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

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

**The Foregoing Agreement has been Reviewed and Approval is Recommended:**

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

Maria Fierner, Public Works Director

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

**CONTRACTOR:** \_\_\_\_\_

Business Name

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

Seal:

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

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

Second Signature (See Section 13.7):

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

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

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

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

END OF CONTRACT

## Payment Bond

The City of San Ramon ("City") and \_\_\_\_\_ ("Contractor") have entered into a contract, ("Contract") for work on the As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services ("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 the maximum Contract Price of \$499,999, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assignees, 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 delivered or transmitted 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 Contra Costa 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.

**7. Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 2024.

**SURETY:**

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

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

\_\_\_\_\_  
Date

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

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**CONTRACTOR:**

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

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

\_\_\_\_\_  
Date

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

**APPROVED BY CITY:**

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

\_\_\_\_\_  
Date

Martin Lysons, City Attorney

Name, Title

END OF PAYMENT BOND

## Performance Bond

The City of San Ramon ("City") and \_\_\_\_\_ ("Contractor") have entered into a contract, dated \_\_\_\_\_, 2024 ("Contract") for work on the As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services ("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 the maximum Contract Price of \$ 499,999 to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assignees, 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, and Contractor has timely provided a warranty bond as required under the Contract, Surety's obligations under this Bond will become null and void upon City's acceptance of the Project, excluding any exceptions to acceptance, if any. Otherwise, Surety's obligations will remain in full force and effect until expiration of the one-year warranty period under the Contract.
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, 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 Contra Costa 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 \_\_\_\_\_, 2024.

**SURETY:**

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

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

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

(Attach Acknowledgment with Notary Seal and Power of Attorney)

**CONTRACTOR:**

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

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

\_\_\_\_\_  
Date

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

**APPROVED BY CITY:**

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

\_\_\_\_\_  
Date

Matin Lysons, City Attorney

\_\_\_\_\_  
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.”

**ADA** means the Americans with Disabilities Act.

**Allowance** means a specific amount that must be included in Contract Price to be used as specifically allocated by City.

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

**Base Price** means the total amount on the Price Schedule submitted with the Proposal.

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

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

**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; 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. 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 maximum 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 Proposal.

**Contract Time** means the time specified for complete performance of the Work, as set forth in a Work Order 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 electrical engineering design 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.

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

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

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

**Engineer** means the City Engineer or District Engineer for the City of San Ramon and his or her authorized delegees.

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

**Extension Term** has the meaning provided in Section 6.1 of the Contract, Extension Terms.

**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 Proposal was submitted; Work that is substantially different from the Work as described in the Contract Documents at the time Proposals were due; or Work that results from a substantially differing and unforeseeable condition.

**Final Completion** means Contractor has fully completed all of the Work required by a Work Order, in accordance with the Contract Documents and 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 warranty bond, 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 now or in the future 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 inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

**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 As-Needed Earthwork, Maintenance, General Contracting, and Emergency Response Services, which is comprised of any and all on-call Work directed by City pursuant to individual Work Orders.

**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.

**Project Site** means the location(s) where Work is to be performed as required by a Work Order.

**Proposal** means the Proposal submitted by Contractor in response to City’s Request for Qualifications and Proposals, including the Qualifications and Proposal form, Price Schedule, Subcontractor List form, and all attachments thereto.

**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.

**Request for Qualifications and Proposals (or RFQP)** means the request for proposals issued by City on November 30, 2023 , soliciting Proposals for Work on the Project, and including any addenda thereto.

**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.

**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.

**Term** has the meaning provided in Section 6 of the Contract, Term and Extensions.

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

**Work Order** means a written directive issued by the City to the Contractor, which specifies a scope of Work to be performed by the Contractor, and specifies the time for commencement and completion of that Work, and which may be modified by a Change Order.

**Work Day or Working Day**, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by the City.

**Worksite** means the place or places where the Work is performed, a Worksite as specified in a Work Order, including separate locations for staging, storage, or fabrication for the Work Order.

## **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 each Work Order. 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 administration of each Work Order 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 for each Work Order 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. Throughout the Term and any Extension Term, 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.

(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 and email address, 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 Worksite 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 will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. 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, 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 and Laws 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 each Work Order, 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 attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If

applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near a Worksite or in relation to the Work, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on each Work Order for each day that Work is performed for the Work Order. The daily report for each day must include the number of workers at the Worksite(s); primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of each Work Order, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review 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 Worksite(s), 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.

(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. Workmanship, materials, parts or equipment that do not conform to the requirements under the Plans, Specifications and every other Contract Document, 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 defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the payments due or to become due to Contractor. If City elects to correct defective 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 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

defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Work in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Records subject to this provision include complete Project cost records and records relating to preparation of Contractor's Proposal and Price Schedule, 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 expiration of the Term, or any Extension Term. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours. 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 each Worksite, of all Work-related documents, including the Work Order(s), 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 the Term or Extension Term.

## 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 will provide that the rights that each Subcontractor may have against any manufacturer 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.

## **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 a Worksite 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 a Worksite, 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, Shop Drawings, samples, product data, and similar submittals required for each Work Order, as further specified in 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 Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in a Work Order.

(A) **General.** Contractor is responsible for ensuring that its 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 Work Order.

(C) **Required Contents.** Each submittal must include the Project name and Work Order 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.

## **2.6 Shop Drawings.**

When Shop Drawings are required by a Work Order, 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. Unless otherwise specified in the Work Order, Shop Drawings must be provided to the Engineer for review and acceptance at least ten days before the Work will be performed. 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 a Worksite 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 any Project Site 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 Work, 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 and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue 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 will 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. 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 Article 5 and 6.)

(C) ***Figures and 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 a Worksite 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.

### 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) Work Order(s);
- (E) Notice of Intent to Recommend Award;
- (F) Notice(s) to Proceed (if used);
- (G) Special Conditions;
- (H) General Conditions;
- (I) Payment, Performance, and Warranty Bonds;
- (J) Proposal and attachments thereto, including the Price Schedule; and
- (L) Any 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 the specified portions of the 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," "State Standard 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 Proposal was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Caltrans Standard Plans:

(A) **Limitations.** The “General Provisions” of the Caltrans Standard Specifications, i.e., 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 or Standard Plans 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 or Special Provisions 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 Special Provisions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

(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.

### **3.5 Current Versions.**

Unless otherwise specified by City, any reference to standard specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.

### **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 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 completion of the Work, as required under 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 Work, 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 ten days following issuance of the Notice of Intent to Recommend Award, Contractor is required to provide the proof, in the form of a letter of commitment from a bonding company, of Contractor's ability to obtain a payment bond and a performance bond, each for 100% of each Work Order issued under the Contract, for a cumulative payment bond amount of up to 100% of the Contract Price and a cumulative performance bond amount of up to 100% of the Contract Price. The letter of commitment must, by its terms, be in effect for the full life of Contract.

(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 proof of ability to obtain supplemental or replacement bonds within ten 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 Indemnity.**

To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "**Indemnatee**," and collectively the "**Indemnitees**") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "**Liability**") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or in

failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's Proposal 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. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

#### **4.3 Insurance.**

No later than ten days following issuance of the Notice of Intent to Recommend Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. 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 Term and any Extension Term. 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 "VIII" 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 the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

(A) ***Policies and Limits.*** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

(1) ***Commercial General Liability ("CGL") Insurance:*** The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protected coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$5,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.

(2) ***Automobile Liability Insurance:*** The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for

bodily injury, death, or property damage, including hired and non-owned auto liability.

(3) *Workers' Compensation Insurance and Employer's Liability:* The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Pollution Liability Insurance:* The pollution liability insurance policy must be issued on an occurrence basis, providing coverage of at least \$2,000,000 for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work.

(B) **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City.

(C) **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.

(D) **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:

(1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "**Additional Insured**") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or an equivalent form approved by the City.

(2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(3) The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.

(4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

(F) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "**deductibles**") in excess of \$100,000 are subject to approval by the City's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the City's Risk Manager determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(G) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

#### **4.4 Warranty Bond.**

As a condition precedent to Final Completion of any Work Order, Contractor may be required to submit a warranty bond, using the form included with the Contract Documents, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for 15% of the total price for the Work Order or as otherwise specified in the Contract Documents. 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.

### **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 Work Order 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 Work Order.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in a Work Order, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of a Work Order.

(C) **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. 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 and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions.

(A) **Baseline (As-Planned) Schedule.** If required by City, within ten calendar days following City's issuance of a Work Order (or as otherwise specified in the Work Order), 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, and the duration of the activity.

(1) *Specialized Materials Ordering.* Within five calendar days following issuance of a Work Order, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase orders date(s).

(B) ***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 Work within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) ***Progress Schedules.*** After City accepts the final baseline schedule with no exceptions, if required by City, Contractor must submit an updated progress schedule and three-week look-ahead 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 Work 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 Work.

(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 may be allocated by the Engineer to best serve timely completion of the Work.

(2) *Failure to Submit Schedule.* Reliable, up-to-date schedules are essential to efficient and cost-effective administration of each Work Order and timely completion of the Work Order. 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 five 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.

(D) ***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.

(E) ***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.

(F) ***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 compensation for a Work Order may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) ***Authorized Working Days and Times.*** Contractor is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. 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 promptly notify the Engineer 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, and 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 40% 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-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(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 will 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 and 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) Weather conditions which are normal for the City, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
- (3) 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;
- (4) Foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of a Worksite or review of the Contract Documents or other information provided or available to Contractor;
- (5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
- (6) Performance or non-performance by Contractor's Subcontractors or suppliers;
- (7) The time required to respond to excessive RFIs (see Section 2.5(G));
- (8) Delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
- (9) Time required for repair of, re-testing, or re-inspection of defective Work;
- (10) Enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
- (11) 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.

(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 causes that are beyond the control of either City or Contractor, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, 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 five calendar 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 of the 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 completion of the Work within the Contract Time specified in the Work Order.

(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 completion of the Work within the Contract Time specified in the Work Order. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable 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 completion of the Work within the Contract Time specified in the Work Order; 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 the Work is not completed 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 complete the Work within

the Contract Time, City will charge Contractor in the amount specified in the Contract for each day that the Work specified in a Work Order is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable 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 compensation for a Work Order, 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 any portion of the Work 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 completing the Work set forth in a Work Order.

(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, 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 Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, 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. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to payment 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 compensation 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 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 compensation or Contract Time for such Extra Work. 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 ten 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, insurance, 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 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 Work Order Compensation.**

The amount of any increase or decrease in the compensation for completion of a Work Order 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.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a Price 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 lump sum 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 for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums:

- (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, including sales tax, plus 15% markup;
- (3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
- (4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and

- (5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

**6.4 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 compensation due for a Work Order, the Contract Price or Contract Time for the amount of compensation or added 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.

**6.5 Non-Compliance Deemed Waiver.**

Contractor waives its entitlement to any increase in compensation for a Work Order, 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, or 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.

(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 Work, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. 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. Contractor must fence and screen its temporary facilities and, if applicable, any staging area(s), and its operation must minimize inconvenience to neighboring properties.

Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer and all other utilities required for its temporary facilities, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **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 a Worksite, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the vicinity of the Work. 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 additional licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond a Worksite is needed, such as for the staging area or temporary facilities, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. 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 the public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

### **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, each Worksite, and the materials and equipment to be incorporated into the Work, until the City has accepted the Work specified in a Work Order, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of a Worksite indicated in a Work Order. 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 will provide and install safeguards to protect the Work; any Worksite; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(a) Contractor must protect trees, lawns, shrubbery and other plants that are not designated for removal from damage or injury. If damaged or removed by Contractor, they must be restored or replaced in as nearly the original condition and location as is reasonably possible. Lawns must be re-seeded and covered with suitable mulch.

(b) Contractor must provide reasonable notice to occupants or owners of adjacent property to permit them to salvage or relocate plants, trees, fences, sprinklers and other improvements within the right-of-way which are designated for removal and will be destroyed due to the Work.

(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 a Worksite that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole

discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure each Worksite and, to the extent feasible, make the area(s) 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 each Worksite daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use a Worksite for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(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 a Worksite, 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; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. 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 will 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 Work. 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 in violation of this provision.



## 7.7 Substitutions.

(A) ***“Or Equal.”*** Any Specification or Work Order 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 or a Work Order, any reference to a specific brand or trade name for an item that is used solely for the purpose of describing the type of item 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 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 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 five days after the date of issuance of a Work Order, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) ***Substantiation.*** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. 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.

(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. In the event Contractor makes an unauthorized substitution, Contractor will 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 locations during construction and/or fabrication and at any Worksite, including at shops and yards. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. 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. Contractor must submit samples of materials, 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 notify the Engineer no later than noon of the Working Day 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 two 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 independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's hourly rates, including over time rates for any after hour or weekend inspection, and, 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 will 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.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the City, 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.

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

Contractor must at all times, on a 24-hour basis and at its sole cost, maintain each Worksite 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 a Worksite, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from each Worksite.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. 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 will 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 payments due or to become due to the Contractor. Contractor will immediately remove any excess excavated material from a worksite and any dirt deposited on public streets.

(C) **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 materials, and the materials removed from existing improvements on a Worksite with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving a Worksite 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 must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on a Worksite. 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.

(E) **Completion.** At the completion of the Work, Contractor must remove from a Worksite all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from a Worksite, 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 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 a Worksite, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. 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. 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.

(F) **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 compensation for a Work Order, or undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due to Contractor.

#### **7.10 Instructions and Manuals.**

Contractor must provide to City three copies each of all instructions and manuals 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 pursuant to a Work Order.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to City at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(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 each Worksite 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 Work specified in a Work Order.

(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) **Engineer Review.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver a complete set of as-built drawings, for each Work Order, to the Engineer for review and acceptance.

#### **7.12 Existing Utilities.**

(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. 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 will 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.

Prior to commencing Work, the Contractor shall notify and allow the applicable utility companies and other agencies time to mark their respective facilities, including the following utilities and agencies, and as further specified in Section 7.13, Notice of Excavation:

|   |                |
|---|----------------|
| Underground Service Alert (USA)                     | (800) 227-2600 |
| AT&T (Telephone)                                    | (925) 328-6925 |
| Central Contra Costa Sanitary District              | (925) 229-7316 |
| City of San Ramon Public Services                   | (925) 973-2800 |
| Comcast (Cable Television)                          | (925) 371-3556 |
| East Bay Municipal Utility District (Water)         | (510) 287-7182 |
| MCI   | (415) 970-2109 |
| Pacific Gas and Electric Company (Gas and Electric) | (877) 743-7782 |
| San Ramon Valley Unified School District            | (925) 824-1818 |
| San Ramon Valley Fire Protection District           | (925) 838-6600 |
| Time Warner Telecom                                 | (925) 953-7075 |
| Kinder Morgan                                       | (925) 682-6850 |
| Dublin San Ramon Services District                  | (925) 875-2258 |
| Waste Management                                    | (510) 613-2173 |

The Contractor shall coordinate with the City to have all traffic loop detectors and home run layouts marked in the field prior to any grinding, roadway excavation, base failure and pavement repair work. Contractor must determine the exact location and depth of all utilities, including service connections, which have been marked by the respective owners or which it believes may affect or be affected by Contractor's operations. Unless the Price Schedule includes a line item for the requirements of this Section, Contractor will not be entitled to any additional compensation for complying with these requirements which are deemed to be an indirect cost included in the price for the underlying Work.

(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 a Worksite if those utilities are not identified in the Contract Documents. Contractor will 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 utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on a Worksite 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 the utility facilities.

**7.13 Notice of Excavation.**

Contractor must comply with all applicable requirements in Government Code §§ 4216 through 4216.5, which are incorporated by reference herein. Government Code § 4216.2 requires that, except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert, at least two working days, but not more than 14 calendar days, before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. Contractor may not begin excavation until it has obtained and submitted to Engineer an inquiry identification number from Underground Services Alert.

**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 a Worksite differing from those indicated by information about the Worksite made available to Contractor prior to the deadline for submitting its Proposal; or

(3) Unknown physical conditions at a Worksite 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 do materially differ or do 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 Work Order. Contractor will 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.**

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 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 connections and services are initiated in accordance with the Work 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 Work. 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 a Worksite 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 a Worksite (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.**

The noise level from Contractor's operations, between the hours of 7:00 p.m. and 7:30 a.m., must not exceed 86 DBA at a distance of 50 feet. Notwithstanding this requirement, 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. The use of loud signals should be avoided in favor of light warnings except those required by safety Laws for the protection of personnel.

#### **7.21 Mined Materials.**

Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must

originate from a surface mining operation included on the AB 3098 List, which is available online at: <ftp://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf>.

## **7.22 Traffic.**

(A) **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 the public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

(B) **Public Traffic.** Unless otherwise provided in the Contract Documents, one 11-foot lane in each direction for public traffic must be permitted to pass through the Work with as little inconvenience and delay as possible.

(C) **Existing Systems.** Existing traffic signal and highway lighting systems must be kept in operation for the benefit of the traveling public during the Work, and other forces will continue routine maintenance of existing systems unless otherwise provided by the Engineer

(D) **Covered Signs.** Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs are to be covered.

(E) **Excavation and Embankments.** Roadway excavation and the construction of embankments must be conducted in such manner as to provide reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross must be placed in advance of other grading operations; and if ordered by the Engineer, roadway cuts must be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction must be conducted on but one-half the width of the traveled way at a time and that portion of the traveled way being used by public traffic must be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic. That portion of travel way left open to traffic must not be less than 11 feet(F)

(F) **Subgrade and Paving Operations.** While subgrade and paving operations are underway, public traffic must be permitted to use the shoulders and, if half-width paving methods are used, must also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least two lanes of traffic must be kept open at all times at locations where subgrade and paving operations are in active progress.

(G) **Public Use.** When Work is complete, Contractor must open it to use by the public if ordered or authorized by the Engineer. Contractor will not be allowed any

compensation due to any delay, damage, or inconvenience caused by such public use. Contractor will not be relieved of any other responsibility under the Contract nor will Contractor be relieved of cleanup and finishing operations.

(H) ***Movement of Equipment.*** At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of Contractor's equipment from one portion of the Work to another will not be governed in accordance with such one-way controls

(I) ***Signage for Public Use.*** In order to expedite the passage of public traffic through or around the Work when ordered or authorized by the Engineer, Contractor must install signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Contractor must also furnish competent flagmen whose sole duties will consist of directing the movement of public traffic through or around the Work, when ordered by the Engineer.

(J) ***Traffic Controls.*** Contractor must provide the necessary traffic controls such as, but not limited to, barricades, signs, flagmen, lights, and other warning and safety devices as required by the latest manual approved by the California Department of Transportation for traffic control through a Worksite. Contractor is fully responsible for any accidents to the public or damage to public or private property caused by Contractor's traffic controls.

(K) ***Failure to Furnish Protective Measures.*** If Contractor is neglectful or negligent in furnishing warning and protective measures, the Engineer may direct attention to the existence of a hazard and the necessary warning and protective measures must be furnished and installed by Contractor at Contractor's expense. Should the Engineer point out the inadequacy of warning and protective measures, such action on the part of the Engineer will not relieve Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish or pay for these devices.

(L) ***Traffic Control Plan.*** When required by the Engineer, Contractor must provide a traffic control plan for review and approval by the Engineer a minimum of ten Working Days prior to construction.

## **Article 8 – Payment**

### **8.1 Schedule of Values.**

If required by a Work Order, prior to beginning Work, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work in that Work Order, including mobilization and demobilization. If a Price Schedule was submitted with Contractor's Proposal, the amounts in the schedule of values must be consistent with the Price Schedule. 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 Proposal. If City does not require a separate schedule of values pursuant to this paragraph, all references to the "schedule of values" will be deemed to mean Contractor's Price Schedule

(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.

(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, Contractor will 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 for a Work Order must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite(s), as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Price Schedule and/or schedule of values (if required by City) and any other substantiating data required by the Contract Documents.

(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 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 or any failure to protect a Worksite, City may deduct an amount based on the estimated cost to repair or replace.

(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 and within the time specified in the Contract Documents, City may withhold an amount equal to five 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 in the manner and 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.

(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 costs to correct unsatisfactory Work or diminution in value.

(I) 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.

(J) 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.

#### **8.4 Early Occupancy.**

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

#### **8.5 Retention.**

City may retain five percent of the full amount due on each Work Order payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment to Payment Application), or the percentage stated in the Request for Qualifications and Proposals, 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 expiration of the Term or Extension Term.

(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. 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 (f) 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 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 a Worksite 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 Work. 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 at the conclusion of the Term or Extension Term 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.

#### **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 will 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 or 1720.9, including cleanup at a Worksite, 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 Worksite.

(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 a day, 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 §§ 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(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) **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, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, 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 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. 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 will provide a copy of the report to City.

(B) **Legal Compliance.** 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) **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.

(D) **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.

## **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 a Worksite 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. 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 a Worksite, 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 a Worksite 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 a Worksite 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. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, a Worksite 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.** Upon completion of the Work required by a Work Order, 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 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.

(B) ***Requirements for Final Completion.*** Final Completion of a Work Order 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 any 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, all to City's satisfaction.

(C) ***Acceptance.*** The Project, including all Work Orders completed to the City's satisfaction, 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.

(D) ***Final Payment and Release of Retention.*** Final Payment and release of retention, less any sums deducted or 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 all 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 Payment, 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.

(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.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten 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 Work, or any portions of the Work, prior to Final Completion if City has determined that the Work 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 Work, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) ***Non-Waiver.*** Occupation or use of the Work, 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 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) ***Definition.*** "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the compensation for a Work Order, when the demand has previously been submitted to City

in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part.

(B) **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 compensation for a Work Order, 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.

(C) **Scope of Article.** This Article is intended to provide 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.

(D) **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.

(E) **Informal Resolution.** Contractor will 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.

## **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, clearly identified as a "Claim" submitted pursuant to this Article 12 and 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. 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) 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).

- (1) Provide a summary of each Claim, including underlying facts and the basis for entitlement, reference the Work Order(s) involved, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date,
- (2) the date of City's rejection of that demand, in whole or in part, and
- (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 Work Order(s), 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 the compensation for a Work Order, Contract Time, or any other remedy requested.
  - e. 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 compensation for a Work Order 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.
  - f. 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 must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or



compensation for a Work Order, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. This Claim deadline applies even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or compensation for a Work Order. 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 15 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. However, 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) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. 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 dispute City's response 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 will 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 a 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 or supplier.

**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) **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.

(B) **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 Worksite(s) as directed by City except for taking measures to protect completed or in-progress Work as directed in the suspension notice. The Work Order compensation 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 suspension notice. However, the time for completing the Work will only be extended if the suspension causes or will cause delay in completion of a Work Order. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension, 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 Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension,

revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(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 ten 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.

(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, 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 Work and located at 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 Work 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.

(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 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 Worksite(s) that were fabricated for incorporation in the Work;
2. ***Demobilization.*** Demobilization costs specified in the schedule of values, or if demobilizations cost 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 Markup.*** Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(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 Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Work. Contractor will 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, 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 Worksite(s).
2. Comply with City's instructions to protect the completed Work and materials, 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 will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance to 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 - Miscellaneous Provisions**

### **14.1 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.

### **14.2 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.

### **14.3 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.

### **14.4 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.

### **14.5 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 that proposals were due.



**14.6 Survival.**

The provisions that survive termination or expiration of this Contract include Contract Section 12, Notice, and subsections 13.1, 13.2, 13.3, 13.4, 13.5, and 13.6, of Section 13, 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, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

## Special Conditions

### 1. General.

This Project is for on-call, as-needed Work. The actual amount of Work will be determined in individual Work Orders and the amount of Work specified in the Price Schedule is not guaranteed. The City reserves the right to delete portions or all of the Price Schedule items after the Contract is awarded to the Contractor, depending on field determinations and availability of funds. Therefore, Contractor will not be entitled to compensation for the City's discretionary deletion of a portion or the entire Price Schedule items.

### 2. Character.

Contractor, its employees, and any Subcontractors must conduct themselves in accordance with the City of San Ramon Sexual Harassment and Equal Opportunity Policy while on City property and engaged directly or indirectly in City business. This policy prohibits comments, slurs, jokes, innuendoes, pranks, physical harassment, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Copies of the policy are available for review at the office of Engineering Services at 7000 Bollinger Canyon Road, San Ramon, CA. Violators of this policy will be discharged from the Worksite(s) immediately upon written direction of the Engineer, and will not be re-employed on the Project.

### 3. Grading and Erosion Controls.

Contractor must comply with Ordinance No. 64, "Ordinance of the City of San Ramon Establishing Grading and Erosion Control Regulations and Procedures." See also, relevant requirements in Article 7 of the General Conditions.

### 4. Permits.

Contractor must obtain the following permits for the Work, in addition to any other permits required for the Project, and the requirements of General Conditions Section 7.1, Permits, Fees, Business License, and Taxes:

**4.1 Encroachment Permit.** Contractor must obtain from the City's Engineering Department a "No Fee" encroachment permit application prior to the Work Order Meeting. Contractor cannot begin Work until an encroachment permit has been issued.

**4.2 Oversized Load Permit.** Contractor must obtain any required state or local permit to operate or move a vehicle or combination of vehicles or special mobile equipment of a size or weight of vehicle or load exceeding the maximum specified in Division 15 of the California Vehicle Code. Any individual, firm, partnership, corporation, or other legal relationship operating or moving a vehicle exceeding the maximum size or weight specified in the Vehicle Code must apply for all such permits and pay all costs associated with insurance of such permits.

**4.3 OSHA.** Such permits and inspections as may be required in accordance with the safety and health requirements of the California Division of Industrial Safety.

**5. Working Days.**

Normal working days shall be Monday through Friday, except legal holidays as recognized by the State of California, with the exception of Columbus Day which the City of San Ramon recognizes as a working day. Any Work done on weekends or holidays must be approved two weeks in advance in writing by the Engineer.

**6. Working Hours.**

Normal working hours shall be from 8:00 a.m. to 4:30 p.m. Monday through Friday. For all Work during any other hours including nights, weekends, or holidays, the Contractor shall make a written request to the Engineer. The request must be received at least two (2) weeks in advance of the work. If the Contractor's request is granted, overtime inspection costs of One Hundred Eighty Dollars (\$240.00) per hour, per inspector, will be deducted from payments due or to become due to Contractor.

**7. Pollution Prevention.**

Contractor must comply with the requirements of the Contra Costa Clean Water Program with respect to the Pollution Prevention Program. The major elements of this program include materials storage and spill cleanup; vehicle and equipment maintenance and cleaning; earthwork and contaminated soils; dewatering operations; sawcutting; paving/asphalt work; concrete, grout and mortar storage and waste disposal; and painting. See also, relevant requirements in Article 7 of the General Conditions.

**8. Graffiti.**

Contractor must maintain each Worksite free of graffiti until the City accepts the Work. All graffiti must be removed immediately. Any graffiti in place longer than 24 hours is subject to removal by City at Contractor's expense, plus a 35% markup, and will be deducted from payment due or to become due to Contractor. See also, General Conditions Section 2.2(B), Responsibility for the Work and Risk of Loss.

**9. Project Appearance.**

Any debris, surplus material, loose gravel, mud, and silt not cleaned up after 24 hours following deposit on a Worksite will be subject to removal by City at Contractor's expense, plus 35% markup, and will be deducted from payment due or to become due to Contractor. See also, relevant requirements in Article 7 of the General Conditions

**10. Markup for Defective or Unauthorized Work.**

Any costs incurred by City to remedy, remove, or replace defective or unauthorized work will include 20% markup, and will be deducted from any payment due or to become due to Contractor. See also, General Conditions Section 2.2(I), Correction of Defects.

**11. Noise Control.**

The noise level from Contractor's operations between the hours of 7:00 P.M. and 7:30 A.M. must not exceed 86 dBA at a distance of 50 feet. See also, General Conditions Section 7.20, Noise Control.

**12. Shop Drawings.**

Each Shop Drawing must be scaled drawing and of good quality transparency, accomplished by a PDF file. If reviewed without change or correction, three copies will be returned to Contractor. If extensive additions or corrections are required, the Engineer will return one marked-up copy to Contractor, together with the transparency, for correction and resubmission. Approved Shop Drawings will be retained by the Engineer. See also, General Conditions Section 2.6, Shop Drawings.

**13. Lines and Grades.**

Such stakes or marks will be set as the Engineer determines to be necessary to establish basic control lines and grades required for completion of the Work. Contractor must notify Engineer in writing at least two working days prior to when the services of the Engineer for laying out any portion of the Work will be required. Basic horizontal and vertical control points will be established by the Engineer at no cost to Contractor. These points will be used as datum for the Work. Contractor must keep Engineer informed of the times and places at which it wishes to do Work, so that horizontal and vertical control points may be done with minimum inconvenience to the City and Contractor. See also, General Conditions Section 7.17, Lines and Grades.

**14. Traffic.**

See also, General Conditions Section 7.3, Noninterference and Site Management.

**14.1 Public Traffic.** Unless otherwise provided in the Contract Documents, one 11-foot lane in each direction for public traffic must be permitted to pass through the Work with as little inconvenience and delay as possible.

**14.2 Existing Systems.** Existing traffic signal and highway lighting systems must be kept in operation for the benefit of the traveling public during the Work, and other forces will continue routine maintenance of existing systems unless otherwise provided by the Engineer.

**14.3 Covered Signs.** Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs are to be covered.

**14.4 Excavation and Embankments.** Roadway excavation and the construction embankments must be conducted in such manner as to provide reasonably smooth and even surface satisfactory for use by public traffic at all times; sufficient fill at culverts and bridges to permit traffic to cross must be placed in advance of

other grading operations and if ordered by the Engineer, roadway cuts must be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction must be conducted on but one-half the width of the traveled way at a time and that portion of the traveled way being used by public traffic must be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic. That portion of travel way left open to traffic must not be less than 11 feet.

- 14.5 Subgrade and Paving Operations.** While subgrade and paving operations are underway, public traffic must be permitted to use the shoulders and, if half-width paving methods are used, must also be permitted to use the side of the roadbed opposite the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least two lanes of traffic must be kept open at all times at locations where subgrade and paving operations are in active progress.
- 14.6 Public Use.** When Work is complete, Contractor must open it to use by the public if ordered or authorized by the Engineer. Contractor will not be allowed any compensation due to any delay, damage, or inconvenience caused by such public use. Contractor will not be relieved of any other responsibility under the Contract nor will he be relieved of cleanup and finishing operations.
- 14.7 Movement of Equipment.** At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer, the movement of Contractor's equipment from one portion of the Work to another will not be governed in accordance with such one-way controls.
- 14.8 Signage for Public Use.** In order to expedite the passage of public traffic through or around the Work when ordered or authorized by the Engineer, Contractor must install signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Contractor must also furnish competent flagmen whose sole duties will consist of directing the movement of public traffic through or around the Work, when ordered by the Engineer.
- 14.9 Traffic Controls.** Contractor must provide the necessary traffic controls such as, but not limited to, barricades, signs, flagmen, lights, and other warning and safety devices as required by the latest manual approved by the California Department of Transportation for traffic control through a Worksite.
- 14.10 Failure to Furnish Protective Measures.** If Contractor appears to be neglectful or negligent in furnishing warning and protective measures, the Engineer may direct attention to the existence of a hazard and the necessary warning and protective measures must be furnished and installed by Contractor at its expense. Should the

Engineer point out the inadequacy of warning and protective measures, such action on the part of the Engineer will not relieve Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish or pay for these devices.

- 14.11 Traffic Control Plan.** When required by the Engineer, Contractor must provide a traffic control plan for review and approval by the Engineer a minimum of 5 working days prior to construction.

END OF SPECIAL CONDITIONS