

**CITY OF ONTARIO**



**BID SOLICITATION PACKAGE  
AND  
ADMINISTRATIVE SPECIFICATIONS  
FOR  
PROJECT NO. D&C21-001A  
D&C21-001A New Fire Administration Building**

**March 18, 2024**

**CITY OF ONTARIO  
INVITATION TO BID**

**D&C21-001A - New Fire Administration Building**

**Project Address:**

**1420 E. Francis Street**

**Ontario, CA**

**Advertisement Date: 3/18/24**

All bids for this project shall be submitted through the City's electronic bid management system (PlanetBids) at [PlanetBids Vendor Portal](#) no later than **11:00 A. M. Pacific Standard Time on or before April 25, 2024**. A bid submitted after the submittal deadline will not be considered.

As set forth in the Project Bid Documents, the proposed work consists of a new Fire Administration Building. The City's Estimate for the Project is **Thirty Million Dollars (\$30,000,000)**.

**Pre-Bid Meeting:** A MANDATORY Pre-Bid Conference is scheduled for **10:00 a.m., on Thursday, March 28, 2024** to review the Project's existing conditions at **1420 E. Francis Street, Ontario, CA 91761**. Representatives of City and consulting engineers, if any, will be present. Bids will not be accepted from any bidder who did not attend the mandatory Pre-Bid Conference.

**Bid Opening:** Bids will be opened immediately after the submittal deadline. Bid information will be provided on the 'Bid Results' tab on PlanetBids. The City reserves the right to postpone the Bid Submittal Deadline at any time prior to the date and time initially announced in this Invitation to Bid in accordance with applicable law.

**Contractor's License:** Bidder must possess a current **B General Contracting License** issued by and in good standing with the California Contractor's State License Board prior to Award of Construction Contract.

**Minimum Bidder Qualifications:** This project has minimum bidder qualifications that must be documented on City Bid Form 03 – Minimum Bidder Qualifications Questionnaire.

**Contractor Registration:** All Bidders and listed subcontractors must be currently registered with the California State Department of Industrial Relations pursuant to Labor Code §1725.5 prior to submitting a Bid.

**Completion of Work:** All work shall be completed within 600 calendar days from the date designated on the Notice to Proceed.

**Bid Security:** Each Bid must be accompanied by a Bid Security in the form of a cashier's check, certified check, or Bid Bond executed on the prescribed form, in an amount not less than ten percent (10%) of the total bid price offered and shall be payable to the City of Ontario. Bidders are hereby notified that in accordance with the provisions of Public Contract Code §22300, securities may be substituted for any monies which the City may withhold pursuant to the terms of this Contract to ensure performance.

**Addenda:** The City explicitly reserves the right to amend any project requirement including the bid submittal deadline by issuing one or more addenda. The City explicitly reserves the right to cancel this project.

Information on any addendum(a) issued for this project will be available on [PlanetBids Vendor Portal](#). The City reserves the right to reject as nonresponsive any bid that fails to include the information required by any addendum(a) posted on the City website.

**Retention:** Five percent (5%) retention will be withheld from payments made to the Contractor in accordance with §7201 of the California Public Contract Code.

**Obtaining Contract Documents:** Specifications and contract documents are posted in the City's electronic bid management system (PlanetBids) at [PlanetBids Vendor Portal](#). All Bidders must first register as a vendor on the PlanetBids System website to participate in a Bid or to be added to a prospective Bidders list. Only those parties that have registered with PlanetBids on a particular project will receive the addendum(a) for that project. The City is not responsible for notifications to those parties. It is the responsibility of all perspective Bidders to register on the City's database to ensure receipt of any addendum(a) prior to Bid submittals.

**Questions:** Project-specific questions must be submitted in writing through PlanetBids at [PlanetBids Vendor Portal](#) no later than **11:00 A. M. Pacific Standard Time on or before April 15, 2024**. All posted questions will be answered in writing and conveyed via written addenda to all Bidders via posting on PlanetBids.

**Prevailing Wage Requirements:** This is a California Public Works Project. At all times and without interruption Contractor shall remain in full compliance of all requirements of Part 7, Chapter 1, Public Works, of the California Labor Code (commencing with §1720. Prevailing Wage Determinations will be on file with the City Clerk's Office and will be included within the Bid Documents.

If this Project is also funded in whole or in part with federal funds. Accordingly, federal labor standards provisions including prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA) will be enforced. In the event of a conflict between Federal and State prevailing wage rates, the higher of the two wage determinations will prevail.

**Bids.** Bids shall be valid for a minimum of one hundred and twenty (120) calendar days from the Submittal Deadline but not less than ninety (90) calendar days following receipt by Bidder of Owner's Notice of Intent to Award the Contract whichever occurs last.

**Award:** The City reserves the right to waive any irregularity in the Bids. If the Construction Contract is awarded by the City, the Contract will be awarded to the responsible Bidder offering the lowest priced responsive Bid. If awarded, the award will be made by the City Council for the City of Ontario. Contractor will be required to sign the Construction Contract prior to action by the City Council. Within ten (10) calendar days following Award of the Construction Contract by the City Council, the successful contractor shall deliver to and have approved by the City proof of all required insurance and bonding.

**Rejection of Bids:** The City reserves the right to reject any and all bids. Any Bid not conforming to the intent and purpose of the Contract Documents may be rejected. The City reserves the right to make all awards in the best interest of the City.

**Disqualification of Bidder:** If there is a reason to believe that collusion exists among any Bidders, none of the Bids of the participants in such collusion will be considered and the City may likewise elect to reject all bids received.

**Bonds:** The successful Bidder will be required to furnish a Labor and Materials Payment bond in an amount equal to one hundred percent (100%) of the Contract price, and a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract price.

**[End of Invitation to Bid]**

CITY OF ONTARIO

**BID SOLICITATION PACKAGE AND ADMINISTRATIVE SPECIFICATIONS**

**TABLE OF ARTICLES**

**Part I – Bid Solicitation Package**

[Article 1](#) – Instructions

[Article 2](#) – Required Forms

**Part II – Administrative Specifications**

[Article 3](#) – Definitions

[Article 4](#) – Additional Agreement Provisions

[Article 5](#) – Special Conditions

[Article 6](#) – Supplemental Conditions

[Article 7](#) – General Conditions

[Article 8](#) – Insurance Requirements

[Article 9](#) – Changes to the Contract

[Article 10](#) – Delays, Suspension, and Termination of the Contract

[Article 11](#) – Compensation and Payment

[Article 12](#) – Owner’s Rights, Role, Responsibilities, and Representation

[Article 13](#) – OR’s Role and Responsibilities

[Article 14](#) – Designer’s Role and Responsibilities

[Article 15](#) – Builder’s Role and Responsibilities

[Article 16](#) – Construction Schedule

[Article 17](#) – Schedule of Values

[Article 18](#) – Field Directives and Scope Clarifications

[Article 19](#) – Site Operations

[Article 20](#) – Submittals and Substitution Requests

[Article 21](#) – Quality Control, Inspection, and Testing

[Article 22](#) – Measurement of Quantities

[Article 23](#) – Project Record Documents

[Article 24](#) – Project Completion and Closeout

[Article 25](#) – Warranties and Guarantees

# Table of Contents

<b>TABLE OF ARTICLES .....</b>	<b>i</b>
<b>PART I – BID SOLICITATION PACKAGE .....</b>	<b>1</b>
<b>1 Article 1 Instructions to Bidders.....</b>	<b>1</b>
1.1 Project Description .....	1
1.2 Bid Documents Provided by Owner .....	1
1.3 Availability of Bid Documents.....	1
1.4 Mandatory Minimum Bidder Qualifications.....	2
1.5 Mandatory License and Registration Requirements .....	2
1.6 Debarment of Contractors and Subcontractors .....	2
1.7 Required Inspection of the Site .....	2
1.8 Required Examination of All Bid Documents.....	3
1.9 Questions During Bidding .....	3
1.10 Scope of Work Includes All Addenda.....	4
1.11 Bid Pricing .....	4
1.12 Bid Pricing of Add/Alternates .....	<b>Error! Bookmark not defined.</b>
1.13 Bid Security and Delivery of Bid Security.....	5
1.14 Bid Delivery.....	6
1.15 Bid Opening .....	6
1.16 Bidding Requirements .....	7
1.17 Responsibility for Preparation of the Bid .....	9
1.18 Bidder’s Signature and Authority .....	9
1.19 Subcontractor Listing Requirements .....	10
1.20 Erasures and Corrections.....	11
1.21 Bid Modification or Withdrawal Prior To Bid Opening.....	11
1.22 Bid Withdrawal after Bid Opening.....	12
1.23 Bid Validity .....	12
1.24 Interest in More than One Bid.....	12
1.25 Performance And Payment Bonding .....	12
1.26 Protests During Bidding .....	13
1.27 Award Process and Execution of the Contract .....	15
1.28 Permit And Licensing Fees .....	15
1.29 Sales, Use, and Other Taxes .....	16
1.30 Assignment of Antitrust Actions.....	16
1.31 Iran Contracting Act Certification.....	16

<b>2 Article 2 Required Bid Forms .....</b>	<b>17</b>
2.1 General .....	17
2.2 List of Forms .....	17
2.3 Bid Schedule .....	18
2.4 Bid Acknowledgement and Signatures.....	21
2.5 Bidder’s General Information .....	26
2.6 Minimum Bidder Qualifications.....	1
2.7 Subcontractor Listing.....	1
2.8 Non-Collusion Declaration.....	1
2.9 Iran Contracting Act Certification .....	1
2.10 DIR Registration Certification .....	1
2.11 Workers’ Compensation Certification .....	1
2.12 Bid Bond .....	2
2.13 Performance Bond Sample.....	5
2.14 Payment Bond Sample .....	52
<b>PART II – ADMINISTRATIVE SPECIFICATIONS.....</b>	<b>52</b>
<b>3 SECTION 00500 – CONTRACT FOR CONSTRUCTION.....</b>	<b>53</b>
3.1 SCOPE OF WORK.....	Error! Bookmark not defined.
3.2 TIME FOR COMPLETION. ....	Error! Bookmark not defined.
3.3 CONTRACT PRICE. ....	Error! Bookmark not defined.
3.4 LIQUIDATED DAMAGES. ....	Error! Bookmark not defined.
3.5 COMPONENT PARTS OF THE CONTRACT.....	Error! Bookmark not defined.
3.6 PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE. ....	Error! Bookmark not defined.
3.7 INDEMNIFICATION.....	Error! Bookmark not defined.
3.8 PREVAILING WAGES. ....	Error! Bookmark not defined.
3.9 FALSE CLAIMS. ....	Error! Bookmark not defined.
<b>4 Article 3 Definitions.....</b>	<b>58</b>
4.1 General .....	58
4.2 Definitions .....	58
<b>5 Article 4 Additional Agreement Provisions.....</b>	<b>72</b>
5.1 Change In Name And Nature Of Builder’s Legal Entity .....	72
5.2 Prohibited Interests.....	72
5.3 Taxes.....	72
5.4 Patents, Patent Infringement, Patent Fees, and Royalties.....	72
5.5 Notice of Taxable Possessory Interest.....	73

5.6	Indemnification .....	73
5.7	Successors And Assigns .....	76
5.8	Rights And Remedies .....	76
5.9	Survival .....	76
5.10	Complete Agreement .....	76
5.11	Severability of Provisions.....	76
5.12	Methods of Delivery for Specified Documents .....	77
5.13	Assignment Of Subcontracts .....	77
5.14	Resolution of Construction Claims .....	78
5.15	Waiver of Right to Rescind for Material Breach.....	80
<b>6</b>	<b>Article 5 Project Requirements .....</b>	<b>81</b>
6.1	Project Description .....	81
6.2	Project Duration .....	81
6.3	Project Requirements Include .....	81
6.4	Landscape Maintenance Period .....	82
6.5	Facilities for the OR During Construction.....	82
6.6	Use of Owner Provided Geotechnical and Geohazard Investigation Report .....	83
<b>7</b>	<b>Article 6 Supplemental Conditions .....</b>	<b>85</b>
7.1	Retention .....	85
7.2	Liquidated Damages .....	85
7.3	Additional Warranty Obligations.....	86
7.4	Fencing.....	87
7.5	Stormwater Pollution Prevention Requirements.....	87
7.6	Diversion Of Recyclable Waste Materials.....	88
7.7	Environmental Product Declarations .....	88
7.8	Noise Limitations .....	89
7.9	Legal Holidays .....	89
7.10	Standard Specifications for Public Works Construction ('Greenbook').....	89
<b>8</b>	<b>Article 7 General Conditions .....</b>	<b>90</b>
8.1	'City' as Owner versus 'City' as Authority Having Jurisdiction ('ahJ') .....	90
8.2	This is a Public Works Project .....	90
8.3	Self Performance .....	91
8.4	Prevailing Wage Requirements .....	91
8.5	California Apprenticeship Council, Title 8 Regulations .....	92
8.6	Employment Of Apprentices .....	92
8.7	Notice to Proceed .....	93



8.8	Owner Does Not Warrant Contract Documents .....	94
8.9	Scope of Work is Based on Assumed Conditions .....	95
8.10	Conflicts, Errors, Omissions, Ambiguities, Inconsistencies, and Discrepancies .....	95
8.11	Requests for Information ('RFI') .....	96
8.12	Performance and Payment Bonding .....	97
8.13	Right to Record Sound and Video.....	97
8.14	Use of Language and Context.....	98
8.15	Applicable Laws .....	98
8.16	Noise and Hours of Operation.....	98
8.17	Ownership and Use of the Contract Documents.....	99
8.18	Plan Checks, Permits, and Fees .....	99
8.19	Utility Fees and Permitting Requirements .....	100
8.20	Use of City's Waste Hauler .....	100
8.21	Access to Site .....	100
8.22	Document Retention & Examination .....	101
8.23	Differing Site Conditions.....	101
8.24	Mined Material.....	102
8.25	Liability for and Repair of Damaged Work .....	102
8.26	Subcontractor Replacement.....	102
8.27	Subcontracting Requirements.....	102
8.28	Registration with the California Department of Industrial Relations.....	103
8.29	Nondiscrimination / Equal Employment Opportunity / Employment Eligibility .....	103
8.30	Disputes .....	104
8.31	Notification of Dispute .....	105
<b>9</b>	<b>Article 8 Insurance Requirements .....</b>	<b>106</b>
9.1	General .....	106
9.2	Form and Proof of Carriage of Insurance .....	107
9.3	Requirements for Commercial General Liability Insurance.....	109
9.4	Requirements for Builder's Risk Insurance.....	110
9.5	Requirements for Public Liability and Property Damage Insurance.....	112
9.6	Requirements for Commercial Automobile Liability Insurance .....	113
9.7	Requirement for Workers' Compensation and Employers' Liability Insurance .....	113
9.8	Requirements for Professional Liability Insurance .....	114
9.9	Requirements Employer's Liability Insurance .....	114
9.10	Requirements for Pollution Liability Insurance .....	114
9.11	Change in Terms .....	115

9.12	Insurance Policies Must Allow Owner Occupancy .....	116
<b>10</b>	<b>Article 9 Changes to the Contract.....</b>	<b>117</b>
10.1	Potential Changes in Scope of Work .....	117
10.2	Obligation to Notify .....	118
10.3	Financial Position of Builder .....	118
10.4	Pay-if-Paid Provisions .....	119
10.5	Changes in Contract Sum.....	119
10.6	Changes in Contract Time.....	120
10.7	Change Order Requests.....	120
10.8	Owner's Review of Change Order Requests.....	122
10.9	Contract Change Orders .....	122
10.10	Unilateral Contract Change Orders .....	123
10.11	Time and Materials Procedures .....	123
10.12	Agreed Labor Rates .....	124
10.13	Builder Direct Costs .....	125
10.14	Builder Indirect Costs .....	127
10.15	Builder Direct Cost Adjustments .....	128
10.16	Permitted Subcontractor Cost Increases.....	129
10.17	Unit Price Adjustments Due to Increased or Decreased Quantities .....	129
10.18	Differing Site Conditions.....	130
<b>11</b>	<b>Article 10 Delays, Suspension, and Termination of the Contract.....</b>	<b>131</b>
11.1	General .....	131
11.2	Time is Of the Essence.....	131
11.3	Mutual Duty to Mitigate.....	131
11.4	Types of Delay .....	131
11.5	Notice of Delays.....	132
11.6	Compensable Delays .....	133
11.7	Delay Compensation.....	133
11.8	Weather Delay Days .....	136
11.9	Suspension By Owner For Convenience .....	136
11.10	Suspension By Owner For Cause .....	136
11.11	Termination by Owner for Convenience .....	137
11.12	Termination by Owner for Cause .....	138
11.13	Termination by Builder.....	139
<b>12</b>	<b>Article 11 Compensation and Payment .....</b>	<b>141</b>
12.1	General .....	141

12.2	Prompt Payment by Owner .....	141
12.3	Builder's Financial Obligations .....	142
12.4	Invoice Period .....	142
12.5	Requests for Payment .....	142
12.6	Waiver and Conditional/Unconditional Releases .....	144
12.7	Owner's Right to Back-Charge, Withhold or Suspend Payments .....	145
12.8	Retention .....	148
12.9	Deposit of Securities in Lieu of Retention and Deposit of Retention into Escrow .....	148
12.10	Stop Payment Provisions .....	149
<b>13</b>	<b>Article 12 Owner's Rights, Role, Responsibilities, and Representation .....</b>	<b>150</b>
13.1	Owner's Right to Evaluate Quality .....	150
13.2	Owner's Representation .....	150
13.3	Owner's Right to Access the Site .....	150
13.4	Owner's Right to Stop the Work .....	150
13.5	Owner's Right to Conduct Work .....	151
13.6	Owner's Right To Perform Work And To Award Separate Contracts .....	151
13.7	Owner's Right to Furnish Materials and Equipment .....	153
13.8	Artistic Effect .....	153
13.9	Owner's Right to Retain Imperfect Work .....	153
13.10	Owner's Right To Use Or Occupy Prior To Substantial Or Project Completion .....	153
<b>14</b>	<b>Article 13 OR's Role and Responsibilities .....</b>	<b>155</b>
14.1	General .....	155
14.2	Inspection of Construction .....	156
14.3	Interpretations .....	156
14.4	OR's Review of Submittals .....	156
14.5	OR's Right to Supplement Builder's Submittal Material .....	157
<b>15</b>	<b>Article 14 Designer's Role and Responsibilities .....</b>	<b>158</b>
15.1	Designer's Role .....	158
15.2	RFI Review and Response .....	158
15.3	Submittal Review and Response .....	158
15.4	Designer's Right to Supplement Builder's Submittal Material .....	159
<b>16</b>	<b>Article 15 Builder's Role and Responsibilities .....</b>	<b>160</b>
16.1	Means And Methods .....	160
16.2	Builder's Expertise and Knowledge of Laws, Codes, Ordinances, Rules and/or Other Regulations .....	161
16.3	Design Responsibilities .....	162
16.4	Project Office and Legal Address .....	162

16.5	Builder’s Designated Representatives.....	163
16.6	Design, Supervision and Construction Procedures .....	163
16.7	Superintendent.....	164
16.8	Competent Foreman .....	165
16.9	Workers .....	165
16.10	Temporary Keys, Codes, and Locks .....	165
16.11	Printing and Distribution Costs.....	166
16.12	Assistance with Reporting .....	166
16.13	Notices of Labor Dispute .....	166
16.14	Nondiscrimination .....	166
<b>17</b>	<b>Article 16 Construction Schedule .....</b>	<b>169</b>
17.1	General .....	169
17.2	Baseline Construction Schedule .....	170
17.3	Baseline Construction Schedule Liquidated Damages Provision.....	171
17.4	Construction Schedule Preparation Guidelines.....	171
17.5	Updates and Revisions to the Construction Schedule.....	174
17.6	Cost and Resource Loading .....	174
17.7	Time Impact Analysis .....	175
17.8	Builder Objections .....	176
<b>18</b>	<b>Article 17 Schedule of Values.....</b>	<b>177</b>
18.1	Baseline Schedule of Values (Design-Bid-Build) .....	177
18.2	Baseline Schedule of Values (Design-Build) .....	177
18.3	Limited Schedule of Values (‘LSOV’).....	177
18.4	Mandatory Schedule of Values Line Requirements .....	177
18.5	Review and Acceptance of the Baseline SOV .....	178
18.6	Revisions to the Schedule of Values.....	179
<b>19</b>	<b>Article 18 Field Directives And Scope Clarifications .....</b>	<b>180</b>
19.1	Field Directives .....	180
19.2	Scope Clarifications .....	180
<b>20</b>	<b>Article 19 Site Operations .....</b>	<b>182</b>
20.1	Mobilization.....	182
20.2	Prevailing Wage Requirements .....	182
20.3	Notice to Subcontract.....	183
20.4	SWPPP Requirements.....	183
20.5	Air Pollution, Air Quality, and Dust Control Requirements .....	184
20.6	Utility Pot-Holing, location, and identification.....	185

20.7	Relocation or Repair of Existing Utilities .....	187
20.8	Temporary Utilities.....	188
20.9	Permanent Utilities.....	188
20.10	Facilities for the OR .....	188
20.11	Field Engineering .....	189
20.12	Weekly Statement of Working Days.....	190
20.13	Builder's Daily Reports .....	190
20.14	Clean Up .....	191
20.15	Material Delivery .....	191
20.16	Obligation to Protect Work And Property from Damage.....	191
20.17	Protection and Use of Public Right Of Way .....	193
20.18	Noise and Construction Hours.....	194
20.19	Sanitary Facilities .....	194
20.20	Owner Coordination .....	194
20.21	Owner-Provided Materials .....	195
20.22	Safety and Injury Prevention .....	195
20.23	Accidents and Injuries .....	196
20.24	Excavation Safety.....	197
20.25	Emergency Action Plan.....	197
20.26	Emergency Response Phone Numbers.....	197
20.27	Emergencies .....	198
20.28	Hazardous and Toxic Materials .....	198
20.29	Demobilization.....	200
<b>21</b>	<b>Article 20 Submittals and Substitution Requests .....</b>	<b>202</b>
21.1	General .....	202
21.2	Substitutions.....	204
21.3	Submittal Register .....	204
21.4	Submittal Schedule.....	205
21.5	Submittal Processing .....	206
21.6	Cost of Submittal Preparation and Review .....	208
21.7	Seismic Design and Anchorage of Equipment or facilities .....	208
21.8	Review Procedures .....	209
21.9	Product Data Submittal .....	210
21.10	Samples including Mockups .....	211
21.11	Manuals .....	211
21.12	Certificates.....	212

21.13	Color Schedules .....	212
21.14	Finish Hardware List .....	212
<b>22</b>	<b>Article 21 Quality Control, Inspection, and Testing .....</b>	<b>213</b>
22.1	Quality Control .....	213
22.2	Quality Control Program.....	213
22.3	As-Cast Concrete Surfaces .....	213
22.4	Inspection and Testing.....	214
22.5	Uncovering Of Work .....	216
22.6	Defective Work.....	217
<b>23</b>	<b>Article 22 Measurement of Quantities .....</b>	<b>219</b>
<b>24</b>	<b>Article 23 Project Record Documents .....</b>	<b>221</b>
24.1	Original Contract Documents .....	221
24.2	As-Built Documents .....	221
24.3	Record Drawings.....	222
<b>25</b>	<b>Article 24 Project Completion and Closeout .....</b>	<b>223</b>
25.1	Early Work Acceptance.....	223
25.2	Final Cleaning.....	223
25.3	Pest Extermination .....	224
25.4	Punch List.....	224
25.5	Substantial Completion .....	224
25.6	Re-Keying Door Hardware and Locks .....	226
25.7	Project Closeout Submittals .....	226
25.8	Attic Stock.....	228
25.9	Owner-Builder TRANSITION .....	228
25.10	Owner Training .....	228
25.11	Acceptance of Machinery and Equipment .....	229
25.12	Work after Substantial Completion.....	230
25.13	Final Acceptance Issues .....	230
25.14	Landscape Maintenance.....	230
25.15	Certificate of Occupancy .....	230
25.16	Easement and Land Issues.....	231
25.17	Project Completion Documents .....	231
<b>26</b>	<b>Article 25 Warranties and Guarantees .....</b>	<b>232</b>
26.1	General .....	232
26.2	Warranty Issues after Substantial Completion.....	233

26.3	Owner-Provided Materials .....	233
<b>27</b>	<b>Index.....</b>	<b>234</b>

# **PART I – BID SOLICITATION PACKAGE**

## **ARTICLE 1 INSTRUCTIONS TO BIDDERS**

### **1.1 PROJECT DESCRIPTION**

- 1.1.1 See [§5.1, Project Description](#) of [Article 5, Project Requirements](#).

### **1.2 BID DOCUMENTS PROVIDED BY OWNER**

- 1.2.1 These Bid Documents establish the Owner’s mandatory requirements for project scope, duration, design intent, level of quality, and administration:

- (A) Invitation to Bid
- (B) Bid Solicitation and Administrative Specifications including the Owner forms required to be returned as part of the Bid and a sample Construction Contract, Sample Payment Bond, and Sample Performance Bond.
- (C) Technical Specifications
- (D) Plans
- (E) Exhibit A, Arborist Report

### **1.3 AVAILABILITY OF BID DOCUMENTS**

- 1.3.1 Unless specified otherwise in the Advertisement, prospective Bidders may download a complete set of Bid Documents at no charge via the City’s electronic Bid Management System (PlanetBids). PlanetBids can be accessed by going to the Ontario, Ca website, clicking on the Business tab, and then clicking on ‘Bids and Proposals.’
- 1.3.2 Interested parties can view the Bid Opportunities without first registering as a vendor by clicking on the ‘Bid Opportunities’ button. Vendor Registration is required in order to download the Bid Documents.
- 1.3.3 PlanetBids can also be accessed by the following link: [PlanetBids Vendor Portal](#).
- 1.3.4 Unless specified otherwise in the Advertisement, Bid Documents shall be made available for review at one or more plan rooms that have registered with City’s electronic Bid Management System (Planet Bids).

Please Note: Unless specified otherwise in the Advertisement, prospective Bidders who choose to review the Bid Documents at a plan room must still register as a vendor on the City’s electronic Bid Management System (Planet Bids) website, must download the Bid Documents, and must submit their Bid electronically.



#### **1.4 MANDATORY MINIMUM BIDDER QUALIFICATIONS**

1.4.1 This project has minimum bidder qualifications that must be documented on [City Bid Form 03 – Minimum Bidder Qualifications Questionnaire](#). See City Bid Form 03 for specific minimum bidder past construction experience and qualification requirements.

**1.4.2 Bidders who lack the minimum required past experience will be deemed nonresponsive and the Bid will be excluded from further consideration.**

#### **1.5 MANDATORY LICENSE AND REGISTRATION REQUIREMENTS**

1.5.1 Bidder shall possess the California Contractor's License(s) specified on [City Bid Form 03 – Minimum Bidder Qualifications Questionnaire](#), and such license shall be in good standing. All subcontractor's listed in the Bid shall have a California Contractor's License for the subcontracted work, and such license shall be in good standing with the California Contractors State License Board.

1.5.2 Pursuant to Labor Code §§1725.5 and 1771.1, all contractors and subcontractors that wish to propose on, be listed in a Bid, or enter a contract to perform public work must be registered with the Department of Industrial Relations. The Contractor identified in the Bid shall be registered with the California Department of Industrial Relations prior to the Submittal Deadline.

1.5.3 No Bid will be accepted, nor any contract entered into without proof of the Contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

#### **1.6 DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

1.6.1 No Bid shall list a contractor or subcontractor who appears on any federal, state, or local list of debarred contractors. Any Bid that identifies a debarred contractor or subcontractor will be deemed nonresponsive and the Bid will be deemed nonresponsive.

1.6.2 In accordance with California Labor Code §§1777.1 and 1777.7, contractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to §1777.1 or §1777.7 of the Labor Code.

#### **1.7 REQUIRED INSPECTION OF THE SITE**

1.7.1 Before submitting its Bid, Bidders shall have visited the Site at least once. Bidders are solely responsible for becoming fully acquainted with the actual conditions of the Site.

1.7.2 If, during the course of its site examination, Bidder finds facts or conditions which appear to be in conflict with the nature or intent of the Bid Documents, Bidder shall submit its observations as a question to the Owner in the manner prescribed in the Bid Documents.

1.7.3 The information provided by the Owner shall not be a substitute for, or a supplement to, the independent verification by the Bidder of the actual conditions of the Site.

## **1.8 REQUIRED EXAMINATION OF ALL BID DOCUMENTS**

- 1.8.1 Bidders are solely responsible for examining the Bid Documents including any Addenda.
- 1.8.2 Before submitting its Bid, Bidders shall have examined all Bid Documents. The failure or neglect of Bidder to receive or examine any Bid Document, especially any Addenda, shall in no way relieve Bidder from any obligation incurred by Bidder as a direct result of offering its Bid.
- 1.8.3 The Bidder shall not be entitled to a change in Contract Sum or Contract Time resulting in any manner from Bidder's failure to become fully informed about the Scope of Work prior to offering its Bid.
- 1.8.4 Where Work is not specifically defined, Bidder shall assume highest quality and most expensive materials, latest model, latest design, and best quality workmanship. Bidder is solely responsible for any assumptions that it makes regarding any work which is not specifically defined. The Owner shall, by definition, be entitled to a credit for any work which the Owner directs or accepts which is less than the highest quality and most expensive materials, latest model, latest design, or best quality workmanship if such work was not specifically defined prior to Bid Opening and the Bidder elected to not request further clarification of the Scope of Work from the Owner.
- 1.8.5 All assumptions by Bidder shall include the minimum required labor and materials to satisfy state and federal law as well as any applicable construction codes.
- 1.8.6 Owner shall have the right to rely on Bidder's expertise in bidding this Project and Bidder's duty to review the Bid Documents carefully and thoroughly. Owner shall also have the right to rely on Bidder's expertise to identify and call attention to errors or omission in the Bid Documents. (See also the [Owner Does Not Warrant the Contract Documents](#) section of the [General Conditions](#) Article.)
- 1.8.7 Except for work specifically identified to be designed by Contractor, compliance with this Article in no way obligates the Contractor to assume any form of design responsibility. Where Bidder is not responsible for design, the extent of Bidder's obligations are limited to the material quality and construction workmanship.

## **1.9 QUESTIONS DURING BIDDING**

- 1.9.1 Project-specific questions must be submitted in writing through the City's digital Bid Management System (PlanetBids) at: [PlanetBids Vendor Portal](#) no later than **11:00 A. M. Pacific Standard Time on or before April 15, 2024.**
- 1.9.2 A response to questions received by Owner after the last date and time to submit questions specified in the Bid Documents will be provided only where such response is deemed to be in the best interests of the Owner. Bidders are encouraged to submit questions as early as possible to allow the Owner sufficient time to prepare a thorough response.

- 1.9.3 **Questions answered by the Owner will be provided via an Addendum posted on PlanetBids only.** Bidders are solely responsible for monitoring PlanetBids for any Addenda issued by the Owner.
- 1.9.4 Bidders are solely responsible for all questions asked and NOT asked. Bidders are also specifically referred to the [Owner Does Not Warrant Contract Documents](#) Section of [General Conditions](#) Article.
- 1.9.5 Where the Bidder has identified errors, omissions, ambiguities, inconsistencies, and/or discrepancies in the Bid Documents, Bidder shall bring the error, omission, ambiguity, inconsistency, or discrepancy to the immediate attention of the Owner by submission of a written question requesting clarification or correction.
- 1.9.6 Where errors, omissions, ambiguities, inconsistencies, and/or discrepancies are identified by the Bidder prior to the Submittal Deadline but not disclosed, the Bidder shall forfeit any claim to additional compensation or extension in the Project Completion Date for its failure to call the Owner's attention to said error, omission, ambiguity, inconsistency, and/or discrepancy prior to the Submittal Deadline.
- 1.9.7 No individual is authorized to make any oral interpretation of any provision in the Bid Documents to any Bidder, and no Bidder shall rely on any oral information received.
- 1.10 SCOPE OF WORK INCLUDES ALL ADDENDA**
- 1.10.1 Owner reserves the right to revise the Bid Documents prior to the Submittal Deadline. Revisions by the Owner to the Bid Documents will be made by issuing one or more Addendum. Addenda issued during the time of Bidding shall become a part of the Bid Documents, shall be covered in the Bid Price, and will be made a part of the Contract Documents.
- 1.10.2 Clarifications and/or corrections of the Bid Documents will only be made by written Addendum issued in accordance with this Section.
- 1.10.3 Unless specified otherwise, Addenda will be posted via the City's digital Bid Management System (PlanetBids). **Please Note: Bidders are responsible for ensuring that they have received all Addenda.**
- 1.11 BID PRICING**
- 1.11.1 Unless stated otherwise in the Bid Documents, the amount offered by Bidder as complete compensation for completion for the Work of this Project shall be made in the format specified in these Bid Documents.
- 1.11.2 Unless specified otherwise, a Schedule of Values shall be prepared by Bidder and delivered to Owner in accordance with the [Schedule of Values](#) Article.

**1.12 BID SECURITY AND DELIVERY OF BID SECURITY**

1.12.1 Each Bid shall be accompanied by a Bid Security in an amount of not less than ten percent (10%) of the price offered in the Bid. The Bid Security shall be in the form of cash, a certified check made payable to the Owner, a cashier's check made payable to the Owner, or a Bid Bond made payable to the Owner that is executed by the Bidder as principal and surety as obligor. Any Bids received by Owner without the prerequisite Bid Security delivered in accordance with this Article will be deemed nonresponsive.

**1.12.2 Regardless of form, the physical or paper Bid Security shall be provided in an envelope clearly labeled with the Bidder's Name, the Project Title, and the Project No. The Security shall be delivered to the following location and be received at such location on or before the Submittal Deadline:**

**City Clerk's Office  
City of Ontario  
303 East B Street  
Ontario, CA 91764**

1.12.3 Where a Bid Bond is being provided, the Bond shall be prepared as specified in the Bid Documents and an electronic copy shall also be uploaded as part of the Bid. **Uploading an electronic copy of the Bid Bond is not a replacement for delivery of the physical ('paper copy') to the City Clerk's Office. Delivery of a physical ('paper copy') of the Bid Bond is a mandatory requirement. Failure to deliver the physical ('paper copy') of the Bid Bond will result in the Bid being deemed nonresponsive.**

1.12.4 Personal sureties and unregistered surety companies are NOT acceptable as Bid Security. Sureties shall be a California admitted surety insurer, as defined in California Code of Civil Procedure §995.120.

1.12.5 Unless otherwise approved in writing by the City's Risk Manager, the surety providing the Bid Security shall be admitted to and authorized to do business in the State of California. The surety shall have an A.M. Best rating (or equivalent with Standard and Poor's or Moody's) of not less than an A- or better, and a financial classification of VII or better.

1.12.6 The Bid Security shall be given as a guarantee that the Bidder will provide the required Payment and Performance Bonds, insurance certificates, and endorsements required by the Bid Documents, and that the Bidder will execute the Contract if Owner awards the Contract to the Bidder.

1.12.7 Bidder shall forfeit to the Owner the Bid Security accompanying its Bid, if its Bid is accepted for Award and the Bidder fails to provide Owner with the required Bonds, insurance certificates, and endorsements required by the Bid Documents or otherwise fails to enter into a Contract for the Work in the manner and time prescribed in the Bid Documents.

1.12.8 The Bid Security of all Bidders will be held until the Successful Bidder has properly executed all Contract Documents.

### **1.13 BID DELIVERY**

- 1.13.1 All bids for this project shall be submitted through the City's digital Bid Management system (PlanetBids) at [PlanetBids Vendor Portal](#) no later than **11:00 A. M. Pacific Standard Time on or before April 25, 2024**. A bid submitted after the submittal deadline will not be considered.
- 1.13.2 Bids shall be uploaded as a single PDF file to City's digital Bid Management System (PlanetBids). The Bid shall include all City Forms provided in the [Required Bid Forms](#) Article. A list of all required Bid Forms is provided in the [List of Forms](#) Section.
- 1.13.3 **A physical or paper copy of the Bid Security is required to be delivered to the City Clerk's Office as required elsewhere in this Article.**
- 1.13.4 Bids shall be submitted in the manner and at the time and place stated in the Bid Documents. Incomplete Bids or Bids received after the Submittal Deadline will be considered nonresponsive.
- 1.13.5 Regardless of the manner of Bid Delivery, Owner will receive Bids up to the Submittal Deadline specified in the Bid Documents. It is Bidder's sole responsibility to ensure that its Bid is received by the Owner prior to the Submittal Deadline. Bids may be submitted earlier than the Submittal Deadline.
- 1.13.6 No oral, telephonic, or facsimile Bids will be considered.
- 1.13.7 Where electronic Bids are being received via City's digital Bid Management System, Bidders experiencing any technical difficulties with the Bid submission process may contact the Bid Management System (PlanetBids) as follows:

**PlanetBids**  
**818-992-1771**

- 1.13.8 If you continue to have difficulty reaching the Bid Management System, you may call the City's Purchasing Department at 909.395.2012 during normal business hours.
- 1.13.9 Neither the Owner, nor the City's digital Bid Management System (PlanetBids), make any guarantee as to the timely availability of assistance, or assurance that any given problem will be resolved before the Bid Submission Deadline. Owner strongly encourages Bidders to submit its Bid early.

### **1.14 BID OPENING**

- 1.14.1 Bids will be publicly opened in view of any bidders at the City Clerk's Office immediately following the expiration of the Submittal Deadline. Bid information will also appear in the 'Bid Results' tab on the City's digital Bid Management System (PlanetBids).

- 1.14.2 Regardless of how bids are received by the City, bidding results are available to Bidders and the general public from the City Clerk's Office during normal business hours anytime after the Bid Submittal Deadline.

**1.15 BIDDING REQUIREMENTS**

- 1.15.1 Bidding is specifically limited to responsible Bidders meeting all requirements specified in the Bid Documents.
- 1.15.2 Forms, certificates, and/or affidavits provided by the Owner shall be used where and how specified in the Bid Documents. Bidders shall neither delete, modify, nor supplement the printed material on the Bid Forms, nor make any substitutions. Use of forms, certifications, and/or affidavits other than those provided by the Owner may render the Bid nonresponsive.
- 1.15.3 Bids shall be full and complete. All information requested by the Owner shall be clearly and legibly set forth in the manner and form required by the Bid Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions, or provisions incorporated into a Bid may render the Bid nonresponsive.
- 1.15.4 Participation in this Bid process is voluntary and shall be at the sole discretion of each potential Bidder. Potential Bidders are solely responsible for any costs incurred in the preparation of its Bid.
- 1.15.5 In the event that any Bidder has an interest in more than one Bid, all such Bids will be rejected, and the Bidder will be disqualified. This restriction does not apply to subconsultants, subcontractors, or suppliers who may submit quotations to more than one Bidder, and while doing so, may also submit a formal Bid as a Bidder.
- 1.15.6 Where the Bid Documents permits paper (non-electronic) Bids to be submitted to the City Clerk's Office, Bids will be deemed nonresponsive if submitted with pencil entries on any of the Bid Forms, Certifications, and/or Affidavits.
- 1.15.7 Bidders may, at their own risk, include alternatives in their Bid for materials and/or equipment specified in the Bid Documents. Inclusion of such alternatives into the Bid should only be considered if Bidder is certain that such alternatives will be approved in accordance with these Specifications. The Owner has no duty or obligation to approve an alternative assumed by Bidder during the preparation of the Bid.
- 1.15.8 Unless specified otherwise in the Bid Documents, the Bid shall include all labor, materials, equipment, tools, construction equipment, machinery, professional and other services, all utilities including water and electricity, temporary sanitary facilities, heat, material and worker transportation, material storage, and all other things necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated into the Work.
- 1.15.9 The Bid shall include all costs required for lawful work and compliance with all federal, state, and local construction codes regardless of the information shown on the plans.

- 1.15.10 The Owner may in its sole discretion and without any cost to the Owner postpone the Submittal Deadline, reject all Bids, terminate the Project, revise the Project, or make changes in the Project Schedule.
- 1.15.11 Bidders assume all responsibility for any costs incurred in the preparation of its Bid. Owner shall not be responsible for any costs incurred by Bidder in the event that the Owner elects to reject all Bids, terminate the Project, revise the Project, or make changes in the Project Schedule.
- 1.15.12 Completion of the Bid process does not obligate the Owner to proceed with the Project.
- 1.15.13 In its sole discretion, the Owner reserves the right to waive non-material errors, omissions, and/or discrepancies in any Bid. No duty is imposed on the Owner to exercise this right for any reason other than the sole benefit of the Owner.
- 1.15.14 In its sole discretion, the Owner reserves the right to determine the responsiveness of each Bid, and any decisions rendered by the Owner shall be final. The Owner will provide a written explanation to any Bidder whose Bid was deemed nonresponsive.
- 1.15.15 Oral, telephonic, facsimile, and electronic modifications will not be considered unless specifically permitted in the Bid Documents.
- 1.15.16 In its sole discretion, the Owner reserves the right to determine which bidders are responsible. Where the Bid Documents include a [Minimum Bidder Qualifications Questionnaire](#) (or similar form), Bidders lacking or unable to document compliance with the stated Minimum Bidder Requirements are NOT responsible by definition.
- 1.15.17 In its sole discretion, the Owner reserves the right to determine which bidders are responsible. Owner shall have the right to rely on any Bid received by Owner as conclusive evidence that:
- (A) Bidder has visited the Site.
  - (B) Bidder has thoroughly reviewed the Bid Documents and has a complete understanding of the character, quality, scope, and complexity of the Project.
  - (C) Bidder has asked all questions in accordance with the requirements of the Bid Documents necessary for Bidder to calculate its Bid Price accurately and correctly.
  - (D) Bidder agrees that Owner's answers to Bidder's questions delivered via Addenda were responsive, accurate, and complete enough for Bidder to calculate its Bid Price accurately and correctly.
  - (E) Bidder has the required knowledge of codes and laws necessary to complete the Project in compliance with said codes and laws.
  - (F) If awarded the Contract for this Project, Bidder can and will provide all bonding and insurance required by the Bid Documents and the final Construction Contract, and is ready, willing, and able to proceed with the Work on the date required by the Owner's Notice to Proceed.

**1.16 RESPONSIBILITY FOR PREPARATION OF THE BID**

- 1.16.1 Bidders are solely responsible for information gathered regarding local labor availability, means of transportation, necessity for security, laws and codes, local permitting requirements, permitted methods and costs for waste disposal, wage scales and prevailing wage requirements, local tax structure, contractors' licensing requirements, availability of required insurance, and all other factors that could affect the Bid Price offered or the Work to be performed prior to Project completion.
- 1.16.2 Bidders are solely responsible for consulting the standards referenced in the Contract Documents.
- 1.16.3 Bidders are solely responsible for any failure to adequately inform, review or examine all aspects and requirements for this project and no relief for error or omission will be given except where permitted under State law.

**1.17 BIDDER'S SIGNATURE AND AUTHORITY**

- 1.17.1 Bidders shall print and sign their names in the spaces provided.
- 1.17.2 If the Bid is made by an individual, his/her name, signature, and mailing address must be shown.
- 1.17.3 If the Bid is made by a firm or partnership, the name and mailing address of the firm or partnership, a list of the partners, and the signature of at least one of the general partners must be shown.
- 1.17.4 If the Bid is made by a corporation, the Bid shall show the name of the state under the laws of which the corporation is chartered, the name and mailing address of the corporation, and the title of the person who signs on behalf of the corporation.
- 1.17.5 If the Bid is made by a corporation, a certified copy of the bylaws or resolution of the Board of Directors of the corporation shall be furnished showing the authority of the officer signing the Bid to execute contracts on behalf of the corporation.
- 1.17.6 If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also:
  - (A) Authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and
  - (B) Provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.



- 1.17.7 Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom. Failure to provide the requested evidence shall be grounds for the Owner to deem the Bid nonresponsive and the Bidder shall forfeit its Bid Security.
- 1.17.8 If a Bid received by the Owner has been signed by an individual who is not lawfully permitted to sign on behalf of the partnership, firm, joint venture, or corporation; the Owner, in its sole discretion, shall have the right to request that the Bid be resubmitted with a signature from an individual who is lawfully permitted to bind the partnership, firm, joint venture, or corporation or the Bidder shall forfeit its Bid Security, whichever the Owner deems to be in its best interests.
- 1.18 SUBCONTRACTOR LISTING REQUIREMENTS**
- 1.18.1 Subcontractors are to be listed in accordance with the Subletting and Subcontracting Fair Practices Act (commencing with §4100 of the Public Contract Code) in the manner specified in the Bid Documents.
- 1.18.2 In accordance with §4104 of the Public Contract Code, Bidders shall identify in the manner required by the Bid Documents the following information for each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to Bidder, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications:
- (A) The name of the subcontractor.
  - (B) A physical mailing (home office) address of the identified subcontractor.
  - (C) The subcontractor's License and DIR Registration Numbers.
- 1.18.3 In accordance with §4104 of the Public Contract Code, Bidders shall identify each Subcontractor who will perform work or labor or render service to the Bidder in or about the Work, or any subcontractor licensed by the State of California who, under subcontract to Bidder, specially fabricates and installs a portion of the Work according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one-percent (0.5%) of the Bidder's total bid.
- 1.18.4 In accordance with §4104 of the Public Contract Code, for Work which includes construction of streets or highways, including bridges, regardless of the percentage of work performed or service provided, Bidder shall additionally identify all subcontractors performing work or labor or rendering service to Bidder with a subcontract dollar value in excess of ten thousand dollars (\$10,000).

- 1.18.5 In accordance with §4106 of the Public Contract Code, if the Bidder fails to specify a subcontractor, or if the Bidder specifies more than one subcontractor for the same portion of work to be performed under the Construction Contract in excess of one-half of one percent (0.5%) of the Bid Price offered by Bidder, the Bidder agrees that it is fully qualified to and will self-perform that portion of the Work which was not identified and subcontracted in accordance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code.
- 1.18.6 Substitution of listed Subcontractors shall be in accordance with §4107 of the Public Contract Code.
- 1.18.7 In accordance with §4107.2 of the California Public Contract Code. no Subcontractor listed by Bidder in accordance with §4104 as furnishing and installing carpeting, shall voluntarily sublet its subcontract with respect to any portion of the labor to be performed unless the Bidder or upper-tier Subcontractor specified the lower-tier Subcontractor in its bid for that portion of the Work.
- 1.18.8 Any claim of clerical error in the listing of a Subcontractor or any substitution associated with such clerical error shall be made in accordance with §4107.5 of the California Public Contract Code.
- 1.18.9 In accordance with §4109 of the California Public Contract Code, subletting or subcontracting of any portion of the work in excess of one-half of one percent (0.5%) of the Bidder's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

## **1.19 ERASURES AND CORRECTIONS**

- 1.19.1 In the event that the Owner has requested paper Bids delivered to the City Clerk's Office rather than via the City's digital Bid Management System (PlanetBids), the Bid submitted must not contain any erasure, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the name of the person or persons responsible for the edit and the date the edit was made.

## **1.20 BID MODIFICATION OR WITHDRAWAL PRIOR TO BID OPENING**

- 1.20.1 At any time prior to the Submittal Deadline, a Bid already received by the Owner may be modified by Bidder. Modifications shall be made in writing, executed, and submitted in the same form and manner as the original Bid.
- 1.20.2 At any time prior to the Submittal Deadline, a Bid may be withdrawn upon written request signed by the Bidder. Except as permitted by §§5101-5107 of the California Public Contract Code, Bids may not be withdrawn after the Submittal Deadline without forfeiture of the Bidder's Bid Security.

- 1.20.3 Withdrawal of a Bid will not prejudice the right of the Bidder to submit a new Bid, providing there is adequate time to do so before the Submittal Deadline.

**1.21 BID WITHDRAWAL AFTER BID OPENING**

- 1.21.1 Any request to withdraw a Bid after the Submittal Deadline because of an error must be made in accordance with Public Contract Code §5100 et seq. The written request must be submitted in writing within five (5) working days, excluding Saturday, Sundays, and State holidays, and must specify in detail how the error was made.
- 1.21.2 Bidder's Bid Security shall be forfeit except where permitted by §§5101-5107 of the Public Contract Code.

**1.22 BID VALIDITY**

- 1.22.1 Unless otherwise specified in the Invitation to Bid, all Bids shall be valid for a minimum of one hundred and twenty (120) calendar days from the Submittal Deadline but not less than ninety (90) calendar days following receipt by Bidder of Owner's Notice of Intent to Award the Contract whichever occurs last.

**1.23 INTEREST IN MORE THAN ONE BID**

- 1.23.1 No Bidder shall be allowed to make, submit, or be interested in more than one Bid. However, a person, firm, corporation, or other entity that has submitted a sub-bid or subcontract to another Bidder, or that has quoted prices for materials to another Bidder, is not disqualified from submitting a sub-bid, subcontract, or price quote to any Bidder.

**1.24 PERFORMANCE AND PAYMENT BONDING**

- 1.24.1 Unless otherwise approved in writing by the City's Risk Manager, the surety providing the Faithful Performance ('Performance') and the Labor and Materials Payment ('Payment') Bonds shall be admitted to and authorized to do business in the State of California (in accordance with as California Code of Civil Procedure §995.120). The surety shall have an A.M. Best rating (or equivalent with Standard and Poor's or Moody's) of not less than an A- or better, and a financial classification of VII or better.
- 1.24.2 Bidder shall furnish the Performance and Payment Bonds using the sample bonds provided in the Bid Documents.
- 1.24.3 The Performance and Payment Bonds shall each be in the amount of the final negotiated Contract Sum.
- 1.24.4 The Performance and Payment Bonds shall be in effect prior to issuance of the Notice to Proceed.
- 1.24.5 The premiums for the Performance and Payment Bonds shall be paid by the Successful Bidder, and all costs for such bonding shall be included in the Bid Price offered.

## **1.25 PROTESTS DURING BIDDING**

- 1.25.1 The lack of prompt procedures to resolve protests and disputes regarding the City's Bidding process impair the City's ability to carry out its purpose of completing this Project in a timely manner. Therefore, to the maximum extent authorized by law and notwithstanding any other procedures specified in documents referenced herein, all protests and/or disputes regarding the City's Bidding process shall be subject to the mandatory procedures and time limits set forth in this Section.
- 1.25.2 The procedures and time limits set forth in this Section are the Bidder's sole and exclusive remedy in the event of a protest or dispute prior to the Award of Construction Contract. The Bidder's failure to comply with all requirements of this Section shall constitute a failure to exhaust all administrative remedies and shall constitute a waiver of any right to further pursue the protest, including filing a claim or legal proceedings in accordance with §900 et seq. of the California Government Code.
- 1.25.3 Protests regarding the Bid Documents provided by the City must be delivered to the City Clerk's Office not less than five (5) City Business Days **prior** to the Bid Submittal Deadline. After this date, Bidders shall be deemed to have waived any objection to the Bid Documents.
- 1.25.4 Protests regarding any Bid received by the City must be delivered to the City Clerk's Office on or before 4:00 P. M. on the fourth (4<sup>th</sup>) City Business Day after the Bid Submittal Deadline. After this date, Bidders shall be deemed to have waived any objection to any Bid received by the City.
- 1.25.5 Written protests must be delivered to and accepted by the City Clerk at the address below on or before the protest submittal deadline specified in this Section.

**City Clerk's Office  
City of Ontario  
303 East B Street  
Ontario, CA 91764**

- 1.25.6 Protests delivered to the City Clerk's Office by U.S.P.S. or similar delivery method after the deadline for submitting protests specified in this Section, regardless of the date mailed or the pickup date, will be deemed untimely and shall not be considered further.
- 1.25.7 The delivery of a protest to any person (including any other City official, officer, or employee) other than a designated representative of the City Clerk's Office shall be deemed to have not been delivered to the City Clerk's Office in strict compliance with the requirements of this Section, will be deemed defective, and shall not be considered further.
- 1.25.8 To submit a protest, the protestor must have submitted a Bid as the Prime Contractor. Protests from subconsultants, subcontractors, or suppliers to the project do not have standing to submit a protest.

- 1.25.9 To be considered valid, each protest shall include the information specified below. Protests that fail to comply with this Section will be deemed defective and shall not be considered further.
- (A) Name and business address for the entity responsible for the protest ('protestor'), and the name, business address, phone number, and email address for the contact individual representing the protestor.
  - (B) A complete and detailed description of the factual and legal justification supporting the protest including the potential prejudice that protestor will suffer.
  - (C) Support for the protest shall include true copies of specific references to the Bid Documents forming the basis for the protest.
  - (D) Statement identifying the form of relief requested by the protestor.
- 1.25.10 Bidders are specifically prohibited from relying on the protest of another Bidder. Each Bidder shall pursue its own protest.
- 1.25.11 Concurrent with delivery of the protest to the City Clerk's Office, protestor must deliver a copy of the protest to all Bidders to this Project having a direct financial interest in the outcome of the protest or who may be adversely affected by the outcome of the protest. The proof of delivery required by this paragraph shall be delivered to the City Clerk's Office within two (2) City Business Days of the date the subject protest was received by the City Clerk's Office, and the proof shall include a declaration under penalty of perjury that a copy of the protest was concurrently delivered to all Bidders identified in this paragraph. Failure to provide the proof of delivery required by this paragraph shall render the protest defective and untimely, and the protest shall not be considered further.
- 1.25.12 Where a protest identifies a specific Bid, the Bidder submitting the identified Bid ('protestee') shall have until 4:00 P. M. on the fourth (4<sup>th</sup>) City Business Day following the protest submittal deadline specified in this Section to provide a written response to the protestor. The protestee shall concurrently deliver a copy of the written response to the City Clerk's Office by the deadline specified in this paragraph.
- 1.25.13 Where a protest is timely, complies with all requirements of this Section, and is not otherwise deemed defective, the City will designate an individual or individuals to review all documents received by the City and to prepare a written response and City decision on the protest. The City's decision shall be final. Except as otherwise required by law, no public hearing will be held.
- 1.25.14 Because time is of the essence, the City reserves the right to Award the Construction Contract and proceed with the Project despite any pending protest or legal challenge.
- 1.25.15 City reserves the right to deem a Bidder nonresponsive on this and any future projects where the Bidder has submitted a protest deemed frivolous by the City. Such designation as nonresponsive shall remain in place for one (1) years from the date the frivolous protest was received by the City.

- 1.25.16 In accordance with §4104(a)(2) of the California Public Contract Code, an inadvertent error in listing the California contractor license number or public works contractor registration number (DIR Registration No.) provided pursuant to paragraph 4104(a)(1) shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted to the general public entity by the prime contractor within one Working Day after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

## **1.26 AWARD PROCESS AND EXECUTION OF THE CONTRACT**

- 1.26.1 If the Owner elects to award the Contract, the selected Bidder will be notified by Owner of Owner's intent to Award the Contract.
- 1.26.2 Upon notification by the Owner of its intent to Award the Contract, Owner will enter into final negotiations as the Owner deems in its best interests. If the final negotiations conclude successfully, then the Owner will forward two or more copies of the Construction Contract to the selected Bidder for signature. Construction Contract signature pages shall be returned to Owner in the quantity required prior to the date and time where the City will make a final decision to Award the Contract.
- 1.26.3 Immediately following the Award of Construction Contract by Owner, the Successful Bidder shall procure the bonding and insurance in the form and in the amount specified in the Bid Documents as modified by Addendum, and proof of such bonding and insurance shall be provided to the Owner within ten (10) calendar days following the Award of Construction Contract. Failure to provide the required documents may result in forfeiture of the Proposer's Proposal Security, and the Owner will open negotiations with the next Bidder.
- 1.26.4 Following the Award of Construction Contract and upon receipt by Owner of the Construction Contract signed by the Bidder and all required bonding and insurance documents, Owner will issue a Notice to Proceed along with Contractor's copy of the fully executed Construction Contract. The Contract Time will begin on the date specified in the NTP.

## **1.27 PERMIT AND LICENSING FEES**

- 1.27.1 Unless specified otherwise, the Price offered by Bidder shall include all permit and licensing fees for Contractor and its subcontractors performing work under this Contract. The City, as AHJ, generally waives its permit and inspection fees. Contractor and each subcontractor are still responsible for all licensing fees including Business License owed to the City. Bidder is responsible for verifying with the City which fees are required to be paid and which will be waived. Bidder is solely responsible for any assumptions made by Bidder regarding any permit or licensing fees.
- 1.27.2 Unless specified otherwise, Contractor and all of its subcontractors are solely responsible for payment of all permit and licensing fees to any AHJ other than the City.

**1.28 SALES, USE, AND OTHER TAXES**

- 1.28.1 By definition, Bid amounts shall include all taxes owed or to be owed in conjunction with the Work performed.
- 1.28.2 Bidder shall pay, and require each of its subcontractors and suppliers to pay applicable sales taxes, use taxes, and any other taxes owed in conjunction with the Work performed
- 1.28.3 The Successful Bidder further agrees to indemnify and hold harmless the Owner from any claims made against the Owner by virtue of the failure of the Bidder or any of its subcontractors or suppliers to comply with any provision of any tax law.

**1.29 ASSIGNMENT OF ANTITRUST ACTIONS**

- 1.29.1 As provided by §4552, et. seq., of the California Government Code, in submitting a Bid to the Owner, the Bidder, if successful in being awarded the Contract, offers and agrees it will assign to the Owner all rights, title, and interest in and to all causes of action the Bidder may have under §4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 [commencing with §167001 of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the Bidder for sale to the Owner for any work associated with this Bid.
- 1.29.2 This assignment shall be made and become effective at the time the Owner tenders final payment to the Bidder.

**1.30 IRAN CONTRACTING ACT CERTIFICATION**

- 1.30.1 Each Bidder shall submit the certification required by the Iran Contracting Act of 2010, California Public Contract Code §2200 et seq. as part of its Bid. The certification is included in the Bid Documents.

**END OF ARTICLE**

## **ARTICLE 2 REQUIRED BID FORMS**

### **2.1 GENERAL**

- 2.1.1 Bids shall be submitted in full conformance with all requirements of the Bid Documents. Bidders are solely responsible for thorough review and compliance with the requirements of the Bid Documents. Where required by the Bid Documents, the following forms shall be used. **NO SUBSTITUTIONS OR ALTERATIONS OF THESE FORMS ARE PERMITTED.**
- 2.1.2 Bids will be deemed nonresponsive where Bidders failed to provide all forms required by this Article in the manner prescribed.

### **2.2 LIST OF FORMS**

- 2.2.1 This Article contains the following forms.
- (A) Bid Schedule
  - (B) City Bid Form 01 – Bid Acknowledgement and Signatures
  - (C) City Bid Form 02 – Bidder’s General Information
  - (D) City Bid Form 03 – City Bidder Qualifications Questionnaire
  - (E) City Bid Form 04 – Subcontractor Listing  
City Bid Form 05 – Non-Collusion Declaration
  - (F) City Bid Form 06 – Iran Contracting Act Certification
  - (G) City Bid Form 07 – DIR Registration Certification
  - (H) City Bid Form 08 – Workers’ Compensation Certification



**2.3 BID SCHEDULE**

**REMAINDER OF THIS PAGE IS BLANK**

**BID SCHEDULE GOES HERE**

**2.4 BID ACKNOWLEDGEMENT AND SIGNATURES**

**REMAINDER OF THIS PAGE IS BLANK**



## CITY BID FORM 01

# BID ACKNOWLEDGMENT AND SIGNATURES

NAME OF BIDDER: \_\_\_\_\_

The undersigned hereby declare that we have carefully examined the location of the proposed Work and have read and examined all of the Owner-provided Bid Documents for the following Project:

**PROJECT NO.: D&C21-001A**

**D&C21-001A NEW FIRE ADMINISTRATION BUILDING**

**BIDDER MUST ACKNOWLEDGE AND IDENTIFY THE QUANTITY OF  
ADDENDA RECEIVED BY BIDDER IN THE STATEMENT BELOW.**

Bidder acknowledges receipt, understanding, and full consideration of \_\_\_\_\_ Addenda

**To the City of Ontario, with its principal place of business at 303 East B Street, ONTARIO, CA 91764:**

1. In response to the Advertisement dated March 18, 2024 and in accordance with the Bid Requirements for this Project, the undersigned hereby proposes to the City to furnish all labor, design, technical and professional services, supervision, materials, and equipment required by the Bid Documents and to perform all operations necessary and required to complete the Project in accordance with the requirements of the Bid Documents and any Addendum thereto in exchange for the price offered in this Bid.
2. This Bid constitutes a firm offer to the City which cannot be withdrawn for 90 calendar days following the Submittal Deadline, nor can the Bid be withdrawn after delivery to Bidder of the City's intent to award the contract so long as the Contract is executed by the City within 180 calendar days of the Submittal Deadline.
3. The undersigned certifies that Bidder has carefully checked all of the words and figures shown in its Bid pricing; that that Bidder has carefully reviewed the accuracy of all statements in this Bid including those made on the required City Forms; and that Bidder understands and agrees that the City will not be responsible for any errors or omissions on the part of the undersigned made in the preparation of this Bid.
4. If notified of City's intent to award the contract, Bidder agrees that it will deliver wet-signed copies of the Agreement in the quantity specified by City prior to the date and time where the City will make a final decision to Award the Contract.
5. If awarded the contract, Bidder shall procure the bonding and insurance in the form and in the amount specified in the Bid Documents as modified by Addendum, and proof of such bonding and insurance shall be provided to the Owner within ten (10) calendar days following the Award of Contract.

6. Submitted electronically through the City's electronic Bid Management system (PlanetBids), the forms required by the Bid Documents have been completed and executed by the undersigned Bidder, are incorporated by this reference, and are made a part of this Bid. Required City forms include:
- a. Completed Bid Schedule.
  - b. Bid Security in the amount of not less than 10% of the total price offered by Bidder.
  - c. Completed City Form 01 – Bid Acknowledgement and Signatures
  - d. Completed City Form 02 – Bidder's General Information
  - e. Completed City Form 03 – Minimum Bidder Qualifications
  - f. Completed City Form 04 – Completed Subcontractor Listing
  - g. City Bid Form 04 – Subcontractor Listing
  - h. City Bid Form 05 – Non-Collusion Declaration
  - i. City Bid Form 06 – Iran Contracting Act Certification
  - j. City Bid Form 07 – DIR Registration Certification
  - k. City Bid Form 08 – Workers' Compensation Certification

**[REQUIRED SIGNATURE(S) ON NEXT PAGE]**

### REQUIRED SIGNATURE(S)

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

BIDDER:

Bidder's Legal Business Address:

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Type of Entity (partnership, corporation, etc.): \_\_\_\_\_

**(If the Bidder is a corporation, two signatures of corporate officers are required.)**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Where signed) (City, State)

(corporate seal)

Dated: \_\_\_\_\_, 20\_\_\_\_

State of Incorporation: \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Where signed) (City, State)

Dated: \_\_\_\_\_, 20\_\_\_\_

**Names and addresses of all partners or joint venturers:**

---

---

---

---

---

---

---

**Statement of the authority of signatory to bind Bidder:**

---

---

---

---

---

---

---

**END OF FORM**

**2.5 BIDDER'S GENERAL INFORMATION**

**REMAINDER OF THIS PAGE IS BLANK**





## CITY BID FORM 02

# BIDDER'S GENERAL INFORMATION

NAME OF BIDDER: \_\_\_\_\_

**If the Bidder is a joint venture, the following information must be provided for each member of the joint venture. Duplicate this page as required.**

Bidder's Business Phone No.: \_\_\_\_\_

Bidder's FAX No.: \_\_\_\_\_

Bidder's email address: \_\_\_\_\_

Bidder holds the following California Contractor License Classifications: \_\_\_\_\_

Contractor's License No.: \_\_\_\_\_

Contractor License Expiration date: \_\_\_\_\_

Bidder's Department of Industrial Relations ('DIR') Registration No.: \_\_\_\_\_

DIR Expiration Date: \_\_\_\_\_

How many years has Bidder been in business as a licensed contractor? \_\_\_\_\_

How many years has Bidder's organization been in business under its present name? \_\_\_\_\_

List all previous former business organization Bidder has been associated with: \_\_\_\_\_

\_\_\_\_\_

What type of work does Bidder generally self-perform? \_\_\_\_\_

### **Bidder's Entity Information**

#### **If Bidder is an Individual or Partnership**

Date of Organization: \_\_\_\_\_

Name and Address of all Partners including General/Limited Partnership information:

---

---

---

---

---

#### **If Bidder is a Corporation**

Date of incorporation: \_\_\_\_\_

State of incorporation: \_\_\_\_\_

President's Name: \_\_\_\_\_

Vice President's Name: \_\_\_\_\_

Secretary's Name: \_\_\_\_\_

Treasurer's Name: \_\_\_\_\_

**END OF FORM**

**2.6 MINIMUM BIDDER QUALIFICATIONS**

**REMAINDER OF THIS PAGE IS BLANK**



CITY BID FORM 03  
**MINIMUM BIDDER QUALIFICATIONS QUESTIONNAIRE**

NAME OF BIDDER: \_\_\_\_\_

1. Within the past five (5) years, Bidder must have completed not less than three (3) publicly funded construction project located within the state of California that had a final contract amount of not less than \$10,000,000 and that finished not more than seventy-five (75) calendar days late regardless of reason.

**List the qualifying projects below:**

1A	Project Name: _____ _____ Project Address: _____ _____ _____	Date Completed: _____ Project Duration: _____ Final Contract Sum: _____	Project Owner: _____ Contact Name: _____ Contact Title: _____ Contact Ph: _____ Email: _____
1B	Project Name: _____ _____ Project Address: _____ _____ _____	Date Completed: _____ Project Duration: _____ Final Contract Sum: _____	Project Owner: _____ Contact Name: _____ Contact Title: _____ Contact Ph: _____ Email: _____
1C	Project Name: _____	Date Completed: _____	Project Owner: _____

	_____ Project Address: _____ _____ _____	Project Duration: _____ Final Contract Sum: _____	Contact Name: _____ Contact Title: _____ Contact Ph: _____ Email: _____
1D	Project Name: _____ _____ Project Address: _____ _____ _____	Date Completed: _____ Project Duration: _____ Final Contract Sum: _____	Project Owner: _____ Contact Name: _____ Contact Title: _____ Contact Ph: _____ Email: _____

2. Within the past four (4) years, Bidder must have completed at least one (1) new publicly funded administration building that had a final contract amount of not less than \$20,000,000. (Projects may be listed more than once.)

**List the qualifying project below:**

2A	Project Name: _____	Date Completed: _____ Project Duration: _____ Final Contract Sum: _____	Project Owner: _____
	_____		Contact Name: _____
	Project Address: _____		Contact Title: _____
	_____		Contact Ph: _____
	_____		Email: _____

3. Within the past three (3) years, Bidder must have completed at least one project involving a new structure having a Contract Amount of not less than \$10,000,000 that was located within one of the following counties: Los Angeles, Orange, Riverside, San Bernardino, or San Diego. List the qualifying project below. (Projects may be listed more than once.)

**List the qualifying project below:**

3A	Project Name: _____	Date Completed: _____ Project Duration: _____ Final Contract Sum: _____	Project Owner: _____
	_____		Contact Name: _____
	Project Address: _____		Contact Title: _____
	_____		Contact Ph: _____
	_____		Email: _____

4. **BIDDER'S MAY, AT THEIR OWN RISK, BID ON THIS PROJECT BASED ON EXPERIENCE OTHER THAN THAT WHICH IS SPECIFICALLY REQUIRED ABOVE.** in its sole discretion, the Owner shall have the right to accept other work as demonstrating an equivalent level of past experience where such determination is deemed to be in the best interests of the Owner. Bidders electing to submit a bid based on this provision do so at their own cost and risk, and the Owner has no obligation to consider such alternate work experience. Any decision made by the Owner regarding any Bidder's past experience provided in accordance with this provision is final and without appeal. On a separate sheet, bidder's electing to demonstrate alternate equivalent experience shall provide the following information: 1) A project description, 2) The address of the project(s), 3) The name of the contact reference for each listed project, 4) The title of the individual listed as the contact reference, 5) The phone number for the individual listed as the contact reference, 6) The email address for the individual listed as the contact reference, 7) The final contract sum for each listed project, 8) The date the listed project(s) were started, and 9) The date the listed project(s) were finished.

**END OF FORM**

2.7 SUBCONTRACTOR LISTING



CITY BID FORM 04  
**SUBCONTRACTOR LISTING**

NAME OF BIDDER: \_\_\_\_\_

**IMPORTANT!** All subcontractors shall be listed on this form in accordance with the Subletting and Subcontracting Fair Practices Act (commencing with §4100 of the Public Contract Code).

Trade or work to be performed: _____ _____ _____ Approx. percentage of total work: _____	Name of Sub: _____ _____ Address: _____ _____ _____ _____	CSLB License Classifications: _____ CSLB License Exp. Date: _____ DIR No.: _____ DIR Exp. Date: _____
Trade or work to be performed: _____ _____ _____ Approx. percentage of total work: _____	Name of Sub: _____ _____ Address: _____ _____ _____ _____	CSLB License Classifications: _____ CSLB License Exp. Date: _____ DIR No.: _____ DIR Exp. Date: _____



### SUBCONTRACTOR LISTING (Cont.)

**DUPLICATE THIS SHEET AS REQUIRED TO LIST ALL REQUIRED SUBCONTRACTORS**

Trade or work to be performed: _____ _____ _____ Approx. percentage of total work: _____	Name of Sub: _____ _____ Address: _____ _____ _____	CSLB License Classifications: _____ CSLB License Exp. Date: _____ DIR No.: _____ DIR Exp. Date: _____
Trade or work to be performed: _____ _____ _____ Approx. percentage of total work: _____	Name of Sub: _____ _____ Address: _____ _____ _____	CSLB License Classifications: _____ CSLB License Exp. Date: _____ DIR No.: _____ DIR Exp. Date: _____
Trade or work to be performed: _____ _____ _____ Approx. percentage of total work: _____	Name of Sub: _____ _____ Address: _____ _____ _____	CSLB License Classifications: _____ CSLB License Exp. Date: _____ DIR No.: _____ DIR Exp. Date: _____

**DUPLICATE THIS SHEET AS REQUIRED TO LIST ALL REQUIRED SUBCONTRACTORS**

## CITY BID FORM 05

**NON-COLLUSION DECLARATION**

NAME OF BIDDER: \_\_\_\_\_

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on: \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

## CITY BID FORM 06

**IRAN CONTRACTING ACT CERTIFICATION**

NAME OF BIDDER: \_\_\_\_\_

As required by California Public Contract Code Section 2204, Builder certifies subject to penalty for perjury that the option checked below relating to Builder's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

☐

Builder is not:

- (1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
- (2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐

The City has exempted Builder from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the City will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐

The amount of the Contract payable to Builder for the Project does not exceed \$1,000,000.

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

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

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

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

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

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

## CITY BID FORM 07

## DIR REGISTRATION CERTIFICATION



NAME OF BIDDER: \_\_\_\_\_

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of Builder's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

DIR Registration Expiration: \_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

Bidder shall maintain a current DIR registration for the duration of the project.

Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.

Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is nonresponsive.

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

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

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

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

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

<sup>1</sup> If the Project is exempt from **Builder** registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

CITY BID FORM 08



## WORKERS' COMPENSATION CERTIFICATION

NAME OF BIDDER: \_\_\_\_\_

I am aware of the provisions of section 3700 of the Labor Code 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 of this Contract.

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

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

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

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

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

**2.12**

**BID BOND**

**BID SECURITY IS REQUIRED TO BE PROVIDED ALONG  
WITH THE BID IN ACCORDANCE WITH THESE BID DOCUMENTS**

**SEE BID BOND ON NEXT PAGE**

## BID BOND

[**Note:** A Bid Bond is not required when another form of Bid Security, e.g. cash, certified check, or cashier's check accompanies the Bid.]

The makers of this bond are, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety and are held and firmly bound unto the City of Ontario, with its principal place of business at **303 East B Street, Ontario, CA 91764**, hereinafter called the City, in the penal sum of **TEN PERCENT (10%) OF THE TOTAL PRICE OFFERED** of the Principal submitted to the City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid dated \_\_\_\_\_, 20\_\_\_\_, for D&C21-001A NEW FIRE ADMINISTRATION BUILDING.

If the Principal does not withdraw its Bid within the time specified in the RFP; and if the Principal is awarded the Contract and provides all documents to the City as required by the RFP; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporation.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate) \_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

- ☐ Partner(s) ☐ Limited  
☐ General

\_\_\_\_\_  
Number of Pages

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

\_\_\_\_\_  
Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Signer(s) Other Than Named Above



**2.13 PERFORMANCE BOND SAMPLE**

- 2.13.1 Owner has included a Sample Performance Bond in this Section. Within ten (10) calendar days following Award of Contract, Bidder shall delivery to the Owner a fully executed copy of this Performance Bond.

**SEE PERFORMANCE BOND ON NEXT PAGE**

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

5. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

6. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
7. Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges,  
\$\_\_\_\_\_.

(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

\_\_\_\_\_  
Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

\_\_\_\_\_  
Date of Document

☐ Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Signer(s) Other Than Named Above

**2.14 PAYMENT BOND SAMPLE**

- 2.14.1 Owner has included a Sample Payment Bond in this Section. Within ten (10) calendar days following Award of Contract, Bidder shall delivery to the Owner a fully executed copy of this Payment Bond.

**SEE PAYMENT BOND ON NEXT PAGE**

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario (hereinafter designated as the "City"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows: \_\_\_\_\_ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be

released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.



## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

\_\_\_\_\_  
Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

\_\_\_\_\_  
Date of Document

☐ Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Signer(s) Other Than Named Above

## **PART II – ADMINISTRATIVE SPECIFICATIONS**

1. **SECTION 00500 – CONTRACT FOR CONSTRUCTION**

This Contract for Construction (“Contract”), No. \_\_\_\_\_ is made and entered as of \_\_\_\_\_, by and between City of Ontario, with its principal place of business at 303 East “B” Street, Ontario, CA 91764, sometimes hereinafter called the “City” and [\*\*\*INSERT\*\*\*], sometimes hereinafter called “Contractor.”

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

**ARTICLE 1. SCOPE OF WORK.**

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

**D&C21-001A Fire Administration Building**

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor’s failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.**

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City’s Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **600** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.**

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

**ARTICLE 4. LIQUIDATED DAMAGES.**

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City’s actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **\$2500** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the

Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

## **ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.**

The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Forms
- Bid Acknowledgement
- Bid Schedule
- Bid Guarantee
- Designation of Subcontractors
- Information Required of Bidders
- Non-Collusion Declaration Form
- Iran Contracting Act Certification
- Public Works Contractor DIR Registration Certification
- Performance Bond
- Payment (Labor and Materials) Bond
- Contract for Construction
- General Conditions
- Special Conditions
- Specifications
- Addenda
- Construction Plans and Drawings
- Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
- Applicable Local Agency Standards and Specifications, as last revised
- Reference Specifications
- Approved and fully executed Change Orders
- Permits
- Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

## **ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.**

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

## **ARTICLE 7. INDEMNIFICATION.**

Contractor shall provide indemnification and defense as set forth in the General Conditions.

## **ARTICLE 8. PREVAILING WAGES.**

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

## **ARTICLE 9. FALSE CLAIMS.**

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

**\*\*\*INSERT NAME OF CONTRACTOR\*\*\***

By: \_\_\_\_\_

Scott Ochoa

City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

ATTEST:

By: \_\_\_\_\_

Sheila Mautz, City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

APPROVED AS TO FORM:

By: \_\_\_\_\_

Best Best & Krieger LLP

City Attorney

\_\_\_\_\_  
Contractor's License Number and Classification

\_\_\_\_\_  
DIR Registration Number

**[IF CORPORATION, TWO SIGNATURES,  
PRESIDENT OR VICE PRESIDENT AND  
SECRETARY OR TREASURER REQUIRED]**

**END OF CONTRACT**

## **ARTICLE 3 DEFINITIONS**

### **3.1 GENERAL**

- 3.1.1 This Article contains a list of definitions to be used specifically with the Project advertised including all Addendum. This Article is intended to be a ready reference for certain selected words only, and is not intended to be an all inclusive list of defined words for this Project.
- 3.1.2 These definitions supplement any definitions provided elsewhere in the Bid, RFP, or Contract Documents. In the event of a conflict, the OR shall resolve the conflict, and the Owner shall have the right to select the definition that most favors the Owner.
- 3.1.3 The Owner shall have full authority to clarify definitions of any words used in the Bid, RFP, and Contract Documents. The Owner's decision on definitions shall be final.
- 3.1.4 Where definitions are identified as 'Design-Bid-Build,' the definition is intended to apply only to Design-Bid-Build Projects. Where definitions are identified as 'Design-Build,' such definitions are intended to apply to Design-Build ('DB') projects only.
- 3.1.5 Questions concerning definitions during bidding or proposal preparation shall be delivered to the Owner in accordance with the Advertisement.
- 3.1.6 Questions concerning definitions after the Award of Contract shall be delivered to the OR.
- 3.1.7 Unless specified otherwise in the Bid, RFP, or Contract Documents, technical words and abbreviations contained in the Bid, RFP, or Contract Documents are used in accordance with commonly understood design professional and construction industry meanings. Non-technical words and abbreviations are used in accordance with their commonly understood meanings.

### **3.2 DEFINITIONS**

#### **A**

**Act of God** is any cataclysmic natural event caused exclusively by natural forces and for which the effects could not have been prevented by the exercise of reasonable care and foresight.

**Activity** is the grouping of related Tasks. For example, a Submittal Activity may include separate Tasks for Submission, Review, Return to Builder, Resubmittal, and Acceptance. Related Tasks should always be grouped under one Activity.

**Addenda** include all written or graphic instruments issued prior to the Submittal Deadline, which amend, modify, or clarify the Owner's Project requirements.

**Addendum** is the singular of Addenda.



**Advertisement** is the printed and/or digital communication by which the Owner identifies its interest in receiving Bids or Proposals for the project described within the Advertisement. An Advertisement is not a promise to complete the bidding or proposal process nor is it a guaranty that the Contract will be awarded.

**Agreement** (See Contract.)

**AHJ** shall mean Authority Having Jurisdiction.

**Applicable Codes** means the applicable construction requirements in effect and applicable to any portion of the Work. Such requirements specifically include applicable California Titles, Federal Codes, and local ordinances, rules, and regulations. Builder is solely responsible for its knowledge of applicable codes.

**Applicable Laws** means or includes all laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued or required by any Authority Having Jurisdiction, the state of California, or the federal governmental. Where appropriate, this also includes utility purveyors or other public or private authorities having jurisdiction over any portion of the Project.

**Architect of Record** (See Designer of Record.)

**As-Built Documents** include the As-Built Plans, Specifications, reports, inspection records, sampling and testing documents, surveys, mockups, photographs, video, and any other documents which identify how the Work was actually performed by Builder.

**As-Built Plans** are the plans maintained by Builder in accordance with these Specifications that identify Work performed differently from the Original Contract Plans.

**As-Built Specifications** are the specifications maintained by Builder in accordance with these Specifications that identify Work performed differently from the Original Contract Specifications.

**Attic Stock** means additional and excess Project materials retained by Owner to facilitate future maintenance and repairs.

**Authority Having Jurisdiction ('AHJ')** shall refer to any public or private agency with code enforcement authority over any portion of the work. See also 'City (as Authority Having Jurisdiction).'

**Award of Agreement** (same as Award of Contract)

**Award of Contract** The final decision made by the City regarding whether to Award the Contract and proceed with the Project or not. Where a public meeting is held, the Award of Contract date shall be the date of the public meeting. Where no public meeting is held, the date of Award of Contract shall be the date the Agreement is signed by the appropriate City representative authorized to sign the Agreement on behalf of the City.

## B

**Beneficial Use** means the Owner's use of any part of the Work prior to either Substantial Completion or Final Completion. The date the Owner first occupies or uses the specific Work in question shall be identified as the 'Beneficial Use Date.'

**Best Value (Design-Build)** means the highest overall value to the Owner based on the most advantageous balance of subjective and quantifiable criteria that include, but are not limited to: closest alignment with project goals, overall design aesthetics, features, quality, operational transparency, cost efficiency, economy, long term functionality, life-cycle costs, sustainability, project control, reputation of team members, past performance, development experience, references and recommendations, past workmanship, past service, past safety performance, past violations of state and federal OSHA requirements, past violations of prevailing wage requirements, history of litigation, ability to bond, ability to insure, use of local work forces, and other qualities that are not possible to articulate.

**Bid** is the written offer or proposal from a prospective Bidder.

**Bid Requirements** consists of all documents identified in the Advertisement (including all Addenda) and these Specifications that have been made available to prospective Bidders prior to the Submittal Deadline.

**Bid Guarantee** (See Bid Security).

**Bid Security** is the security required to be provided by the Bidder in compliance with the requirements of these Specifications prior to the Submittal Deadline.

**Bid Solicitation** (See Advertisement.)

**Bid Submittal Deadline** (See 'Submittal Deadline')

**Bidder** is a prospective, lawfully licensed contractor who is preparing to submit or did submit a Bid to perform work in accordance with an Advertisement.

**Builder** refers to the entity actively licensed by the California Contractors State License Board ('CSLB') that has been contracted by the Owner to perform the Design-Build Work of this Project. The term is equivalent to 'Contractor' and 'Prime Contractor,' and specifically includes all design and construction forces under the direction or control of Builder including its officers, agents, employees, subcontractors regardless of tier, subconsultants regardless of tier, suppliers, etc. On Design-Build projects Builder specifically means 'Design-Builder.'

## C

**Calendar Day** is any day of the year, and includes all holidays, Saturdays, and Sundays.

**Changed Work** is Work different from the current Contract Documents that was ordered by the Owner in accordance with these Specifications or was proposed by Builder and accepted by the Owner in accordance with these Specifications.

**City ( as 'Authority Having Jurisdiction')** refers to the departments and divisions within the Owner's Table of Organization that are responsible for code or law enforcement. The Owner 'as AHJ' is distinctly different from the City 'as Owner of the Project,' and the two roles are not interchangeable.

**City (as 'Owner of the Project')** means the same thing as 'Owner' and refers to the actual ownership and contract administrator for the Project. The City 'as the Owner of the Project' is distinctly different from the City 'as Authority Having Jurisdiction,' and the two roles are not interchangeable.

**City's Representative** means the same thing as the OR.

**CCO** - acronym for Contract Change Order.

**Change Order Request ('COR')** is a written request from Builder to the Owner, prepared in accordance with the Contract Documents, to change the Scope of Work in a way that increases or decreases the Contract Sum and/or the Contract Time.

**Codes** means or refers to laws, codes, ordinances, rules and/or any other regulations lawfully adopted, established, or enforced by any Authority Having Jurisdiction over any portion of the work.

**Concurrent Delay** means two or more Delays with at least one (1) working day of overlap.

**Construction Documents** (Design-Bid-Build) (See Contract Documents).

**Construction Documents (Design-Build)** means the Work Product prepared by Builder's Design Team that completes the Project design development required by the Contract Documents. Unless specified otherwise, Design Build Construction Documents include all effort on the part of the Design Build Team required to obtain all plan approvals required by any Authority Having Jurisdiction over any portion of the Project.

**Construction Documents Phase (Design-Build)** means the Scope of Work and period of time set forth in the Agreement for the preparation of Construction Documents based on the Owner approved Design Development Documents. (Same as 'CD Phase or Phase 2.')

Construction Manager ('CM') (See OR.)

**Construction Phase (Design-Build)** means the period of time set forth in the Agreement beginning with the issuance of the first Construction Notice to Proceed and ending on the date of Final Completion of the Project. (Same as Phase 3.)

**Construction Schedule** means the time-based graphic representation of Builder's intended progress from NTP to Project Final Completion. By definition there can be only one (1) currently accepted Construction Schedule. All preceding Construction Schedules are replaced by the currently accepted Construction Schedule. A Construction Schedule is not accepted until so identified by the OR.

**Construction Schedule Revision** is a change in the Construction Schedule made for the purpose of accelerating the work or mitigating a Delay impact.

**Construction Schedule Update** is an update of the Construction Schedule to reflect the actual work performed as of the most current Data Date.

**Contract** means the written agreement between City and Contractor that defines the mutually agreed scope of work, administration, performance requirements, and compensation obligations to complete Project defined by the Contract Documents in a substantial and acceptable manner. The Contract includes and incorporates by reference all enumerated Contract Documents and any future supplemental agreements or Contract Change Orders amending the Work or adjusting the time for completion of the Work prepared in accordance with the Contract Documents.

**Contract Change Order ('CCO')** is a written order issued to Builder by the Owner for the purposes of directing changes in the Work for which a change in either or both the Contract Sum and/or Contract Time is warranted.

**Contract Completion Date** is the date specified in the Contract Documents (as modified by any Owner approved Contract Change Order) upon which the Owner expects to accept the Project Work as being complete. The most current Construction Schedule shall always reflect the Contract Completion Date.

**Contract Documents** means the executed Contract, all Specifications, all Plans, all addenda, and any other written or graphic instruments and/or information specifically identified in the Agreement as being part of this Project. Unless specified otherwise, the Contract Documents also include the Notice of Award, the Notice to Proceed (NTP), all Field Directives, all Scope Clarifications, all RFI Responses from Owner's forces, and all fully executed Contract Change Orders including Unilateral Contract Change Orders.

Shop Drawings, Product Data, Samples, and similar submittals are specifically not Contract Documents. Shop Drawings, Product Data, Samples, and similar submittals are instruments of Builder's forces by definition.

**Contract Duration** (same as 'Contract Time.')

**Contract Milestone** means a planned point in time for the start or completion of a specific task specifically defined or identified by the Contract Documents.

**Contract Price** (same as 'Contract Sum').

**Contract Scope of Work** (See 'Project').

**Contract Sum** is the amount payable to Builder under the terms and conditions of the Contract Documents as compensation for the Work performed.

**Contract Time** is the duration of time specified in the Agreement by which Builder is obligated to complete the Work. Contract Time may be total calendar days or total working days. Total calendar days shall include the number of calendar days between the date specified on the Notice to Proceed and the Contract Completion Date, plus any Time Extensions. Total working days shall be the same as total calendar days minus the total number of Nonworking days.

**Contractor** refers to the entity actively licensed by the California Contractors State License Board ('CSLB') that has been contracted by the Owner to perform the Work of this Project. The term is equivalent to 'Builder' and 'Prime Contractor,' and specifically includes all design and construction forces under the direction or control of Contractor including its officers, agents, and employees, subcontractors regardless of tier, subconsultants regardless of tier, suppliers, etc.

**COR** - acronym for Change Order Request.

**Critical Path** means the longest path or paths shown on the currently accepted Construction Schedule that indicates the least amount of time in which the project can be completed.

**Critical Path Delay** means any Delay to any Task on the Critical Path.

## **D**

**Day** shall mean working day unless otherwise specified where the Contract Duration is specified in working days, and shall mean calendar days unless otherwise specified where the Contract Duration is specified in calendar days.

**Defective Work** means Work that is unsatisfactory, faulty, omitted, incomplete, or deficient; or Work that otherwise fails to perform or conform to the requirements of the Contract Documents, written direction from the OR, the requirements of any AHJ, or law.

**Delay** (see Critical Path Delay). By definition, the use of float by either the Owner or Builder on a non-critical path Task is not a Delay.

**Design-Builder** means all of the forces for design and construction under the control and/or direction of the Builder. As used in these Specifications, Design Builder shall mean the same as 'Builder,' 'Contractor,' or 'Prime Contractor.'

**Designer (Design-Bid-Build)** refers collectively to the individuals or entities responsible for preparing the plans and specifications under contract or subcontract to the Owner. For Work that is required by the Contract Documents to be designed by the Builder, the Builder's designers are specifically excluded from this definition.

**Design Development Documents (Design-Build)** means the Design Team Work Product that describes and/or defines the initial project design as defined by the Contract Documents. DD Documents define the important aspects of the Project and generally include to-scale and dimensioned architectural plans and structure elevations, fully developed but not yet fully detailed plans for all important trades involved in the Project, and a fully developed outline of the scope to be completed during the Construction Document Phase.

**Design Development Phase (Design-Build)** means the Scope of Work and period of time set forth in the Agreement for the preparation of Design Development Documents. (Same as DD Phase or Phase 1.)

**Designer of Record** collectively refers to any person or entity licensed in accordance with State Law to practice architecture, engineering, landscape architecture, surveying, or similar work and who prepared the plans and specifications for any portion of the Work and/or provided other project related design or consulting services. The term includes all representatives of the Designer of Record, including, but not limited to, employees of the Designer of Record, consultants to the Designer of Record, and any other representatives designated by the Designer of Record. Designer of Record may be Owner forces or Builder forces depending on the actual Work designed.

**Direct Costs** (See Changes to the Contract.)

## E

**Engineer** shall mean the City Engineer for the City, or their designee, acting either directly or through properly authorized agents. The Engineer acts within the role of City as Authority Having Jurisdiction. The Engineer is distinctly different from the OR.

**Engineer of Record** (See Designer of Record.)

**Environmental Product Declarations** means those documents and other submissions required to be furnished by Builder's forces pursuant to California Public Contract Code §3500 et seq., the Buy Clean California Act, and these Specifications.

**Equipment Manufacturer** (See Manufacturer).

**Extra Work** (See 'Changed Work.')

## F

**Favorable Review** shall mean the acceptance (with or without comment) or approval by the Owner's forces and/or any Authority Having Jurisdiction over any Submittal or portion of the Work. Favorable Review is not achieved until all required entities have accepted or approved the Submittal and/or Work being reviewed.

**Field Directive** is a written order issued to Builder by the OR directing Builder to complete a change in the Scope of Work for which a change in Contract Time and/or Contract Sum is warranted.

**Final Completion** means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents.

**Float** is the amount of time a Task not on the Critical Path can be delayed without impacting the start of a Task that is on the Critical Path.

## G

**Government Approvals** mean any approval by any Authority Having Jurisdiction over any portion of the Work.

**Guarantee** (see Warranty).

## H

**Holidays** are the legal holidays designated by the Owner or specifically identified in the Contract Documents.

**Home Office Overhead** (same as Indirect Home Office Overhead).

## I

**Indirect Cost** shall be any cost not defined as a Direct Cost.

**Indirect Home Office Overhead ('IHOO')** is the Builder's indirect costs that cannot be directly allocated to a project. Costs included in IHOO generally include office space costs; corporate, staff, and other non-jobsite salaries; company level insurances; utilities; consulting services; bidding and proposal preparation costs; etc.

**Informational Submittals** are standard printed data, which show or otherwise describe a product or system, or some other portion of the work. Informational Submittals do not generally require acceptance or approval.

**Invitation to Bid** (See Advertisement.)

## L

**Landscape Architect of Record** (See Designer of Record.)

**Lead Time** means the duration of time required to confirm scope, prepare, and accept Shop Drawings, place the order, and receive the order at the Site.

**List of Deficiencies** is a list prepared by Owner's forces or an AHJ identifying Work which is missing, incomplete, non-code compliant, or otherwise not in conformance with the Contract Documents. Failure of the Owner or AHJ to identify any deficiency does not relieve Builder of its obligation to perform Work in conformance with the Contract Documents.

**Lump Sum** is the additive or deductive change in Contract Sum and/or Contract Time calculated in accordance with the Time and Materials Procedures specified in these Specifications that is negotiated and accepted by both Owner and Builder prior to completion of the Work covered by the Lump Sum calculation.

**LSOV** - acronym for Limited Schedule of Values.

## M

**Manufacturer** means any fabricator not directly under the control of Builder who supplies a product to be installed in accordance with the Contract Documents.

## N

**Negative Float** (See 'Critical Path Delay'.)

**NIB** – Acronym for 'Notice Inviting Bid.' (See Advertisement.)

**NISB** – Acronym for 'Notice Inviting Sealed Bid'. (See Advertisement.)

**NIC – Acronym for 'Not in Contract'**. The acronym is used to identify portions of the Project that are not to be furnished, installed, or performed by the Builder. The term is synonymous with 'Not a Part of the Work to be performed by the Builder except that coordination with identified NIC items shall be the Builder's responsibility where such coordination is required by the Contract Documents.

**Nonworking Day** is the remaining calendar days of the year not defined as Working Days.

**Notice of Intent to Award Agreement** is the written notification from the Owner to the Bidder or Proposer that it has been identified by the Owner as the successful Bidder or Proposer and that the City intends to award the contract in accordance with the terms and at the date and time specified in the Notification. Receipt by Bidder or Proposer of a Notice of Intent to Award the Contract is not promise or guaranty that the contract will be awarded. Until the Agreement between Owner and Bidder or Proposer is executed, Owner maintains all rights defined elsewhere in these Specifications.

**Notice Inviting Bid** (See Advertisement).

**Notice to Proceed ('NTP')** is the written notice from the Owner to Builder directing Builder to proceed with the Project, and which specifies the Start of Construction Date.

**Notice of Substantial Completion** is the written notice from the Owner to Builder indicating that the Owner has accepted the Work as Substantially Complete.

## O

**O & M Documentation** is an acronym that stands for Operation and Maintenance Documentation.

**Omitted Work** is work deducted from the Contract Documents by the Owner as part of a Field Directive or Contract Change Order.

**Owner** is the City or other agency identified in the Contract Documents for whom the work is being performed. See also City as 'Owner of the Project.'

**Owner Forces** includes any entity of or representing the Owner including, but not limited to, its council and board members, directors, officers, agents, employees, and consultants under contract to the Owner for any purpose related in any way to the Work.

**Owner Representative** is any person or entity who has been designated in writing by the Owner to act in the capacity of the Owner in matters relating to management and enforcement of the Contract Documents. Unless specified otherwise, the OR has no role as an Authority Having Jurisdiction over any portion of the Work.

**OR** - acronym for Owner Representative.

**Original Contract Documents** are the Contract Documents as they exist on the date the NTP is issued. The Original Contract Documents identify the Scope of Work anticipated when the Agreement was executed.



## P

**Plans** (same as drawings) are the graphic representations of the Work required to be performed by the Contract Documents.

**Prime Contractor** (See 'Builder' and 'Contractor'.)

**Product Data Submittals** are instruments prepared by Builder's forces and/or manufacturers supplying material and equipment to the Project which describe a product, system, or some other portion of the Work to be furnished and installed by the Builder.

**Progress Payment Request ('PPR')** is the documentation prepared by Builder to justify the portion of the Contract Sum requested in exchange for the portion of Work completed in accordance with the Contract Documents.

**Project** Prior to Award of Contract, the Project is defined by the RFP or Bid Solicitation Documents. After Award of Contract, the Scope of Work is defined by the Contract Documents. The term 'Project' specifically includes all supervision, design, deliverables, labor, materials, furnishings, equipment, services, quality control, and ancillary tasks necessary, whether specifically defined or not, to complete the Project.

**Project Acceptance** means the point in time where the Owner has accepted the Project as complete.

**Project Architect** (See Designer of Record).

**Project Development Schedule** means the time-based graphic representation of the Designer's intended progress from NTP to Permit Issuance.

**Project Duration (DB Project Only)** For Design-Build projects, the project duration shall include all time beginning on the date the Phase I NTP is issued and concluding on the date the project is accepted by the OR as complete. Project Duration specifically excludes the time required by the Owner to obtain council or board approval of the Project, to record a Notice of Completion, or to release Retention.

**Project Engineer** (See Designer of Record).

**Project Record Documents** are documents prepared and/or maintained by Builder for the sole purpose of documenting actual conditions and the work as it is actually performed.

**Project Schedule** means the time-based graphic representation of the intended progress from NTP to Final Project Completion.

**Project Site** (Same as Site).

**Proposal** means the written response submitted to the Owner in response to the Owners Request for Proposals.

**Proposal Guarantee** (See Proposal Security).

**Proposal Security** is the security required to be provided by the Proposer in compliance with the requirements of these Specifications at the time of Proposal delivery.

**Proposal Submittal Deadline** (See 'Submittal Deadline')

**Proposer** means the potential entity submitting a response to the Owner's Request for Proposal ('RFP') that includes an offer to design and/or build the Project defined by the RFP.

**Punch List** refers to all lists prepared by Owner forces that identify not started, incomplete, uncorrected, deficient, or defective Work as observed on the date of inspection. Owner's Punch List is intended to be separate from any corrections identified by any code required special inspection or any AHJ especially the City as AHJ, but may refer to or incorporate any corrections identified by any special inspector or AHJ.

## R

**Record Drawings** shall mean the final version of the Project plans that have been created based on the As-Built Documents created throughout performance of the Work. Record Drawings reflect the actual as-built Work performed by Builder.

**Recyclable Waste Materials** shall mean materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.

**Request for Information ('RFI')** shall include any removal and replacement or any other replication of effort required to bring defective or noncomplying Work into conformance with the minimum requirements of the Contract Documents or other law, ordinance, code, regulation, etc.

**Request for Proposal ('RFP')** consists of all documents identified in the Advertisement (including Addenda) and these Specifications that have been made available by Owner to prospective Proposers prior to the RFP Submittal Deadline.

**Rework** shall include any removal and replacement or any other replication of effort required to bring defective or noncomplying Work into conformance with the minimum requirements of the Contract Documents or other law, ordinance, code, regulation, etc.

**RFP Response** (See Proposal).

**RFP** (See Request for Proposal).

**RFP Documents** (See Request for Proposal).

## S

**Samples** are physical examples of the products or work to be furnished and installed by Builder and define the minimum standard by which Work will be judged compliant with the Contract Documents.

**Scope of Work** (See Project).

**Shall** indicates a mandatory requirement.

**Shop Drawings** are original instruments prepared by Builder's forces which describe and/or graphically illustrate some portion of Work, erection, or means and methods. Shop drawings are instruments of Builder.

Shop Drawings, Product Data, Samples, and similar Submittals are not Contract Documents. The purpose of Shop Drawings is to demonstrate how Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

**Site** is the location of the Project described in the Contract Documents, including such access and other lands and facilities designated in the Contract Documents for use by Builder.

**SOV** - acronym for Schedule of Values.

**Specifications** refers to those portions of the Contract Documents, which provide the written administrative, performance, and/or technical requirements for this Project. Where specifically identified, those portions of the Standard Specifications for most current Public Works Construction ('Green Book' or 'Standard Specifications') shall apply where not in conflict with these Administrative Specifications.

**Subcontractor** is any person or entity who has a direct contract with Builder or with any upper tier subcontractor that has a direct contract with Builder to perform any of the Work.

**Submittal** means any instrument, including Substitution requests, which is required by the Contract Documents to be reviewed and accepted or approved by Owner forces or any Authority Having Jurisdiction prior to ordering, fabrication, or installation of any Work.

**Submittal Deadline (Bid)** is the date and time specified in the Bid Documents, where Bids submitted in response to Owner's Advertisement will no longer be accepted by the Owner.

**Submittal Deadline (Proposal)** is the date and time specified in the RFP Documents, where Proposals submitted in response to Owner's RFP will no longer be accepted by the Owner.

**Submittal Register** means a list prepared by Builder of all Submittals that require review and acceptance by any Owner forces.

**Substantial Completion** is the stage in the progress of the Work where the Project is sufficiently complete and the Owner can beneficially occupy or use the Work for the Owner's intended purposes.

**Substitution Request** (See 'Submittal').

**Successful Bidder** is the responsible Bidder who submitted the lowest responsive Bid as identified by the Owner.

**Successful Proposer** is the Proposer who submitted the Proposal deemed to provide the best value to the Owner.

**Superintendent** means the person designated by Builder to represent Builder and supervise the Work defined by the Contract Documents.

**Supplemental Instruction** (See 'Field Directive').

**Supplier** is any person or entity having a direct contract with Builder or its forces that supplies material or equipment for this Project.

**Surety** is any person or entity that joins with Builder to assume liability by issuing Bonds for the faithful performance of the Project Work and for the payment of all obligations pertaining to the Project in accordance with the Contract Documents or as prescribed by Law.

## T

**Task** is an individual row on the Construction Schedule that identifies some finite amount of project construction directly related to completion of the Work. By definition, each Task must have a Start Date and a Duration.

**Task Float** is the amount of time that an individual Task can be delayed without delaying the start date of any successor Task that is on the Critical Path.

**Tier** means the contractual level of a Subcontractor, fabricator, supplier, or consultant with respect to Builder.

**Time and Materials** refers to the method for determining additive or deductive changes in Contract Sum and /or Contract Time permitted by these Specifications. This term encompasses the totality of all factors identified in these Specifications that impact any change in Contract Sum and/or Contract Time.

**Time Extension** is a change in the Contract Time resulting from a change in the Scope of Work and/or a Delay.

**Total Float** (same as Total Project Float) is the difference measured in days between the finish date of the last task on the Critical Path of the currently accepted Construction Schedule and the current Contract Completion Date.

## U

**Unilateral Contract Change Order** is a Contract Change Order processed by the Owner and issued to Builder without first requiring the consent and/or signature of Builder.

**Usual Weather** shall mean weather conditions not classified as "Unusual Weather."

**Unusual Weather** shall mean weather conditions that exceed sixty-five percent (65%) of that recorded in the most recent one hundred years. To be considered 'Unusual Weather' such conditions must exist for a minimum of ten (10) continuous working days or for a total of twenty (20) working days in any continuous forty (40) working day period of time. Any weather conditions not meeting the threshold stated in this definition shall be considered 'Usual Weather.'

## **W**

**Work** (same as Project).

**Working Day** is any day, other than Saturdays, Sundays and days defined as Holidays in the Contract Documents on which Builder may prosecute Work in accordance with the Contract Documents.

**Warranty** is the expressed and implied promise of Builder that Owner will have the beneficial use intended by the Contract Documents for the full Warranty Period provided by the manufacturer or by the Contract Documents whichever is greater.

**Warranty/Guarantee Period** means the period during which Builder shall remain liable for repair or replacement of any defective Work performed under the Contract Documents.

## **END OF ARTICLE**

## **ARTICLE 4**

### **ADDITIONAL AGREEMENT PROVISIONS**

#### **4.1 CHANGE IN NAME AND NATURE OF BUILDER'S LEGAL ENTITY**

- 4.1.1 Should a change be contemplated in the name or nature of Builder's legal entity, Builder shall first notify the Owner in order that proper steps may be taken to have the change reflected on the Contract Documents. No change of Builder's name or nature will affect Owner's rights under the Contract Documents, including but not limited to the bonds.

#### **4.2 PROHIBITED INTERESTS**

- 4.2.1 No Owner force authorized to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting, or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Work.

#### **4.3 TAXES**

- 4.3.1 Builder shall pay all sales, consumer, use, income, payroll, excise, and similar taxes or assessments for the Work or portions thereof provided by Builder. No separate allowance is made for such taxes, and all costs in connection therewith shall be included in the total amount of the Contract price.

#### **4.4 PATENTS, PATENT INFRINGEMENT, PATENT FEES, AND ROYALTIES**

- 4.4.1 All fees or claims for any patented invention, article, or arrangement that may be used upon, or in, any manner connected with the performance of the Work or any part thereof shall be included in the price offered for doing the work.
- 4.4.2 The amount offered by Builder shall include the patent fees or royalties on any patented article or process furnished or used in the Work. Builder shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices, or processes used in or incorporated within the Work.
- 4.4.3 Builder shall pay all royalties and license fees required for the performance of the Work. Builder shall defend suits or claims resulting from Builder's or any Subcontractor's infringement of patent rights and shall defend (with Counsel of Owner's choosing), indemnify, and hold harmless Owner and OR from losses on account thereof.
- 4.4.4 Builder shall defend, indemnify, and hold harmless the Owner, its officials, officers, agents, employees, and representatives from and against all liabilities, demands, claims, damages, losses, costs, and expenses arising from such use.

#### **4.5 NOTICE OF TAXABLE POSSESSORY INTEREST**

- 4.5.1 In accordance with Revenue and Taxation Code §107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Builder will be responsible.

#### **4.6 INDEMNIFICATION**

- 4.6.1 Where Builder is responsible for defense, indemnification, and hold harmless, such protection shall be from, but is not limited to, claims, demands, causes of action, costs, expenses, liabilities, losses, damages, injuries, at law or in equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. Defense shall be provided at Builder's cost, expense, and risk, with Counsel of Owner's choosing, for all suits, actions or other legal proceedings of any kind that may be brought or instituted against Owner. Builder shall reimburse Owner for all legal expenses and costs incurred in connection with or resulting from the enforcement of the obligations imposed on Builder by these Specifications. The only limitations on this requirement shall be those specified in California Civil Code §2782.
- 4.6.2 Builder shall defend (**with Counsel** of Owner's choosing), indemnify, and hold harmless Owner and Owner Forces from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating to the following:
- (A) The failure of Builder to perform its obligations under the Contract Documents.
  - (B) The inaccuracy of any representation or warranty by Builder given in accordance with or contained in the Contract Documents.
  - (C) Any claim of damage or loss by any Builder forces against Owner or Owner Forces arising out of any alleged act or omission of Builder.
  - (D) Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by Builder.
- 4.6.3 The Owner and Owner Forces shall not be liable or responsible for any accidents, loss, injury, death, or damages happening or accruing during the performance of the Work to persons or property. Builder shall fully defend (**with Counsel** of Owner's choosing), indemnify, and hold harmless Owner and Owner Forces from and against any such accidents, loss, injury, death, or damages happening or accruing during the performance of the Work to persons or property.

- 4.6.4 In addition to the liability imposed by law upon Builder for damage or injury (including death) to persons or property by reason of the negligence of Builder, which liability is not impaired or otherwise affected hereby, Builder shall defend (with Counsel of Owner's choosing), indemnify, hold harmless, release and forever discharge the Owner and its forces from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of Builder or anyone directly or indirectly employed by any Builder forces from the condition of the premises or any part of the premises while in control of Builder arising out of the performance of the Work called for by this Contract Documents.
- 4.6.5 Builder agrees that this indemnity and hold harmless shall apply even in the event of negligence of Owner or Owner forces, regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply:
- (A) In the event of the sole negligence, active negligence or willful misconduct of Owner or Owner forces;
  - (B) To the extent that the Owner shall indemnify and hold harmless Builder for Hazardous Materials pursuant to these Specifications.
- 4.6.6 In claims against any person or entity indemnified under this Article that are made by an employee of Builder or any Subcontractor, any person indirectly employed by Builder or any Subcontractor, or anyone for whose acts Builder or any Subcontractor may be liable, the indemnification obligation under this Article shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 4.6.7 The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- 4.6.8 Builder shall indemnify Owner from and against losses resulting from any claim of damage made by any separate contractor against Owner arising out of any alleged acts or omissions of Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.
- 4.6.9 Builder shall indemnify separate contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.



- 4.6.10 Builder shall defend (with Counsel of Owner's choosing), indemnify, and hold harmless Owner and its forces (collectively, 'Indemnatee'), against all liability, demands, claims, costs, damages, injury (including death), settlements, and expenses (including without limitation interest and penalties) incurred by Indemnatee arising out of the performance of services or Builder's other obligations under this Contract, but only in proportion to and to the extent such losses are caused by or result from;
- (A) The negligent acts or omissions of Builder, its officers, agents, employees, subcontractors, design consultants, or any person or entity for whom Builder is responsible (collectively, 'Indemnitor'),
  - (B) The breach by Indemnitor of any of the provisions of the Contract Documents,
  - (C) The willful misconduct by Indemnitor.
- 4.6.11 The indemnification obligations under this Article shall not be limited by any assertion or finding that:
- (A) The person or entity indemnified is liable by reason of non-delegable duty,
  - (B) The losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnatee. The obligation to defend shall arise regardless of any claim or assertion that Indemnatee caused or contributed to the losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by Owner except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's:
    - (i) Negligent acts or omissions,
    - (ii) Breach of any of the provisions of the Contract Documents,
    - (iii) Willful misconduct.
- 4.6.12 Builder shall defend (with Counsel of Owner's choosing), indemnify, and save harmless Indemnatee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnatee of the Design Materials or Contract Documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Contract.
- 4.6.13 Nothing in the Contract Documents, including the provisions of this Article, shall constitute a waiver or limitation of any rights which Indemnatee may have under applicable law, including without limitation, the right to implied indemnity.

#### **4.7 SUCCESSORS AND ASSIGNS**

- 4.7.1 Owner and Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all its obligations under the Contract.

#### **4.8 RIGHTS AND REMEDIES**

- 4.8.1 All Owner's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of Owner under the Contract Documents or otherwise available at law or in equity.
- 4.8.2 No action or failure to act by Owner will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Owner of any condition, breach or default will constitute a waiver of any other condition, breach, or default; nor will any such waiver constitute a continuing waiver.
- 4.8.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against Owner, OR, or Builder.

#### **4.9 SURVIVAL**

- 4.9.1 The provisions of the Contract Documents which by their nature survive Project completion or Termination of the Contract, specifically including Warranties, Indemnities, payment obligations, and Owner's right to audit Builder's books and records shall remain in full force and effect after Final Completion or Termination of the Contract.

#### **4.10 COMPLETE AGREEMENT**

- 4.10.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. Except for Unilateral Change Orders and where otherwise specified, the Contract Documents may be modified only by a written instrument signed by both parties.

#### **4.11 SEVERABILITY OF PROVISIONS**

- 4.11.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **4.12 METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS**

4.12.1 The following documents identified below, shall be delivered in accordance with this Article and shall only be effective if delivered in the manner specified in this Article. Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Unless otherwise agreed, delivery of the specified documents shall be made at the respective street address set forth in the Agreement. The following documents must be delivered in accordance with this Article:

- (A) Owner's notices of Builder's failure to perform and/or correct defective work.
- (B) Owner's notice to Stop Work.
- (C) Notices of Termination or Suspension.
- (D) Builder Notices of election to litigate or arbitrate.
- (E) Written demand for an informal conference to meet and confer.
- (F) Owner's written statement identifying remaining disputes following informal conference.
- (G) Written demand for non-binding mediation.
- (H) Builder claims.

4.12.2 Delivery methods for documents specified above shall be as follows:

- (A) By personal delivery.
- (B) Sent by facsimile copy where receipt is confirmed.
- (C) Sent by email where receipt is confirmed.
- (D) Sent by Express Mail, or another method of delivery where receipt is confirmed.
- (E) Sent by registered or certified mail, postage prepaid, return receipt requested.

#### **4.13 ASSIGNMENT OF SUBCONTRACTS**

4.13.1 Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which Owner designates in writing. Owner may accept said assignment at any time during the Work and prior to Final Completion in the event of a suspension or termination of Builder's rights under the Contract Documents. Such assignment is part of the consideration to Owner for entering into the Contract with Builder and may not be withdrawn prior to Final Completion.

- 4.13.2 Subcontractors, regardless of tier, recognize the right of Owner to assign subcontracts, regardless of tier, in accordance with these Specifications. Upon notice from Owner that Owner has elected to assign and retain Subcontractor pursuant to the terms of the Contract Documents, Subcontractor shall complete the unperformed obligations under the subcontract and, if requested by Owner, to execute a written agreement confirming that Subcontractor is bound to Owner under the terms of the agreement.

#### **4.14 RESOLUTION OF CONSTRUCTION CLAIMS**

- 4.14.1 Failure by Builder to provide timely Notification of Dispute or Potential Dispute in accordance with the ***Disputes*** Section of the ***General Conditions*** Article shall constitute a waiver of Builder's right to submit a construction claim in accordance with this Section.
- 4.14.2 All Public works claims between Builder and Owner shall be resolved pursuant to the procedures set forth in California Public Contract Code §9204. All Public works claims of \$375,000 or less which arise between Builder and Owner shall be resolved in accordance with California Public Contract Code §§20104 et seq. and other applicable law, unless Owner has elected to resolve the dispute pursuant to California Public Contract Code §10240 et seq.
- 4.14.3 All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by Builder for:
- (A) A change in Contract Time, including, without limitation, relief from damages or penalties for delay assessed by Owner;
  - (B) A change in Contract Sum or damages arising from Work done by or on behalf of Builder and payment of which is not otherwise expressly provided for or Builder is not otherwise entitled; or
  - (C) Payment of an amount which is disputed by Owner.
- 4.14.4 **All Claims.**
- (A) Builder will submit the claim justification in the following format:
    - (i) Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
    - (ii) List of documents relating to the claim.
    - (iii) Chronology of events and correspondence.
    - (iv) Analysis of claim merit.
    - (v) Analysis of claim cost.
    - (vi) Time impact analysis in CPM format.

- (vii) Cover letter and certification of validity of the claim, including any claims from subcontractors, regardless of tier, in accordance with California Government Code §§ 12650 et seq.

4.14.5 **Owner Response to Claim.**

- (A) Upon receipt of a Claim pursuant to this Section, Owner shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) calendar days of receipt of the claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within sixty (60) calendar days after Owner issues its written response.
- (B) If Owner needs approval from Owner Council to provide Builder a written statement as set forth above, and Owner Council does not meet within the forty-five (45) calendar days or within the mutually agreed extension of time following receipt of a Claim, Owner shall have up to three (3) business days following the next publicly noticed meeting of Owner Council after forty-five (45) calendar day period, or extension, expires to provide Builder a written statement identifying the disputed portion and the undisputed portion of the Claim.
- (C) Owner may request, in writing, within thirty (30) calendar days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims Owner may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of Owner and the claimant. Owner's written response shall be submitted thirty (30) calendar days [fifteen (15) calendar days if the Claim is less than \$50,000] after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

4.14.6 **Meet & Confer Conference.** If Builder disputes Owner's response, or if Owner fails to respond within the statutory time period(s), Builder may so notify Owner within fifteen (15) calendar days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, Owner shall schedule a meet and confer conference within thirty (30) calendar days.

4.14.7 **Mediation.** Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion thereof remains in dispute, Owner shall provide Builder with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any portion of the claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with California Public Contract Code §9204 and Owner and Builder shall equally share the associated mediator fees. Each party will be responsible for its own attorney's fees and other costs incurred due to the resolution of any Claim.

- 4.14.8 **Condition Precedent.** Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by Owner, is a condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by Builder.
- 4.14.9 **Government Code Claim.** If the Claim or any portion thereof remains in dispute, the claimant must file a claim pursuant to California Government Code §§900 et seq. and Government Code §§910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference or mediation. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions have been followed by Builder. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Builder shall be barred from bringing and maintaining a valid lawsuit against Owner.
- 4.15 WAIVER OF RIGHT TO RESCIND FOR MATERIAL BREACH**
- 4.15.1 Builder agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner shall constitute a material breach of the Contract entitling Builder to cancel or rescind the provisions of this Agreement or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. Builder hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

#### **END OF ARTICLE**

## **ARTICLE 5**

### **PROJECT REQUIREMENTS**

***GUIDANCE: This Article contains the Conditions that are specific to this Project.***

#### **5.1 PROJECT DESCRIPTION**

- 5.1.1 Project: D&C21-001A New Fire Administration Building
- 5.1.2 Project Location: 1420 E. Francis Street, Ontario, CA
- 5.1.3 Project Number: D&C21-001A
- 5.1.4 Project Description: Construction of a Three-story Fire Administration Building.
- 5.1.5 Est. Construction Cost: **\$30,000,000**
- 5.1.6 The City of ONTARIO ('Owner') is requesting Bids for construction of a New Fire Administration Building project located within the City of ONTARIO, California.
- 5.1.7 This Bid Solicitation establishes the Owner's mandatory requirements for project scope, duration, design intent, level of quality, and administration.
- 5.1.8 The Scope of Work specifically includes, but is not limited to, all supervision, design, labor, materials, deliverables, furnishings, equipment, services, quality control, protection, and ancillary tasks necessary, whether specifically defined or not, to complete the Project.

#### **5.2 PROJECT DURATION**

- 5.2.1 Time is of the essence. The work must be completed within **Six Hundred (600) CALENDAR DAYS** from the date specified on the Notice to Proceed. For this Project, 'complete' specifically means the contractor has obtained a Certificate of Occupancy or a Temporary Certificate of Occupancy from both the City of Ontario and from the Los Angeles County Fire Department, and that residents are lawfully permitted to move into the dwelling units. Liquidated Damages will apply for any failure to complete the Project on time.
- 5.2.2 Builder shall be entitled to an additional forty-five (45) calendar days starting on the date of Substantial Completion or issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy, whichever occurs first, to complete all remaining Project Work.
- 5.2.3 Owner shall be entitled to Liquidated Damage in accordance with the Contract Documents for Builder's failure to comply with the Mandatory Project Duration requirements of this Section.

#### **5.3 PROJECT REQUIREMENTS INCLUDE**

- 5.3.1 In addition to all other requirements of code or law, the design to be prepared, the construction to be performed, and the price offered in this RFP shall include all requirements identified in this Article.

#### **5.4 LANDSCAPE MAINTENANCE PERIOD**

- 5.4.1 The project requirements specifically include a 6-month landscape maintenance period. Builder shall be responsible for all maintenance of landscaping unless the Owner accepts a direct relationship with the landscape Builder responsible for the landscape placement.
- 5.4.2 The Owner shall retain \$5,000 from the total project Retention owed Builder until the 6-month plant maintenance period has expired. Where Builder fails to address landscape issues in a timely manner, the Owner shall have the right to address the issue with its own forces and to deduct all costs incurred by the Owner from the plant maintenance Retention balance.

#### **5.5 FACILITIES FOR THE OR DURING CONSTRUCTION**

- 5.5.1 At the earliest possible opportunity during mobilization Builder shall establish facilities for the OR. Unless otherwise agreed to by the Owner, the facilities for the OR shall be established and accepted by the Owner prior to processing of any payment for mobilization.
- 5.5.2 Facilities for the OR shall include a construction trailer (or other enclosed space acceptable to the OR ). The trailer (or equal) shall provide a minimum of two (2) individual office spaces, and shall provide or include the following:
- (A) Heating and air conditioning.
  - (B) Bathroom with toilet, sink, and functioning exhaust fan. A source of water shall be provided that provides for proper operation of the toilet and hand sink. Builder shall be responsible for paper and other amenities including appropriate measures for Covid 19. Builder shall be responsible for disposal of all waste generated by OR.
  - (C) 120v Electrical outlets (6 minimum).
  - (D) Data outlets (6 minimum).
  - (E) Independent high-speed WIFI capable internet access. Unless approved on a separate password that does not share Builder's server or IT structure at any point. Builder shall be responsible for all hardware (router, modem, mesh Wi-Fi router, etc.) required to deliver internet service to the data points.
  - (F) Two printers as follows:
    - (i) One printer shall be a black and white WIFI-enabled combination Laser printer, scanner, copier capable of printing 8½ x 11 and scanning 11'x17'.
    - (ii) One printer shall be color and capable of printing on 11' x 17'.
  - (G) Builder shall be responsible for maintenance of the printer throughout construction including all printer cartridges. Builder shall be responsible for all paper use.



- (H) At the end of construction (demobilization of the facilities for the OR ), both printers shall be provided to the Owner as is and at no cost.
- (I) One 4 drawer file cabinet and one 2-drawer file cabinet.
- (J) One (1) desk.
- (K) One (1) plan rack.
- (L) Bottled drinking water. Builder shall be responsible for insuring adequate drinking water. A water dispenser may be used in place of bottled water, but only where the dispenser has replaceable filters. Builder shall be responsible for maintaining an adequate supply of replaceable filters.
- (M) A plan layout space (may be free standing or mounted to the wall).
- (N) Secure, site-wide Wi-Fi access to OR's separate internet services.
- (O) Facilities for the OR shall be maintained without interruption for the entire duration of the project. Where accepted by the OR in writing, the facilities may be demobilized on the date agreed to by Builder and the OR. Builder shall be solely responsible for trailer (or equal) security and shall provide appropriate lighting and security.

## **5.6 USE OF OWNER PROVIDED GEOTECHNICAL AND GEOHAZARD INVESTIGATION REPORT**

- 5.6.1 Where a soils, geotechnical, and/or geohazard investigation report ('Report') is made available by the Owner, such report is made available with the specific limitation that the report was prepared solely for the benefit of the Owner to satisfy the Owner's need for certain specific design values.
- 5.6.2 Neither the preparer of the Owner's Report nor the Owner assume any responsibility for use of the report by any other parties for any other uses.
- 5.6.3 The Report is based on small samples intended to be representative for the entire site. Soil, by its very definition, is highly variable and the level of sampling requested by the Owner for design purposes is explicitly incapable of defining actual subsurface conditions for the entire site at any of the depths likely to be encountered by the work of this Project.
- 5.6.4 The OR shall be immediately notified if Builder encounters any subsurface conditions or soils properties that are different from the conditions anticipated in the currently accepted Report.
- 5.6.5 Unless an alternate Report is accepted by the Owner, the conclusions and recommendations stated in the Owner's Report are part of the Scope of Work of this Project. Builder is required to be aware of all conclusions and recommendations stated in the Report and Builder shall incorporate those conclusions and recommendations into the Work in the manner specified in the Report.

- 5.6.6 Builder may at any time have an alternate Report prepared. Builder's alternate Report shall not be used for any purpose until Builders soils and geology consultant has accepted the role as Soils and Geology Engineer of Record, the Owner has accepted the alternate Report in writing, and the Report has been reviewed and accepted by any AHJ having jurisdiction over any part of the Work.
- 5.6.7 Where the Owner is responsible for inspection and testing of soils work performed by Builder, the inspection and testing shall be completed and accepted by Owner's Special Inspection and Testing Consultant before Builder proceeds with any further earthwork.
- 5.6.8 Any earthwork performed by Builder that is determined not to be in conformance with the Report by the Owner's Special Inspection and Testing Consultant shall be removed and replaced with earthwork that does comply with the Report at the sole expense of Builder.

**END OF ARTICLE**

## **ARTICLE 6**

### **SUPPLEMENTAL CONDITIONS**

#### **6.1 RETENTION**

- 6.1.1 For Design-Bid-Build projects, and unless specified otherwise in the Advertisement, the percentage of retention to be withheld from each progress payment made by City to Builder shall be five percent (5%) in accordance with §7201 of the California Public Contract Code
- 6.1.2 At the request and expense of the Successful Bidder or Successful Proposer, the City will substitute securities for the amount so retained in accordance with Public Contract Code §22300. Any Builder wishing to exercise this option shall give written notice to Owner. Owner is not responsible for any delay in processing any Progress Payment Request where the delay is caused by the establishment of the escrow account or payments made to the escrow account.
- 6.1.3 Retention is in addition to any other withholding permitted in these Specifications.
- 6.1.4 Unless agreed otherwise, Owner shall retain five percent (5%) of the total withheld Retention until the end of the one-year Warranty Period. This final retention payment will be released by Owner following a joint inspection made by Builder and Owner near the end of the one-year Warranty Period (or other period of time specified in the Contract Documents). Where Builder has failed to respond to Warranty issues in accordance with these Specifications, Owner shall have the right to deduct actually incurred cost in accordance with these Specifications.

#### **6.2 LIQUIDATED DAMAGES**

- 6.2.1 In accordance with Government Code §53069.85, Builder, Builder's Surety, and the Owner agree that time is of the essence in the completion of the Work, and that failure to complete the Work on or before the current Contract Completion Date will result in actual damages being sustained by the Owner.
- 6.2.2 In addition, Builder, Builder's Surety, and the Owner agree upon the following:
- (A) That Builder's failure to complete Work on or before the Contract Completion Date will result in inconvenience to the citizens and staff of the City.
  - (B) That Builder's failure to complete Work on or before the Contract Completion Date will result in additional project management, construction management, inspection, special inspection, and administrative costs for the Owner.
  - (C) That Builder's failure to complete Work on or before the Contract Completion Date will prevent the Owner from having the use of the affected facilities.
  - (D) That Builder's failure to complete Work on or before the Contract Completion Date will impact the sale of the existing Fire Station 01 to the University of La Verne.

- (E) That these damages, and other damages not specifically enumerated, are and will continue to be impracticable and extremely difficult to calculate, but in no case shall be less than the amount specified in the Agreement.
  - (F) That the dollar amount specified in the Agreement is per calendar day, is the minimum value of such costs to the Owner and is a reasonable amount.
  - (G) That such sum is liquidated damages, shall not be construed as a penalty, and that such sum may be deducted from payments due Builder if such delay in completing the work by the Contract Completion Date occurs.
- 6.2.3 Liquidated damages for Builder's failure to comply with the Baseline Construction Schedule delivery and acceptance requirements of the ***Construction Schedule*** Article shall be **Two Thousand Seven Hundred Dollars (\$2,700)** per calendar day.
- 6.2.4 Builder, Builder's Surety, and Owner agree that the Liquidated Damages provisions of this Article shall remain in full force and effect should Builder abandon or otherwise fail to complete the work as required by the Contract Completion Date.
- 6.3 ADDITIONAL WARRANTY OBLIGATIONS**
- 6.3.1 Owner shall be responsible for Warranty repairs in accordance with the [Warranty Issues After Substantial Completion](#) Section of the [Warranties and Guarantees](#) Article.
- 6.3.2 In addition to the requirements specified in the Warranties and Guarantees Article, Builder shall be specifically responsible for Warranty obligations for twelve (12) calendar months following Final Acceptance of the Project for the following:
- (A) Roofing;
  - (B) Exterior windows and doors;
  - (C) All electrical systems, mechanical systems, and plumbing systems installed by Builder.
  - (D) Fire Sprinkler and Fire Alarm Systems;
  - (E) Elevators; and
  - (F) Electric Service Entrance Equipment, transformers rated more than 200 kVA, panel sections rated more than 225 amperes, motor control centers, and inverters rated more than 10 kWh.
  - (G) Mechanical equipment rated more than five (5) tons; duct systems conveying more than 1750 cfm; fire, smoke, and combination fire- and smoke-dampers; all chillers regardless of size; all boilers regardless of size; all HVAC equipment which incorporate any type of fire extinguishing system.
  - (H) Plumbing equipment that involves a motor rated five (5) horsepower or more or has a Btu/Hr rating of more than 500,000 Btu/Hr.

6.3.3 Where Builder is responsible for Warranty obligations in accordance with this Section, Owner shall have the right to require that Builder provide a one year Maintenance Bond. Such bond shall have a value not less than five percent (5%) of the total value of the work required to be covered by the Maintenance Bond based on the most current Schedule of Values.

6.3.4 When approved otherwise by the Owner, Builder may supply a one year Maintenance Agreement provided by the installer of the covered Work. The Maintenance Agreement shall cover all Warranty and Maintenance issues observed within one year after Final Acceptance of the Project.

## **6.4 FENCING**

6.4.1 As part of mobilization, Builder shall completely enclose the Site in temporary fencing. Unless otherwise agreed to by the OR, the fencing shall comply with the following:

- (A) The fence shall be chain link not less than six feet (6') in height.
- (B) The installed fencing shall be completely enclosed by full height screening.
- (C) Fence posts and associated fence bracing shall be designed to resist the minimum wind loads specified by the California Building Code ('CBC') at the Site. If Builder installs fencing that fails to resist actual wind loading conditions, Owner shall have the right to require Builder to have calculations prepared by a California registered engineer, to have the calculations reviewed by the Building Department, and to have the fencing installed per the calculations; and no cost shall be incurred by the Owner. Owner shall have the right to suspend processing of any progress payment until this condition is satisfied.
- (D) If Builder fails to provide fencing which complies with this Section within two business days following written notice from the OR, Owner shall have the right to revise the fencing and to recover actually incurred costs from money owed or to be owed Builder.
- (E) Builder remains solely responsible for the adequacy and safety of the required construction fencing and screening.

6.4.2 Builder shall obtain an Encroachment Permit from the City Engineering or Public Works Department for any fencing located on or gates that swing over the public right-of-way.

## **6.5 STORMWATER POLLUTION PREVENTION REQUIREMENTS**

6.5.1 Builder shall be required to comply with all conditions of the State Water Resources Control Board ('SWRCB') and the Construction Stormwater Program, and to obtain a Construction General Permit ('Permit') for all construction activity including, but not limited to, clearing, grubbing, grading, stockpiling, and excavation when required by the SWRCB.

- 6.5.2 It shall be Builder's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. All costs for compliance are the sole responsibility of Builder.
- 6.5.3 Builder shall provide and maintain all construction Best Management Practices ('BMP') required by any storm water related document, law, or regulation. Builder is solely responsible for all costs incurred to provide and maintain required BMPs.
- 6.5.4 Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, Builder, by submitting its Bid or Proposal, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid or Proposal accordingly, and assumes all risks and liabilities arising therefrom.

## **6.6 DIVERSION OF RECYCLABLE WASTE MATERIALS**

- 6.6.1 In compliance with the applicable Owner's waste reduction and recycling efforts, Builder shall divert all Recyclable Waste Materials to appropriate recycling centers. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- 6.6.2 Builder will be required to submit weight tickets and written proof of diversion with its monthly Progress Payment Requests.
- 6.6.3 Builder shall complete and execute any certification forms required by Owner or other applicable agencies to document Builder's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of Builder.

## **6.7 ENVIRONMENTAL PRODUCT DECLARATIONS**

- 6.7.1 Builder shall comply with California Public Contract Code Article 3500 et seq., the Buy Clean California Act ('BCCA').
- 6.7.2 The term 'Eligible Materials', as used herein, shall mean the same as defined by the BCCA, and shall include at a minimum the following materials:
- (A) Carbon steel rebar.
  - (B) Flat glass.
  - (C) Mineral wool board insulation.
  - (D) Structural steel.
- 6.7.3 Unless specified otherwise in the Agreement, compliance with the BCCA and these Specifications applies to all Eligible Materials for the Project.
- 6.7.4 Builder shall submit to the Owner a current facility-specific Type III Environmental Product Declaration ('EPD') as defined by the International Organization for Standardization ('ISO') Standard 14025, or similarly robust life cycle assessment methods that have uniform standards in data collection consistent with ISO standard 14025, industry acceptance, and integrity, for each Eligible Material proposed to be used on the Project.

6.7.5 Eligible Materials installed on the Project by Builder must comply with any standards to the extent established in the BCCA or by the Owner, whichever is more stringent. The facility-specific global warming potential for any Eligible Material must not exceed any existing maximum acceptable global warming potential for that material pursuant to the BCCA or by Owner, whichever is more stringent.

6.7.6 Builder shall not install any Eligible Materials on the Project until Builder submits a facility specific EPD for that material which demonstrates that the material complies with any existing EM Standards and these Specifications. Builder shall be responsible for any losses, expenses, penalties, or damages of any type incurred or sustained by the Owner, including any tear out and replacement of Defective Work, which are caused by Builder's failure to comply with the requirements of the BCCA or these Specifications.

## **6.8 NOISE LIMITATIONS**

6.8.1 **[CITY TO INSERT SPECIFIC NOISE RESTRICTIONS HERE TO INCLUDE ANY RESTRICTIONS MANDATED BY PROJECT ENVIRONMENTAL DOCUMENTS.**

**RESTRICTIVE LANGUAGE SHOULD BE INCLUDED IF PROJECT IMPACTS RESIDENTIAL AREAS.]**

## **6.9 LEGAL HOLIDAYS**

6.9.1 Unless identified elsewhere in the Contract Documents, Holidays for the City shall be as defined in Caltrans Standard Specifications §1-1.255.

6.9.2 Builder may request approval from the OR to work on a City Holiday. Builder shall reimburse Owner for Owner's actually incurred extra costs for administration, construction management, inspection, or similar costs incurred by the Owner because Work was performed on a City Holiday.

6.9.3 Workers shall receive Holiday pay in accordance with the respective Prevailing Wage Determination for the respective trade or craft or as defined by a labor agreement.

## **6.10 STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION ('GREENBOOK')**

6.10.1 These Administrative Specifications incorporate by reference all requirements of the most current Standard Specifications for Public Works Construction except Part 1 (Sections 1 through 9), General Provisions which is specifically excluded.

**END OF ARTICLE**

## **ARTICLE 7**

### **GENERAL CONDITIONS**

#### **7.1 'CITY' AS OWNER VERSUS 'CITY' AS AUTHORITY HAVING JURISDICTION ('AHJ')**

- 7.1.1 Unless specified otherwise, the City is to be interpreted as the Owner of this Project. It is the Builder's responsibility to understand the distinction between the City as the Project Owner, and the City as an Authority Having Jurisdiction (AHJ) over some portion of the work with legal or code enforcement responsibilities.
- 7.1.2 Owner forces including but not limited to design, project management, and construction management are distinctly different from City AHJ forces. Owner forces have no duty or role to coordinate with or facilitate action by City AHJ forces.
- 7.1.3 Builder is solely responsible for all coordination and interaction with any Authority Having Jurisdiction, City or otherwise.
- 7.1.4 The only Owner force that will have an obligation to interact with both the Owner and City AHJ forces is code required special inspection and code required materials testing. Special inspection and testing will report jointly to the Owner, Designer, and Builder regardless of contractual relationships.
- 7.1.5 Inspection by Owner forces is for the purpose of enforcement of the requirements of the Contract Documents, and all such inspection is distinctly different from code required inspection performed by any AHJ, City or otherwise, having jurisdiction over any portion of the Work.

#### **7.2 THIS IS A PUBLIC WORKS PROJECT**

- 7.2.1 This is a California Public Works Project. At all times and without interruption Builder shall remain in full compliance of all requirements of Part 7, Chapter 1, Public Works, of the California Labor Code (commencing with §1720).
- 7.2.2 Builder and all subcontractors performing work on this project shall be registered with the California Department of Industrial Relations. Builder shall maintain a roster of all subcontractors performing work on this Project with proof of registration. The OR shall have the right, but not the obligation, to review this list at any time upon request. Builder remains solely responsible for ensuring that all its subcontractors are and remain registered with the Department of Industrial Relations.
- 7.2.3 Pursuant to Labor Code Sections 1725.5 and 1771.1, all contractors and subcontractors that wish to Bid on, be listed in a Bid or Proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations.



7.2.4 No Bid or Proposal will be accepted nor any contract entered into without proof that Builder and all of its identified subcontractors are currently registered with the Department of Industrial Relations to perform public work.

7.2.5 This Project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

### **7.3 SELF PERFORMANCE**

7.3.1 Where the Bid Documents incorporate the Standard Specifications for Public Works Construction (the 'Greenbook'), Section 2-3.2 is deleted in its entirety.

7.3.2 Except as required by §4106 of the Public Contract Code and unless specified otherwise in the Bid or Proposal Documents, there is no self-performance requirement.

### **7.4 PREVAILING WAGE REQUIREMENTS**

7.4.1 At all times throughout the Project, Designer and/or Builder shall comply fully with all requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Article 16000 et seq. ('Prevailing Wage Laws').

7.4.2 Designer and/or Builder shall defend (with Counsel of Owner's choosing), indemnify, and hold the Owner, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure to comply with California or Federal Prevailing Wage Laws.

7.4.3 All workers employed on this Project and not otherwise covered by a union or similar collective bargaining agreement shall be paid the prevailing wage determined by the Director of the Department of Industrial Relations, according to the type of work and location of the project.

7.4.4 Builder, including all forces under the direction and control of Builder, shall submit Certified Worker Payroll to the California Department of Industrial Relations in accordance with state law.

7.4.5 Ready-mix haulers and companies that deliver ready-mixed concrete for public works projects are considered subcontractors under Labor Code §1722.1 and must register with the Department of Industrial Relations as specified in Labor Code §1725.5.  
See [https://www.dir.ca.gov/ConcreteDeliveryPrevailingWage/AB\\_219\\_Fact\\_Sheet.html](https://www.dir.ca.gov/ConcreteDeliveryPrevailingWage/AB_219_Fact_Sheet.html) for additional information.

7.4.6 For Suppliers and other trucking companies, a Contractors State License Board License is not required to register with DIR to work on a public works project. (Contractors working in a trade that is subject to licensing by the California CSLB will still be subject to CSLB licensing requirements).

- 7.4.7 When registering with the Department of Industrial Relations, suppliers and other trucking companies will need to provide a Public Utilities Commission license number, U.S. Department of Transportation license number, and any other state or federal license, if one is required for the specific business.
- 7.4.8 A copy of the general prevailing per diem wage rates will be on file at Owner's principal facility office and will be made available to any interested party upon request.
- 7.4.9 Builder shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Construction Work.
- 7.5 CALIFORNIA APPRENTICESHIP COUNCIL, TITLE 8 REGULATIONS**
- 7.5.1 Throughout the Project, Builder shall review and remain in full compliance with Chapter 2, California Apprenticeship Council of Title 8 (commencing with §200).
- 7.6 EMPLOYMENT OF APPRENTICES**
- 7.6.1 Builder's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by Builder or any subcontractor. Builder shall obtain a certificate of apprenticeship before employing any apprentice pursuant to §1777.5, §1777.6, and §1777.7 of the Labor Code.
- 7.6.2 Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- 7.6.3 For purposes of this Article, the term Subcontractor shall not include suppliers, manufacturers, and distributors.
- 7.6.4 Only apprentices, as defined in the State of California Labor Code §3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Builder and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to §1777.5. Builder bears responsibility for compliance with this Article for all apprenticeable occupations.
- 7.6.5 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Construction Work in the craft or trade to which the apprentice is indentured.

- 7.6.6 When Builder or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Builder or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work, and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Site, for a certificate approving Builder or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Construction Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of journeyperson work, except as permitted by law.
- 7.6.7 Builder or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices, or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee, or present an exemption certificate issued by the Division of Apprenticeship Standards.
- 7.6.8 'Apprenticeship craft or trade,' as used in this Article, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.
- 7.6.9 If Builder or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Site are contributing, Builder and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Construction Work in the same amount or upon the same basis and in the same manner done by the other contractors. Builder may include the amount of such contributions in computing its Proposal for the Contract; but if Builder fails to do so, it shall not be entitled to any additional compensation therefore from Owner.
- 7.6.10 In the event Builder willfully fails to comply with this Article, Builder will be considered in violation of the requirements of the Contract.
- 7.6.11 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Builder or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.
- 7.7 NOTICE TO PROCEED**
- 7.7.1 Builder shall not commence Work until Builder has received a Notice to Proceed ('NTP') from the Owner.

- 7.7.2 The Notice to Proceed will not be issued, and the Builder shall not commence work, until all insurance requirements have been verified and approved by Owner. The dates of commencement and Final Completion of the Work shall not be changed by the effective date of such insurance.
- 7.7.3 The last date to commence Work shall be set forth in the applicable Notice to Proceed. The date of commencement of the Work shall not be postponed by the failure of Builder, Subcontractors, or of persons or firms for whom Builder is responsible, to act.
- 7.7.4 Contract Time will be measured from the actual date of commencement of the Work or the last date to commence Work specified in the Notice to Proceed whichever occurs first.
- 7.7.5 The Owner may issue a Limited NTP allowing or limiting Builder to proceed with certain early work. Unless specified otherwise in the NTP, start of Work shall begin on the date specified in the Limited NTP. Where deemed in the Owner's best interests, the Owner may allow Builder to perform certain early work and such time shall not be counted towards the Contract Time specified in the Contract Documents.
- 7.7.6 Notwithstanding any other provisions of the Contract, Builder shall not be obligated to perform any Work, and the Owner shall not be obligated to accept or pay for any Work, performed by Builder prior to delivery of a Notice to Proceed. The Owner's knowledge of Work being performed prior to delivery of the Notice to Proceed shall not obligate the Owner to accept or pay for such Work.
- 7.8 OWNER DOES NOT WARRANT CONTRACT DOCUMENTS**
- 7.8.1 Builder is explicitly notified that the Contract Documents may contain errors, omissions, inconsistencies, and/or discrepancies. The Owner DOES NOT warrant that the Contract Documents for this Project are free of errors, omissions, ambiguities, inconsistencies, and/or discrepancies.
- 7.8.2 Owner shall have the right to rely on Builders expertise as defined in the ***Builder's Expertise and Knowledge of Laws, Codes, Ordinances, Rules and/or Other Regulations*** Section of the ***Builder's Role and Responsibilities*** Article, and Owner shall have the right to rely on Builder to be the primary resource for determining errors, omissions, ambiguities, inconsistencies, and/or discrepancies in the Contract Documents after Award of Contract.
- 7.8.3 On Design-Bid-Build ('DBB') projects, Owner shall be responsible for costs associated with revisions to the Scope of Work where an error, omission, ambiguity, inconsistency, and/or discrepancy is brought to the attention of the Owner in a timely manner. Timely manner is specifically defined as early enough to eliminate an unanticipated construction cost to the Owner.
- 7.8.4 Owner shall have the right to rely on the knowledge and experience claimed by Builder in its Proposal or Bid, and Builder shall bear any costs incurred to remove and replace Work performed which was not in full compliance with any regulation or code requirement regardless of the information shown in the Contract Documents.

- 7.8.5 It is financially advantageous for Builder to notify Owner of any error, omission, ambiguity, inconsistency, and/or discrepancy in the Contract Documents at the earliest possible opportunity and before impacted work is performed. Owner and Builder shall share equally any costs associated with revisions to the Work where an error, omission, ambiguity, inconsistency, and/or discrepancy was NOT brought to the attention of the Owner in a timely manner. Timely manner is specifically defined as early enough to eliminate an unanticipated construction cost.
- 7.8.6 Additionally, 'Timely Manner' means the time required to allow the Owner sufficient time to marshal the forces necessary to correct the error, omission, ambiguity, inconsistency, and/or discrepancy in the Contract Documents without interfering with Critical Path Work as identified in the currently accepted Construction Schedule. In this context, Timely Manner shall specifically include the time required to process submittals in accordance with the Contract Documents.
- 7.8.7 Builder shall cooperate and actively participate in the resolution of any errors, omissions, inconsistencies, and/or discrepancies in the Contract Documents, and shall use its expertise to assist the Owner in obtaining the most cost effective solution acceptable to the Owner.
- 7.9 SCOPE OF WORK IS BASED ON ASSUMED CONDITIONS**
- 7.9.1 In preparing the Contract Documents, the Owner and its consultants have performed exploratory or other investigative work in a good faith effort to obtain the information necessary to properly define the Scope of Work. The Contract Documents incorporate relevant exploratory or other investigative information known to the Owner and its consultants prior to Advertisement of the Project and/or Award of this Contract.
- 7.9.2 Where exploratory or other investigative work has been performed, it is specifically noted that the derived information represents only that which was determined at the exact point of exploration or investigation. The Owner specifically does not warrant that exploratory or investigative work guarantees the existence, or lack thereof, of conditions throughout the Site upon which the Contract Documents are based.
- 7.10 CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, INCONSISTENCIES, AND DISCREPANCIES**
- 7.10.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of this Project by Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all.
- 7.10.2 In the event of a conflict, error, omission, ambiguity, inconsistency, or discrepancy within or between the Contract Documents, the following shall apply:
- (A) Owner has sole right to resolve the conflict, error, omission, ambiguity, inconsistency, or discrepancy.

- (B) Owner shall have the right to select the most stringent, most restrictive, most difficult, and/or most expensive option without any cost to Owner.

For Design-Bid-Build ('DBB') projects, see also the ***Required Examination of all Bid Documents*** section of the ***Instructions to Bidders*** Article.

For Design-Build ('DB') projects, see also the ***Required Examination of all RFP Documents*** section of the ***Instructions to Design-Build Proposers*** Article.

- (C) The Owner shall have the sole right to clarify which information within the Contract Documents is correct, and which is incorrect at no cost to the Owner.

- 7.10.3 Immediately after Award of Contract, Builder shall commence review of all Contract Documents for errors, omissions, ambiguities, inconsistencies, and/or discrepancies. Builder is solely responsible for its timely review of the Contract Documents. Builder is solely responsible for any costs incurred by Builder's failure to identify issues in a timely manner.
- 7.10.4 Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to Owner.
- 7.10.5 If Builder knowingly proceeds with Work which is impacted, or potentially impacted by a conflict, error, omission, ambiguity, inconsistency, and/or discrepancy without instructions from the Owner, Builder shall remove the noncomplying work, or Builder shall make the necessary corrections to comply with the Owner's instructions at no cost to the Owner.
- 7.10.6 In resolving conflicts, errors, omissions, ambiguities, inconsistencies, and/or discrepancies in any of the Contract Documents, if the Owner determines that none of the information stated in the Contract Documents is correct, and if the required corrective work increases or decreases the Contract Sum or the Contract Time, the Owner shall issue an appropriate Field Directive.
- 7.10.7 For Design-Build ('DB') Projects only, the Owner and Builder acknowledge that the Contract Documents may differ in some respects from other documents included in the Request for Proposal submitted by Design-Builder. The Owner and Design-Builder explicitly agree that documents having the more restrictive or higher quality requirements control over any conflicting requirements of other documents.

## **7.11 REQUESTS FOR INFORMATION ('RFI')**

- 7.11.1 Throughout the prosecution of the Work, Builder may request additional information to clarify the purpose and intent of the Contract Documents in the form of a Request for Information ('RFI').
- 7.11.2 Requests for Information from the Builder shall be submitted to the OR. Builder shall not submit any Request for Information directly to any Owner forces other than the OR without written approval from the OR.

- 7.11.3 The Builder shall number each of its Requests for Information sequentially starting from the number one (1) unless directed otherwise in writing by the OR. Requests for Information which do not meet the sequential numbering requirements of this paragraph may be returned to the Builder with no action taken. The Builder shall be solely responsible for the numbering of its Requests for Information, and for any delays which result from any Request for Information returned to Builder for incorrect numbering.
- 7.11.4 The Builder shall be solely responsible for the timely submission of its Requests for Information. The Builder shall insure that all Requests for Information are submitted to the OR far enough in advance of the Work in question to allow the OR and/or the Owner's Design Team sufficient time to review and to respond to the Builder's Request for Information. The Builder shall allow not less than ten (10) working days for response by the OR to any submitted Request for Information involving critical path work as identified on the Builder's currently accepted Construction Schedule.
- 7.11.5 Builder shall be responsible for any and all costs incurred by the Owner as a result of the Builder's failure to submit its Request for Information in a timely manner and in accordance with this Article.

## **7.12 PERFORMANCE AND PAYMENT BONDING**

- 7.12.1 Builder shall promptly furnish additional Performance and Payment security as may be required to protect the Owner's interests and those interests of persons or firms supplying labor or materials to this Project. Builder shall continuously maintain Performance and Payment Bonding in the amount of the current Contract Sum until completion of the Work.

## **7.13 RIGHT TO RECORD SOUND AND VIDEO**

- 7.13.1 In conformance with California state law, OR shall have the right to record sound and video on City Owned property and on City Right of Way as part of its duty to verify that Work being performed is in conformance with the Contract Documents.
- 7.13.2 OR shall have the right to use a readily visible Go Pro style body camera so long as such camera is readily visible and hand-held or mounted not lower than mid-chest of the OR.
- 7.13.3 Builder may request a copy of video information collected by the OR.

## **7.14 USE OF LANGUAGE AND CONTEXT**

- 7.14.1 The Contract Documents may omit modifying words such as 'all' and 'any,' and articles such as 'the' and 'an,' but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word 'including,' when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as 'without limitation,' 'but not limited to,' or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- 7.14.2 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

## **7.15 APPLICABLE LAWS**

- 7.15.1 All Work shall be performed in full compliance with Applicable Laws and Codes.
- 7.15.2 Where applicable laws conflict, the design and construction cost shall assume the most expensive resolution to the conflict. Where applicable laws provide for a choice, the Design-Builder shall obtain direction from the Owner, and the Owner shall be entitled to select the most expensive option.
- 7.15.3 Builder shall comply with and give notices required by all Applicable Laws and Codes including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code §25249.5, and applicable sections that follow).
- 7.15.4 Builder shall promptly notify OR in writing if Builder becomes aware during the performance of the Work that the Contract Documents are at variance with any Applicable Law or Code.

## **7.16 NOISE AND HOURS OF OPERATION**

- 7.16.1 Work shall be performed by Builder only as permitted by the City's Municipal Code.
- 7.16.2 Construction noise shall be kept within the limits of the Municipal Code. Owner shall have the right to recover not less than \$500 per day from Builder as compensation for having to investigate each valid complaint regarding noise outside of the limits specified in the Municipal Code.
- 7.16.3 Builder shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.



- 7.16.4 No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other noise control device sustain damage or be determined to be ineffective or defective, Builder shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced.

## **7.17 OWNERSHIP AND USE OF THE CONTRACT DOCUMENTS**

- 7.17.1 The Contract Documents are the property of the Owner. The Owner and Builder explicitly agree that any materials developed by Builder during the performance of this Contract are also the property of the Owner.
- 7.17.2 The Owner shall have the right to use all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, or in connection with this Project, including without limitation future additions, alterations, connections, repairs, information, reference, use or occupancy and the right to re-use details of the design on any other work, all without Builder's consent and at no additional cost to the Owner.
- 7.17.3 Owner will defend, indemnify, and hold harmless Builder, its officers, agents, and employees from any costs or claims for damages arising from Owner's use of Contract Documents on other projects.
- 7.17.4 Notwithstanding above, the Owner will not defend, indemnify, or hold harmless Builder, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that Owner's use of the Contract Documents is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual, or legal right pertaining to their use.

## **7.18 PLAN CHECKS, PERMITS, AND FEES**

- 7.18.1 Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Builder, unless otherwise specified in the Contract Documents.
- 7.18.2 Builder is responsible for completing all portions of the plan review process required or identified by the Contract Documents including design-build or deferred submittals with any AHJ having jurisdiction over any portion of the design Work.
- 7.18.3 Builder is solely responsible for obtaining all permits required by any AHJ having jurisdiction over any portion of the Work. The OR is not responsible for any coordinative between Builder and the Owner acting in the capacity of Authority Having Jurisdiction ('AHJ'). Builder is solely responsible for all communication between Builder and the Owner as AHJ.
- 7.18.4 Unless specified otherwise, where the Owner is the AHJ, the Owner will be responsible for the fees owed to the AHJ, and such fees may be waived where deemed in the best interests of the Owner, and where not waived by the Owner, such fees shall be paid by Builder. Where the Owner is not the AHJ, Builder is solely responsible for payment of any required fees.

7.18.5 Where identified in the Contract Documents, Builder shall have the right to request reimbursement without markup for actually incurred costs paid to any AHJ so long as such fees are reimbursed within thirty calendar days of delivery of the request for reimbursement. Builder shall be entitled to markup AHJ fees paid by Builder where Owner fails to reimburse Builder in accordance with this Section.

7.18.6 Builder shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by governing authorities, except for such off-site inspections delineated as the Owner's responsibility pursuant to the Contract Documents.

## **7.19 UTILITY FEES AND PERMITTING REQUIREMENTS**

7.19.1 Builder is responsible for completing all portions of the plan review process required by the Contract Documents for any portion of the Work owned or regulated by any utility purveyor.

7.19.2 Builder is responsible for obtaining all permits regardless of the utility purveyor.

7.19.3 Unless specified otherwise, where the Owner is the utility purveyor, the Owner will be responsible for the fees, and such fees may be waived where deemed in the best interests of the Owner. Where not waived by the Owner, such fees shall be initially paid by Builder, and Builder shall request reimbursement from the Owner.

7.19.4 Where the Owner is not the utility purveyor, Builder is solely responsible for payment of any required fees. Unless negotiated otherwise, utility purveyor fees specifically identified by Builder as not within its Proposal will be paid by the Owner.

7.19.5 Builder shall have the right to request reimbursement without markup for actually incurred costs paid to any utility purveyor so long as such fees are reimbursed within thirty calendar days of delivery of the request for reimbursement. Builder shall be entitled to utility purveyor fees paid by Builder where Owner fails to reimburse Builder in accordance with this Section.

## **7.20 USE OF CITY'S WASTE HAULER**

7.20.1 The disposal, removal, recycling and diversion of all construction and demolition waste and debris generated by the Work must be hauled from the site in full conformance with the Agreement between the City's and its duly authorized and duly franchised solid waste hauler. The fees, charges and other costs of the City's waste hauler must be factored into the Bid.

## **7.21 ACCESS TO SITE**

7.21.1 Access to the Site will be provided in accordance with the Contract Documents on the date and time specified in the Notice to Proceed.

- 7.21.2 Personnel of Builder and Subcontractors shall not occupy, live upon, or otherwise make use of the Site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract Documents.

## **7.22 DOCUMENT RETENTION & EXAMINATION**

- 7.22.1 In accordance with Government Code §8546.7, records of both the Owner and Builder shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- 7.22.2 Builder shall make available to the Owner any of Builder's other documents related to the Project immediately upon request of the Owner.
- 7.22.3 In addition to the State Auditor rights above, the Owner shall have the right to examine and audit all books, estimates, records, contracts, documents, subcontracts (regardless of tier), vouchers, purchase orders, correspondence, instructions, drawings, receipts, memoranda, and other written documents or electronic data of Builder related to negotiating, pricing, or performing Work in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Owner, for a period of four (4) years after final payment.
- 7.22.4 Upon the request of Owner, Builder shall promptly furnish to Owner a true, complete, and executed copy of any subcontract regardless of tier.
- 7.22.5 Upon request, a copy of the executed Contract between the Owner and Builder shall be made available to any requesting Subcontractor, regardless of tier level.

## **7.23 DIFFERING SITE CONDITIONS**

- 7.23.1 If Builder encounters any of the following conditions at the site, Builder shall immediately notify the OR in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:
- (A) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or
  - (B) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- 7.23.2 Builder shall be entitled to request an adjustment to the Contract Sum and/or Contract Time resulting from a materially differing site condition if Builder complies fully with these Specifications and submits a timely Change Order Request.

## **7.24 MINED MATERIAL**

- 7.24.1 In accordance with California Public Contract Code §10676, a contractor or a mining operator shall not sell any sand, gravel, or other minerals, as defined in subdivision (c) of §10295.5, to a local agency, unless the operation is not subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with §2710) of Division 2 of the Public Resources Code), or unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list published pursuant to subdivision (b) of § 2717 of the Public Resources Code.

## **7.25 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

- 7.25.1 Builder shall be liable for damages and losses to the Project (whether by fire, theft, vandalism, earthquake or otherwise) prior to Owner's acceptance of the Project as fully completed except that Builder shall not be liable for earthquakes classified or recognized by the U. S. Geological Survey as being greater than 4.8 on the Richter Scale or greater than Class V on the Mercalli Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of Builder. As used herein, 'flood' shall have the same meaning as in Builder's Risk insurance.
- 7.25.2 Builder shall promptly remedy, repair, or replace any Work damaged in accordance with the previous paragraph, and shall not be entitled to any change in Contract Sum or Contract Time.

## **7.26 SUBCONTRACTOR REPLACEMENT**

- 7.26.1 Subcontractors listed by Builder shall only be substituted in strict accordance with the Subletting and Subcontracting Fair Practices Act (§4100 et seq. of the California Public Contract Code) and upon the written consent of the Owner.
- 7.26.2 Any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor shall be borne solely by Builder. Builder shall not be entitled to any increase in Contract Sum or an extension of Contract Time due to a Subcontractor replacement or substitution.

## **7.27 SUBCONTRACTING REQUIREMENTS**

- 7.27.1 Builder agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of the Work. Each agreement between Builder and its Subcontractors, regardless of tier, shall preserve and protect the rights of the Owner and all representatives of the Owner performing duties in accordance with the Contract Documents.
- 7.27.2 Builder shall be as fully responsible to the Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Builder is for acts and omissions of persons directly employed by Builder. Persons engaged in any portion of the Work will be considered employees of Builder.

- 7.27.3 Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor or supplier and the Owner except when, and only to the extent that, Owner elects to accept the assignment of the subcontract in accordance with the Contract Documents.
- 7.27.4 Any contract on a public works project entered between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by Builder for this Project shall be returned to the Owner. Builder shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.
- 7.28 REGISTRATION WITH THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**
- 7.28.1 Builder and its subcontractors, regardless of tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.
- 7.29 NONDISCRIMINATION / EQUAL EMPLOYMENT OPPORTUNITY / EMPLOYMENT ELIGIBILITY**
- 7.29.1 Pursuant to Labor Code §1735 and other applicable provisions of law, Builder and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. Builder will take affirmative action to insure employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.
- 7.29.2 By executing this Contract, Builder verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of Builder. Builder also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract.
- 7.29.3 Builder shall avoid any violation of the Immigration Reform and Control Act of 1986 during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Builder shall maintain records of each such verification and shall make them available to the Owner or its representatives for inspection and copy at any time during normal business hours. The Owner shall not be responsible for any costs or expenses related to Builder's compliance with the requirements provided for or referred to herein.

- 7.29.4 To the same extent and under the same conditions as Builder, Builder shall require all of its subcontractors regardless of tier performing any part of the Work to make the same verifications and comply with all requirements and restrictions provided for in the Section.
- 7.29.5 Each person providing Work on behalf of Builder verifies that he or she is a duly authorized officer of Builder, and understands that any of the following shall be grounds for the Owner to terminate the Contract for cause:
- (A) Failure of Builder or its subcontractors (regardless of tier) or consultants to meet any of the requirements provided for in this Section;
  - (B) Any misrepresentation or material omission concerning compliance with the requirements defined in this Section; and/or
  - (C) Failure to immediately remove from the Work any person found not to be in compliance with the requirements of this Section.

### **7.30 DISPUTES**

- 7.30.1 OR shall be notified of all conditions disputed by Builder in accordance with this Section.
- 7.30.2 Disputes include, but are not limited to, the following conditions:
- (A) Disagreement by the Builder with any decision made by the OR.
  - (B) Belief by Builder that additional compensation is owed for work or materials not covered in the Contract or not recognized as extra work or extra materials by the OR.
  - (C) Belief by Builder that additional time should be added to the current Contract Completion Date for work not covered in the Contract or not recognized as extra work by the OR;
  - (D) Any other decision or condition deemed by the Builder to violate the Contract Documents.
- 7.30.3 It is agreed that unless notice is given in accordance with this Section, Builder shall not be entitled to recover costs or time incurred by the Builder as a result of the alleged extra work, changed work, or other condition which, had proper notice been given, would have given rise to a right for additional compensation or extension of time.
- 7.30.4 Builder should understand that timely notice of a potential dispute is of great importance to the Owner, and is not merely a formality. Such notice allows the Owner to consider preventative action, to monitor Builder's increased costs resulting from the condition(s) creating the potential dispute, to marshal facts, and to plan its affairs.
- 7.30.5 It is agreed that the Contractor shall forfeit any right to submit a claim in accordance with the California Government Code and the California Public Contract Code if the Contractor fails to submit a Notice of Dispute or Notice of Potential Dispute in accordance with this Section.

- 7.30.6 It is agreed that submittal of a Notice of Dispute or Notice of Potential Dispute shall be a prerequisite to submittal of any claim submitted in accordance with the California Government Code and/or the California Public Contract Code.
- 7.30.7 No action will be taken on any Notice of Dispute or Notice of Potential Dispute submitted after acceptance of the final payment.
- 7.30.8 Owner's receipt of Builder's Notice of Dispute or Notice of Potential Dispute and the fact that the OR has or is keeping account of any costs or time associated with any real or potential dispute shall not be construed as proving the validity, justification, and/or appropriateness of the dispute.
- 7.30.9 Disputed costs and time shall be calculated in accordance with the ***Changes to the Contract*** Article.
- 7.30.10 In the event that the Owner determines that the dispute is just, the Owner shall be allowed to pay for the disputed Work in accordance with the ***Changes to the Contract*** Article.
- 7.30.11 Where a Notice of Dispute or Potential Dispute was properly submitted in accordance with this Section, Builder shall keep accurate, daily records of its labor, material, and equipment costs for all disputed work. Builder shall submit a daily summary of its labor, material, and equipment costs for all disputed work to the OR not later than noon of the next **Working Day** following the date the disputed or potentially disputed Work was performed.

## **7.31 NOTIFICATION OF DISPUTE**

- 7.31.1 Builder shall submit its Notice of Dispute or Notice of Potential Dispute within ten (10) calendar days of any action by the OR giving rise to such dispute or potential dispute, but in no case shall any Notice of Dispute or Notice of Potential Dispute be submitted after any disputed work has been started by the Contractor.
- 7.31.2 All disputes shall be titled using the words '***Notice of Dispute.***' All potential disputes shall be titled using the words '***Notice of Potential Dispute.***' All disputes and potential disputes shall state the circumstances and/or reasons for the dispute or potential dispute and an estimate of the anticipated costs or time associated with the dispute or potential dispute.

## **END OF ARTICLE**

## **ARTICLE 8**

### **INSURANCE REQUIREMENTS**

#### **8.1 GENERAL**

- 8.1.1 Unless specified otherwise, Builder shall, immediately following Award of Contract and at its expense, purchase and maintain in full force and effect such insurance as will protect Owner from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Builder, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 8.1.2 Insurance policies shall include a provision that the policies are primary and do not participate with, nor are excess over, any other valid collectible insurance carried by Owner.
- 8.1.3 Insurance policies shall include a waiver of subrogation against Builder, its agents, and employees.
- 8.1.4 All insurance required by this Article shall be approved by Owner as to form, amount and carrier, and the Builder shall not allow any subcontractors to commence work on any subcontract until all similar insurance required of the subcontractor shall have been so obtained and verified by the Builder.
- 8.1.5 The Owner, including volunteers, shall be named as additional insureds on Builder's and its subcontractors' policies of commercial general liability and automobile liability insurance shall be named as "additional insured" on all insurance policies required hereunder.
- 8.1.6 Builder shall furnish Owner, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required, and adequate legal assurance that each carrier will give Owner at least thirty (30) days prior notice of the cancellation of any policy during the effective period of this Contract.
- 8.1.7 The Builder shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by the Builder. Such insurance shall remain in full force and effect at all times during the prosecution of the Work until all Work associated with this Project including, but not limited to, any and all Addenda, Contract Change Orders, and Field Directives, and acceptance thereof.
- 8.1.8 Insurance provided under this Article shall include a waiver of subrogation against Builder, its agents, and employees.
- 8.1.9 Insurance coverage required by this Article shall not in any way limit the liability of Builder.



- 8.1.10 In the event Builder does not comply with these insurance requirements, Owner may, at its option, provide insurance coverage to protect Owner. Actually incurred costs for Owner provided insurance coverage shall be subtracted from the Contract Sum and shall be deducted from any money owed or to be owed the Builder.
- 8.1.11 Builder's insurance as required by this Article, shall, by endorsement to the policies and the Certificates of Insurance, include the following:
- (A) The Owner and its staff, the Owner's Representative and its staff, visitors to the site, consultants, officers, agents, and employees, identified in the Contract Documents or to the Builder in writing, will be included as additional insureds on the Builder's General Liability insurance for claims caused in whole or in part of the Builder's negligent acts or omissions for which loss occurs during ongoing and completed operations relating to the Work to be performed as part of this Project. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. The Additional Insured provision or endorsement shall be at least as broad as ISO Form CG 20 10 07 04 in combination with ISO Form CG 20 37 0704 (or earlier versions of ISO Form CG 20 10 and CG 20 37 or Form B - CG 20 10 11 85 by itself), as published by Insurance Services Offices (ISO) and shall be included with Certificates of Insurance. The additional insured requirement shall not apply to Worker's Compensation and Employer's Liability insurance.
  - (B) Further, the amount of insurance available to the Owner shall be for the full amount of the loss up to the available policy limits and shall not be limited to any minimum requirements stated in the Contract Documents.
  - (C) Owner, Owner's consultants, and any consultants of the Owner's Representative will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
  - (D) Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by Owner, Owner's consultants, and any consultants of the Owner's Representative.

## **8.2 FORM AND PROOF OF CARRIAGE OF INSURANCE**

- 8.2.1 Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the Owner's Risk Manager.
- 8.2.2 Carrier(s) shall have an A.M. Best rating (or equivalent with Standard and Poor's or Moody's) of not less than an A- or better, and a financial classification of VII or better or (ii) guaranteed, under terms consented to by the Owner (such consent to not be unreasonably withheld).

- 8.2.3 The Builder must declare insurance deductibles or self-insured retentions. At the election of the Owner, the Builder shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Builder shall provide a “follow form” endorsement satisfactory to the Owner indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- 8.2.4 Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Owner its directors, officials, officers, employees, agents, and volunteers.
- 8.2.5 The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Owner prior to any material modification or cancellation of such insurance.
- 8.2.6 In the event of a material modification or cancellation of coverage, the Owner may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Owner receives, prior to such effective date, another properly executed electronic copy of the Certificate of Insurance and electronic copies of endorsements or policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect.
- 8.2.7 Builder shall not take possession, or use the Site, or commence operations under this Contract until the Owner has been furnished an electronic copy of the Certificate(s) of Insurance and electronic copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The electronic copies of endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- 8.2.8 The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Owner’s insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- 8.2.9 The Owner reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if in the Owner’s reasonable judgment, the amount or type of insurance carried by the Builder becomes inadequate.
- 8.2.10 Builder shall report to the Owner, in addition to Builder’s insurer, all insurance claims submitted by the Builder in connection with the Work under this Contract.

- 8.2.11 Builder shall require all subcontractors, regardless of tier, to provide the insurance required under this Article unless otherwise agreed to in writing by Owner. Builder shall make certain that all subcontractors hired by Builder are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Builder shall indemnify and hold the Owner harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Owner as a result thereof.

### **8.3 REQUIREMENTS FOR COMMERCIAL GENERAL LIABILITY INSURANCE**

- 8.3.1 Immediately following Award of Contract, Builder shall obtain and maintain a General Liability Insurance policy limit of not less than \$12,000,000 per occurrence for bodily injury, personal injury and property damage.
- 8.3.2 Builder shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Builder's operations, use, and management of the Site, or the performance of its obligations hereunder.
- 8.3.3 The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another.
- 8.3.4 If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 8.3.5 Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Builder by these Contract Documents. Builder shall continue to maintain Products/Completed Operations liability insurance coverage for a minimum completed operations period of 10 year(s) or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy, whichever is less.
- 8.3.6 All terms and conditions of such coverage shall be maintained during this completed operations period, including the required minimum coverage limits and the requirement to provide the Owner with coverage as an additional insured for completed operations as specified in the Contract Documents.
- 8.3.7 Defense costs shall be paid in addition to the limits.

- 8.3.8 Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Builder from liability in excess of such coverage, nor shall it limit Builder's indemnification obligations to the Owner, and shall not preclude the Owner from taking such other actions available to the Owner under other provisions of the Contract Documents or law.
- 8.3.9 All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
- 8.3.10 All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Builder of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
- 8.3.11 If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Owner may require additional coverage to be purchased by Builder to restore the required limits. Builder may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
- 8.3.12 All policies of general liability insurance shall permit and the Builder does hereby waive any right of subrogation which any insurer of Builder may acquire from Builder by virtue of the payment of any loss.

#### **8.4 REQUIREMENTS FOR BUILDER'S RISK INSURANCE**

- 8.4.1 It is the Builder's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. Unless Owner and Builder agree otherwise in writing, the Owner accepts no responsibility for the Work until the Work is complete and accepted by the Owner as part of Substantial Completion or Project Completion whichever occurs first for the covered Work. The Builder shall provide a certificate evidencing this coverage before commencing performance of the Work.

- 8.4.2 The additional insureds shall be Builder, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Owner, its elected officials, officers, employees, agents, and authorized volunteers, as their interests may appear. Builder shall not be required to maintain property insurance for any portion of the Work following acceptance by Owner. The Owner shall also be named as a co-loss payee.
- 8.4.3 Such coverage shall specifically cover, but not be limited to, loss or damage by fire, vandalism, and malicious mischief; and shall cover one hundred percent (100%) of the replacement cost. The Owner will accept no responsibility for the future DB Project until the Project is complete and accepted by the Owner as part of Substantial Completion or Project Completion whichever occurs first for the covered Work.
- 8.4.4 Policy shall be provided for replacement value on an “all risk” basis. There shall be no coinsurance penalty provision in any such policy. Policy must include:
- (A) Coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specification;
  - (B) Coverage against machinery accidents and operational testing;
  - (C) Coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures, and all other properties constituting a part of the Project;
  - (D) Transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and
  - (E) Coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Owner to ensure adequacy and sublimit.
- 8.4.5 In addition, the policy shall meet the following requirements:
- (A) Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
  - (B) Coverage shall include all materials stored on site and in transit.
  - (C) Coverage shall include Builder’s tools and equipment.
  - (D) Coverage shall include boiler, machinery, and material hoist coverage.
  - (E) Coverage shall include, but not be limited to, coverage against loss or damage to the Project by fire, lightning, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such insurance coverage.

- 8.4.6 Said Builder's Risk Insurance policy shall be in an amount equal to the replacement cost (without deduction for depreciation and subject to the stipulated *value in lieu of average* clause) of all construction constituting any part of the Project, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses which do not exceed \$10,000 for any one loss. Said Builder's Risk Insurance policy will not cover loss or damage to the Builder's equipment, scaffolding, or other materials not to be consumed in the prosecution of the Project.
- 8.4.7 The Owner and Builder hereby waive their rights of subrogation against (1) each other and any subcontractors regardless of tier, agents, and employees, each of the other; and (2) Separate Contractors, if any, and any of their subcontractors regardless of tier, agents, and employees for damages caused by fire, or other causes of loss, to the extent those losses are covered by Builder's Risk insurance required by the Contract Documents. The Builder shall obtain from the Insurer a recognition that a mutual waiver of subrogation endorsement for losses caused by fire or other perils to the extent covered by this insurance is provided. Builder shall pay any extra premium required therefor.
- 8.4.8 Builder's risk insurance shall not expire prior to the date of Final Completion recited in a Notice of Completion. Should a Notice of Completion be filed more than 10 calendar days after the date of Final Completion, the date of Final Completion recited in the Notice of Completion will govern.

## **8.5 REQUIREMENTS FOR PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

- 8.5.1 The Builder shall promptly obtain and maintain, at its own expense, throughout the life of the Contract, a Commercial General Liability Policy, on an occurrence basis, with a minimum limit of not less than Twelve Million Dollars (\$12,000,000) combined single limit for public liability and property damage for any one occurrence, for all of the following:
- (A) Premises Operations, including Explosion, Collapse and Underground (X, C, and U) Coverage.
  - (B) Completed Operations/Products, including X, C, and U Coverage.
  - (C) Blanket Contractual.
  - (D) Personal injury.
- 8.5.2 Unless Owner and Builder agree otherwise, the limits of liability and deductible amounts for Builder shall not be more than \$10,000. and the limits of liability and deductible amounts for its Design Consultants and Subcontractors, regardless of tier, shall be established by the Builder.
- 8.5.3 The Builder shall provide the Owner with a per project general aggregate endorsement.

## **8.6 REQUIREMENTS FOR COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

- 8.6.1 Provided Commercial Automobile Liability Insurance shall be no less broad than the Insurance Services Office's (ISO) form CA 0001 (1990 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering owned, hired, leased, and non-owned automobiles used by or on behalf of Insured, and providing liability insurance for bodily injury and property damage arising from the use or operation of such auto(s) with a minimum combined single limit of not less than \$5,000,000 per accident.
- 8.6.2 The minimum limits required may be satisfied by combination of primary and umbrella/excess policies. The Commercial Automobile Liability Insurance shall be provided by Builder for all on-site and off-site Work, and shall include the following:
- (A) Coverages shall be applicable to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any Work associated with this Project including, but not limited to, any and all Addenda, Contract Change Orders, and Field Directives.
  - (B) All mobile equipment including cranes, which are not covered under said Commercial Business Auto Policy shall have said coverage provided for under the Commercial General Liability Policy.
  - (C) Insurance is to include bodily injury, sickness and death of any person and property damage owned and unowned per occurrence.
  - (D) The deductible shall not exceed One Thousand Dollars (\$1,000).

## **8.7 REQUIREMENT FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**

- 8.7.1 Workers' Compensation and Employer's Liability Insurance shall be not less than as required by Federal and State law. Builder shall also require all of its Subcontractors to maintain this insurance coverage.
- 8.7.2 The Builder shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Builder shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law.
- 8.7.3 Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Builder's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Builder shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected.
- 8.7.4 The Builder is required to secure payment of compensation to its employees in accordance with the provisions of §3700 of the Labor Code. The Builder shall file with the Owner certificates of insurance protecting its workers. Company or companies providing insurance coverage shall be acceptable to the Owner, if in the form and coverage as set forth in the Contract Documents.

## **8.8 REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE**

- 8.8.1 The Builder in the performance of the Project shall procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability with a limit of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate. Unless Owner and Builder agree otherwise, the limits of liability and deductible amounts for Builder shall not be more than \$10,000. and the limits of liability and deductible amounts for its Design Consultants and Subcontractors, regardless of tier, shall be established by the Builder.

## **8.9 REQUIREMENTS EMPLOYER'S LIABILITY INSURANCE**

- 8.9.1 Builder shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Builder shall provide Owner with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents.
- 8.9.2 The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Owner.

## **8.10 REQUIREMENTS FOR POLLUTION LIABILITY INSURANCE**

- 8.10.1 The Builder shall obtain, either itself or through the applicable Subcontractor(s) performing Work involving hazardous materials, Builder's Pollution Liability (CPL) insurance coverage for such Work and an endorsement to either its CPL or Commercial Automobile Liability policies for transporting or hauling of hazardous materials. The insurance required by this paragraph 11.1.2.4 shall be (i) issued by companies with an A. M. Best rating of A- or better, and a financial classification of VII or better or (ii) guaranteed, under terms consented to by the Owner (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VII or better. Such insurance shall be written for not less than the following minimum limits:
- 8.10.2 Limits of Liability shall be not less than \$2,000,000 for each loss, and \$4,000,000 policy Aggregate.
- 8.10.3 Such CPL insurance shall, by endorsement to the policies, also include the following:
- (A) The Owner and its consultants, directors, officials, officers, employees, agents, and volunteers, and each of their Representative's consultants shall be included as additional insureds on a primary non-contributory basis.
  - (B) As to all liability insurance policies, each shall include a waiver of subrogation endorsement evidencing that the Builder and/or Subcontractor waives all rights of recovery by subrogation against Owner, Owner's Representative, Owner's Representative's consultants, their respective officers, agents, or employees.
  - (C) Except with respect to the limits of insurance, Builder and Subcontractor required insurance shall apply separately to each insured or additional insured.
  - (D) Coverage for Emergency Response Costs, with a 72-hour minimum time frame.



- (E) Coverage for Crisis Management, Public Relations Management or Equivalent.
- (F) Coverage for Mold and Fungi.
- (G) Coverage for transportation of hazardous materials.
- (H) Coverage for non-owned hazardous material disposal sites.

8.10.4 If coverage is provided on an Occurrence form, Builder and/or Subcontractor shall maintain and show evidence of coverage while Work involving hazardous materials is being completed, to include Completed Operations liability coverage for a minimum period of ten (10) years or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less. If coverage is provided on a Claims-Made form, Builder and/or Subcontractor shall maintain and show evidence of coverage while Work involving hazardous materials is being completed, to include a ten (10)-year Extended Reporting Period from the completion of contracted services.

8.10.5 Coverage must extend to Transportation and Hauling of hazardous materials. The Owner shall require a copy of the policy endorsement noting extension of Transportation coverage. If this extension of coverage is not provided under the Builder's or applicable Subcontractor's Builder's Pollution Liability, then the Builder/Subcontractor shall also be required to show evidence of the following under its Business Auto policy:

- (A) Covering Transportation and/or Hauling and/or Disposing of hazardous materials by amending the pollution exclusion of ISO Form CA 00010 6/92 (or its equivalent) in the following manner:
  - (i) **Delete Article a. (1) a.:** (Pollution) "being transported or towed away by, or handled for movement into, onto or from the Covered Auto."
  - (ii) **Delete Article a. (1) b.:** "Otherwise in the course of transit by the insured."
- (B) Coverage shall include MCS-90 endorsement and shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

## 8.11 CHANGE IN TERMS

8.11.1 The Builder shall provide immediate written notice to the Owner of any change in terms and conditions and/or reduction in the coverage of any nature to the insurance policies. The notice shall be sent to the Owner's Representative and to the following:

**City Clerk's Office  
ONTARIO  
303 East B Street  
ONTARIO, California 91764**

8.11.2 The Builder shall be obligated to pay any extra premium for maintaining the insurance requirements specified herein.

**8.12 INSURANCE POLICIES MUST ALLOW OWNER OCCUPANCY**

- 8.12.1 The Owner reserves the right to occupy existing facilities under construction or to use or occupy parts of the Work as provided for in the Contract Documents for Beneficial Use. Insurance policies shall not restrict or limit such use.

**END OF ARTICLE**

## **ARTICLE 9**

### **CHANGES TO THE CONTRACT**

#### **9.1 POTENTIAL CHANGES IN SCOPE OF WORK**

- 9.1.1 The Scope of Work for this Project specifically anticipates Changed Work.
- 9.1.2 The Owner reserves the right to direct Builder to perform Changed Work, or to prosecute Work out of sequence from the currently accepted Construction Schedule so long as the total dollar value for the directed change in Work does not exceed the following:
- (A) Twenty-five percent (25%) of the total dollar value of the initial Contract Sum or \$75,000 whichever is greater.
  - (B) The net change in Contract Time does not exceed twenty-five percent (25%) of the Contract Time stated in the Notice to Proceed or sixty (60) calendar days, whichever is greater.
- 9.1.3 Changes in excess of the limits specified in the preceding paragraph shall be deemed a Cardinal Change. Where the Owner determines that it is in the Owner's best interests, the Owner may request that Builder perform additional changed work beyond the limits specified in the preceding paragraph, but such work shall only be undertaken by Builder where there is agreement between Builder and the Owner on the change in Contract Sum and Contract Time.
- 9.1.4 All changes to the Work within the limits specified above shall be in accordance with this Article.
- 9.1.5 Owner requested changes in the Scope of Work will be by Field Directive, or equivalent written direction, delivered to Builder by the OR. So long as the change in Scope of Work is within the limits defined in this Article, Builder shall be required to proceed as directed in the Field Directive. Where time permits, Builder is encouraged to prepare a Change Order Request ('COR') and to submit the COR to the Owner for review and potential acceptance prior to the start of work. Builder shall be required to proceed with the change in Scope of Work as specified in the Field Directive regardless of whether or not there is agreement between the Owner and Builder regarding the change in Contract Sum or Contract Time.
- 9.1.6 Except for emergencies endangering life, limb, or property, no change in the Contract Scope of Work shall be performed by Builder unless such work has been authorized in writing by the Owner.
- 9.1.7 Any Change in the Scope of Work prosecuted by Builder without written authorization from the Owner shall be prosecuted at the sole risk of Builder. The Owner shall have no obligation to compensate Builder for any change in Scope of Work prosecuted by Builder without writing direction from the Owner.

## **9.2 OBLIGATION TO NOTIFY**

- 9.2.1 Builder is solely responsible for identifying when Changed Work is being performed that could have an impact on the Contract Sum and/or Contract Time. Builder forfeits any right to recover compensation for any Changed Work performed where the OR was not notified in advance that Changed Work would be performed and Builder knew or should have known that Changed Work was being performed.

## **9.3 FINANCIAL POSITION OF BUILDER**

- 9.3.1 Excluding Cardinal Changes, adjustments to the Contract Sum for a Change in the Scope of Work authorized in accordance with this Article are not intended to change the overall financial position of Builder.
- 9.3.2 Excluding Cardinal Changes, Builder shall not be entitled to anticipated profit in any form whatsoever for any change in the Scope of Work. Because permissible changes in the Scope of Work can be additive or deductive, no adjustment for Profit beyond the direct cost adjustments specified in this Article will be permitted as part of any change in Contract Sum and/or Contract Time.
- 9.3.3 Excluding Cardinal Changes, changes in Work that change the Contract Sum and/or Contract Time are to be priced in strict accordance with this Article. Cardinal changes in the Work shall be compensated as discussed elsewhere in this Article.
- 9.3.4 Excluding Cardinal Changes, compensation for changes in Work are to be based on verifiable costs actually incurred by Builder and/or actual credits owed to the Owner. Dollar amounts for deleted work shall be calculated in the same manner as for added work ('Same In – Same Out').
- 9.3.5 Only costs which can be fully documented, and which result directly from an Owner directed Change in Work may be recovered by Builder. Builder shall specifically not be entitled to additional compensation for 'perceived inconvenience,' and Builder shall specifically not be entitled to additional compensation for a Change in Scope of Work where no cost was actually incurred by Builder in performing the Changed Work.
- 9.3.6 Except where Builder can document otherwise, costs for changes in Work shall not include any Indirect Costs that would have already been incurred by Builder had the Change in Work not been directed by the Owner.
- 9.3.7 Builder shall be specifically permitted to recover actual costs incurred by performing Work out of sequence from the currently accepted Construction Schedule, but only where such actual costs can be supported by documentation verified by the OR.

#### **9.4 PAY-IF-PAID PROVISIONS**

- 9.4.1 Builder is specifically notified that the California Supreme Court held that Pay-If-Paid clauses are illegal in California construction contracts. See *Wm. R. Clarke Corp. v. Safeco Ins. Co.* (1997) 15 Cal. 4th 882. Pay-When-Paid clauses that defer payment to a subcontractor until Builder is paid by the Owner are considered equivalent to Pay-If-Paid clauses.

#### **9.5 CHANGES IN CONTRACT SUM**

- 9.5.1 A change in Contract Sum will only be authorized by Contract Change Order.
- 9.5.2 The Owner will consider changes in the Contract Sum for any of the following conditions:
- (A) Owner has directed a change in the Scope of Work for which a change in the Contract Sum is warranted.
  - (B) Owner has accepted a change in the scope of Work proposed by Builder for which a change in the Contract Sum is warranted.
  - (C) A Delay has occurred and a change in Contract Sum is warranted by these Specifications.
- 9.5.3 Any change in the Contract Sum will be added to or deducted from the current Contract Sum by a fair and reasonable valuation based on one or more of the following methods:
- (A) By unit prices already accepted by the Owner in the Contract Documents.
  - (B) By unit prices subsequently fixed by agreement between Owner and Builder.
  - (C) By a lump sum amount calculated in accordance with the Time and Material procedures specified in this Article.
  - (D) The Owner has directed in writing a different method for pricing the Changed Work that is accepted by Builder.
- 9.5.4 When Changed Work is to be performed, Builder is encouraged to process a Change Order Request for a lump sum price calculated in accordance with the Time and Material provisions of these Specifications at any point prior to or during the performance of the Changed Work. Unless agreed otherwise, all documentation for the lump sum price shall be based on the Time and Material procedures specified in this Article except that Owner and Builder will agree on reasonable estimates of the Time, Materials, and Equipment required to perform the Changed Work.
- 9.5.5 A waiver of, or failure by, the Owner to enforce any requirement in the Contract Documents in connection with any adjustment of the Contract Sum, will not constitute a waiver of, and will not preclude the Owner from enforcing such requirements in connection with any other adjustments of the Contract Sum.

## **9.6 CHANGES IN CONTRACT TIME**

- 9.6.1 A change in Contract Time will only be authorized by Contract Change Order.
- 9.6.2 Owner will consider changes in the Contract Time for any of the following conditions:
- (A) Owner has directed a change in the Scope of Work for which a change in the Contract Time is warranted.
  - (B) Owner has accepted a change in the scope of Work proposed by Builder for which a change in the Contract Time is warranted.
  - (C) A Delay has occurred and a change in Contract Time is warranted by these Specifications.
- 9.6.3 Whenever the Owner directs a change in the Scope of Work or a change in the Scope of Work is proposed by Builder and accepted by Owner which impacts one or more critical paths on the currently accepted Construction Schedule, the Contract Time will be added to or deducted from the current Contract Completion Date by a fair and reasonable calculation of the actual time impact based on the change in the Scope of Work.
- 9.6.4 In the event of a Delay and where it is possible for Builder to eliminate the time impact of an unforeseen event without added cost to itself, Builder shall do so, and Builder shall not submit a request for Time Extension.
- 9.6.5 If a new Delay impacts an already recognized Delay, Builder shall not be entitled to a change in the Contract Completion Date unless the new Delay has a negative impact on the current Critical Path and a Time Extension is warranted by these Specifications.
- 9.6.6 Where Owner agrees to change the Contract Completion Date for a Non-Excusable Delay, Builder agrees to compensate Owner for any actually incurred costs. Such costs owed by Builder to Owner include, but are not limited to, cost for additional project management, construction management, inspection, special inspection, and administration.

## **9.7 CHANGE ORDER REQUESTS**

- 9.7.1 Builder shall submit Change Order Requests ('COR's') to the OR. Builder shall number each of its Change Order Requests sequentially starting from the number one (1) unless directed otherwise in writing by the OR.
- 9.7.2 Change Order Requests are solely an instrument of Builder. Builder shall bear full responsibility for the appropriateness of all items described in the Change Order Request and/or any supplemental documentation submitted by Builder.
- 9.7.3 Where Builder's Change Order Request includes costs for labor, material, equipment, and/or services from any subconsultant or subcontractor, regardless of tier, Builder shall be solely responsible for verifying the accuracy and validity of all costs for which Builder is seeking compensation. Such verification shall be in accordance with applicable laws, codes, ordinances, rules, regulations, and the Contract Documents.

- 9.7.4 Where practical, and to facilitate timely approval and payment of Contract Change Orders, Builder is encouraged to prepare Change Order Requests grouped by task activity, by trade, and/or by Subcontractor.
- 9.7.5 Change Order Requests shall include all the following as separate line items:
- (A) Detailed description of the scope of work covered by the COR.
  - (B) A copy of the Field Directive or other written direction from the OR to proceed with the Changed Work.
  - (C) Hourly labor payroll costs as calculated per the Agreed Labor Rates provisions specified elsewhere in this Article.
  - (D) Direct subcontractor costs.
  - (E) Material costs.
  - (F) Equipment Costs.
  - (G) Fuel Costs.
  - (H) Adjustments permitted by this Article to the Agreed Labor Rates.
  - (I) Adjustments permitted by this Article to Material costs.
  - (J) Adjustments permitted by this Article to Equipment costs.
  - (K) Adjustments permitted by this Article to the Subcontractor costs.
  - (L) Adjustments permitted by this Article for bonding and insurance costs.
  - (M) Documentation that justifies the net change in Contract Time.
- 9.7.6 Builder is solely responsible for separate accounting of all Changed Work labor hours. Any costs for preparation of documentation required by this Article shall be considered an Indirect Cost, and any compensation owed by the Owner shall be included within the Direct Cost Labor Adjustments permitted by this Article. Owner owes no additional compensation for documentation of Direct Labor Costs.
- 9.7.7 For labor not performed on Site; specifically including design, assembly, and fabrication; the Owner shall have the right to request copies of time cards for any labor hours not performed on site. Time cards may have personal information redacted, but must identify the worker by name, identify the work performed, and identify the number of labor hours required. Builder forfeits any request for off-site labor costs where the quantity of hours are not documented in accordance with this Article.
- 9.7.8 Builder shall include all necessary supporting documentation at the time of submittal of its Change Order Request. For materials and rented equipment, supporting documentation specifically includes a copy of the original receipt or paid invoice. Unless otherwise approved in writing by the OR, a quote will not be accepted in lieu of a copy of the actual receipt or paid invoice.

- 9.7.9 Upon agreement between the OR and Builder, the OR will forward the accepted Change Order Request to the Owner for processing as a Contract Change Order.
- 9.7.10 Should Builder fail to submit a Change Order Request in a timely manner, the Owner shall have the right to issue a Unilateral Contract Change Order.
- 9.7.11 In the event that a dispute arises between the Owner and Builder, Builder shall not be excused from any requirement of the Contract Documents. Builder shall retain all rights provided either by the Contract Documents or by law which pertain to the resolution of disputes and protests between the Owner and Builder. Builder shall have the right to dispute the Owner's decision in accordance with the Contract Documents.
- 9.7.12 When required by the OR, two signatures from Builder shall appear on any Change Order Request form submitted by Builder. The OR shall have the right to request two signatures anytime the accuracy of the information contained in Builder's Change Order Request is in question.

## **9.8 OWNER'S REVIEW OF CHANGE ORDER REQUESTS**

- 9.8.1 The OR will review Builder's Change Order Request and take one of the following actions: 1) Deny; 2) Approve; 3) Return with summary comments.
- 9.8.2 The OR shall complete its initial review of Builder's Change Order Request within twenty-five (25) working days of receipt of such Request from Builder.
- 9.8.3 Where a Change Order Request is returned to Builder with Summary Comments, Builder shall address each Summary Comment, and shall return the Change Order Request to the Owner with each Summary Comment completely addressed.
- 9.8.4 The OR shall have fifteen (15) working days for each additional review of Builder's revised Change Order Request. Where Builder has returned the Change Order Request without completely addressing each of the Owner's Summary Comments, the OR shall be entitled to an additional ten (10) working days for review of Builder's Change Order Request.
- 9.8.5 Where the Owner's forces are required to expend additional effort to review Change Order Requests as a direct result of Builder's failure to completely address each of the Owner's comments, the Owner shall have the right to deduct actually incurred costs for all additional review time. The Owner shall have the right to deduct costs for all effort required by the Owner's forces after the second review (after the first recheck) required to be performed by the Owner's forces.

## **9.9 CONTRACT CHANGE ORDERS**

- 9.9.1 An executed Contract Change Order or Unilateral Change Order is the only means by which the Contract Sum and/or Contract Time can be changed.



- 9.9.2 Except where a Unilateral Contract Change Order is processed by the Owner, a Contract Change Order will not be effective until both parties have signed the Order and the City's Purchasing and/or Finance Departments have processed the necessary approvals. Upon approval from the Owner, the Contract Change Order and the associated change in Contract Time may be added to the next Progress or Final Payment Request.
- 9.9.3 By signature on the Contract Change Order, Builder acknowledges that the adjustments to the Contract Sum and/or Contract Time specified in the Contract Change Order are to the full satisfaction and accordance of Builder, and that payment in full by the Owner so waives any right on the part of Builder to claim any further cost and/or time impacts at any time during or after the completion of the Changed Work encompassed by the Contract Change Order.
- 9.9.4 Builder agrees and understands that no oral approval, either expressed or implied, of any cost change or time extension by Owner or its agents shall be binding upon Owner unless and until such approval is ratified by the execution of a written Contract Change Order or Unilateral Change Order.

#### **9.10 UNILATERAL CONTRACT CHANGE ORDERS**

- 9.10.1 If the Owner and Builder fail to agree upon a fair and reasonable change in the Contract Sum and/or the Contract Time, the Owner shall have the right to issue a Unilateral Contract Change Order. The Owner shall compensate Builder as it deems appropriate based on the Time and Materials Procedures specified in this Article, and Builder shall have the right to dispute the amount paid in accordance with the Contract Documents.

#### **9.11 TIME AND MATERIALS PROCEDURES**

- 9.11.1 Where the Owner has issued a Field Directive and the change in Contract Sum and/or the change in Contract Time cannot be or is not determined, or cannot be agreed upon before the work is completed, Builder shall perform the Changed Work in accordance with the Time and Materials procedures specified in this Article.
- 9.11.2 Labor, equipment, fuel, and materials shall be recorded daily by Builder upon Time and Materials Sheets acceptable to the OR. At the option of the OR, Builder shall use Time and Material Sheets provided by the Owner.
- 9.11.3 Not less than one (1) working day prior to the commencement of Time and Materials Work, Builder shall notify the OR of its intent to begin work to be documented by the Time and Materials requirements of this Article.
- 9.11.4 Time and Material Sheets shall be delivered to the OR within one (1) working day of the date the Changed Work was performed. The Time and Material Sheets, if found to be correct, shall be signed by both Builder and the Owner Representative.
- 9.11.5 Builder waives all right to compensation for any Time and Materials Work performed which was not documented as required by this Article.

- 9.11.6 The Time and Material Sheets shall thereafter be considered the true record of the actual Time and Materials Work performed.
- 9.11.7 Regardless of the information shown on any Time and Material Sheet prepared by Builder and delivered to OR, the Time and Material Sheet shall only be used to document units or quantities of Changed Work. Unless specifically stated separately in writing, acceptance of any Time and Material Sheet by OR shall not indicate acceptance of any price or cost information.
- 9.11.8 If either Builder or the OR do not agree with the labor, equipment, fuel, and/or material information listed on Builder's Time and Material Sheet, Builder and OR shall identify all items on which there is agreement. The Owner shall then review the items of disagreement and provide Builder with summary comments within one (1) working day. If Builder disagrees with the summary comments received from the Owner, it shall have the right to dispute the Owner's decision in accordance with the Contract Documents.
- 9.11.9 Where agreement cannot be reached on the amount of labor, equipment, fuel, or materials employed to perform the Changed Work on more than two (2) working days, the Owner shall have the right to employ additional construction management personnel to continuously monitor and document the actual labor, equipment, fuel, and materials employed, and all actually incurred costs to the Owner for additional monitoring shall be subtracted from any money owed or to be owed Builder.
- 9.11.10 Builder shall maintain its records in such manner as to provide a clear distinction between the Direct Costs of work paid for on a Time and Materials basis and the Direct Costs of all other Work performed.
- 9.11.11 To receive partial and/or final payment for Changed Work, Builder shall submit a Change Order Request to the OR with detailed and complete documentation as required by this Article. Builder's COR shall be submitted within thirty (30) working days after the Changed Work has been completed by Builder. Builder waives any right to request compensation for Change Work where the Change Order Request is not submitted to the OR in accordance with this paragraph.

## **9.12 AGREED LABOR RATES**

- 9.12.1 Prior to preparation of any Change Order Request, Builder shall prepare and have approved by the OR an Hourly Labor Rate Worksheet for each trade and classification of Worker including Foremen. Builder shall not be entitled to submit any COR which includes any labor costs until agreement has been reached between the OR and Builder on the permitted hourly rate to be paid.
- 9.12.2 Agreed Labor Rates shall not include any Direct Cost Adjustments provided elsewhere in this Article.

- 9.12.3 Hourly Labor Rate Worksheets shall be prepared by Builder and approved by the OR. Hourly Labor Rate Worksheets shall specifically identify which Fringe Benefits are paid in cash and which are provided by the employer. Only those Fringe Benefits paid in cash shall be included in any calculation for payroll taxes or insurance costs (including Medicare, Social Security, FICA, etc.) where such taxes and costs are calculated based on a fixed percentage of the hourly rate. Where Fringe Benefits are provided by the employer, such costs shall not be included in any fixed percentage calculation of payroll tax or insurance burdens.
- 9.12.4 Once an Hourly Labor Rate Worksheet has been approved, it will remain in effect until the base labor rate changes or a change in benefits, taxes, insurance, etc. occurs.

### 9.13 BUILDER DIRECT COSTS

- 9.13.1 Builder's Direct Costs shall be limited to the following:

- (A) **Hourly Labor Payroll Costs.** Documented hourly labor payroll costs for workers and foremen as established by negotiated labor agreements or as established by federal and/or state prevailing wage requirements.

By definition, Rework-related labor shall be considered an Indirect Cost.

- (B) **Other Direct Labor Costs.** Other documented Direct Labor Costs incurred by or on behalf of a specific employee providing work on this project. Permitted Direct Labor Costs specifically include all payments identified or listed in any negotiated labor agreement, or state or federal wage determination. Other Permitted Direct Labor Costs include payments made for payroll taxes including social security, FICA, and Medicare; disability insurance; unemployment insurance; worker's compensation; and health insurance. No other fixed labor burdens will be considered, unless approved in writing by the OR.

**NOTE:** Other Direct Labor Costs shall be calculated and documented in accordance with the Agreed Labor Rates provisions specified elsewhere in this Article.

- (C) **Documented Direct Subcontractor Costs.** The documented costs incurred by any subcontractor for direct labor, direct material costs including taxes, direct equipment costs, direct fuel costs, and any other costs identified in this Article as a 'Direct Cost.'

- (D) **Documented Direct Material Costs.** The documented cost of materials, including sales tax, where paid. Material costs shall be limited to those materials actually used, consumed, or applied during the performance of the work. Surplus material shall be returned to the Owner upon request. Owner is under no obligation to accept any surplus material. Costs for all surplus material not returned to and accepted by the Owner shall be deemed an Indirect Cost for Builder. Unless approved otherwise in writing, documented material costs shall be based on an original invoice or receipt. The Owner is under no obligation to accept a quote in lieu of an invoice or receipt nor to accept unidentified materials identified as 'Consumable Materials' or other similar designation.
- (E) **Documented Delivery Costs.** Where the delivery carrier is under the direct control of Builder or any of its forces, the delivery cost shall be calculated in accordance with the Time and Materials Procedures of this Article. The OR may accept a reasonable flat fee delivery cost without documentation. Where an independent carrier not under the direct control of Builder or any of its forces provides delivery, the delivery cost shall be documented by paid invoice or receipt.
- (F) **Actual Equipment Rental Costs.** Direct costs of equipment rental shall be limited to the actual amount paid to a rental company. Equipment rental costs shall be limited to the actual number of days or fraction thereof where the equipment is in use. Builder shall bare all equipment rental costs for equipment that was not returned to the rental company at the earliest possible opportunity.
- (G) **Builder-owned Equipment Costs.** Direct costs for equipment owned by Builder or its forces shall be limited to the rate specified in the current version of the Caltrans Labor Surcharge and Equipment Rental Rates or the current Caltrans Miscellaneous Equipment Rates. Where Builder-owned equipment does not appear in either Caltrans reference, the cost shall be based on eighty percent (80%) of the average rental rate for similar equipment available within a twenty-five (25) mile radius or as otherwise determined by the OR. Unless otherwise accepted by the OR, no equipment cost charged to the Owner shall exceed fifty percent (50%) of the current purchase price for the same or equivalent equipment.
- (H) **Fuel Costs.** Direct costs for fuel, taxes, and fuel delivery; but only to the extent that the direct costs can be directly attributed to Changed Work directed by the Owner.
- (I) **Insurance and Bonding Costs.** Documented insurance and bonding costs directly attributable to the Project. All other bonding and insurance costs, including general liability and automobile coverage, shall be considered Indirect Costs. Undocumented insurance and bonding costs shall be considered Indirect Costs by definition. At the Owner's sole discretion, the Owner may approve a surcharge of not more than two percent (2%) of the total direct costs plus permitted cost adjustments without further documentation to cover any actually incurred insurance and bonding costs.

- (J) **Utility Costs.** Documented utility costs directly associated with or necessary to perform the Scope of Work. Undocumented utility costs shall be considered Indirect Costs by definition.
- (K) **Other Costs.** Other documented costs accepted by the OR as being a Direct Costs to the Project. Undocumented costs shall be considered Indirect Costs by definition.

## **9.14 BUILDER INDIRECT COSTS**

9.14.1 Builder's Indirect Costs shall include all costs not specifically identified as a direct cost, including, but not be limited to, all the following:

- (A) Interest or other money related costs associated with the financing of construction required to be performed by Builder.
- (B) All offsite labor, office, utility, and corporate costs not employed directly for performance of Work on this Project.
- (C) All onsite Builder and subcontractor administrative, supervision, trailer, and office costs.
- (D) Unless specified otherwise in the Contract Documents, costs for security measures and/or protection of the Work not specifically identified on the Schedule of Values.
- (E) Costs for processing Project related administrative documents whether on or off Site including, but not limited to, Builder's Daily Reports, Schedules, Submittals, RFIs, Scope Clarifications, Time and Material Tickets, Change Order Requests, and Contract Change Orders.
- (F) Costs for scanning, printing, and other similar reproductions.
- (G) Labor costs associated with Rework.
- (H) Contribution to stock, bonus, or profit-sharing plans. This category specifically excludes direct pension payments and similar expenses associated with State and/or Federal Prevailing Wage Requirements or negotiated labor agreements.
- (I) Small Tool and Equipment Costs (tools with a purchase price of \$1000 or less). Unless otherwise identified as a reimbursable cost in the Contract Documents, Builder may recover a maximum of 50% of the Small Tool and Equipment Cost where the Owner agrees in writing to accept the small tool at the end of the job.
- (J) Tool Costs greater than \$1000 shall be considered Equipment Costs.
- (K) Materials identified as 'Consumable Materials' or 'Incidentals.' For the purposes of this classification, consumable and/or incidental materials specifically includes any materials not identified by type and quantity on a Time and Materials ticket for any work documented in accordance with the Time and Materials procedures of this Article.

- (L) Unless specified otherwise in the Contract Documents, cleanup and disposal costs not specifically identified on the Schedule of Values.
- (M) Costs for repair and maintenance of equipment and facilities.
- (N) Quality control and quality assurance costs.
- (O) Inspection costs.
- (P) Costs for guarantee and/or warranty related Work.
- (Q) Safety supervision and training not otherwise provided in accordance with State and/or Federal Prevailing Wage Requirements or a negotiated labor agreement.
- (R) Equipment and material depreciation costs.
- (S) Equipment and tool maintenance costs.
- (T) Research and development costs.
- (U) Bidding expenses.
- (V) All costs associated with documenting employee labor hours associated with any revision in Contract Scope of Work or compliance with any prevailing wage requirement.
- (W) All costs for materials used for the benefit and/or protection of Builder, the subcontractor, and/or any of their employees including all Personal Protective Equipment ('PPE') unless specifically accepted by the Owner.
- (X) Vehicle and fuel costs not required to complete the actual work for the Project including vehicles and fuel used by employees to provide transportation to and/or from the Site.
- (Y) Maintenance of all vehicles and equipment regardless of use or purpose.
- (Z) All unused equipment time, regardless of whether the equipment is rented or owed by Builder or any of its subcontractors.
- (AA) Bonding and insurance costs for general liability and automobile coverage.
- (BB) All taxes other than specifically identified labor taxes and sales taxes on purchased direct cost materials.

## **9.15 BUILDER DIRECT COST ADJUSTMENTS**

9.15.1 Builder shall be allowed to adjust the Direct Costs identified in this Article by not more than the following percentages as sole and complete compensation to Builder for the change in Contract Sum:

- (A) For Direct Labor Costs, Builder shall be allowed to increase its actual costs by not more than twenty percent (20%).

- (B) For supervision of subcontractors, Builder shall be allowed to increase its Direct Subcontractor Costs by not more than five percent (5%).
- (C) For material, delivery, equipment, and fuel costs Builder shall be allowed to increase its direct costs by not more than five percent (5%).
- (D) For utility and other direct costs specifically identified in this Article, Builder shall be allowed to increase its costs by not more than five percent (5%).
- (E) For bonding and insurance costs Builder shall be allowed not more than two percent (2%) of the sum of all Direct Costs plus any adjustments permitted in this Article.

9.15.2 When a Contract Change Order includes both increases and decreases in the Contract Sum and/or the Contract Time, the permitted Builder Direct Cost Adjustments shall be calculated on the basis of the net increase or decrease. Credits to the Owner shall include the full percentage Direct Cost Adjustment specified in this Article.

## **9.16 PERMITTED SUBCONTRACTOR COST INCREASES**

9.16.1 For all work prosecuted by subcontractors at any tier, each subcontractor may increase its Direct Cost amounts by the same increases permitted Builder in this Article as sole and complete compensation for the subcontractor's direct, indirect, profit, bonding, and insurance costs.

## **9.17 UNIT PRICE ADJUSTMENTS DUE TO INCREASED OR DECREASED QUANTITIES**

9.17.1 The unit prices stated in the Contract Documents or as negotiated in any Contract Change Order shall apply to the actual quantity used, installed, or consumed so long as the actual quantity does not differ from the estimated quantity by more than the following:

- (A) For estimated quantities at the time of bidding or proposal of one hundred (100) or less, the agreed unit price shall apply where the actual quantity used is not more or less than three hundred percent (300%) of the quantity estimated at the time of bidding or proposal.
- (B) For estimated quantities at the time of bidding or proposal of more than one hundred (100) but not more than five hundred (500), the agreed unit price shall apply where the actual quantity used is not more or less than two hundred percent (200%) of the quantity estimated at the time of bidding or proposal.
- (C) For estimated quantities at the time of bidding or proposal of more than five hundred (500) but not more than one thousand (1000), the agreed unit price shall apply where the actual quantity used is not more or less than one hundred and fifty percent (150%) of the quantity estimated at the time of bidding or proposal.
- (D) For estimated quantities at the time of bidding or proposal of more than one thousand (1000) but not more than five thousand (5000), the agreed unit price shall apply where the actual quantity used is not more or less than one hundred percent (100%) of the quantity estimated at the time of bidding or proposal.

- (E) For estimated quantities at the time of bidding or proposal of more than five thousand (5000), the agreed unit price shall apply where the actual quantity used is not more or less than seventy-five percent (75%) of the quantity estimated at the time of bidding or proposal.

9.17.2 Where quantities exceed the amounts specified in this Article, the unit price shall be renegotiated based on supporting data acceptable to the OR. No increase in unit price regardless of quantity used shall be approved without sufficient documentation justifying the change in unit price.

## **9.18 DIFFERING SITE CONDITIONS**

9.18.1 Pursuant to Public Contract Code §7104 and before such conditions are disturbed and within two (2) working days after discovery, Builder shall notify the Owner in writing of the discovery and/or existence of any of the following:

- (A) Material at the Site that Builder believes may be hazardous waste, as defined in §25117 of the Health and Safety Code, and that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (B) Subsurface or latent physical conditions at the Site that differs from those indicated in the Contract Documents.
- (C) Unknown physical conditions at the Site of any unusual nature which differs materially from those ordinarily encountered, and which is generally recognized as inherent in work of the character provided for in the Contract Documents.

9.18.2 Pending a determination by the Owner of appropriate action to be taken, Builder shall provide appropriate security measures adequate to prevent the hazardous waste or physical conditions from causing bodily injury to any person.

9.18.3 Upon notification, the Owner shall promptly investigate the conditions observed by Builder. If the Owner finds that the conditions do materially differ from the Contract Documents or do involve hazardous waste, and do cause a decrease or increase in Builder's cost of, or the time required for, prosecution of any part of the Work, the Owner shall issue a Field Directive that defines how Builder shall proceed and the manner by which the Contract Sum and /or Contract Time shall be changed.

9.18.4 No claim by Builder under this Article shall be allowed unless Builder has given the required notice to the Owner.

## **END OF ARTICLE**



## **ARTICLE 10**

### **DELAYS, SUSPENSION, AND TERMINATION OF THE CONTRACT**

#### **10.1 GENERAL**

- 10.1.1 A waiver of, or failure by, Owner to enforce any Delay related requirement of the Contract Documents in connection with any or all past Delays shall not constitute a waiver of, and shall not preclude the Owner from enforcing, such requirements in connection with any present or future Delays.
- 10.1.2 Builder represents to Owner that the Contract Time is reasonable for performing the Work and that Builder can perform the Work within the Contract Time.
- 10.1.3 Builder agrees that Owner is purchasing the right to have Builder present on the Site for the full duration of the Contract Time even if Builder could finish the Contract in less than the Contract Time.

#### **10.2 TIME IS OF THE ESSENCE**

- 10.2.1 With regard to all dates and durations specified in the Contract Documents, time is expressly made of the essence.

#### **10.3 MUTUAL DUTY TO MITIGATE**

- 10.3.1 Owner and Builder shall use all reasonable and economically practicable efforts to mitigate Delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such Delay or damage.

#### **10.4 TYPES OF DELAY**

- 10.4.1 Delays shall be classified as one or more of the following:
  - (A) **Abnormal Delays** shall be defined as Delays in the prosecution of Critical Path Work caused by Acts of God, fire, Unusual Weather, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and similar acts which prevent Builder from employing at least sixty percent (60%) of the total labor and equipment force scheduled for that day for more than a four (4) hour period of time. For earthquakes, only those classified or recognized by the U. S. Geological Survey as being greater than 4.8 on the Richter Scale or greater than Class V on the Mercalli Scale.
  - (B) **Differing Site Condition Delays** shall be defined as Delays in the prosecution of Critical Path Work due to the existence of site conditions which are different than the site conditions assumed to exist based on the conditions defined in the Contract Documents.

- (C) **Excusable Delay** includes any type of Delay in the prosecution of Critical Path Work that results from causes beyond the control of both Owner and Builder and which **could not have been** avoided by the exercise of care, prudence, foresight, and/or diligence on the part of Builder. Excusable Delays include Abnormal Delays, Differing Site Condition Delays, Material Shortage Delays, Owner-Caused Delays, and Weather Delays.
- (D) **Material Shortage Delays** shall be defined as Delays in the prosecution of Critical Path Work that result from causes beyond the control of Builder and which **could not have been** avoided by the exercise of care, prudence, foresight, and/or diligence on the part of Builder. This definition also applies for any Owner supplied materials or Work to be performed by Owner forces. Builder's failure to adequately schedule the time required for Submittal approval, order, procurement, and delivery of materials is not a Material Shortage Delay by definition.
- (E) **Non-Excusable Delays** shall be defined as Delays in the prosecution of Critical Path Work which **could have** been avoided by the exercise of care, prudence, foresight, and/or diligence on the part of Builder.
- (F) **Owner-Caused Delays** shall be defined as Delays in the prosecution of Critical Path Work caused by the action or inaction of the Owner. Such Delays include those caused by other contractors hired by the Owner under separate contracts who interfere with Builder's prosecution of the Work.
- (G) **Weather Delays** shall be defined as Delays in the prosecution of Critical Path Work caused by Unusual Weather. Builder is solely responsible for its assumptions regarding weather that is not classified as Unusual Weather (see definition).

## **10.5 NOTICE OF DELAYS**

- 10.5.1 Regardless of the cause, when Builder foresees a Delay in the prosecution of the Work, or immediately upon the occurrence of an unforeseen Delay, Builder shall notify the OR in writing of the probability or existence of the Delay and Builder's opinion of the Type of Delay.
- 10.5.2 The OR shall be notified of the anticipated or existing Delay within two (2) working days of Builder's discovery of the anticipated or existing Delay. Builder agrees that failure to notify the OR within the required time shall result in Builder waiving its rights to claim any time or cost compensation for the Delay at a later date.
- 10.5.3 Builder shall take immediate steps to prevent or mitigate, if possible, the occurrence, continuance, or duration of the Delay.

## **10.6 COMPENSABLE DELAYS**

- 10.6.1 For non-Concurrent Delays, Builder may request compensation for Excusable Delay Days only. Builder may submit to the OR a Change Order Request for a Change in Contract Sum and/or Time where Builder can document that an actual cost was incurred by Builder as a direct consequence of the Delay and for the actual number of Compensable Delay days.
- 10.6.2 Builder may request a change in the Contract Sum and/or Time for a Material Shortage Delay only if Builder can document compliance with the following:
- (A) Builder must demonstrate to the satisfaction of the OR that every option available to Builder has been employed to obtain such materials from all known sources. Only the physical shortage of said materials will be considered. The inability of some suppliers but not others to obtain materials is not a Material Shortage Delay, nor is the condition where materials are available from one or more suppliers, but at a greater cost than assumed at the time of Bidding.
  - (B) No consideration for a Change Order Request shall be given for any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless Builder can demonstrate to the satisfaction of the OR that such material could only have been obtained at exorbitant prices, which are inconsistent with normal, current rates, taking into account the quantities involved and usual practices in obtaining such quantities.
  - (C) No consideration for a Change Order Request will be made by Owner where material was ordered or delivered late, or whose availability is/was affected by mishandling of the procurement by Builder.

## **10.7 DELAY COMPENSATION**

- 10.7.1 Builder's compensation per **Working Day** for Indirect Home Office Costs shall be limited to the amount identified on the current Schedule of Values converted to a cost/**Working Day** rate.
- 10.7.2 Site Direct Costs including supervision, office facilities, sanitation, fencing, equipment, fuel, etc. shall not apply to any Delays occurring after the Work has been accepted by the Owner as substantially complete. All other actually incurred costs must be documented by Builder and accepted by Owner.

10.7.3 Builder shall be eligible for compensation for compensable Delays in accordance with the following table:

	Type of Delay				
	Abnormal	Differing Site Conditions	Excusable Delay	Material Shortage	Owner Caused
Type of Compensation	Time Extension Only	Time Extension, Direct Costs, and Indirect Costs as Identified on the Schedule of Values <sup>1</sup>	Time Extension Only	Time Extension Only	Time Extension, Direct Costs, and Indirect Costs as Identified on the Schedule of Values <sup>1</sup>

<sup>1</sup> Indirect Costs are limited to the Indirect Costs identified on the Schedule of Values expressed as a daily rate. No other Indirect Costs shall be permitted.

10.7.4 Builder shall be eligible for compensation for Concurrent Delays in accordance with the following table.

CONCURRENT DELAY COMPENSATION ELIGIBILITY TABLE				
		2nd Type of Delay		
		OWNER CAUSED OR DIFFERING SITE CONDITIONS	NON-EXCUSABLE	ABNORMAL, EXCUSABLE, OR MATERIAL SHORTAGE
1st Type of Delay	OWNER CAUSED OR DIFFERING SITE CONDITIONS	Time Extension, Direct Costs, and Indirect Costs as Identified on the Schedule of Values <sup>1</sup>	None <sup>2</sup>	Time Extension Only
	NON-EXCUSABLE	None <sup>2</sup>	None	None <sup>3</sup>
	ABNORMAL, EXCUSABLE, OR MATERIAL SHORTAGE	Time Extension Only	None <sup>2</sup>	Time Extension Only

<sup>1</sup> Indirect Costs are limited to the Indirect Costs identified on the Schedule of Values expressed as a daily rate. No other Indirect Costs shall be permitted.

<sup>2</sup> Where the Owner caused Delay has a more negative impact than Builder caused Delay, Builder shall be limited to impacts based on the whole number difference in the days of Delay. For example, if the Owner causes a Delay which results in five (5) days of Delay, and simultaneously, Builder causes a Delay which results in 3 days of Delay, Builder shall be limited to two (2) days (five days minus three days) of potential compensation for the Concurrent Delays.

<sup>3</sup> Where an Abnormal, Excusable, or Material Shortage Delay overlaps a Non-Excusable Delay, Builder shall only be eligible for an extension of Contract Time where the whole number of Abnormal, Excusable, or Material Shortage Delay days are greater in quantity than the Non-Excusable Delay days, and any change in Contract Time shall be limited to the whole number difference in the days of Delay between the Abnormal, Excusable, or Material Shortage Delay and Builder's Non-Excusable Delay. For example, if an Excusable Delay results in 5 days of Delay, and simultaneously, Builder causes 3 days of Non-Excusable Delay, Builder shall be limited to two (2) days (five days minus 3 days) of Time Extension.

## **10.8 WEATHER DELAY DAYS**

- 10.8.1 For Project durations defined in Working Days, the Owner has provided an allowance of Weather Delay Days for the sole benefit of Builder. Use of Weather Delays Days is the prerogative of Builder. No additional time extensions will be granted for Builder's failure to appropriately account for Usual Weather conditions for the location of the Work and for the period of time in which the Work is to be accomplished. Only Unusual Weather events will be considered an Excusable Delay.
- 10.8.2 For Project Durations not defined in Working Days, Builder is solely responsible for its assumptions for Usual Weather impacts to the Construction Schedule. Only Unusual Weather events will be considered an Excusable Delay.

## **10.9 SUSPENSION BY OWNER FOR CONVENIENCE**

- 10.9.1 Owner may, at any time and without cause, order Builder in writing to suspend, Delay, or interrupt the Work in whole or in part for a maximum of ninety (90) calendar days in any twelve (12) consecutive calendar month period of time, but not more than a total of one hundred and eighty (180) calendar days or twenty percent (20%) of the original Contract Time whichever is greater in total time.
- 10.9.2 Any suspension of time ordered by the Owner shall be computed from the date of delivery of the written order. Such order shall be specifically identified as a 'Suspension Order.' The Work may be stopped for such further period as both Owner and Builder may agree.
- 10.9.3 Upon receipt of a Suspension Order, Builder shall, at Owner's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 calendar days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Builder and Owner, Owner shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Contract Change Order.
- 10.9.4 If a Suspension Order is canceled or expires, Builder shall continue with the Work. A Contract Change Order will be issued by Owner to cover any adjustments to the Contract Sum and/or the Contract Time necessarily caused by such suspension.
- 10.9.5 Any Claim by Builder for an adjustment of the Contract Sum or the Contract Time shall be made within twenty (20) working days following the termination of the Work suspension. Builder agrees that submission of its claim within said twenty (20) working days is an express condition precedent to its right to Arbitrate or Litigate any future claim.

## **10.10 SUSPENSION BY OWNER FOR CAUSE**

- 10.10.1 If Builder fails to correct defective work as in accordance with the Contract Documents, or fails to proceed with Work in accordance with the Contract Documents or any other applicable laws, codes, ordinances, rules or other regulations, the Owner may, by written direction, order Builder to suspend all work, or to suspend any portion thereof, until the cause for such order has been eliminated.

- 10.10.2 The right of the Owner to suspend the Work shall not give rise to any duty on the part of the Owner, or any of its designated representatives, to exercise this right for the benefit of Builder or for any other person or entity.
- 10.10.3 All delays in the Work occasioned by such stoppage shall not relieve Builder of any duty to complete Work prior to the Contract Completion Date. Corrective work done to comply with the Contract Documents shall be performed at no cost to the Owner.
- 10.10.4 If a temporary suspension of Work is ordered, Builder, at its expense, shall perform all work necessary to provide safe access to all portions of the suspended Work. Should Builder fail to provide the required safe access, Owner may perform such work and the cost thereof may be deducted from money owed or to be owed Builder.
- 10.10.5 Owner shall also have authority to suspend the Work wholly or in part, for such period as the Owner may deem necessary, due to unusual weather, or for such other conditions as are considered unfavorable for the suitable and/or safe prosecution of the Work.

**10.11 TERMINATION BY OWNER FOR CONVENIENCE**

- 10.11.1 Owner may, at its option, terminate this Contract at any time by giving notice to Builder. Upon such termination, Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Builder, Owner shall pay Builder in accordance with this Article.
- 10.11.2 Upon receipt of a Notice of Termination under this Article, Builder shall, unless the Notice directs otherwise, take the following action:
- (A) Immediately discontinue the Work to the extent specified in the Notice.
  - (B) Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
  - (C) Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
  - (D) Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, landscaping, and equipment on the Site or in transit thereto.
  - (E) Upon such Termination, the obligations of the Contract Documents shall continue as to portions of the Work already performed prior to the date of Termination.
  - (F) Upon such Termination, Owner shall pay to Builder the sum of the following:
    - (i) The amount of the Contract Sum allocable to the portion of the Work properly performed by Builder as of the date of Termination, less sums previously paid to Builder.

- (ii) Plus any proven losses with respect to materials and equipment directly resulting from such Termination.
- (iii) Plus reasonable Demobilization costs.
- (iv) Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such Termination.

10.11.3 The above payment shall be the sole and exclusive remedy to which Builder is entitled in the event of Termination of the Contract by Owner pursuant to this Article. Builder will be entitled to no other compensation or damages and expressly waives same.

## **10.12 TERMINATION BY OWNER FOR CAUSE**

10.12.1 Owner will have the right to terminate the Contract for cause if any of the following conditions exists:

- (A) Builder abandons the Work.
- (B) Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- (C) Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from Owner.
- (D) Builder is more than thirty (30) calendar days behind the date set forth in the currently accepted Contract Schedule for any Task on the critical path that is a Non-excusable Delay. Where the Contract Time is less than one hundred and fifty (150) calendar days or one hundred and ten (110) **Working Days**, the thirty (30) calendar day period shall be reduced to the number of days commensurate with twenty percent (20%) of the original Contract Time but not more than thirty (30) calendar days.
- (E) Builder disregards applicable code requirements or laws.
- (F) Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.
- (G) Builder is in default of any other material obligation under the Contract Documents.
- (H) Builder persistently or materially fails to comply with applicable safety requirements.
- (I) Builder becomes insolvent or files for relief under the bankruptcy laws of the United States.
- (J) Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.



- (K) A receiver is appointed to take charge of Builder's property.
- 10.12.2 Owner shall deliver written Notice to Builder of Owner's intention to terminate the Agreement for cause. Within five (5) **Working Days** after delivery of written Notice to Builder from the Owner, or within such longer period of time as is reasonably necessary to complete such cure, Builder shall cure the cause for termination. If Builder fails to cure the cause for termination, then Owner shall have the right to immediately terminate the contract.
- 10.12.3 In the event that the Owner terminates the Agreement, Owner may, at its election and without further notice to Builder, take possession of the Site and all materials, supplies, equipment, tools, and machinery thereon owned by Builder.
- 10.12.4 In the event the Owner terminates the Agreement, Owner may accept the assignment of any or all of the subcontracts; and then complete the Work by any method Owner may deem expedient. If requested by Owner, Builder shall remove any part or all of Builder's materials, supplies, equipment, tools, and machinery from the Site within seven (7) calendar days of such request. If Builder fails to remove the identified materials, supplies, equipment, tools, and machinery, Owner may, after ninety (90) calendar days sell any of the same and use the proceeds to continue the Project.
- 10.12.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for Owner staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Builder. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Builder shall pay such excess to Owner.
- 10.12.6 No termination or action taken by Owner after termination shall prejudice any other rights or remedies of Owner provided by law or by the Contract Documents upon such termination; and Owner may proceed against Builder to recover all losses suffered by Owner.
- 10.13 TERMINATION BY BUILDER**
- 10.13.1 Builder shall have the right to terminate the Contract only upon the occurrence of one of the following:
- (A) Provided that Owner has not commenced reasonable action to remove any order of a court within a ninety (90) calendar day period of time.
  - (B) The Work is stopped for ninety (90) consecutive days through no act or fault of Builder due to the issuance of an order of a court or other public authority having jurisdiction.
  - (C) A declaration of a national emergency making material unavailable.

- (D) Owner fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) calendar days, or Owner has not commenced to cure such default within thirty (30) calendar days where such cure will require a reasonable period beyond thirty (30) calendar days and diligently prosecutes the same to completion, after receipt of notice from Builder stating the nature of such default(s).
- (E) Repeated suspensions by Owner, other than such suspensions as are agreed to by Builder, where such suspensions total more than one hundred and eighty (180) calendar days or twenty percent (20%) of the original Contract Time whichever is greater.

10.13.2 Upon the occurrence of one of the events listed in this Section, Builder may deliver written Notice to the Owner of Builder's intention to terminate the Agreement. Ten (10) calendar days following delivery of the Notice to the Owner, Builder may terminate the Agreement provided that the conditions giving rise to Builder's right to terminate is continuing.

**END OF ARTICLE**

## **ARTICLE 11**

### **COMPENSATION AND PAYMENT**

#### **11.1 GENERAL**

- 11.1.1 Builder shall be responsible for any testing, inspection, and/or commissioning fees required by any manufacturer or supplier of Work on this Project.
- 11.1.2 Owner shall be responsible for special inspection and material testing fees where required by law, code, or these specifications. Builder shall be responsible for all other inspection and testing costs.
- 11.1.3 Payments made by Owner to Builder, including Retention, shall not relieve Builder of any obligation to correct any defective work or material and shall not be considered evidence of performance of Work.

#### **11.2 PROMPT PAYMENT BY OWNER**

- 11.2.1 Owner will make Payments to Builder in accordance with the Owner's normal accounts payable procedures. Receipt by Builder of any payment requires the following mandatory Owner actions:
  - (A) Approval by the OR;
  - (B) Approval by the City's Program Manager;
  - (C) Approval by the City's Purchasing Department (or equivalent where exists);
  - (D) Approval by the City's Finance Department.
- 11.2.2 In accordance with §20104.50(f) of the California Public Contract Code, the following summary of §20104.50 is provided:
  - (A) It is the intent of the Legislature in enacting §20104.50 to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.
  - (B) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

- (C) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in §685.010(a) of the California Code of Civil Procedure.
- (D) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:
  - (i) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
  - (ii) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.
  - (iii) The number of days available to a local agency to make a payment without incurring interest pursuant to this §20104.50 shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in the preceding paragraph.
  - (iv) The requirement for prompt payment excludes that portion of the final payment designated by the contract as retention earnings.

### **11.3 BUILDER'S FINANCIAL OBLIGATIONS**

- 11.3.1 Upon receipt of payment from the Owner, Builder shall promptly pay each Subcontractor in accordance with Business and Professions Code §7108.5. The amount paid to each Subcontractor shall be based on the portion of the Work completed by the Subcontractor, and the amount to which said Subcontractor is entitled, less any amounts retained from Builder's Progress Payments by percentage based on the Subcontractor's portion of the Work.

### **11.4 INVOICE PERIOD**

- 11.4.1 The Owner and the Design Builder shall agree on a regular interval during which Builder shall be permitted to submit its invoice for work completed in accordance with the Contract Documents. Where the Owner and Builder cannot agree on an invoice period, the invoicing period shall be monthly starting the 5<sup>th</sup> working day of each calendar month.

### **11.5 REQUESTS FOR PAYMENT**

- 11.5.1 In consideration of the faithful performance of the Work performed by Builder in accordance with the Construction Documents, Owner will pay Builder for all such work installed based on actual work performed less any required retention in accordance with this Article.

- 11.5.2 Unless approved otherwise by the OR, the currently accepted Schedule of Values is the sole basis for determining payments.
- 11.5.3 Builder may request a Progress Payment Request anytime all of the following conditions are satisfied:
- (A) Except for Mobilization, Demobilization, and final payment, progress payments may be requested when Work has been performed that has a minimum value of not less than five percent (5%) of the original Contract Sum or more than five thousand dollars (\$5,000) whichever is less.
  - (B) The work for which payment is requested is fully installed per the Contract Documents and has been reviewed and accepted by the OR.
  - (C) The Owner has not received any Stop Notices. (Where the Owner has received one or more Stop Notices, payment will be made in strict conformance with California Civil Code Title 3 commencing with §9000.
  - (D) The total dollar amount owed by Owner to Builder is greater than the total dollar amount received by Builder from Owner as determined by the OR based on all Work performed to date.
- 11.5.4 Payments will be made by the Owner to Builder based on estimates duly certified and approved by OR based on the value of the Work performed to date, plus any other amounts permitted by the OR.
- 11.5.5 Prior to receipt by the OR of Builder's Progress Payment Request, Builder shall complete the following tasks:
- (A) The Construction Schedule shall be currently accepted by the OR.
  - (B) Builder shall provide to the OR a list of all Tailgate/Toolbox Topics and the dates the topics were discussed with Workers.
  - (C) Defective work identified by OR shall have been corrected or Builder and OR shall be in agreement on when Defective Work will be corrected.
  - (D) All requirements of the Contract Documents for Work and conditions shall be fully satisfied up to the last date of Work shown on the current Progress Payment Request.
- 11.5.6 Requests for Progress or Final Payments shall be on forms acceptable to the OR. OR shall have the right to provide forms for Builder to use when requesting a Progress or Final Payment.
- 11.5.7 Except for Shop Drawings and plan preparation which is part of a design-build and/or deferred submittal to any AHJ, payment will not be made for preparation of any Submittals or other related work required to be performed prior to incorporation of any Work into Project.

- 11.5.8 In its sole discretion, Owner may authorize payment for Work in progress and/or materials and equipment received and safely stored where deemed to be in the best interest of the Owner. For materials and equipment, Builder must be able to transfer clear title and/or be able to provide proof of payment. Owner is under no obligation to exercise this right, and any decision regarding payment for incomplete work, materials, and/or equipment is final. Payment made in accordance with this paragraph does not relieve the Builder from any obligations of the Contract Documents nor does it imply that the Work has been accepted by the OR.
- 11.5.9 Upon receipt of Builder's Request for Progress Payment, OR shall review and accept the Request or shall return the Request within six (6) working days to Builder with summary comments. No further processing of the Request will occur until Builder responds to the OR's summary comments and OR agrees that the revised Request for Progress Payment is in accordance with the Contract Documents.
- 11.5.10 Upon request by the OR, Builder shall provide such additional data as may be reasonably required to support the Progress Payment Request, including, but not limited to, time cards for all Builder forces.
- 11.6 WAIVER AND CONDITIONAL/UNCONDITIONAL RELEASES**
- 11.6.1 Conditional and Unconditional Waiver and Release of claims against the Owner shall be provided with each Progress Payment Request in accordance with this Article. Disputed payment amounts may be specifically excluded by Builder from the respective release.
- 11.6.2 Each Conditional and Unconditional Waiver and Release shall be signed and notarized by an individual authorized to sign such documents on behalf of Builder.
- 11.6.3 With each Progress Payment Request, Builder shall furnish a Conditional Waiver and Release Upon Payment in a form acceptable to the Owner for the amount requested in the current Progress Payment Request.
- 11.6.4 With each Progress Payment Request, where Builder has received payment, Builder shall furnish an Unconditional Waiver and Release Upon Payment in a form acceptable to the Owner for payments made by the Owner and received by Builder for the preceding Progress Payment Request.
- 11.6.5 Retention will not be released until the Unconditional Waiver and Release for the Final Payment has been received by the Owner.
- 11.6.6 Acceptance of final payment by Builder shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Builder as unsettled at the time of the final Application for Payment.

## **11.7 OWNER'S RIGHT TO BACK-CHARGE, WITHHOLD OR SUSPEND PAYMENTS**

- 11.7.1 Owner shall have the right to back-charge Builder, withhold payment from Builder and/or suspend processing of any Progress Payment Request from Builder in accordance with this Article. Owner's right to back-charge, withhold, or suspend processing of any Progress Payment Request is not effected by any failure of the Owner to exercise this right on any previous Progress Payment Request.
- 11.7.2 In its sole discretion, Owner may apply any withheld amount to the payment of valid claims. In so doing, the Owner shall be deemed the agent of Builder, and any payment made by Owner shall be considered a payment to Builder made in accordance with the Contract Documents, and Owner shall not be liable to Builder for any payments made in good faith in accordance with the Article. Such payments may be made without prior judicial determination of the claim or claims. Owner will render to Builder a proper accounting of all funds disbursed or claims paid on behalf of Builder.
- 11.7.3 In addition to retention, Owner shall have the right to back-charge or withhold payment to Builder for any of the following reasons:
- (A) Valid Stop Notice Claims properly filed with Owner.
  - (B) Builder has failed to correct defective Work or Work that is not in conformance with the Contract Documents.
  - (C) Builder has failed to make proper payments to its subcontractors or suppliers.
  - (D) The Owner reasonably believes that the work cannot be completed for the current unpaid balance including retention.
  - (E) Damages have been sustained by a third party or by a separate contractor working under the direction of the Owner.
  - (F) Money owed by Builder to Owner for any reason including, but not limited to:
    - (i) Owner incurred costs to update As-Built drawings or to update the Construction Schedule.
    - (ii) Owner incurred costs for Site clean up.
    - (iii) Owner incurred costs including violations resulting from Builder's failure to implement, maintain, or comply with dust control, air quality, water quality, or storm water pollution prevention requirements or any other environmental regulation applicable to the Project or the Site.
    - (iv) Liquidated Damages in accordance with these Specifications.
    - (v) Legally permitted penalties owed by Builder to Owner.
    - (vi) Cost of insurance arranged by Owner due to cancellation or reduction of Builder's insurance.

- (vii) Costs, including reinspection and retesting, incurred by Owner as a direct result of Builder's failure to comply with the Contract Documents or written direction from the OR.
- (viii) Costs incurred by Owner for utilities prior to acceptance of the Project by Owner.
- (ix) Failure of Builder to maintain facilities for the OR required by the Contract Documents.

11.7.4 Owner shall have the right to suspend processing of one or more Progress Payment Requests where any of the following conditions exist:

- (A) Builder has failed to obtain acceptance of the Baseline Schedule of Values by the OR.
- (B) Builder has failed to obtain acceptance of the Baseline Construction Schedule by the OR.
- (C) Builder does not have an accurate, current, and accepted Construction Schedule or Schedule of Values.
- (D) Builder does not have a complete, current, and accepted Submittal Register and/or Submittal Schedule.
- (E) Builder has failed to deliver a Cash-Flow and/or Work-Hour Projection as requested by the OR.
- (F) Builder has failed to maintain a Superintendent or designated alternate in accordance with these Specifications.
- (G) Builder is more than five (5) working days behind in delivery of the Builder's Daily Reports required by the ***Builder's Role and Responsibilities*** Article, or has more than five (5) Daily Reports that have never been submitted by Builder to the OR, or has more than five (5) Daily Reports that have been returned by OR to Builder with comments that have never been addressed.
- (H) Builder has failed to remove from the Site any worker identified by the OR as incompetent, disorderly, inappropriate, or improper (as specified in the ***General*** Section of the ***Builder's Role and Responsibilities*** Article). OR shall have the right to withhold processing of any progress payment for the same number of days the identified work continued to appear on the Site after delivery of OR's written direction to have the worker removed.
- (I) Builder has failed to provide all facilities for the OR required by the Contract Documents.
- (J) Builder has failed to provide a copy of Builder's Quality Control Program as requested by the OR.



- (K) Builder has failed to provide a copy of Builder's Safety Program as requested by the OR.
  - (L) Builder has failed to post Emergency Response Phone Numbers in accordance with these Specifications.
  - (M) Builder has failed to provide OR with a copy of Builder's Emergency Action Plan.
  - (N) Builder has failed to post information required by law to be posted. Such postings including, but are not limited to nondiscrimination, prevailing wages, and safety.
  - (O) Builder has failed to perform work in accordance with the currently accepted Construction schedule.
  - (P) Builder has failed to correct defective Work or Work that is not in conformance with the Contract Documents.
  - (Q) Builder has failed to maintain the Site in accordance with the **Clean Up** Section of the **Builder's Role and Responsibilities** Article.
  - (R) Builder has failed to provide Site fencing in accordance with the **Fencing** Section of the **Supplemental Conditions Article**.
  - (S) Submittals requiring approval by the Owner or any AHJ have not been accepted in accordance with the currently accepted Construction Schedule.
  - (T) Builder has failed to comply with the Project Record or Project Completion requirements of these Specifications.
- 11.7.5 The Owner shall have the right to deduct actually incurred costs from any money owed or to be owed the Builder resulting from a Request for Information (RFI) from the Builder where such information requested in the RFI was available to the Builder through a careful review of the Contract Documents, the existing field conditions, and pending or already reviewed submittals.
- 11.7.6 Owner owes Builder an initial review and one re-review of each Submittal at no cost. Owner shall have the right to deduct from any money owed or to be owed Builder for actually incurred costs to the Owner resulting from two or more re-reviews (three or more total reviews of any submittal).
- 11.7.7 Owner shall have the right to deduct from any money owed or to be owed Builder for actually incurred costs to the Owner resulting from site visits by any Owner forces made necessary by the Builder's failure to prosecute the Work in accordance with the Contract Documents.
- 11.7.8 Owner shall have the right to deduct actually incurred project and/or construction management costs incurred because of Builders failure to comply with any requirement of these Specifications. This provision specifically includes costs incurred because of Builder's failure to act in a timely manner.

- 11.7.9 Owner shall have the right to deduct special inspection and/or testing costs incurred because of Builder's failure to prosecute work in accordance with the Contract Documents. This provision specifically includes special inspection and testing costs because Work performed by Builder failed to be accepted by the Special Inspector or because of a material test failure.

## **11.8 RETENTION**

- 11.8.1 Unless identified otherwise in the Contract Documents, Owner will withhold five percent (5%) Retention from each Progress Payment Request in accordance §22167 of the California Public Contract Code. Such retention shall be withheld from all payments to Builder including both design and construction.
- 11.8.2 Where Owner incurs an extra administrative or management cost as a direct result of a performance failure on the part of Builder, Owner shall have the right to deduct actually incurred extra costs from any Retention currently held or to be held by Owner.
- 11.8.3 Retention shall be released in accordance with §7107 of the California Public Contract Code.
- 11.8.4 ***[Project Acceptance by City Council]*** Where the Owner elects to formally accept the Project as complete by action of the City Council and to record a Notice of Completion ('NOC'), Retention will be released not less than thirty (30) calendar days after the NOC is recorded and not more than sixty (60) calendar days after the City Council's action. Where the Owner elected to accept the Project as complete by action of the City Council but not record an NOC, Retention will be released within sixty (60) calendar days after the City Council's action.
- 11.8.5 ***[Project Acceptance by City Staff]*** Where the Owner elects to accept the Project as complete without action by the City Council and to record a Notice of Completion ('NOC'), Retention will be released not less than thirty (30) calendar days after the NOC is recorded and not more than sixty (60) calendar days after the City has accepted in writing the Project as complete. Where the City elects to accept the Project as complete without action by the City Council and to not record a NOC of completion, Retention will be released within sixty (60) calendar days following the date the City accepted in writing the Project as complete.
- 11.8.6 Where Owner retains some portion of the Retention until the termination of Builder's Warranty Periods, Owner shall have the right to deduct actually incurred costs resulting from Builder's failure to respond to Warranty issues in accordance with these Specifications.

## **11.9 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW**

- 11.9.1 In accordance with §22300 of the California Public Contract Code and at the request and expense of Builder:
- (A) A substitution of securities may be made for any monies retained by Owner to ensure performance under the Contract Documents.

- (B) Owner will make retention payments to an Escrow Agent. Escrow agent shall be a state or federally chartered bank lawfully permitted to operate in the state of California. Where payments are made by Owner directly to an Escrow Agent, Owner shall have the right to accept the Escrow Agent prior to making any retention payments. Owner's right to accept the Escrow Agency is final and without appeal.
- 11.9.2 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Builder, Owner, and Escrow Agent of an Escrow Agreement for Deposit of Securities in Lieu of Retention and/or Deposit of Retention. Builder shall submit the Escrow Agreement for Deposit of Securities in Lieu of Retention and/or Deposit of Retention prior to delivery of the second Progress Payment Request to the OR. The terms of such escrow agreement shall incorporate all Owner requirements.
- 11.9.3 Where Builder is providing securities equivalent in value to the Retention amount required by the Contract Documents, Escrow Agency shall hold such securities pursuant to an escrow agreement until Retention is due. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Builder shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of Retention.
- 11.9.4 Where Builder has requested that Owner deposit retention directly with Escrow Agent. Builder may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Builder. Builder and its surety shall bear the risk of failure of the Escrow Agent selected.
- 11.10 STOP PAYMENT PROVISIONS**
- 11.10.1 Stop Payment Notices received by the Owner will be handled in full conformance with California Civil Code Title 3 commencing with §9000.

**END OF ARTICLE**

## **ARTICLE 12**

### **OWNER'S RIGHTS, ROLE, RESPONSIBILITIES, AND REPRESENTATION**

#### **12.1 OWNER'S RIGHT TO EVALUATE QUALITY**

- 12.1.1 Owner shall have sole authority to judge the quality of the Work performed by Builder. Owner shall have the right to delegate this authority to any Owner's forces except that no AHJ, including City as AHJ, shall have any authority of evaluate quality of Builder's Work.
- 12.1.2 In addition to the OR, Owner may employ additional inspectors to observe the Work and to act in matters of construction required by the Contract Documents. Such inspectors hired by the Owner are not authorized to revoke, alter, or waive any requirements of the Contract Documents. The inspectors are authorized to call the attention of Builder and OR to any failure of the Work to conform to the Contract Documents. Builder may appeal any judgement made by an Owner hired inspector to the OR.
- 12.1.3 Only the Owner shall have the authority to reject material.

#### **12.2 OWNER'S REPRESENTATION**

- 12.2.1 The OR shall represent the Owner. Owner may employ other forces to provide technical assistance to the OR, but unless Builder is notified otherwise in writing, , all Owner representation to Builder will be through the OR.
- 12.2.2 In event that the Owner terminates any of Owner's consultants including the OR, Owner shall appoint a new consultant or Owner's Representative whose status under the Contract Documents shall be that of the original consultant or Owner's Representative.
- 12.2.3 Builder agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by OR, Owner, or any of Owner' other agents shall be binding upon Owner unless and until such approval is ratified by execution of a written Contract Change Order.

#### **12.3 OWNER'S RIGHT TO ACCESS THE SITE**

- 12.3.1 Owner forces and other persons authorized by Owner shall at all times have access to the Site. Builder shall provide safe and proper facilities for such access, review, and inspection.

#### **12.4 OWNER'S RIGHT TO STOP THE WORK**

- 12.4.1 If Builder fails to perform the Work in accordance with the Contract Documents, correct Defective Work in accordance with written direction from the OR, fails to correct unsafe conditions, or fails to comply with worker and site safety laws, Owner may direct Builder to stop Work, or any portion thereof, until the cause for such Order has been eliminated by Builder. Builder shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such Order. Owner has no duty or responsibility to Builder or any other party to exercise this right to stop the Work.

12.4.2 The notification and suspension of any Work by the Owner or failure to provide such notification and suspension in accordance with this Article shall not relieve Builder of its sole responsibility and liability for failing to comply with the requirements of the Contract Documents, nor shall a duty be imposed upon the Owner to suspend work for the benefit of Builder.

12.4.3 Orders to Stop Work or any portion of the Work by any AHJ, specifically including the City as AHJ, shall be followed as directed and shall remain in force until the AHJ determines otherwise. Any resulting costs incurred by Builder while any work has been stopped at the direction of any AHJ, specifically including the City as AHJ, shall be the sole expense of Builder.

## **12.5 OWNER'S RIGHT TO CONDUCT WORK**

12.5.1 If Builder fails to conduct the Work in accordance with the Contract Documents, fails to maintain the Contract Schedule, or fails to provide sufficient labor, materials, equipment, tools, and/or services during design or construction, Owner may, without prejudice to other remedies correct such failure at Builder's expense.

12.5.2 Owner shall notify Builder of its intent to conduct work not less than two (2) working days prior to start of Owner's corrective work. Upon notification, Builder shall immediately correct the conditions identified in the Owner's notification, or shall forfeit any right to recover additional Contract Time or to request a change in Contract Sum.

12.5.3 If Owner conducts Work in accordance with this Section, Owner will be entitled to deduct actually incurred costs from any money owed or to be owed Builder. Such costs specifically include additional services and expenses incurred by Owner from any Owner forces. If payments then or thereafter due Builder are not sufficient to cover such costs, Builder shall pay the balance owed directly to the Owner.

## **12.6 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

12.6.1 In addition to the Owner's right to conduct Work, Builder explicitly agrees that Owner has the following rights:

- (A) To perform work related to this Project with separate Owner forces.
- (B) To award separate Contracts in connection with this Project or other work located on the same Site or adjacent to the Site under conditions similar to this Contract.
- (C) To delete work from this Contract by Contract Change Order and to perform the deleted work with Owner's forces or by separately awarded contracts to another contractor.

- 12.6.2 Owner will provide coordination of the activities of Owner's forces and of each separate contractor with the Work of Builder. Builder shall participate with Owner and separate contractors in joint review of construction schedules and project requirements when directed to do so. Builder shall make necessary revisions to the Contract Schedule after such joint review.
- 12.6.3 For work performed on City owned property that is not located within the public right-of-way, Owner agrees to indemnify Builder for the actions of Owner's separate contractors or agrees to bind the separate contractors to the same terms and conditions of Builder's contract with the Owner including insurance requirements. For work within the Site that is located within the public right-of-way Owner shall have the right to use separate contractors to perform work as the Owner deems in its best interests.
- 12.6.4 Builder shall cooperate with Owner's forces and separate contractors. Builder shall have the right to request a change in Contract Sum and/or Contract Time where Builder can demonstrate an actually incurred cost resulting from Owner performed work or where Owner's work impacted any Work on Builder's critical path.
- 12.6.5 When separate Contracts are awarded for different portions of the Project, or other work on the Site, the term 'Builder' or 'Contractor' in the Contract Documents in each case shall mean Builder who executes each separate Contract.
- 12.6.6 The Owner shall have the right to perform any portion of the work due to an emergency threatening the safety of the Work, public, Owner, and/or any property or equipment.
- 12.6.7 Builder shall afford the Owner and separate contractors working under the direction of the Owner reasonable opportunity to receive and store materials and equipment belonging to other contractors, to execute their work, and to accommodate the needs of their employees and subcontractors.
- 12.6.8 If any part of Builder's Work depends on proper execution of work performed by other Owner forces, Builder shall, prior to proceeding with Builder's Work, promptly report to the Owner any apparent discrepancies or defects in such other work performed by other Owner forces that render Builder's work unsuitable for this Project. Except for latent defects which subsequently become apparent, failure of Builder to report deficient work to the Owner shall constitute an acceptance of work performed by Owner's forces as fit and proper to receive Builder's Work.
- 12.6.9 If requested by Builder, Owner shall arrange meetings between its forces and Builder to plan coordination of construction activities.
- 12.6.10 Owner shall keep Builder informed of all activities planned by Owner forces.
- 12.6.11 Differences and conflicts arising between Builder and Owner forces with regard to Builder's work shall be submitted to the Owner for its decision in the matter.

- 12.6.12 If a dispute arises between Builder and contractors performing separate Owner work as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, Owner may clean up and allocate the cost between Builder and the separate contractors as the Owner deems appropriate.

**12.7 OWNER'S RIGHT TO FURNISH MATERIALS AND EQUIPMENT**

- 12.7.1 The Owner reserves the right to furnish materials and equipment and Builder shall have no claim for profit, loss of profit, or added fees on the cost of such materials and equipment supplied by the Owner.

**12.8 ARTISTIC EFFECT**

- 12.8.1 The Owner shall have the final authority to decide matters relating to the artistic effect required by the Contract Documents.

**12.9 OWNER'S RIGHT TO RETAIN IMPERFECT WORK**

- 12.9.1 If any Work performed or material furnished under this Contract fails to meet the requirements of the Contract Documents for any reason, specifically including vandalism and Builder's failure to properly protect new work, Owner may agree to accept the noncompliant work and Owner shall have the right to deduct such costs as the Owner deems appropriate in exchange for Owner's agreement to accept the noncompliant work. Alternatively, Builder shall remove the noncompliant work and replace with Work that does comply with the Contract Documents. Owner has no obligation to accept vandalized Work or any Work that is not in full compliance with the Contract Documents.

**12.10 OWNER'S RIGHT TO USE OR OCCUPY PRIOR TO SUBSTANTIAL OR PROJECT COMPLETION**

- 12.10.1 The Owner reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Substantial Completion or Final Completion upon 10 calendar days notice to Builder. Such occupancy or use is herein referred to as 'Beneficial Use.' Beneficial Use shall be subject to the following conditions:
- (A) OR will inspect the portion of the Project to be beneficially used and prepare a list of items to be completed or corrected prior to use.
  - (B) Beneficial Use by Owner shall not be construed by Builder to be an acceptance by Owner of that portion of the Work as complete and in full conformance with the Contract Documents.
  - (C) Beneficial Use by Owner shall not constitute a waiver of existing claims of Owner or Builder against each other.
  - (D) The exercise of this right does not affect the Contract Time unless Builder can document an actual impact to the Critical Path of the currently accepted Construction Schedule.

- 12.10.2 In the areas beneficially used by Owner, Builder shall maintain, as needed by the Owner, all temporary and permanent utility services, including heating and cooling, which are in operable condition at the time of Beneficial Use. Warranty Periods will commence upon the first date of Beneficial Use except that Warranty Periods for that part of equipment or systems that serve portions of the Work for which Owner has not taken Beneficial Use or issued a Certificate of Substantial Completion shall not commence until the Owner has taken Beneficial Use for that portion of the Work or has issued a Certificate of Substantial Completion for that portion of the Work.
- 12.10.3 Owner will pay all normal operating and maintenance costs resulting from its Beneficial Use of equipment.
- 12.10.4 Owner will pay all utility costs which arise out of the Beneficial Use.
- 12.10.5 Builder shall not be responsible for providing security in areas beneficially occupied.
- 12.10.6 Owner will use its best efforts to prevent its Beneficial Use from interfering with the conduct of Builder's remaining Work.
- 12.10.7 Builder shall not be required to repair damage caused by Owner in its Beneficial Use.
- 12.10.8 There shall be no added cost to Owner due to Beneficial Use unless Builder can document an actually incurred cost.
- 12.10.9 Builder shall continue to maintain all insurance required by the Contract in full force and effect.

**END OF ARTICLE**



## **ARTICLE 13**

### **OR'S ROLE AND RESPONSIBILITIES**

#### **13.1 GENERAL**

13.1.1 The Owner will at all times be represented by the Owner's Representative ('OR') designated in writing by Owner to Builder. The OR is employed to manage the construction and to advise the Owner in all matters relating to completion of this Project. The OR will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

13.1.2 Unless the Owner elects to communicate directly with Builder, all instructions from the Owner to Builder will be through the OR. Unless approved otherwise in writing by the Owner, all communications to Builder from any of the Owner's forces will be through the OR.

13.1.3 The OR's initial authority shall include, but not be limited to, the following:

- (A) Receipt of all communication from Builder to Owner and delivery of all communication between Owner's forces and Builder.
- (B) Acceptance of the Baseline Construction Schedule and any updates to that Schedule.
- (C) Acceptance of the Baseline Schedule of Values and any updates to that Schedule.
- (D) Initial review, processing, and acceptance or rejection of Builder's Change Order Requests.
- (E) On Design-Bid-Build ('DBB') projects, OR shall be responsible for receiving all of Builder's Requests for Information ('RFIs') and all coordination of RFIs between Owner's forces. On Design-Build ('DB') projects, OR shall only be responsible for those RFIs that require a response from Owner forces.
- (F) Initial processing of Progress Payment Requests.
- (G) Joint coordination with Builder of special inspection and material testing provided by Owner forces or required by code.
- (H) Verification of material quantities.
- (I) Verification of Builder's work for compliance with the Contract Documents.
- (J) On Design-Bid-Build ('DBB') projects, OR shall be responsible for receipt of Submittals and coordination of Submittal review by Owner's forces. On Design-Build ('DB') projects, OR shall only be responsible for those Submittals that directly involve input from Owner forces.
- (K) Documentation of work progress and, where required by Owner, documentation of manpower and equipment employed by Builder during construction.

(L) Project Closeout.

- 13.1.4 Builder shall look initially to the OR for all matters relating to the Contract Documents.
- 13.1.5 The OR's authority and any decisions made by it in good faith, either to exercise or not to exercise authority, shall not give rise to any duty or responsibility of the Owner to Builder or any of its forces performing any portion of the Work.
- 13.1.6 The OR shall not be responsible for Builder's construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work.

## **13.2 INSPECTION OF CONSTRUCTION**

- 13.2.1 The OR will observe the progress, quality, and quantity of the Work to determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents.
- 13.2.2 The OR shall have the initial authority to reject work and materials which do not conform to the Contract Documents, and to require additional inspection and/or testing.
- 13.2.3 The OR may employ one or more inspectors to observe the Work and to act as the OR in matters of construction under this Contract.

## **13.3 INTERPRETATIONS**

- 13.3.1 The OR shall have the authority to make interpretations of the administrative and technical requirements of the Contract Documents especially those involving conflicts, errors, omissions, ambiguities, inconsistencies, and discrepancies. Such issues shall be resolved in accordance with these Specifications.
- 13.3.2 Builder shall refer in writing all questions regarding the meaning and intent of the Contract Documents to the OR. The OR shall review such requests and render such interpretation as deemed appropriate by the OR.
- 13.3.3 Where Builder has requested an interpretation from the OR, or been notified by the OR that such interpretation has been requested by the Owner, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the OR without additional expense to Owner or delay in the Construction Schedule.

## **13.4 OR'S REVIEW OF SUBMITTALS**

- 13.4.1 OR's review, with or without acceptance, of any Submittal shall not constitute approval of Builder's safety precautions, means, methods, techniques, sequences, or procedures.
- 13.4.2 OR's acceptance of a specific item shall not indicate approval of an assembly of which the item is a component nor shall it relieve Builder of Builder's responsibility for safety precautions, means, methods, techniques, sequences, or procedures.

**13.5 OR'S RIGHT TO SUPPLEMENT BUILDER'S SUBMITTAL MATERIAL**

- 13.5.1 After Owner's first Submittal review, and with the approval of the OR, Owner's Designer may prepare additional plans, sketches, details, or similar clarifying material where such material is necessary to insure that the requirements and the intent of the Contract Documents are fully complied with by the Builder, subcontractors at any tier, or the suppliers.
- 13.5.2 Before granting its approval, OR shall verify that preparation of additional clarification material is necessary to maintain the timely prosecution of the Work, except that OR shall have the right to grant approval at any time after Builder's first Resubmittal (Submittal followed by first Resubmittal) regardless of the timeliness of the Submittal or prosecution of the Work.
- 13.5.3 Where Owner's Designer has prepared additional clarifying material as permitted in this Article, Owner's Designer shall submit an invoice for all costs associated with preparation of the additional clarifying material to the OR. Upon review and acceptance of the invoice by OR, OR shall have the right to deduct the invoice amount from any money owed or to be owed Builder.

**END OF ARTICLE**

## **ARTICLE 14**

### **DESIGNER'S ROLE AND RESPONSIBILITIES**

*NOTE: This Article ONLY applies to Design-Bid-Build ('DBB') project and only where the Designer is part of the Owner's forces.*

#### **14.1 DESIGNER'S ROLE**

- 14.1.1 Owner's Designer will have authority to act on behalf of the Owner only to the extent specified by the Owner in writing to Builder. Unless otherwise specified by the Owner, all communication from Designer to Builder and from Builder to Designer will be through the OR.
- 14.1.2 Designer's role shall be as defined by the Owner. Designer's role specifically includes, but is not limited to RFI review and response, Submittal review and response, preparation of material that clarifies the intent of the Contract Documents, preparation of materials that change the Contract Documents, participation in meetings, and site and inspection visits at the frequency defined by the Owner.
- 14.1.3 Designers may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Designer will not be required to make extensive or continuous inspections to verify either the quality or quantity of the Work or compliance with the Contract Documents.

#### **14.2 RFI REVIEW AND RESPONSE**

- 14.2.1 Unless otherwise approved by the OR, no RFIs from the Builder should be sent directly to any of the Owner's design forces. Designer is under no obligation to accept, review, or respond to any RFI delivered directly from Builder to Designer without written approval from the OR. Builder shall not directly communicate with Owner's design forces without written approval from the OR.

#### **14.3 SUBMITTAL REVIEW AND RESPONSE**

- 14.3.1 Unless otherwise approved by the OR, all Submittals shall be delivered by Builder to the OR, and all Submittal Responses shall be delivered by the OR to Builder. Builder shall not directly communicate with Owner's design forces without written approval from the OR.
- 14.3.2 Submittal review by Designer shall be in accordance with the ***Submittals and Substitutions Requests*** Article.
- 14.3.3 Designer's review, with or without acceptance, of any Submittal shall not constitute approval of Builder's safety precautions, means, methods, techniques, sequences, or procedures.

- 14.3.4 Designer's acceptance of a specific item shall not indicate approval of an assembly of which the item is a component nor shall it relieve Builder of Builder's responsibility for safety precautions, means, methods, techniques, sequences, or procedures.
- 14.3.5 When professional certification of the performance characteristics is required by the Contract Documents for materials, systems or equipment, Designer shall be entitled to rely upon such certification to establish that the proposed materials, systems, or equipment meet the performance criteria required by the Contract Documents.
- 14.4 DESIGNER'S RIGHT TO SUPPLEMENT BUILDER'S SUBMITTAL MATERIAL**
- 14.4.1 After Designer's first Submittal review, and with the approval of the OR, Designer may prepare any additional plans, sketches, details, or similar clarifying material where such material is necessary to insure that the requirements and the intent of the Contract Documents are fully complied with by the Builder, subcontractors at any tier, or the suppliers.
- 14.4.2 Before granting its approval, OR shall verify that the preparation of the additional clarification material is necessary to maintain the timely prosecution of the Work, except that OR shall have the right to grant approval at any time after Builder's first Resubmittal (Submittal followed by first Resubmittal) regardless of the timeliness of the Submittal or prosecution of the Work.
- 14.4.3 Where Designer has prepared additional clarifying material as permitted in this Article, Designer shall submit an invoice for all costs associated with preparation of the additional clarifying material to the OR. Upon review and acceptance of the invoice by OR, OR shall have the right to deduct the invoice amount from any money owed or to be owed Builder.

**END OF ARTICLE**

## **ARTICLE 15**

### **BUILDER'S ROLE AND RESPONSIBILITIES**

#### **15.1 MEANS AND METHODS**

- 15.1.1 It is expressly stipulated that the Contract Documents set forth the requirements of the completed Work, and not the means, methods, techniques, sequences, and procedures of performing the Work.
- 15.1.2 Builder has the authority to determine the means, methods, techniques, sequences, and procedures of construction, except in those instances where the Owner, to define the quality of an item of work, has specified in the Contract Documents, a means, method, technique, sequence, or procedure for construction of that item of Work.
- 15.1.3 Unless expressly stipulated elsewhere in the Contract Documents, neither the Owner, OR, nor Owner's Designer are responsible for or have any control or charge of Builder's means, methods, techniques, sequences, and procedures of construction.
- 15.1.4 Neither the Owner, OR, nor Owner's Designer are responsible for or have control or charge over the acts or omissions of Builder or any of its forces performing any of the Work.
- 15.1.5 Suggestions offered by Owner forces are made in the spirit of cooperation and are provided solely for consideration by Builder. Builder is solely responsible for all decisions made by Builder regarding means, methods, techniques, sequences, and procedures of construction. Owner incurs no liability for any Builder action that is based on a suggestion made or not made by any Owner force.
- 15.1.6 Any general control of the Work exercised by the Owner, or any of its designated representatives, shall not make Builder an agent of the Owner, and the liability of Builder for all damages to persons and/or to public or private property arising from Builder's execution of the Work shall not be lessened because of such general control.
- 15.1.7 Inspection and acceptance, or lack thereof, by Owner, OR, or Owner's Designer shall not relieve Builder from its obligation to comply with the Contract Documents.
- 15.1.8 Acceptance by the Owner, OR, or Owner's Designer of any plans or information regarding materials and equipment Builder proposes to furnish or any method of work shall not be regarded as an assumption of risks or liability by any Owner forces. Builder shall have no claim under the Agreement on account of the failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the Owner's forces have no objection to Builder using, upon its own full responsibility, the plan or method of work proposed or Builder furnishing the materials and equipment proposed.

**15.2 BUILDER'S EXPERTISE AND KNOWLEDGE OF LAWS, CODES, ORDINANCES, RULES AND/OR OTHER REGULATIONS**

- 15.2.1 Builder is solely responsible for its knowledge of all state and federal laws, codes, rules and/or regulations which are applicable to any portion of the Work described in the Contract Documents. The Owner is relying on the knowledge and expertise of Builder, and shall have the right to expect Builder to keep fully informed of all existing and applicable future state and federal laws, code requirements, rules and/or other regulations which affect, in any manner, the Work or those engaged or employed in the Work.
- 15.2.2 Lack of knowledge or awareness by Builder or any of Builder's forces of any existing or applicable future law, code, rule and/or other regulations shall not be a defense by Builder for its failure to prosecute the Work described in the Contract Documents in accordance with said law, code, rule and/or regulation.
- 15.2.3 Immediately following Award of Contract, Builder shall obtain at its own cost a copy of all applicable City and County ordinances, rules and/or regulations which affect, in any manner, the Work from any local public agency having jurisdiction over any portion of the Work.
- 15.2.4 Regardless of the information shown on the plans, Builder shall be solely responsible for verifying that the Work it is preparing to prosecute complies with all applicable laws, codes, ordinances, rules and/or regulations. Except for Submittals prepared by Builder, this responsibility applies only to the prosecution of the Work described by the Contract Documents and not the professional design prepared by the Owner's representatives.

**EXAMPLES:**

- (A) The Contract Documents specify a certain size wire to be pulled through a certain size conduit. The Owner shall have the right to rely on Builder's knowledge and expertise to determine whether the specified wire size can be pulled through the specified size conduit in accordance with the requirements of the current Electrical Code as adopted by the AHJ.

Builder shall not be responsible for determining whether the wire size was correctly determined by Owner's Designer.

- (B) The Contract Documents specify a certain plumbing waste pipe material. The Owner shall have the right to rely on Builder's knowledge and expertise to determine whether the specified plumbing waste pipe material is permitted to be incorporated into this Project in accordance with the current Plumbing Code as adopted by the AHJ.

Builder shall not be responsible for determining whether the plumbing waste pipe size was correctly determined by Owner's Designer.

- (C) The Contract Documents specify a minimum concrete cover over reinforcement in a structural concrete slab. The Owner shall have the right to rely on Builder's knowledge and expertise to determine whether the dimension specified complies with the requirements of the current Building Code as adopted by the AHJ.

Builder shall not be responsible for determining whether the reinforcing steel size and spacing was correctly determined by Owner's Designer.

- (D) The Contract Documents specify a method of sealing HVAC ductwork. The Owner shall have the right to rely on Builder's knowledge and expertise to determine whether the method of sealing the HVAC ductwork is in accordance with the requirements of the current Mechanical and/or Energy Code as adopted by the AHJ.

Builder shall not be responsible for determining whether the size of the duct was correctly determined by Owner's Designer.

- (E) The Contract Documents specify a temperature range during the manufacture, storage, and construction of asphalt. The Owner shall have the right to rely on Builder's knowledge and expertise to determine whether the specified temperature range is in accordance with the requirements of the current Standard Specification for Public Works Construction "GREENBOOK" used by the AHJ.

15.2.5 Builder shall notify the OR in writing of the discovery of any violation of any law, code, ordinance, rule and/or regulation within one (1) working day of said discovery.

15.2.6 Builder shall be responsible for any and all removal and/or replacement costs incurred for Work which Builder prosecuted, where, based on the knowledge and expertise relied on by the Owner, Builder should have known violated said law, code, ordinance, rule and/or regulation.

### **15.3 DESIGN RESPONSIBILITIES**

15.3.1 Where Builder is responsible for design, either as part of a design-build component of the Work or a Shop Drawing or similar Submittal, Builder shall be solely responsible for all negligent design errors including, but without limitation, errors, inconsistencies, or omissions in Builder's plans, specifications, submittals, and all other related Work product.

### **15.4 PROJECT OFFICE AND LEGAL ADDRESS**

15.4.1 Unless otherwise specified in the Contract Documents or otherwise approved by the OR, Builder shall provide and maintain on the Site a suitable office or other protected area where the Builder will maintain its copies of the Contract Documents, Project progress records, Construction Schedule, Shop Drawings, and other relevant documents which shall be accessible to the Owner, the OR, and any AHJ during normal working hours.



- 15.4.2 Where the Builder maintains an office at or around the Site, such office is hereby designated as the legal address of Builder for the receipt of documents, samples, notices, letters, and other articles of communication from the Owner or any of its representatives.

## **15.5 BUILDER'S DESIGNATED REPRESENTATIVES**

- 15.5.1 Builder shall identify a single individual as point of contact to function as Builder's representative. Said individual shall have the authority to act in matters relating to this Project, and all communication given to said individual shall be binding as if given to Builder. Builder, acting through its representative, shall give personal attention to, and shall manage the Work, so that it shall be prosecuted faithfully. Builder's representative shall be an employee of Builder.
- 15.5.2 There shall be not more than one point of contact unless otherwise approved in writing by the OR. For Design-Build projects or design work that Builder is responsible for as part of a Design-Bid-Build project, the single point of contact for design need not be the same single point of contact for construction.
- 15.5.3 Builder's Designated Representative shall be responsible for the coordination of all shop drawing and any other plans, sketches, or similar instruments prepared by Builder.
- 15.5.4 Before Work begins, Builder shall file with the OR addresses and telephone numbers where Builder can be reached during all hours, including nights and weekends, when work is not in progress.

## **15.6 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES**

- 15.6.1 Builder is responsible for construction of the entire Project as defined by the Contract Documents. Builder shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time.
- 15.6.2 Builder shall coordinate scheduling, design, submittals, inspection, and work done in accordance with the Contract Documents to ensure efficient and properly sequenced Work. Builder shall insure that current Work will accept later Work. It is Builder's responsibility to coordinate the Work so as to minimize conflicts and optimize efficiency.
- 15.6.3 Builder shall be responsible for the adequacy, efficiency, and sufficiency of its employees. Workers shall have sufficient knowledge, skill, and experience to perform properly the work assigned to them.
- 15.6.4 Builder shall employ only competent, skillful workers to perform the Work. If any of Builder's forces appears to the OR to be incompetent, or to act in a disorderly, inappropriate, or improper manner, such person shall be discharged from the site immediately by Builder upon written direction of the OR, and such person shall not again be employed on the Project. OR's decision shall be final and without appeal.

- 15.6.5 Builder is responsible for reviewing and coordinating the Work of and among his subcontractors, designers, and material suppliers. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors, or omissions.
- 15.6.6 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Builder in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- 15.6.7 Builder shall be responsible for inspection of all portions of the Work, including those portions already performed, and to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- 15.6.8 Builder shall be responsible to Owner for all acts and omissions of Builder and its forces.
- 15.6.9 Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of Owner in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than Builder.

## **15.7 SUPERINTENDENT**

- 15.7.1 Builder shall employ a competent Superintendent satisfactory to Owner who shall be in attendance at the Site at all times during the performance of the Construction Work. With approval of the OR, the Superintendent may designate an alternate. Failure to maintain a Superintendent or a designated alternate on the Site at all times Work is in progress shall be considered a material breach of this Contract, entitling Owner to terminate the Contract or, alternatively, issue a Stop Work Order until the Superintendent or designated alternate is on the Site. Builder shall be solely responsible for any costs incurred as a direct result of its failure to maintain a competent Superintendent on the Site at all times.
- 15.7.2 Superintendent shall represent Builder and communication given to and received from the Superintendent shall be binding on Builder.
- 15.7.3 The Superintendent shall coordinate all work activities and shall be extremely familiar with all relevant and applicable laws, codes, ordinances, rules, and/or regulations, and be capable of reading, interpreting, and coordinating all portions of the Contract Documents.
- 15.7.4 Unless Builder identifies a different employee as Safety Supervisor, the Superintendent shall be responsible for all task required to satisfy all state and federal worker and workplace safety requirements specifically including training.
- 15.7.5 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Project Work.

15.7.6 Where deemed to be in the Owner's best interest, the Owner shall have the right to request that a new Superintendent be assigned to the project, and Builder shall honor such request within three (3) working days. Owner's request for a new Superintendent shall be final and without appeal.

15.7.7 Owner shall have the right to require the immediate removal from the Project of the superintendent in responsible charge of the work where safety violations occur.

15.7.8 In addition, Builder shall provide any Key Personnel specifically identified in any Contract Document for the time periods stipulated in the Contract Documents.

## **15.8 COMPETENT FOREMAN**

15.8.1 Builder shall ensure that all trades are supervised by a competent foreman. A competent foreman shall be on site any time Work is in progress. Builder agrees that Owner has purchased the continuous supervision by a competent foreman.

15.8.2 Owner shall have the right to require the immediate removal from the Project of a foreman in responsible charge of work where safety violations occur.

## **15.9 WORKERS**

15.9.1 Builder shall provide competent, fully qualified personnel to perform the Work. Builder shall not employ or allow subcontractors to employ any unfit person or any one not skilled in the Work assigned to him or her. Any person in the employ of Builder or any Builder forces whom the OR deems incompetent or unfit shall be dismissed from the Work and shall not be employed again on this Project except with the written approval of the OR.

15.9.2 Builder shall at all times maintain good discipline and order among all of its forces. OR shall have the right to have any of Builder's workers removed from the Site for inappropriate behavior. Duration of such removal shall be for the period deemed appropriate by the OR and Builder shall have no right to appeal.

## **15.10 TEMPORARY KEYS, CODES, AND LOCKS**

15.10.1 OR shall at all times be provided with temporary keys, all codes, and the combination to all locks securing the Site or any materials or equipment on the Site. Builder shall have the right to request that a member of Builder's forces accompany OR when accessing any secured materials, and such request shall be honored by OR to the greatest extent feasible.

15.10.2 OR's access to keys, codes, and locks does not extend to the means and methods used to secure electrical equipment or any other work that presents a real and obvious risk to worker safety, the Project, the public, or adjacent property. OR shall be given access upon request of OR and such access, where requested, shall be supervised by Builder.

**15.11 PRINTING AND DISTRIBUTION COSTS**

- 15.11.1 Builder shall be responsible for all plotting, printing, copying and distribution cost for all documents required by Builder in connection with this Work.

**15.12 ASSISTANCE WITH REPORTING**

- 15.12.1 Builder shall cooperate with the Owner in the preparation of any reports required to be prepared and submitted to any Authority Having Jurisdiction including the City.

**15.13 NOTICES OF LABOR DISPUTE**

- 15.13.1 If Builder has knowledge that an actual or potential labor dispute may Delay or threaten timely performance of the Work, Builder shall immediately give notice including all relevant information to the Owner.

**15.14 NONDISCRIMINATION**

- 15.14.1 Builder shall comply and shall ensure that all Subcontractors comply with §§12900 through 12996 of the California Government Code.

- 15.14.2 Builder agrees as follows during the performance of the Work:

- (A) Builder shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in §12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or City's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).
- (B) Builder will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified in the preceding paragraph. Such equal treatment shall apply, but not be limited to the following:
  - (i) Employment; upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (C) Builder also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- (D) Builder will, in all solicitations or advertisements for employees placed by or on behalf of Builder, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in §12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or Owner's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994).
- (E) For the preceding paragraph 'Pregnancy' includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth. For the preceding paragraph, 'service in the uniformed services' includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

15.14.3 Builder and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by Owner or any appropriate agency of the State of California for the purposes of investigation to ascertain compliance with this Article. The outcome of the investigation may result in the following:

- (A) A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by Owner as (1) a basis for determining that Builder is not a 'responsible bidder as to future contracts for which such Builder may submit bids, or (2) a basis for refusing to accept or consider the bids of Builder for future contracts.
- (B) Owner may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Builder has violated the Fair Employment Practices Act, and (2) issued an order under the State of California Government Code §12970 or obtained an injunction under Government Code §12973.
- (C) Upon receipt of such written notice from the Fair Employment Practices Commission, Owner may notify Builder that, unless it demonstrates to the satisfaction of Owner within a stated period that the violation has been corrected, Builder's Proposals on future projects will not be considered.
- (D) Nothing contained in this Article shall be construed in any manner so as to prevent Owner from pursuing any other remedies that may be available at law.

- (E) Builder shall meet the following standards for compliance and provide Owner with satisfactory evidence of such compliance upon Owner's request, which shall be evaluated in each case by Owner:
- (i) Builder shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
  - (ii) Builder shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
  - (iii) Builder or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
  - (iv) Builder shall notify Owner of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.
- (F) Builder shall include the provisions of this Article in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

**END OF ARTICLE**

## **ARTICLE 16**

### **CONSTRUCTION SCHEDULE**

#### **16.1 GENERAL**

16.1.1 The Construction Schedule shall be the basis for evaluating all issues relating to time for this Project. The Construction Schedule shall at all times reflect the current plan for the timely prosecution of the work, and shall document actual progress to date in accordance with the requirements of this Article. In addition, the Construction Schedule shall be used as a basis for processing Progress Payment Requests, and the Owner and Builder shall **jointly** utilize the Construction Schedule for the following purposes:

- (A) To communicate to the Owner Builder's intended means, methods, techniques, sequences, and procedures of performing the Work on or before the Contract Completion Date.
- (B) To identify the work paths that are critical to the timely completion of the Work.
- (C) To help prioritize the Owner's efforts including review of submittals and Owner performed work.
- (D) As a basis for evaluating the costs and/or credits associated with any change in the Contract Scope of Work.
- (E) As a basis for evaluating requests for a change in the Contract Time.
- (F) To document the actual progress of the work.
- (G) To evaluate the best course of action for mitigating the impact of unforeseen events.
- (H) To facilitate cooperative efforts between Owner and Builder to complete the work on or before the Contract Completion Date.

16.1.2 Nothing in this Article shall be deemed a usurpation of Builder's authority and responsibility to plan and schedule work as Builder sees fit, subject to all other requirements of the Contract Documents.

16.1.3 Builder is solely responsible for ensuring that its current Construction Schedule is in full compliance with the Contract Documents. Acceptance by the OR of any Construction Schedule does not relieve Builder of its sole responsibility to complete the Work in accordance with the Contract Documents.

16.1.4 Builder shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work will permit its completion within the Contract Time while simultaneously meeting all milestones specified in the Contract Documents.

- 16.1.5 Builder shall provide at all times sufficient competent labor, materials, and equipment to properly perform the Work and to insure completion of each milestone in accordance with the Construction Schedule and the Contract Documents.
- 16.1.6 If OR determines and notifies Builder that Builder's progress is such that Builder will not achieve completion of the Work within the Contract Time, upon notification by OR in writing, Builder shall immediately and at no additional cost to Owner, take all measures necessary, including working overtime and additional shifts, as may be required to ensure that Builder will achieve completion of the Work within the Contract Time. Upon receipt of such notice from OR, Builder shall immediately notify OR of all measures to be taken to ensure completion of the Work within the Contract Time. Builder shall reimburse Owner for actually incurred costs resulting from Builder's failure to manage the timing of the Work in compliance with the Contract Documents.
- 16.1.7 Builder shall be liable for any incurred costs that result from Builder's untimely submission of Construction Schedules. The Owner shall not be responsible for Delays to Builder's work that occur during a period when Builder has failed to provide a Construction Schedule in accordance with this Article when having the Construction Schedule at the required time could have influenced the Owner's decisions or actions.
- 16.1.8 The Construction Schedule shall represent Builder's current plan for prosecuting the work and shall be an accurate record of the progress as of each Schedule Data Date.

## **16.2 BASELINE CONSTRUCTION SCHEDULE**

- 16.2.1 Within ten (10) working days after Award of Contract, Builder shall submit Builder's proposed Construction Schedule to the OR for review. The Baseline Construction Schedule shall be prepared in accordance with this Article.
- 16.2.2 Where approved by the OR, Builder may submit an Interim Baseline Construction Schedule. The Interim Baseline Construction Schedule must identify all Tasks which the Builder intends to complete within the first ninety (90) calendar days following issuance of the Notice to Proceed and must indicate the Contract Completion Date.
- 16.2.3 Where the OR agrees to accept an Interim Baseline Construction Schedule, the final Baseline Construction Schedule shall be completed and accepted by the OR within the first ninety (90) calendar days following issuance of the NTP unless otherwise agreed to in writing by the OR.
- 16.2.4 The OR shall review and accept or return with summary comments Builder's initial Baseline Schedule within eleven (11) working days of receipt. Builder shall resubmit the Baseline Schedule with responses to the OR's summary comments within six (6) working days of receipt.
- 16.2.5 Additional review by the OR shall be completed within six (6) working days. The review process shall be repeated within the specified time frames until Builder's Baseline Schedule is accepted by the OR.



16.2.6 Once Builder and the OR agree on the Baseline Schedule, this version of the Schedule shall be identified as the **Baseline Construction Schedule**, and shall become a part of the Contract Documents.

### 16.3 **BASILINE CONSTRUCTION SCHEDULE LIQUIDATED DAMAGES PROVISION**

16.3.1 Builder and the Owner agree that failure to obtain acceptance of the Interim or Baseline Construction Schedule within twenty-five (25) working days after Award of Contract will result in damages being sustained by the Owner. Further, Builder and the Owner agree upon the following:

- (A) That Builder's failure to complete the Baseline Construction Schedule within the allotted time will affect the Owner's ability to verify that Builder is capable of prosecuting and completing the Work on or before the Contract Completion Date.
- (B) That Builder's failure to complete the Baseline Construction Schedule within the allotted time will affect the Owner's ability to understand Builder's intended means, methods, techniques, sequences, and procedures of performing the Work.
- (C) That Builder's failure to complete the Baseline Construction Schedule within the allotted time prevents the Owner from facilitating cooperative efforts that would assist Builder in completing the work on or before the Contract Completion Date.
- (D) That Builder's failure to complete the Baseline Construction Schedule within the allotted time will affect the Owner's ability to assist Builder in establishing milestone events, prioritizing the Work, and marshaling the Owner's forces for submittal review and other work required to be performed by Owner.
- (E) That Builder's failure to complete the Baseline Construction Schedule within the allotted time will result in additional construction management and administrative costs to the Owner.
- (F) That such damages, among others, are, and will continue to be, impracticable and extremely difficult to determine, but in no case shall be less than the amount specified in the Agreement.
- (G) That the dollar amount specified in the Agreement is per calendar day, is the minimum value of such costs to the Owner, and is a reasonable amount.
- (H) That such sum is liquidated damages, shall not be construed as a penalty, and that such sum may be deducted from any money owed or to be owed Builder if such Delay occurs.

### 16.4 **CONSTRUCTION SCHEDULE PREPARATION GUIDELINES**

16.4.1 Builder shall be responsible for all costs associated with the preparation, maintenance, and revisions to the Construction Schedule required to comply with the Contract Documents.

- 16.4.2 The Construction Schedule shall be a computer generated, time scaled, activity-on-node diagram identifying Task precedence and the critical path (longest path) network(s). The Construction Schedule shall reflect the construction phasing required by the Contract Documents.
- 16.4.3 The Construction Schedule shall represent a practical plan to complete the work within the time requirements of the Contract, and shall comply with, adhere to, or incorporate the following:
- (A) The Construction Schedule shall reflect the phasing required by the Contract Documents.
  - (B) The Construction Schedule shall not indicate work performed beyond the Contract Completion Date.
  - (C) The Construction Schedule shall be in sufficient detail to assure adequate planning and execution of work.
  - (D) Builder shall use full, understandable descriptions for all Tasks. The OR shall have the authority to reject any Task description.
  - (E) Every Task except the NTP milestone shall have one or more logically assigned predecessors. Every Task except for the Project Completion milestone shall have one or more logically assigned successors.
  - (F) Each Construction Schedule shall indicate all milestone events required by the Contract Documents and any other milestones as determined by Builder and the OR. No other manually imposed dates will be accepted without written approval of the OR.
  - (G) The Construction Schedule must include all Tasks having a duration of more than four **Working Days** or involving more than eighty (80) worker hours.
  - (H) The logic ties must accurately model reality.
  - (I) Builder shall specifically identify any Tasks entered with a lag.
  - (J) With the exception of fabrication and procurement Task activities, no individual Task activity shall have a duration of more than ten (10) working days. Tasks that require more than ten working days shall be broken up into two or more sub-Tasks of not more than ten (10) working days.
  - (K) The Construction Schedule shall include individual Tasks for procurement, delivery, or installation of equipment, materials, and other supplies.
  - (L) The Construction Schedule shall include individual Tasks for all submittals requiring review by Owner forces and/or any AHJ. Each Submittal Review Task indicated on the Construction Schedule shall assume at least one resubmittal. All Submittal Tasks shall have a predecessor and a successor activity.

- (M) The Construction Schedule shall include individual Tasks for decision dates for selections of all finishes.
  - (N) The Construction Schedule shall accurately indicate the interdependence of procurement and construction Task activities.
  - (O) The Construction Schedule shall identify dates for testing and balancing of equipment.
  - (P) The Construction Schedule shall include individual Tasks for inspections by Owner forces and/or any AHJ, including for Project Closeout.
  - (Q) Builder shall plan for weather-related non-Working Days in the Construction Schedule. Builder is solely responsible for its assumptions regarding the number days where Critical Path Work cannot proceed because of weather.
  - (R) Task durations shall be based on an analysis of the labor, equipment, and materials required. The OR may request Builder to provide justification for durations that appear to be too short or too long.
  - (S) If the Construction Schedule indicates an early completion of the Contract, the following shall apply:
    - (i) The early completion schedule shall satisfy all requirements of the Contract Documents.
    - (ii) A Contract Change Order may, at the discretion of the Owner, be issued to Builder to revise the Contract Completion Date to the early completion date shown in the Construction Schedule. Builder shall be liable for liquidated damages in the manner and dollar amount prescribed in the Contract for failure to achieve the revised Contract Completion Date.
- 16.4.4 Float shall not be for the exclusive use of either the Owner or Builder. Float shall be a jointly owned, expanding and contracting resource available to both the Owner and Builder on a “first come, first serve” basis.
- 16.4.5 The use of float suppression techniques by the Builder, including preferential sequencing, special lead/lag logic restraints, extended task activity durations, or imposed dates will not be permitted and shall be the grounds for rejection of the Construction Schedule.
- 16.4.6 Regardless of whether the Construction Schedule is accepted by the OR, the failure of Builder to include any element of Work required for performance of this Contract shall not excuse Builder from completing the Work on or before the Contract Completion Date.
- 16.4.7 Submittal of the Construction Schedule shall be interpreted as Builder's confirmation that the Construction Schedule meets the requirements of the Contract Documents, and that the work will be prosecuted in the sequence indicated in the Construction Schedule.

- 16.4.8 If at any point in time it becomes impossible for Builder to complete the Work within the current Contract Time, Builder shall immediately prepare an updated Construction Schedule indicating the earliest practical completion date.
- 16.4.9 OR's acceptance of or its review comments about any Construction Schedule shall not relieve Builder from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any Construction Schedule shall not transfer responsibility for any schedule to the Owner nor imply their agreement with any assumption upon which such schedule is based or any matter underlying or contained in such Construction Schedule.
- 16.4.10 Failure of OR to discover errors or omissions in the Construction Schedules or OR's failure to inform Builder that Builder, Subcontractors, or others are behind schedule shall not relieve Builder from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

## **16.5 UPDATES AND REVISIONS TO THE CONSTRUCTION SCHEDULE**

- 16.5.1 There shall be only one currently accepted Construction Schedule at any given time.
- 16.5.2 Revisions to the currently accepted Construction Schedule shall be mutually agreed upon by the OR and Builder. Builder may make minor revisions to the currently accepted Construction Schedule without completing the formal submittal and review specified within this Article so long as Builder provides the OR with a written description of all minor changes made.
- 16.5.3 Where work was performed out of sequence from the current Construction Schedule, that out of sequence work shall be shown correctly on the next Construction Schedule Update.
- 16.5.4 Where Builder has made, or intends to make, major changes in its methods and/or operations after commencing Work, Builder shall submit a revision to the currently accepted Construction Schedule to the OR. Unless otherwise approved in writing by the OR, the revised Construction Schedule shall be submitted to and accepted by the OR prior to commencing the Work that differs from the currently accepted Construction Schedule.
- 16.5.5 Builder shall obtain acceptance of any revision to the currently accepted Construction Schedule in accordance with this Article.
- 16.5.6 Work required by each Field Directive issued by the OR shall be incorporated into the currently accepted Construction Schedule in accordance with this Article at the earliest time feasible.

## **16.6 COST AND RESOURCE LOADING**

- 16.6.1 In addition to the Schedule of Values, the OR shall have the right to require that the currently accepted Construction Schedule be Cost and Resource Loaded in accordance with this Article.

- 16.6.2 When required by the OR, all Tasks except procurement Tasks shown on the Schedule shall be Cost and Resource-Loaded. The total cost reflected in the Construction Schedule shall be equal to the current Contract Sum.
- 16.6.3 At the OR's sole discretion, the OR may limit the cost and resource loading to only certain Tasks or Activities.
- 16.6.4 Alternatively, if required by the OR, Builder shall provide a Cash Flow and/or Work-Hour Projection for all remaining work to be performed.

**16.7 TIME IMPACT ANALYSIS**

- 16.7.1 Where a Delay has occurred that cannot be corrected by Builder, OR shall have the right to request in writing that Builder prepare a Time-Impact Analysis in accordance with this Article. The Time Impact Analysis shall be submitted to the OR within ten (10) working days following the written request. The Time Impact Analysis shall reflect all unforeseen events that caused the uncorrectable Delay. Failure to submit a complete Time Impact Analysis within the required time frame shall result in Builder waiving its rights to any Time Extensions or claim for other damages associated with the uncorrectable Delays.
- 16.7.2 A Time Impact Analysis shall include the following:
- (A) A detailed set of Tasks that represent the impact of the Delay, which are logically tied into a copy of the currently accepted Construction Schedule and which demonstrate the impact of the Delay to a Milestone mandated by the Contract Documents or the Contract Completion Date.
  - (B) A detailed narrative that describes the Delay and its impact to a Milestone mandated by the Contract Documents or the Contract Completion Date.
  - (C) A plan to mitigate the Delay along with the costs of the mitigation.
- 16.7.3 OR shall review and accept or return with summary comments Builder's Time Impact Analysis within six (6) working days of receipt. Builder shall resubmit the Time Impact Analysis with responses to the OR's summary comments within six (6) working days of receipt. The review process shall be repeated within the specified time frames until Builder's Time Impact Analysis is accepted by the OR. Failure to resubmit the Time Impact Analysis within the required time frame shall result in Builder waiving its rights to any Time Extensions or claim for other damages associated with current Delays.
- 16.7.4 The results of a Time Impact Analyses shall not be incorporated into the currently accepted Construction Schedule until accepted by the OR.
- 16.7.5 Mitigation plans for Delays that Builder feels may be the responsibility of the Owner shall only be implemented following acceptance by the OR.

## **16.8 BUILDER OBJECTIONS**

- 16.8.1 If Builder disagrees with any of the comments made by the OR on any Construction Schedule submitted by Builder to the OR, Builder shall notify the OR of such disagreement within six (6) working days of receipt of OR's comments. Builder's written notification of disagreement shall include the words "Notice of Objection" in the title.
- 16.8.2 Upon receipt of Builders objection to comments made by the OR, the OR shall take one of the following actions:
- (A) Accept the Notice of Objection as valid;
  - (B) Accept the Notice of Objection without making summary comment; or
  - (C) Shall return the Notice of Objection with summary comments to Builder within six (6) working days.
- 16.8.3 Where the OR has returned Builder's Notice of Objection with summary comments, Builder shall resubmit its Notice of Objection with responses to the OR's summary comments within six (6) working days. This process shall be repeated within the specified time frames until the OR accepts the Notice of Objection as valid or has no additional summary comments. The OR shall then forward the Record of Objection to the Owner for processing as the Owner deems appropriate.
- 16.8.4 Builder waives its rights to any Time Extension or other claim for damages if Builder fails to submit or resubmit the Notice of Objection within the required time frames specified in this Article.

## **END OF ARTICLE**

## **ARTICLE 17**

### **SCHEDULE OF VALUES**

#### **17.1 BASELINE SCHEDULE OF VALUES (DESIGN-BID-BUILD)**

*The following provisions apply only to **Design-Bid-Build** Projects.*

*See the next section for Design-Build Project Requirements.*

- 17.1.1 For Design-Bid-Build projects, unless specified otherwise in the Bid Documents, Builder shall submit a Schedule of Values ("SOV") within three (3) working days of the Submittal Deadline.
- 17.1.2 In addition to the specific line items required in this Article (below), the Baseline SOV shall include line items for individually grouped tasks that are consistent with Builder's List of Subcontractors, phasing of the work, the Construction Schedule, and the Bid requirements.
- 17.1.3 The Owner may reject as nonresponsive any Bid where the Baseline Schedule of Values subsequently provided by the potential Successful Bidder unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular line items.
- 17.1.4 Unless specified otherwise in the Bid Documents, acceptance by the Owner of the Baseline SOV is a mandatory requirement for identification of the potentially successful responsible Bidder offering the lowest price Bid.

#### **17.2 BASELINE SCHEDULE OF VALUES (DESIGN-BUILD)**

*The following provisions apply only to **Design-Build** Projects.*

*See the previous section for Design-Bid-Build Project Requirements.*

- 17.2.1 Unless specified otherwise in the Design Build RFP or Addendum, Builder shall prepare an SOV that covers all work for which Builder intends to invoice over not less than the initial ninety (90) calendar days starting from the initial NTP or the last Owner accepted Progress Payment Request whichever occurred most recently plus any Work for which a subcontract has been let by the Builder. All other dollar amounts shall be allocated by the Construction Specifications Institute ('CSI') Division No.

#### **17.3 LIMITED SCHEDULE OF VALUES ('LSOV')**

- 17.3.1 Where the Bid or RFP Documents require that a Limited Schedule of Values be prepared, such Schedule shall be prepared in accordance with all applicable requirements of this Article, the Advertisement, the Bid or RFP Documents, and any Addendum.

#### **17.4 MANDATORY SCHEDULE OF VALUES LINE REQUIREMENTS**

- 17.4.1 To be accepted by the OR, and in addition to any other requirements stated elsewhere, the Schedule of Values or Limited Schedule of Values shall provide for and comply fully with all of the following:

- (A) Builder's costs to manage and coordinate design work shall be allocated on one or more separate line items.
- (B) Builder's Indirect Home Office Overhead shall be a separate line item.
- (C) Insurance costs shall be one or more separate line items.
- (D) Bonding costs shall be one or more separate line items.
- (E) Total Project Profit shall be a separate line item.
- (F) Construction related costs for Site and Field operations (Field Overhead) shall be on one or more separate line items.
- (G) Costs for Mobilization shall be on one or more separate line items.
- (H) Costs for Demobilization shall be one or more separate line items.
- (I) Builder and Subcontractor costs for preparation of submittals shall be on one or more separate line items.
- (J) Subcontractor General Conditions costs shall be identified on one or more separate line items. If approved by the OR, Subcontractor General Conditions may be appropriately divided among Subcontractor's other line items. Front loading of Subcontractor General Conditions is specifically prohibited.
- (K) For design-build work (applies to both Design-Build projects and Design-Bid-Build projects that have one or more design-build elements), costs for design shall be identified separately from construction.
- (L) For design-build work (applies to both Design-Build projects and Design-Bid-Build projects that have one or more design-build elements), costs for designer's construction administration (if/where appropriate) shall be identified on one or more separate line items.
- (M) The sum of all line items shall be equal to the amount offered or the current Contract Sum (including approved CCOs) as appropriate.

## **17.5 REVIEW AND ACCEPTANCE OF THE BASELINE SOV**

- 17.5.1 The OR shall review and accept or return with summary comments Builder's Baseline SOV within three (3) working days of receipt. Builder shall resubmit the Baseline SOV with responses to the OR's summary comments within two (2) working days of receipt.
- 17.5.2 Additional review by the OR shall be completed within two (2) working days. The review process shall be repeated within the specified time frames until Builder's Baseline SOV is accepted by the OR.
- 17.5.3 Once Builder and the OR agree on the Baseline SOV, this version of the SOV shall be identified as the ***Baseline Schedule of Values***, and shall become a part of the Contract Documents.



**17.6 REVISIONS TO THE SCHEDULE OF VALUES**

- 17.6.1 Revisions to any Schedule of Values that has been accepted by the OR shall be mutually agreed upon by the Owner and Builder.
- 17.6.2 Builder and OR shall be in agreement on the SOV prior to Builder's delivery of any progress or final payment request.

**END OF ARTICLE**

## **ARTICLE 18**

### **FIELD DIRECTIVES AND SCOPE CLARIFICATIONS**

#### **18.1 FIELD DIRECTIVES**

- 18.1.1 In accordance with these Specifications, Owner shall have the right to direct Builder to perform Changed Work. Changed Work shall be prosecuted in accordance with the Field Directive and, to the greatest extent feasible, Builder shall minimize the final cost and negative time impacts associated with the Changed Work.
- 18.1.2 OR shall issue Field Directives on forms deemed appropriate by the OR. Each Field Directive shall state the following:
- (A) A description of the Changed Work.
  - (B) The date the OR issued the Directive.
  - (C) Whether approval of a COR is required prior to start of the Changed Work by Builder.
  - (D) Whether or not the Field Directive impacts any Critical Path Work.
- 18.1.3 Additionally, the Field Directive may identify the agreed change in Contract Sum and/or Contract Time where such agreement was reached between OR and Builder prior to issuance of the Field Directive.
- 18.1.4 Unless agreement on the change in Contract Sum and/or Contract Time is reached in advance between OR and Builder prior to completion of the Work, all Changed Work shall be performed in accordance with the Time and Materials Procedures defined in these Specifications. Builder is encouraged to negotiate a lump sum cost for this work even if work was started

#### **18.2 SCOPE CLARIFICATIONS**

- 18.2.1 Where Builder has requested or the OR believes that a clarification of the Scope of Work is warranted, OR shall issue Builder a Scope Clarification.
- 18.2.2 Scope Clarifications are information only and are not intended to change the current Scope of Work or to impact either the Contract Sum or the Contract Time. The sole purpose for Scope Clarifications is to clarify the original intent of the Contract Documents.
- 18.2.3 If the Builder believes that a Scope Clarification has changed the Scope of Work, Contract Sum, and/or Contract Time, then Builder shall immediately notify the OR. Builder waives all rights to submit a COR for any cost or time impacts associated with a Scope Clarification where Builder failed to notify OR prior to start of the Changed Work or within fifteen (15) working days of the date the Scope Clarification was issued, whichever occurs first. Such Notification shall indicate why Builder believes that this Scope Clarification has changed the Scope of Work.

**END OF ARTICLE**

## **ARTICLE 19**

### **SITE OPERATIONS**

#### **19.1 MOBILIZATION**

- 19.1.1 Unless mutually agreed between Owner and Builder, or directed otherwise in writing by the OR, no mobilization activities shall begin before the date specified on the Owner's NTP.
- 19.1.2 If Builder will occupy any portion of the public right-of-way as part of the Work, then Mobilization includes the obligation of Builder to obtain an Encroachment Permit from the City.
- 19.1.3 Prior to mobilization, unless otherwise approved by OR, Builder shall deliver to OR a site plan not less than 11"x17" in size indicating how Builder initially intends to utilize the Site. Such plan shall identify major activity areas or necessary provisions including concrete washout, storage of hazardous and toxic materials, sanitary facilities, location of storage containers, access points, evacuation areas, etc. Where the site is required to be fenced, the location of all fencing and gates shall be identified.
- 19.1.4 Mobilization includes all activities and costs necessary for successful completion of the Project including, but not limited to, the following:
- (A) Delivery to the Site of Builder's personnel, materials (including operating supplies), equipment, and fuel.
  - (B) Establishment of furnished and supplied temporary offices and other facilities including sanitary facilities and batch plants.
  - (C) Installation of all stormwater pollution prevention, air quality, water quality, and dust control requirements.
  - (D) Establishment of temporary fire protection and communication systems.
  - (E) Establishment of water, electricity, and other utilities including internet access .
  - (F) All fencing activities.
  - (G) Builder's obligations to badge and train personnel, familiarization with the Site, and initial Safety training.
  - (H) Posting of all OSHA, CalOSHA, Prevailing Wage, and any other notices required by law to be posted at the Site.

#### **19.2 PREVAILING WAGE REQUIREMENTS**

- 19.2.1 The Owner shall provide a copy of the Prevailing Wage Rates applicable to this project.

- 19.2.2 Builder shall post copies of the Prevailing Wage Rates at the Site in an area useable by workers during breaks. Unless otherwise agreed to by the OR, Prevailing Wage Rates shall not be posted inside or within 75 feet of the office facilities used by the Superintendent. Prevailing Wage Rates may be posted less than 75 feet from the office facilities used by the Superintendent if posted in the same exterior area where Safety Training occurs.

### **19.3 NOTICE TO SUBCONTRACT**

- 19.3.1 Owner's approval to subcontract is required for each of Builder's subcontracts involving Subcontractors not identified at the time of Contract Award. This requirement does not apply to consultant subcontracts. Owner's approval to subcontract shall be obtained prior to award of the subcontract, and Owner shall have the right to reject any subcontractor for cause. The requirement applies to all design-build or deferred submittal work of Design-Bid-Build ('DBB') contracts not identified at time of bidding, and to all Design-Build ('DB') contracts.
- 19.3.2 Notification to the Owner of Builder's intent to subcontract shall include the following:
- (A) Subcontractor's legal name and legal mailing address.
  - (B) Owner's name and direct phone number.
  - (C) Subcontractor's business phone number and email address.
  - (D) Subcontractor's Scope of Work.
  - (E) Subcontractor's California Contractor License No. (where required by law).
  - (F) Subcontractor's California Department of Industrial Relations ('DIR') Registration No.
- 19.3.3 Builder shall be solely responsible for any costs incurred as a result of Builder's failure to obtain Owner approval prior to award of any subcontract.
- 19.3.4 Owner has the right to request all documentation that supports Builder's selection of a Subcontractor. The Owner shall have the right of final approval as to the qualification(s) of any Subcontractor to perform its designated scope of work where the Subcontractor was not identified at time of Bidding or RFP. Within the Owner's sole discretion, any Subcontractor may be deemed not qualified to perform work on this Project. Owners decision regarding the ability to subcontract with any Subcontractor not identified at the time of Bidding is final and without appeal.

### **19.4 SWPPP REQUIREMENTS**

- 19.4.1 In addition to the requirements stated in the Supplemental Conditions Article, Builder shall be responsible for procuring, implementing, and complying with all State Water Resources Control Board ('SWRCB') Construction General Permit ('Construction Permit') requirements.

- 19.4.2 Construction Permit requirements specifically include preparation of a Storm Water Pollution Prevention Program ('SWPPP'), implementation of all best management practices ('BMPs'), and storm water pollution monitoring and reporting required by the Construction Permit or the SWPPP. Builder shall provide copies of all programs, reports, and monitoring information to the OR.
- 19.4.3 Builder shall be responsible for filing the Notice of Intent and for obtaining the Construction Permit. Builder shall be solely responsible for preparing and implementing Builder's SWPPP during Mobilization and prior to initiating Work.
- 19.4.4 Builder shall comply with the lawful requirements of any applicable municipality, the Owner, drainage Owner, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- 19.4.5 Failure to comply with the Construction Permit is in violation of federal and state law.
- 19.4.6 Owner may seek damages from Builder for Delay in completing the Work in accordance with the Contract Documents caused by Builder's failure to obtain the Construction Permit or to comply with the requirements of the Construction Permit.
- 19.4.7 If Builder fails to immediately comply with any measures required by any storm water related document, law, or regulation, Owner shall have the immediate authority to provide storm water controls and to deduct actually incurred costs from any payments owed or to be owed Builder.
- 19.4.8 Builder shall defend (with Counsel of Owner's choosing), indemnify, and hold harmless the Owner, its officials, officers, agents, employees, and representatives from and against all liabilities, demands, claims, damages, losses, costs, and expenses arising from Builder's failure to provide and maintain any required BMPs.
- 19.5 AIR POLLUTION, AIR QUALITY, AND DUST CONTROL REQUIREMENTS**
- 19.5.1 At no time during construction shall Builder release pollutants, including particulate matter, into the air that exceed those permitted by the California Ambient Air Quality Standards ('CAAQS').
- 19.5.2 At all times during earthwork or moving of equipment and vehicles, Builder shall continuously implement dust control procedures in compliance with law and the Air Quality Management District ('AQMD') having jurisdiction over the work.
- 19.5.3 All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

- 19.5.4 Builder shall fully comply with all Applicable Laws, rules and regulations in furnishing or using equipment and/or providing services, including but not limited to, emissions limits and permitting requirements imposed by the AQMD having jurisdiction over the Project and/ or California Air Resources Board (CARB). Builder shall specifically be aware of the application of these limits and requirements to 'portable equipment' which definition is considered to include any item of equipment with a fuel-powered engine.
- 19.5.5 Builder shall indemnify Owner against any fines or penalties imposed by the AQMD, AHJ, CARB, or any other governmental or regulatory agency for Builder's violations of applicable laws by Builder or any Builder forces.
- 19.5.6 Builder shall provide and maintain indoor air quality required by any Authority Having Jurisdiction, law, or code. If Builder fails to immediately comply with any measures required by any AHJ including the Owner, the Owner shall have the immediate authority to act as required to comply with air quality requirements and to deduct actually incurred costs from any payments owed or to be owed Builder.
- 19.5.7 Builder shall provide and maintain outdoor dust control required by any Authority Having Jurisdiction, law, or code. If Builder fails to immediately comply with any measures required by any AHJ including the Owner, the Owner shall have the immediate authority to provide dust control and deduct actually incurred costs from any payments owed or to be owed Builder.
- 19.5.8 Builder shall defend (**with Counsel** of Owner's choosing), indemnify, and hold harmless the Owner and its forces from and against all liabilities, demands, claims, damages, losses, costs, and expenses arising from Builder's failure to provide and maintain required air quality and/or dust control measures.
- 19.6 UTILITY POT-HOLING, LOCATION, AND IDENTIFICATION**
- 19.6.1 Unless stated otherwise in the Contract Documents, the Scope of Work specifically includes a utility survey with potholing for utilities by any means necessary, including careful hand digging, to insure all utilities are located and exposed without damage.
- 19.6.2 The existence and location of underground utilities and other underground construction indicated as existing is not guaranteed. Known existing utilities and pipelines are shown on the Plans in their approximate locations. Builder is solely responsible for all activities that could impact known or identified existing utilities which convey electricity, light, communication, or any gaseous, liquid, or semi-liquid material by pipe, duct, conduit, fiber, or wire located beneath the ground surface.

- 19.6.3 Owner is under no obligation to indicate the presence of existing service laterals, accessories, including irrigation and irrigation control, and similar appurtenances where the presence of such utilities can be inferred from the presence of other visible facilities such as buildings, cleanouts, meters, junction boxes, irrigation controllers and devices, valves, fire hydrants, etc. located on or adjacent to the site of the Project. Builder is solely responsible for all costs incurred in locating such laterals, accessories, and appurtenances and for repairing such if damaged by Builder's activities.
- 19.6.4 After the utility survey is completed, Builder shall commence 'potholing' or hand digging to determine the actual location of the pipe, duct, conduit, fiber, or wire. The OR shall be given written notice prior to commencing potholing operations. Builder shall uncover all underground utilities to a point one (1) foot below the utility where crossings, interferences, or connections are shown on the Plans.
- 19.6.5 It shall be Builder's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which Builder believes may affect or be affected by Builder's operations. Builder shall not be entitled to additional compensation or time extensions for work necessary to avoid interferences or for repair to damaged utilities if Builder did not locate all such existing utilities as required by this Article.
- 19.6.6 Builder shall coordinate and serve as the point of contact for all entities involved in utility installation. Builder shall coordinate utility purveyor layouts to ensure maximum compatibility between existing conditions and the Work.
- 19.6.7 New pipelines shall be laid to such grade as to clear all existing facilities which are to remain in service during and after placement of the new pipeline.
- 19.6.8 Builder is solely responsible for compliance with California Government Code §4216 et seq. and applicable federal law. Upon request, Builder shall furnish to OR proof documenting Builder's efforts to satisfy USA/Dig Alert requirements.
- 19.6.9 Builder shall contact the appropriate City Department for assistance locating City owned utilities, especially irrigation wiring, located within the public right-of-way or on City owned property.
- 19.6.10 Builder shall notify the Owner in writing of any interferences with any utility that occur at locations other than those indicated in the Contract Documents (within reasonable accuracy limits).
- 19.6.11 Where under Builder's control, utilities shall be identified in accordance with APWA's color coding system:
- (A) Red for electric power, cables, conduit, and lighting lines.
  - (B) Orange for telecommunication, alarm and signals, and conduit lines.
  - (C) Yellow for natural gas, oil, steam, and petroleum. As well as other gaseous or flammable material pipes.



- (D) Green for sewer and drain pipes.
- (E) Blue for drinking water pipes.
- (F) Purple for reclaimed water, irrigation, and slurry pipes.

## **19.7 RELOCATION OR REPAIR OF EXISTING UTILITIES**

- 19.7.1 Owner will compensate Builder in accordance with these Specifications for removal, relocation, or protection of existing main or trunk line utility facilities located on the Site where such utilities were not identified in the Contract Documents (within reasonable accuracy) or could not be reasonably inferred from the presence of other visible facilities.
- 19.7.2 Builder shall exercise care to prevent damage to adjacent existing facilities and public or private works. Where equipment and materials will pass adjacent to or over these obstructions, suitable shoring and coverage shall be provided. If high priority subsurface installations are damaged and the operator cannot be immediately contacted, Builder shall call 911 emergency services.
- 19.7.3 In the event of damage, Builder shall expose and repair any utility as required by the utility purveyor including the City at the sole cost of Builder. Builder is solely responsible for repairing damage resulting from the failure of Builder to exercise reasonable care.
- 19.7.4 Builder shall immediately notify OR and the utility purveyor of any damage to any utility.
- 19.7.5 Where a Delay is caused by the failure of the Owner or utility company to provide for removal or relocation of utility facilities, Builder shall not be assessed Liquidated Damages. Requests for extensions of time arising out of utility relocation or repair Delays shall be delivered to OR in accordance with these Specifications.
- 19.7.6 The public utility, where they are the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit Builder to do such repairs or relocation work at a reasonable price.
- 19.7.7 The right is reserved by the Owner and each utility purveyor, or their authorized agents, to enter the Site for the purpose of making any changes necessary, or for making necessary connections or repairs to their facilities. Builder shall cooperate with all utility or other Owner forces engaged in such work, and Builder shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the utility-related work being performed. Where specified in the Contract Documents, Builder shall allow the respective utility purveyor sufficient time to relocate their facilities.
- 19.7.8 Unless specified otherwise in the Contract Documents, if a utility is to be relocated, altered, or constructed by others, the Owner will conduct all negotiations with the utility company and the work will be done at no cost to Builder.

## **19.8 TEMPORARY UTILITIES**

- 19.8.1 All temporary utilities and/or utility distribution, including but not limited to electricity, water, gas, telephone, and internet shall be furnished and paid for by Builder. Builder shall provide necessary temporary distribution systems to all required areas of the site, including meters where necessary. Unless otherwise accepted by the Owner, Builder, as part of its Demobilization, shall remove all temporary utilities.
- 19.8.2 Where utilities already exist, Builder may, with prior written Approval of the Owner, use the Owner's existing utilities. Builder shall compensate Owner for all costs incurred, and Owner shall have the right to deduct any incurred temporary utility costs directly from any money owed or to be owed Builder.
- 19.8.3 Temporary or permanent relocation or alteration of utilities desired by Builder for its own convenience shall be Builder's responsibility. Builder shall plan and bear all costs for such utility relocation or alteration work.

## **19.9 PERMANENT UTILITIES**

- 19.9.1 Builder shall verify that the utility requirement characteristics of equipment are compatible with the building utilities. Builder shall coordinate the work of installing, connecting to, and placing in service, all equipment and associated utility infrastructure. All Work shall conform to the requirements of the utility purveyor regardless of the information shown on the plans.
- 19.9.2 Unless otherwise accepted by the Owner, all permanent meters Installed as part of the Project shall be listed in Builder's name until the Project is accepted by the Owner. Where the Owner agrees to have utilities installed and billed directly to Owner, Builder shall compensate Owner for all costs incurred, and Owner shall have the right to deduct utility costs incurred prior to Project acceptance by Owner directly from any money owed or to be owed Builder.
- 19.9.3 Unless specified otherwise in the Contract Documents, applications required for any permanent utility shall be completed by the entity responsible for payment of the utility installation costs.
- 19.9.4 Unless specified otherwise in the Contract Documents, payment to a utility purveyor of any fees directly associated with meter installation or initial operation of the utility shall be paid by the entity responsible for installation and initial operation of the utility.

## **19.10 FACILITIES FOR THE OR**

- 19.10.1 Where required by the Contract Documents, facilities for the OR shall be provided and continuously maintained by Builder. Builder shall be responsible for all repairs and maintenance of the OR facilities, and Builder shall be responsible for any costs incurred by Owner as a result of Builder's failure to place, install, and maintain any facility for the OR specified by the Contract Documents.

**19.11 FIELD ENGINEERING**

- 19.11.1 Unless specified otherwise, Builder shall retain a California licensed land surveyor for the following activities:
- (A) Horizontal and vertical control;
  - (B) Grading and elevation contours;
  - (C) Determination of line and grade;
  - (D) Slope and cross-slope of walking paths;
  - (E) Location and depth of utilities and infrastructure;
  - (F) Flow line control;
  - (G) Invert elevations;
  - (H) Structure size, location, elevation, and plumbness of all Work;
  - (I) Establishment, placement, and replacement of reference points, markers, and monuments;
  - (J) Measurements where required by the Contract Documents; and
  - (K) Documentation, including recording of documents required by law, for all Land Survey Work performed as part of this Project.
- 19.11.2 Builder shall verify all layout information shown on the plans, in relation to the property survey and existing benchmarks before proceeding with any layout of the work. Builder shall establish and maintain a minimum of two (2) permanent benchmarks on the site, referenced to data established by existing survey control points.
- 19.11.3 Upon written request by the OR, and at no cost to Owner, Builder shall supply such labor as required to assist the OR in checking locations and grades of the Work as set by Builder. For this paragraph, assisting the OR shall include moving materials and equipment located between stakes, markers, or monuments and the Work.
- 19.11.4 All utility connections shall be installed based on actual utility elevations of existing utilities to which the connections are required to be made.
- 19.11.5 Regardless of whether a licensed surveyor is employed or not, Builder remains solely responsible for information identified in this Article.
- 19.11.6 Builder shall locate and protect existing survey points, markers, monuments, or other devices marking property boundaries and corners prior to starting Work.
- 19.11.7 Builder shall take extra care to protect existing survey points, markers, monuments, or other devices marking property boundaries and to prevent damage, disturbance, or concealment to such. If such points, markers, or monuments or devices are disturbed by accident, they shall be replaced by a licensed land surveyor at no cost to the Owner.

- 19.11.8 Builder shall promptly replace any lost or damaged benchmarks or control points. Replacement locations shall be based on the original survey control points.
- 19.11.9 Builder shall not change or relocate any benchmarks or control points without prior written approval from the OR. The Builder shall promptly report lost or destroyed benchmarks or control points to the OR. Builder shall notify the OR in writing at least three (3) working days prior to relocating any benchmarks or control points as part of the Work.

**19.12 WEEKLY STATEMENT OF WORKING DAYS**

- 19.12.1 Where Contract Time is based on a fixed number of Working Days, the OR will be responsible for preparing a Weekly Statement of Working Days. Unless identified differently in the Contract Documents, OR shall maintain the record of Working Days in accordance with current California Department of Transportation requirements.
- 19.12.2 Copies of the Weekly Statement of Working Days will be delivered by OR to Builder within three (3) working days of the end of the previous work week. Builder shall have five (5) working days to dispute the OR's calculation of working days. Builder forfeits all rights to dispute the OR's calculation of working days where Builder fails to identify a disputed condition to the OR within the required five (5) working days.

**19.13 BUILDER'S DAILY REPORTS**

- 19.13.1 Unless permitted otherwise by the OR, Builder shall submit Daily Reports to the OR, for all days where any Work was performed. The Daily Report shall be submitted within two (2) working days of the date the Work was performed. The Daily Report shall include the following information:
- (A) Date of Work.
  - (B) General weather conditions.
  - (C) Daily workforce of Builder. Workforce shall be categorized by the prevailing wage craft for each type of Worker.
  - (D) Daily workforce of each first tier Subcontractor. Workforce shall be categorized by the prevailing wage craft for each type of Worker.
  - (E) All 2<sup>nd</sup> tier and lower Subcontractors.
  - (F) Description of all Work that was started on that **Working Day**.
  - (G) Description of all Work that is ongoing.
  - (H) Description of all Work that was completed on that **Working Day**.
  - (I) All nonconforming and unsatisfactory items to be corrected.

#### **19.14 CLEAN UP**

- 19.14.1 Throughout construction Builder shall keep the Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Builder's forces.
- 19.14.2 Builder shall not unreasonably encumber the Site with its materials. Builder shall store waste materials and rubbish in suitable containers and shall have all excess dirt, waste materials, and rubbish removed from the Site on a regular and timely basis. At the completion of work each day, Builder shall leave the Site in a clean, safe condition.
- 19.14.3 Owner shall have the right to maintain the Site and surrounding area free from excess dirt, waste materials, and rubbish. If the OR determines that Builder is failing to provide adequate clean up, the OR shall notify Builder in writing, and shall give Builder not more than two (2) working days to correct the existing condition. Should Builder fail to appropriately remove all excess dirt, waste materials, and rubbish, Owner shall have the right to employ its own forces or to separately contract additional forces to remove the excess dirt, waste materials, and rubbish and to recover actually incurred costs from any money owed or to be owed Builder.

#### **19.15 MATERIAL DELIVERY**

- 19.15.1 Materials shall be delivered to the Site with the least impact to the public. Deliveries under the control of Builder shall specifically not be made at times and locations that impact schools or commuters heading to or returning from work.
- 19.15.2 Unless specified otherwise in the City's Municipal Code, all vehicles over five tons (5 Tons) shall travel on designated Truck Routes in accordance with the Municipal Code. Where deliveries are under the control of Builder, Builder is responsible for communicating all City Truck Route requirements to the entity responsible for the delivery.
- 19.15.3 All deliveries shall be made in compliance with the Vehicle and City Municipal Code. Deliveries within the right-of-way shall be in accordance with the requirements of the Encroachment Permit. Builder shall pay any unpaid citations and/or penalties incurred by deliveries under the control of Builder that are owed to City, and Owner shall have the right to deduct such owed money from any payments owed or to be owed Builder.

#### **19.16 OBLIGATION TO PROTECT WORK AND PROPERTY FROM DAMAGE**

- 19.16.1 Upon issuance of the Notice to Proceed, Builder shall have the charge and care of the Site, all work performed, and responsibility for all materials necessary for completion of the Work until the Project is complete and accepted by the Owner. This requirement shall apply continuously and is specifically not limited to normal working hours.
- 19.16.2 Except where stated otherwise in these Specifications, Builder is solely responsible for any damage to the Work regardless of cause.
- 19.16.3 Builder shall adequately protect adjacent property from settlement or loss of lateral support as necessary and in accordance with the California Civil Code §832.

- 19.16.4 Unless specified otherwise, Builder is solely responsible for all security measures taken or not taken during construction. Builder shall rebuild, repair, restore, and make good all losses or damages, including vandalism and theft, to any portion of the Work or to materials damaged by any cause before its completion and acceptance regardless of whether partial payments have been made for any portion of the affected Work. Builder shall bear all costs except for such injuries, losses, or damages that are solely and directly caused by the Owner.
- 19.16.5 Builder's responsibility to prevent loss or damage specifically apply to all property adjacent to the Site that may be affected by Work and to materials received by Builder but not yet stored onsite.
- 19.16.6 Builder shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the Work. Such equipment and facilities shall meet all requirements of applicable laws, codes, ordinances, rules, or other regulations.
- 19.16.7 Should damage to persons or property occur because of Work, Builder shall promptly notify the OR, in writing. Builder shall be responsible for proper investigation, documentation, including video and/or photography, to adequately memorialize and make a record of what transpired. Builder shall make all reports as are, or may be, required by any authority having jurisdiction. The Owner shall be entitled to inspect and copy any such documentation, video, and/or photographs.
- 19.16.8 Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All injury or loss to any property caused, directly or indirectly, in whole or in part, by Builder, any Subcontractor, supplier or any other person or organization directly or indirectly employed by Builder, Subcontractor, supplier, or other person or organization to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by Builder.
- 19.16.9 At the Owner's sole discretion, Owner may accept Work damaged by vandalism or theft but shall have the right to deduct a dollar amount deemed appropriate by the Owner as just compensation for acceptance of the damaged Work. The Owner's decision on compensation shall be final unless Builder elects to remove and replace the damaged Work.
- 19.16.10 Materials, whether onsite or not, shall be stored in such manner as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the OR, materials shall be placed on platforms or other hard, clean surfaces and covered with appropriate materials at no cost to the Owner.
- 19.16.11 Materials shall be stored so as to facilitate inspection. Storage areas shall be suitably fenced, if necessary to protect workers, the public, or the materials.
- 19.16.12 Builder shall provide substantial barricades around any shrubs or trees indicated to be preserved.

- 19.16.13 The Owner shall be specifically exempted in any agreement from any liability incurred from the use of private property for Builder's construction purposes. Use of portions of the Owner's area at the site for materials and equipment storage shall be permitted only upon the written approval of the OR.
- 19.16.14 Builder shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, fencing, signs, barriers, lights, and watchmen for protection of Work, workers, and the public; and shall post danger signs warning against hazards created during the course of construction.
- 19.16.15 Builder shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- 19.16.16 Builder shall not endanger the Work or adjacent property. Builder shall take all precautions necessary to protect people and property.
- 19.16.17 Builder shall not alter any of Owner's work, including work by other contractors, without written approval from the OR.

**19.17 PROTECTION AND USE OF PUBLIC RIGHT OF WAY**

- 19.17.1 Builder shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and adjacent property and structures. At no cost to Owner, Builder shall repair any damage caused by its operations. Precautionary measures apply continuously and shall not be limited to normal working hours.
- 19.17.2 As part of its operations, Builder shall:
- (A) Enclose the working area with a substantial barricade, protect all trenches, and arrange work to cause the minimum amount of inconvenience and danger to the public.
  - (B) Deliver materials to the Site over a route accepted by the City as AHJ.
  - (C) Ensure that existing facilities, fences, trenches, utilities, and structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Owner.
  - (D) Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
  - (E) Comply with any construction staging and traffic handling plans. Unless specified otherwise in the Contract Documents or accepted otherwise by the City as AHJ, access to residences and businesses shall be maintained at all times.
- 19.17.3 Unless approved otherwise by the OR, City property or public streets shall not to be used for Builder or Subcontractor parking, staging, and/or material storage areas except as permitted in the Encroachment Permit.

- 19.17.4 Builder shall have under construction no greater length or amount of work than it can prosecute properly with due regard to the rights of the public.

#### **19.18 NOISE AND CONSTRUCTION HOURS**

- 19.18.1 Builder shall download and have ready access to City's Noise regulations and Construction/Work Hours as specified in the Municipal Code. At no time shall Builder violate the Municipal Code requirements for noise or construction/work hours.
- 19.18.2 Builder shall comply with any additional Noise Restrictions specified in the Supplemental Conditions.
- 19.18.3 At all times, Builder shall use equipment in such state of repair that no emission of sound exceeds the noise tolerance level for that equipment as established by CalOSHA. Noise level requirements shall apply to all equipment, including but not limited to, trucks, transit mixers, jack hammers, concrete pumps, nail guns, pneumatic tools, etc.
- 19.18.4 No internal combustion engine shall be operated by Builder without a muffler of the type required by the manufacturer. Should any muffler or other control device sustain damage or determined to be ineffective or defective, Builder shall promptly remove the equipment and shall not return said equipment on the job until the equipment is repaired.

#### **19.19 SANITARY FACILITIES**

- 19.19.1 Unless accepted otherwise by the Owner, Builder shall provide temporary toilet facilities for the use of all workers. Toilet Facilities shall comply with all applicable federal, state, and local codes, ordinances, and regulations; and shall be provided in a quantity as required by CalOSHA. Owner shall approve all locations for toilet facilities.
- 19.19.2 Use of new or existing permanent toilet facilities within the Work under construction is not permitted without written approval of the OR.
- 19.19.3 Toilet Facilities shall always be continuously maintained in a sanitary condition, shall be kept supplied with toilet paper, shall have workable door fasteners, and soap and water for handwashing.
- 19.19.4 Toilet facilities shall be provided in sufficient quantity for all workers to be able to wash their hands after use of the toilet. Not less than one handwashing station shall be provided for each three toilets rounded up to the next largest whole number.
- 19.19.5 Toilet facilities shall be serviced no less than once weekly.

#### **19.20 OWNER COORDINATION**

- 19.20.1 Where Builder's work must be coordinated with an Owner activity or obligation, Builder shall be solely responsible for scheduling such Owner coordination and for notifying Owner far enough in advance of Builder's work to insure that Owner can complete the activity or obligation without impacting Builder's work.



- 19.20.2 Where Builder's work must be coordinated with Owner's work, Builder shall include a separate task on the Construction Schedule. Where submittal review by Builder of Owner's work is warranted, Builder shall include a separate task on the Construction Schedule or Submittal Schedule for such Submittal review by Builder.
- 19.20.3 On Design-Build projects, Builder shall deliver Submittals of any work impacted by Owner work to the OR far enough in advance of Owner's work to ensure that Owner's work will not be impacted.
- 19.20.4 Builder is solely responsible for any costs incurred by Owner for Builder's failure to coordinate with Owner in accordance with this Article, and Owner shall have the right to deduct any actually incurred costs for Builder's failure to coordinate with Owner from any money owned or to be owed Builder.

## **19.21 OWNER-PROVIDED MATERIALS**

- 19.21.1 Where the Contract Documents identify Owner-Provided Materials, Owner will be responsible for procurement and timely delivery of such materials to Builder. Where Submittal review by Builder is appropriate, Owner shall be responsible for timely delivery of such Submittal.
- 19.21.2 Builder shall be responsible for incorporating Owner-Provided materials into the Work in accordance with the Contract Documents.
- 19.21.3 Builder shall be responsible for identifying Owner-Provided materials as a separate task in its Construction Schedule. Any schedule changes that impact delivery of Owner-Provided materials shall be immediately brought to the attention of the OR.
- 19.21.4 Where submittal review by Builder of Owner-Provided is warranted, Builder shall include a separate task on the Construction Schedule or Submittal Schedule for such Submittal review by Builder.

## **19.22 SAFETY AND INJURY PREVENTION**

- 19.22.1 Builder shall be solely and completely responsible for all safety precautions and conditions of the Site until the work is complete and accepted by the Owner. This requirement shall apply continuously and is specifically not limited to normal working hours. Full compensation for the effort required to preserve life, safety, and property shall be considered as included in the Contract Sum.
- 19.22.2 Builder shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Site.
- 19.22.3 Safety provisions shall conform with all requirements of the U.S. Department of Labor (OSHA), the California Occupational Safety and Health Act, and all other applicable Federal, State, County, and City laws, ordinances, codes, rules, and regulations. Where any of said laws, ordinances, codes, rules and/or regulations are in conflict, the more stringent requirement shall be followed.

- 19.22.4 Builder's responsibility to prevent risk to life and limb include all persons on the Site and all persons adjacent to the Site that may be affected by the Work.
- 19.22.5 Builder shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying Owner, utilities, and adjacent property owners.
- 19.22.6 Builder shall not load or permit any part of the Construction Work on or adjacent to the Site to be loaded so as to endanger the safety of persons or property.
- 19.22.7 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, Builder shall exercise the utmost care and execute such activities only under the supervision of properly qualified personnel.
- 19.22.8 Prior to start of Work, Builder shall establish, implement, and maintain an effective injury prevention and safety program in strict compliance with California Labor Code §6401.7.
- 19.22.9 Builder is encouraged to regularly visit the California Department of Industrial Relations website for updates and new publications especially regarding Confined Space, Construction, Electrical, Ergonomics, Heat Illness, Injury and Illness Prevention, Lockout/Blockout, Noise, Posters, Recordkeeping, Respiratory Protection, Silica, Tailgate/Toolbox Topics, and Workplace Security.
- 19.22.10 Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Work. Builder's compliance with requirements for safety and/or any review by the OR of Builder's Safety Program shall not relieve or decrease the liability of Builder for safety.
- 19.22.11 If requested by OR, Builder shall provide OR with a current copy of Builder's Safety Program. OR has no duty or obligation to review or comment on Builder's Safety Program. Any comments made by OR on Builder's Safety Program are for Builder's consideration only. Builder is solely responsible for any action taken or not taken based on OR's comments, and neither Owner nor OR incur any liability for any comments made or not made.
- 19.22.12 Builder shall designate a responsible member of Builder's site staff whose duties shall include injury prevention and safety. The designated person shall be the Superintendent, unless otherwise designated by Builder in writing to Owner and OR.

## **19.23 ACCIDENTS AND INJURIES**

- 19.23.1 Builder shall maintain emergency first aid treatment for use by all forces under the control of Builder. Such first aid shall comply with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4.

19.23.2 If, during prosecution of the Work, death or serious injury occurs, the death or injury shall be immediately reported to the OR and the Owner. Builder shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the work being performed under this Contract. The Owner shall be entitled to inspect and copy any such documentation, video, and/or photographs.

19.23.3 If a claim is made by anyone against Builder on account of any accident, Builder shall promptly report the facts in writing to the OR, giving full details of the claim.

#### **19.24 EXCAVATION SAFETY**

19.24.1 When required by the Work, Builder shall obtain a Cal-OSHA Excavation Permit in accordance with State Law. Shoring, bracing, sloping, or other protective systems shall not be less effective, and wherever practical, shall be more effective than that required by Cal-OSHA.

#### **19.25 EMERGENCY ACTION PLAN**

19.25.1 Prior to start of Work, unless approved otherwise by OR, Builder shall establish, implement, and maintain an Emergency Action Plan in strict compliance with §3220 of California Title 8.

19.25.2 If requested by OR, Builder shall provide OR with a current copy of Builder's Emergency Action Plan. OR has no duty or obligation to review or comment on Builder's Emergency Action Plan. Any comments made by OR on Builder's Emergency Action Plan are for Builder's consideration only. Builder is solely responsible for any action taken or not taken based on OR's comments, and neither Owner nor OR incur any liability for any comments made or not made.

#### **19.26 EMERGENCY RESPONSE PHONE NUMBERS**

19.26.1 Builder shall prepare and keep readily available a list of Emergency Response Phone Numbers that include phone numbers or other appropriate contact information for the following:

- (A) The nearest health care centers that could provide care for injured workers.
- (B) Local fire department(s).
- (C) Medical transport.
- (D) Poison control.
- (E) Local police department.
- (F) Phone numbers for CalOSHA and OSHA.
- (G) Hazardous material notification and response.
- (H) Local health department

- (I) Local environmental health (including Air Quality Management District and Water Quality Control Board).
  - (J) All potentially affected utility purveyors.
  - (K) Helicopter evacuation.
  - (L) Any other emergency phone numbers deemed appropriate by Builder based on the actual Scope of Work.
- 19.26.2 All phone numbers associated with this Article shall be posted in an area that is readily available to the Superintendent and in at least one additional location readily available to the workers.
- 19.26.3 If requested by OR, Builder shall provide OR with a current copy of Builder's List of Emergency Response Phone Numbers. OR has no duty or obligation to review or comment on Builder's List of Emergency Response Phone Numbers. Any comments made by OR on Builder's List of Emergency Response Phone Numbers are for Builder's consideration only. Builder is solely responsible for any action taken or not taken based on OR's comments, and neither Owner nor OR incur any liability for any comments made or not made.

## **19.27 EMERGENCIES**

- 19.27.1 In an emergency affecting the safety of persons, the Work, or property, Builder shall act without special instruction or authorization from the OR to prevent or minimize damage, injury, or loss. Builder shall promptly notify OR of any action taken. Initial notification to OR may be verbal but must be followed up in writing with a description of the emergency and Builder's action.
- 19.27.2 Any compensation claimed by Builder on account of emergency work shall be determined in accordance with the Contract Documents.
- 19.27.3 In the event of any emergency constituting an immediate hazard to health, safety, or property, when caused by Builder's Work not in accordance with the Contract Documents, Owner may undertake at Builder's expense, and without prior notice, any action deemed necessary by the Owner to correct such condition. Actual costs incurred by Owner may be deducted from any money owed or to be owed Builder.

## **19.28 HAZARDOUS AND TOXIC MATERIALS**

- 19.28.1 The storage and handling of potential pollution causing and hazardous materials, including but not necessarily limited to, fuel, oil, solvents, and paint shall be in accordance with all local, state, and federal requirements.
- 19.28.2 All hazardous materials shall be stored and handled in strict accordance with the Material Safety Data Sheets for the respective product. If requested, Material Safety Data Sheets, shall be submitted to the OR and local Fire Department prior to the delivery of materials to the Site.

- 19.28.3 Builder shall comply with and shall post all notices required by law, code, ordinance, rule, or other regulation.
- 19.28.4 The Owner shall not be responsible for any Hazardous Material brought to the site by Builder regardless of purpose.
- 19.28.5 If Builder introduces and/or discharges a Hazardous Material onto the site in a manner not specified by the Contract Documents or disturbs a Hazardous Material identified in the Contract Documents, Builder shall hire a qualified remediation contractor at Builder's sole cost to eliminate the condition as soon as possible. Under no circumstance shall Builder perform Work for which it is not qualified. Owner, in its sole discretion, may require Builder to retain at Builder's cost an independent testing laboratory. Owner shall have the right to deduct any actually incurred cost to Owner resulting from Builder's mishandling of Hazardous Materials from any money owed or to be owed Builder.
- 19.28.6 If Builder encounters a Hazardous Material which may cause foreseeable injury or damage, Builder shall immediately take the following action
- (A) Secure or otherwise isolate such condition;
  - (B) Stop all Work in connection with such material or substance (except in an emergency situation); and
  - (C) Notify Owner (and promptly thereafter confirm such notification in writing).
- 19.28.7 Subject to Builder's compliance with the preceding paragraph, the Owner shall verify the presence or absence of the Hazardous Material reported by Builder. In the event such material or substance is found to be present, Owner will verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the Owner. Builder may submit a Change Order Request for actually incurred costs or Delays resulting from the Owner's obligation to address the potentially hazardous material.
- 19.28.8 The Owner shall indemnify and hold harmless Builder from and against claims, damages, losses, and expenses, arising from a Hazardous Material on the Site, if such Hazardous Material was not disclosed in the Contract Documents or information readily available at the time of Bidding, was not brought to the site by Builder, and exceeded OSHA Permissible Exposure Levels or other levels which would classify the material as a state of California or federal hazardous waste. The indemnity obligation in this Article shall not apply to:
- (A) Claims, damages, losses, or expenses arising from the breach of contract, negligence or willful misconduct of Builder, its suppliers, its Subcontractors of all tiers and/or any persons or entities working under Builder; and
  - (B) Claims, damages, losses, or expenses arising from a Hazardous Material subject to this Article.

- 19.28.9 In addition to the requirements in this Article, Builder shall indemnify and hold harmless the Owner from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Site, if negligently handled by Builder and such Hazardous Material exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either shown on the Contract Documents or information available to Builder at the time of bidding or proposal, or was brought to the site by Builder. Nothing in this paragraph shall obligate Builder to indemnify Owner in the event of the sole negligence, active negligence or willful misconduct of the Owner.
- 19.28.10 Builder agrees that, as part of a Contract Change Order, Owner shall have the right to contract with Builder for investigation and remediation of all hazardous materials and other related environmental requirements located on the Site. For the purposes of this Contract, Hazardous Materials shall also include, but are not limited to, Underground storage tanks. Any Hazardous Materials that are encountered beyond those described in the Contract Documents, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The Owner agrees that Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site. 'Underground Storage Tank' shall have the definition assigned to that term by §9001 of RCRA, 42 U.S.C. §6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.
- 19.28.11 Builder is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by Builder based on its experience and expertise on similar projects in urban areas.

## **19.29 DEMOBILIZATION**

- 19.29.1 Demobilization includes all activities and costs for removal from the Site of Builder's personal, materials, equipment, and fuel not included or incorporated into the Work or not otherwise considered Owner's property. Demobilization includes, but is not limited to, clean up, disassembly and removal of temporary offices and related facilities, including sanitary facilities and batch plants, removal of all storm water pollution prevention requirements, and termination of any temporary utilities established by Builder.
- 19.29.2 Upon completion of Work, Builder shall clean the Site and shall remove temporary fencing, barricades, planking, construction toilets, and similar temporary facilities from the Site. Builder shall clean all asphalt and concrete surfaces to the degree necessary to remove oil, grease, fuel, or other stains caused by Builder operations or equipment, and any painted utility location markings.

- 19.29.3 Following demobilization, Builder and OR shall review the conditions of the Site and adjacent public right-of-way for damage caused by Builder's forces during construction. Such damage shall be repaired prior to release of Retention. Upon agreement between Builder and OR, the Owner may elect to withhold an amount from the current Retention to insure proper and timely repair of any damage to the Owner right of way. Such withholding shall be based on the cost to repair the damage to the public right of way. If Builder fails to repair the damage to the public right of way in a timely manner, the Owner shall have the right to make repairs with its own forces and to deduct actually incurred costs from Retention currently held by the Owner. If there is a Retention balance following completion of the Work, Owner shall refund the Retention balance to Builder. Any additional costs actually incurred by the Owner in excess of the current Retention balance shall be immediately paid by Builder to Owner.

**END OF ARTICLE**

## **ARTICLE 20**

### **SUBMITTALS AND SUBSTITUTION REQUESTS**

*NOTES: 1) On Design-Build projects, this Article applies only to Submittals from the Design-Builder that require Owner review. Submittals between Builder and its Design Team are not covered by this Article.*

*2) On Design-Bid-Build projects, all Submittals required by the Contract Documents shall be processed in accordance with this Article.*

*3) A separate Article exists for Project Closeout Submittals.*

#### **20.1 GENERAL**

20.1.1 The Owner, Designer, and Builder all have a vested interest in the accurate preparation and timely review of Submittals. Builder's compliance with this Article will help insure that Submittals are processed by Owner's forces as efficiently as feasible.

20.1.2 For this project, Submittal goals include but are not limited to:

- (A) Improve quality control and help ensure that the requirements of the Contract Documents are satisfied.
- (B) Encourage collaboration between stakeholders, especially the Owner, Designers, and Builder, but also with any AHJs required to provide review and acceptance.
- (C) To demonstrate that Builder understands Designer's intent, and to confirm that Owner's intent is reflected in the Contract Documents.
- (D) To identify discrepancies, conflicts, ambiguities, and missing scope within the Contract Documents.

20.1.3 It is **Builder's** sole responsibility to sequence, review, coordinate, submit, resubmit, and obtain acceptance of any Submittals required to be reviewed by any Owner forces or any Authority Having Jurisdiction over any portion of the Work or any work affected by the Submittal well in advance of fabrication or installation of the Work.

20.1.4 **Builder forfeits all rights to any claim for delay resulting from Owner failure to review Submittals where Builder failed to comply with the requirements of this Article.**

20.1.5 Review and acceptance of any Submittal which includes one or more deviations from the Contract Documents which were not identified as deviations as required by this Article shall not be construed to indicate acceptance by any Owner forces of such deviation(s).



- 20.1.6 **Except for Substitution Requests, Submittals are the wrong instrument for making changes in the Scope of Work.** Unless approved otherwise in writing by the OR, no changes in the Scope of Work by either Builder or the Owner's forces shall be made via any submittal. Only AHJs may direct a change in the Scope of Work via favorable review of a Submittal. All changes in the Work by Owner's forces will be by Field Directive issued by the OR.
- 20.1.7 **No Work shall be preformed or installed until all comments on any Submittal from Owner's forces and/or all AHJs have been fully and completely addressed.**
- 20.1.8 All Submittals shall be submitted solely as instruments of Builder. Builder is solely responsible for the accuracy, completeness, and coordination of each Submittal regardless of which Builder forces prepared the Submittal or which Owner forces reviewed the Submittal.
- 20.1.9 Builder's responsibility for accuracy, completeness, and coordination shall not be delegated to any of Builder's subcontractors regardless of tier, suppliers, or fabricators. Builder shall be solely responsible for verifying that each Submittal meets all of the requirements of the Contract Documents, and conforms to the actual Project conditions prior to Submittal delivery to the OR.
- 20.1.10 Submittals including all resubmittals which require review by Owner forces shall be submitted directly to the OR. Submittals which require review by an AHJ shall be submitted directly by Builder to the AHJ.
- 20.1.11 Submittals will be accepted from Builder only. Submittals received from other entities, including subcontractors, will be returned without review or action.
- 20.1.12 Acceptance of any Submittal by Owner forces does not relieve Builder of its obligation to comply with Contract Documents. Changes in the Work shall be made in accordance with these Specifications.
- 20.1.13 Builder is solely responsible for any Delays in the Work resulting from its failure to obtain acceptance of any Submittal by Owner's forces or any AHJ in a timely manner. No Time Extension will be allowed for Builder's Delay in obtaining timely review and approval of any Submittal by any Authority Having Jurisdiction.
- 20.1.14 Designation of work "By Others" or similar language, if shown on any Submittal, shall mean that the Work will be the responsibility of Builder rather than the subcontractor, supplier, or fabricator preparing the Submittal unless such work is clearly identified as the responsibility of the Owner.
- 20.1.15 Builder is solely responsible for deviations from the Contract Documents resulting from Work performed in accordance with any Submittal.
- 20.1.16 It shall be Builder's responsibility to copy and distribute reviewed Submittals in enough numbers for its files, its field use, the OR, its subcontractors, and its suppliers.

- 20.1.17 Where the Builder performed work without the benefit of favorable Submittal review by the OR, and the work is subsequently found not to be in full compliance with the Contract Documents, Builder shall be responsible for any costs incurred to remedy the noncompliant Work. Such remedy specifically includes removal and replacement of the noncompliant Work.

## **20.2 SUBSTITUTIONS**

- 20.2.1 The Owner has a vested interest in reducing the Contract Sum and/or Contract Time. Builder is encouraged to submit Substitutions that maintain the minimum quality and performance standards of the Contract Documents. Legitimate reasons for a Substitution Request include new products on the market, value engineering, material scarcity, and delivery chain delays.
- 20.2.2 Owner is not obligated to approve any Submittal based on an alternative the Builder assumed during bidding. Builder remains solely responsible for decisions made during bidding with respect to any Substitution Request. Builder shall not substitute an alternative for any work or item specified in the Contract Documents without approval from the OR.
- 20.2.3 Where a Submittal includes a Substitution Request, Builder shall clearly identify that a Substitution Request is being made. The Substitution Request shall include a written explanation of what is being substituted, and why the Substitution Request is being made. Builder is solely responsible for any costs or Delays in the Work caused by Builder's failure to identify a Substitution Request in accordance with this paragraph.
- 20.2.4 No Substitution shall be incorporated into the Work without approval of the Substitution Request by the OR. In the event that a Substitution is not accepted by the OR, then Builder shall provide the product specified in the Contract Documents. Builder remains solely responsible for the time required by Owner to review a Substitution Request.
- 20.2.5 Owner Forces will process substitution requests as for normal Submittals. Builder is strongly encouraged to delivery substitution requests well before scheduled Work to insure that Owner's forces have sufficient time to review the Substitution Request.

## **20.3 SUBMITTAL REGISTER**

- 20.3.1 Unless otherwise approved by the OR, Builder shall prepare and deliver to OR a Submittal Register that identifies all Submittals which require review and acceptance by any Owner forces.
- 20.3.2 Builder's Submittal Register shall be delivered to and accepted by OR prior to start of any work that requires Submittal review by any Owner force or AHJ. If approved by the OR, an interim Submittal Register may be created that identifies all Submittals required to be approved within the first ninety (90) calendar days of the project.
- 20.3.3 Unless otherwise approved by the OR, Builder shall submit to, and have its Submittal Register accepted by, the OR within forty-five (45) calendar days of the date the NTP was issued.

- 20.3.4 Review and acceptance of the Submittal Register by the OR will be the same as for any other Submittal. Builder is solely responsible for ensuring that development of the Submittal Register is sufficiently ahead of any Work associated with any Submittal listed or to be listed in the Submittal Register.
- 20.3.5 The Submittal Register shall identify the Submittal Subject, the associated CSI Code, the Specification Section or Subsection associated with the Submittal, the plan sheets associated with the Submittal, the preparer of the Submittal, and who must review the Submittal including all AHJs.
- 20.3.6 Builder shall provide sufficient time for Owner forces to review and comment on each Submittal Register delivered to the OR. In no case shall Builder allow less than five (5) working days for the each fifty (50) Submittals listed on the Register or fraction thereof for each review of the Submittal Register by Owner forces.
- 20.3.7 Builder is solely responsible for determining which AHJ approvals are required for each Submittal. The OR is not responsible for identification of any City AHJ approvals required for any portion of the Work.

## **20.4 SUBMITTAL SCHEDULE**

- 20.4.1 In addition to the Submittal Register, and unless otherwise approved by the OR, Builder shall prepare and deliver to OR a Submittal Schedule or Submittals shall be individually identified on the Construction Schedule. In addition to identification of the Submittal by name, CSI Code, and Specification Section, the Submittal Schedule shall identify the date the Owner should anticipate delivery of the Submittal, and the date the Builder needs the Submittal approved by in order to avoid a delay of any Work, especially for Critical Path Work.
- 20.4.2 Where a Submittal requires review by both Owner forces and one or more AHJs, the Submittal shall be reviewed in the sequence specified by the Contract Documents. Where no such sequence is specified, Builder shall sequence the Submittal review as directed by the OR. Builder remains solely responsible for the time required to sequentially review each Submittal, and is solely responsible for insuring that the Submittal review is completed in advance of the Work.
- 20.4.3 Builder may incorporate the Submittal Schedule into the Construction Schedule or may prepare an independent Submittal Schedule. Builder remains solely responsible for insuring that Submittals are prepared and submitted to the OR in conformance with the requirements of the Construction Schedule.
- 20.4.4 Builder shall allow not less than sixteen (16) working days on average for each initial Owner review, and not less than eleven (11) working days on average for each resubmittal. Builder and Owner understand and agree that larger, more complicated Submittals will require more time than smaller, less complicated Submittals. Builder shall reflect this understanding and agreement in its Submittal Schedule.

20.4.5 Builder shall stagger its Submittals, as necessary, to allow the Owner forces adequate time for proper review without negative impact to Builder's Construction Schedule. **Builder shall not submit more than ten (10) Submittals in any single five (5) working day period without written approval from the OR.**

## **20.5 SUBMITTAL PROCESSING**

20.5.1 City as 'Owner' of this Project is completely separate from the City as 'Authority Having Jurisdiction.' City as Owner of this Project has no duty or obligation to prevail upon any Authority Having Jurisdiction, City or otherwise, to expedite any Submittal.

20.5.2 For Design-Bid-Build projects, Submittals requiring review by Owner forces shall be delivered to the OR in accordance with this Article. Anticipated Submittals include, but are not limited to, the following:

- (A) Submittal Register and updates.
- (B) Submittal Schedule and updates.
- (C) Substitution Requests.
- (D) Schedule of Values and updates.
- (E) Construction Schedule and updates.
- (F) Shop Drawings.
- (G) Equipment or Product Data Submittals.
- (H) Sample Materials.
- (I) Manuals.
- (J) Finish Hardware Lists.
- (K) Colors, textures, and finishes.
- (L) Hardware.
- (M) Mockups.
- (N) Structural Steel Details.
- (O) Reinforcing Steel Details.
- (P) Mechanical Control Submittals
- (Q) Electrical Control Submittals.
- (R) Architectural Fabrications.
- (S) Pipe, Pipe Joints, and Special Pipe Sections.
- (T) Equipment and System Commissioning Documents.

- 20.5.3 For Design-Build projects, Submittals shall be in accordance with the Contract Documents. Submittals that require review by the Owner will be processed in accordance with this Article to the greatest extent feasible.
- 20.5.4 For each Submittal, Builder is solely responsible for the accuracy, completeness, and compliance with the requirements of the Contract Documents. Unless OR agrees otherwise, prior to submission of any Submittal to the OR, Builder shall stamp or write on the Submittal the following (or equivalent language as accepted by the OR):

**BUILDER HAS REVIEWED THIS SUBMITTAL AND FOUND THE SUBMITTAL TO BE IN COMPLIANCE WITH THE CONTRACT DOCUMENTS.**

Submittals received by the OR without this necessary identification information may be returned by OR to Builder without review or action.

- 20.5.5 The OR shall have the right to return to Builder without review or action any Submittal received from Builder that has not been reviewed and accepted by all AHJs having authority over any portion of the Work shown on the Submittal or any other related Work, and such decision shall be final.
- 20.5.6 Where Submittals require approval by both Owner forces and one or more AHJs (specifically including the City as AHJ), Builder may if approved in writing by the OR submit concurrently to both Owner forces and any required AHJs, but Builder remains solely responsible for coordination of information shown on the Submittal and the timing of the Submittal. No Submittal review shall be deemed complete until accepted by both Owner forces and any AHJ having any authority over any Work shown on the Submittal or related Work.
- 20.5.7 Submittals to the Owner shall include a transmittal or equivalent that identifies the date the Submittal is delivered to the Owner, the Work addressed by the Submittal, the plan sheets affected by the Submittal, and the Specification Section or Subsection associated with the Submittal. Submittals received by the OR without a Transmittal and complete identification information may be returned by OR to Builder without review or action.
- 20.5.8 Builder shall provide a blank space, not less than 4 inches wide by 5 inches high, on each Transmittal or on the Submittal itself for action marking by Owner forces or the AHJ .
- 20.5.9 Separate transmittal forms shall be used for each individual Submittal. Submittal documents common to more than one piece of equipment shall be identified with all the appropriate equipment numbers. Submittals for multiple items shall be made with a single form when the items taken together constitute a manufacturer's package or are so functionally related that expediency indicates checking or reviewing of the group or package as a whole.
- 20.5.10 Where physical submittals are required or provided, Builder shall deliver such Submittals directly to Designer, shall pack Submittals suitably for shipment to Designer, or, where approved in writing by the OR, may be delivered directly to the OR.

20.5.11 Builder forfeits any right to submit a COR or Claim for any change in Contract Sum or Contract Time that directly results from any change in the Scope of Work resulting from a Submittal that did not identify the change in Scope of Work to the OR. Owner shall have the right to deduct actually incurred cost from any money owed or to be owed Builder or to deduct time where unidentified changes to the Scope of Work were made on a Submittal that resulted in a change in Contract Sum and/or Contract Time.

20.5.12 Builder shall provide timely notification to the Owner in each case where Builder's Submittal may affect the work of the Owner or another contractor working under separate contract to the Owner. Such notification to the Owner shall be given early enough to avoid any negative impacts to the Owner. Owner shall have the right to deduct actually incurred costs for non-timely delivery of Submittals by Builder to the Owner involving separate work by Owner.

## **20.6 COST OF SUBMITTAL PREPARATION AND REVIEW**

20.6.1 Builder shall be solely responsible for the costs associated with the preparation and acceptance of any Submittals by any Authority Having Jurisdiction. Where specifically identified within the Contract Documents, Builder may be reimbursed for fees paid to an Authority Having Jurisdiction, but all other costs shall be borne by Builder.

20.6.2 Owner owes the Builder one (1) initial Submittal review and one recheck of a previously rejected Submittal or Submittal revision. It is considered reasonable that Builder shall make a complete and acceptable Submittal to Owner's forces by the second submission (first resubmittal) of any Submittal. Owner shall have the right to deduct any actually incurred costs from any money owed or to be owed Builder for additional review effort required to be performed by Owner forces resulting from Builder's failure to prepare the Submittal in accordance with the Contract Documents.

## **20.7 SEISMIC DESIGN AND ANCHORAGE OF EQUIPMENT OR FACILITIES**

20.7.1 All pieces of electrical, mechanical, and instrumentation equipment and applicable facilities which are separately mounted, braced, or anchored shall be so designed and installed as to be in full conformance with all requirements of California Title 24 as adopted and amended by the county in which the Work is located and/or the City.

20.7.2 Design and installation of equipment and facilities shall accommodate both vertical and lateral loading. Builder shall be responsible for all costs and time requirements associated with the review and approval of any Submittal for seismic anchorage.

20.7.3 Submittals shall include calculations, details, and other amplifying data demonstrating conformance to the seismic requirements of this Article. Such calculations shall be prepared and signed by a currently registered California Civil or Structural engineer.

20.7.4 For Design-Bid-Build projects, calculations shall also be submitted to the Designer for their respective review. No anchorage shall be installed until the Designer has accepted or takes no exception to the proposed anchorage design.

- 20.7.5 No anchorage shall be installed until all AJHs having jurisdiction over the Work being mounted, braced and/or anchored have approved the proposed anchorage design.
- 20.7.6 Anchorage requirements of this Article specifically apply , but are not limited to, such items as light fixtures, electrical and instrumentation panels, electrical switchgear and motor control centers, conduit supports, tanks, pumps, piping, pipe supports and hangers, transformers, generators, motors, HVAC equipment, ventilating ducts and equipment, and other similar equipment, facilities, or utilities.
- 20.7.7 Anchorage or restraints which are part of the apparatus or equipment supplied by the manufacturer or supplier shall be designed as required by this Article. Builder, working closely with the manufacturer or supplier, shall be responsible for furnishing or installing any anchors or restraints which are independent of the apparatus or equipment.

## **20.8 REVIEW PROCEDURES**

- 20.8.1 Owner forces shall review and return each Builder Submittal with information equivalent to the following:

(A) NO EXCEPTIONS TAKEN

This stamp or similar identification indicates that the Submittal is accepted subject to its compatibility with other Work not covered in this Submittal. Acceptance does not constitute approval or deletion of specified or required items not shown in the Submittal. **Resubmittal is not required.**

(B) MAKE CHANGES NOTED

Same as (A) above, except that the Submittal includes revisions voluntarily made by Owner forces. All such revisions shall be implemented by Builder. **Resubmittal is not required.**

(C) 3. REVISE AND RESUBMIT

The Submittal requires revisions. **Resubmittal is required.**

(D) 4. REJECTED

The Submittal was too deficient and/or non-compliant with the Contract Documents to review. **Resubmittal is required.**

- 20.8.2 Owner forces may voluntarily prepare additional plans, sketches, details, or similar clarifying material to facilitate Work required by the Contract Documents. Where Owner's forces determine that Builder's Submittal fails to reflect Work required by the Contract Documents and Owner forces elect to supplement Builder's Submittal as a means of expediting the Submittal review, the Owner shall have right to deduct actually incurred costs for the preparation of necessary materials from any money owed or to be owed Builder. Owner forces are under no obligation to prepare such additional materials, and may simply return the Submittal as REVISE AND RESUBMIT or REJECTED as appropriate.
- 20.8.3 Any revisions made to a Submittal by Owner forces or an AHJ that Builder believes differ from the Contract Documents are to be immediately brought to the attention of the OR. Builder shall bear any extra costs incurred by such changes made to a Submittal where Builder failed to notify the OR prior to start of Work.
- 20.8.4 Unless otherwise approved by the OR in writing, no review will be performed on Submittals that are not required by the Contract Documents to be submitted to the OR. Any such Submittals will be returned to Builder without review or action taken.
- 20.8.5 If a Submittal deviates from the Contract Documents, other than as a Substitution, Builder shall include with the Submittal a separate written description of each deviation, and the reason for the deviation. If the Owner accepts such deviation(s), and the deviation results in either a change in Contract Sum or Contract Time, then Builder shall submit a COR in accordance with these Specifications.

## **20.9 PRODUCT DATA SUBMITTAL**

- 20.9.1 Where Manufacturer's Standard Schematic Drawings are being submitted, Builder shall comply with the following prior to deliver of the Submittal to the OR:
- (A) Delete all information that is not applicable to the Project.
  - (B) Supplement the standard Drawings to provide additional information applicable to the Project.
  - (C) Where manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, and other standard descriptive data are being submitted, Builder shall perform the following:
    - (i) Clearly mark each copy to identify pertinent materials, products, or models.
    - (ii) Indicate dimensions and clearances required.
    - (iii) Indicate performance characteristics and capacities.
    - (iv) Indicate power requirements, wiring diagrams and controls.



## **20.10 SAMPLES INCLUDING MOCKUPS**

- 20.10.1 Builder shall furnish all samples of materials in accordance with the Contract Documents without cost to the Owner.
- 20.10.2 Representative preliminary samples of the character and quality prescribed by the Contract Documents shall be submitted to the OR by Builder in sufficient quantities for testing or examination by all required Owner forces.
- 20.10.3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the item and as required by the Contract Documents.
- 20.10.4 No material shall be used until accepted in writing by the OR.
- 20.10.5 Where samples are being submitted, the Submittal shall include the following:
- (A) Samples of sufficient size and quantity to clearly illustrate:
    - (i) The functional characteristics of the product or material, with information on integral parts and attachment devices.
    - (ii) Information on the full range of colors, textures, patterns, etc.
  - (B) Provide permanent identification for each sample.
  - (C) Whenever a choice of color, texture, pattern, etc. is available in a specified product, submit accurate color chips and pattern charts for review and selection.
- 20.10.6 When required by the Contract Documents or by the OR, Builder shall erect field samples and mock-ups at the Site to illustrate materials, equipment, and/or workmanship, and to establish standards by which the completed Work shall be judged. Field samples may only be reused in the Work if undamaged, and if specific written approval for Builder to reuse the sample has been obtained from the OR.

## **20.11 MANUALS**

- 20.11.1 Where Manuals are required by the Contract Documents to be submitted by Builder to the OR, Builder shall bind such materials in durable binders, approximately 8½" by 11" in size. Builder shall deliver Manuals to the OR in accordance with the following:
- (A) Binders shall be provided with identification on, or readable through, the front cover and the binding of the binder, stating the general nature of the manual.
  - (B) A neatly typewritten index at the front of the binder, furnishing immediate information as to the location within the binder of the data or equipment involved.
  - (C) Complete instructions regarding operation and maintenance of equipment involved.
  - (D) Complete nomenclature of replaceable parts, their part numbers, current cost, and name and address of nearest vendor of parts.

20.11.2 Where the contents of the binders include the manufacturer's catalog pages, clearly indicate the precise items included in this Project, and delete, or otherwise clearly indicate which manufacturer's data is not part of this Project.

20.11.3 Builder shall submit a minimum of two (2) copies of each manual to the OR for review, acceptance, and distribution.

**20.12 CERTIFICATES**

20.12.1 All Certificates shall be submitted in triplicate.

**20.13 COLOR SCHEDULES**

20.13.1 The OR will select colors and distribute the approved colors to Builder. Builder shall deliver not less than three (3) color samples for review by Owner's forces.

**20.14 FINISH HARDWARE LIST**

20.14.1 Unless otherwise approved in writing by the OR, Builder shall within thirty (30) working days following issuance of the NTP submit a Finish Hardware List to the OR. A minimum of one (1) copy will be returned to Builder.

**END OF ARTICLE**

## **ARTICLE 21**

### **QUALITY CONTROL, INSPECTION, AND TESTING**

#### **21.1 QUALITY CONTROL**

- 21.1.1 At all times, Builder's work shall be in compliance with local, state, and federal codes and laws and the Contract Documents.
- 21.1.2 Where the minimum quality level is not specified, the Builder shall provide Work of the minimum quality customary to similar types of work. Builder shall contact the OR prior to proceeding with any Work where the Builder is unclear about the required minimum level of quality required by the Contract Documents.
- 21.1.3 Where two or more quality provisions of the Contract Documents conflict, the Builder shall comply with the most stringent requirements. Where requirements are different, but apparently equal or where it is uncertain which requirements are most stringent, Builder shall obtain clarification from the OR before proceeding.
- 21.1.4 The Builder shall comply fully with manufacturer's most current instructions. If the manufacturer's published instructions conflict with the Contract Documents, Builder shall request clarification from the OR before proceeding with any related or associated work.

#### **21.2 QUALITY CONTROL PROGRAM**

- 21.2.1 Builder is solely responsible for developing, implementing, monitoring, and enforcing all provisions of Builder's Quality Control Program.
- 21.2.2 Builder's Quality Control Program shall include written procedures to monitor quality control over the Builder's employees, its subcontractors, its suppliers, its manufacturers, all products, all services, the site conditions, and the workmanship.
- 21.2.3 Builder's Quality Control Program shall identify the Builder's Quality Control Representative.
- 21.2.4 A copy of Builder's Quality Control Program shall be provided to the OR upon request by the OR. OR has no duty or obligation to review and/or comment on Builder's Quality Control Program.

#### **21.3 AS-CAST CONCRETE SURFACES**

- 21.3.1 Unless the Technical Specifications indicate a more restrictive requirement, the following shall apply for all as-cast concrete surfaces.
  - (A) For smooth form, as-cast concrete, evenly scattered bug holes not more than 0.4 inches in any dimension shall be permitted regardless of area.

- (B) For smooth form, as-cast concrete, bug holes larger than 0.4 inches in any dimension but not larger than 0.6 inches in any dimension and/or more than 0.4 inches in depth shall be permitted so long as not more than 10 such bug holes exist in any 18"x18" (2.25 SF) area of concrete surface. Bug holes exceeding this requirement shall be repaired in a manner approved by the OR.
- (C) For smooth form, as-cast concrete, bug holes larger than 0.6 inches in any dimension or more than 0.4 inches in depth shall be repaired in a manner approved by the OR.
- (D) For wood formed, as cast concrete, nails shall be set flush. Imperfections in the concrete surface formed by nail heads that were set proud of the wood surface by 1/8 inch or more shall be repaired in a manner approved by the OR.
- (E) For wood formed, as cast concrete, imperfections in the concrete surface formed by nail heads that were set below the surface of the wood shall be chipped off or ground flush regardless of how deep the nail head was set.
- (F) Popout and blister surface imperfections shall be accepted or repaired as for bug holes.
- (G) Scaling, regardless of area, shall be repaired in a manner approved by the OR.
- (H) Blowouts, regardless of size, shall be repaired in a manner approved by the OR.
- (I) Visible cracks greater than 0.06 inches in width and more than 24 inches in length shall be repaired in a manner approved by the OR.
- (J) Honeycomb in concrete shall be removed and repaired regardless of area or depth as approved by the OR.
- (K) Delamination of concrete shall be removed and repaired regardless of area or depth as approved by the OR.

## **21.4 INSPECTION AND TESTING**

- 21.4.1 Builder is solely responsible for understanding what Work requires inspection and/or testing by any AHJ or by the Contract Documents.
- 21.4.2 All work performed by Builder in accordance with the Contract Documents shall be subject to inspection and acceptance in writing by the OR. All other inspections performed and approvals obtained from any other AHJ having jurisdiction over any portion of the Work shall be in addition to, **and not in-lieu of**, inspection and acceptance by the OR.
- 21.4.3 Where Builder is notified in writing by any AHJ, the OR, or any other designated Owner forces that the quality of the Work does not conform to the Contract Documents, laws, or codes, Builder shall immediately correct the deficiencies and request reinspection from the individual who identified the noncomplying condition. Builder shall not conceal any Work until acceptance or approval has been obtained from the individual who observed and identified the noncomplying Work.

- 21.4.4 Builder is solely responsible for the timely scheduling of any inspections required by any AHJ (including the City), the OR, or other designated Owner forces. Builder is solely responsible for any delays resulting from Builder's failure to schedule and obtain inspections in accordance with the most currently accepted Construction Schedule.
- 21.4.5 City as Owner has no duty or obligation to prevail upon any City department or division to insure that a required inspection is made by the City as AHJ. Any effort made by City as Owner to contact or coordinate with any City AHJ is solely provided as a courtesy. City as Owner incurs no liability for any effort made by City as Owner to facilitate any inspection by City as AHJ.
- 21.4.6 Builder is solely responsible for insuring that all Work requiring inspection is in fact inspected by all required individuals and/or AHJs. The presence of inspection individuals, including the OR, on the Site shall not be construed by Builder as a basis for believing that an inspection has indeed taken place, and that work has been approved or accepted. Written approval or written acceptance shall be the only standard that Builder shall rely upon as a basis for proceeding with subsequent work.
- 21.4.7 Where Work is required to be in compliance with California Title 24, Special Inspection shall be as defined in Chapter 2 of California Title 24, Part 2, Volume 1. Special inspection and/or material testing required by California Title 24 shall be done in accordance with Title 24 and the requirements specified by the Structural Engineer of Record.
- 21.4.8 Unless specified otherwise in the Contract Documents, Builder shall be responsible for scheduling and coordinating all testing and inspection regardless of the party, agency, or AHJ performing or requiring the testing and/or inspection.
- 21.4.9 Unless specified otherwise in the Contract Documents, any fees required by any AHJ for inspection and/or material testing shall be paid by the Owner.
- 21.4.10 Additionally incurred costs for testing and inspection of Work originally found not to be in compliance with the Contract Documents or applicable law, regardless of who performs the testing and/or inspection, shall be paid by Builder.
- 21.4.11 Builder shall be solely responsible for any cost associated with any reinspection or retesting of any Work determined not in compliance with the Contract Documents, all laws, codes, ordinances, rules and/or regulations by the OR and/or any AHJ.
- 21.4.12 Inspection and acceptance of the Work by Owner's Representative or any AHJ shall not relieve Builder of its obligation to comply with all requirements of the Contract Documents. Any initially approved Work which is later found to be in noncompliance with any requirement of the Contract Documents shall be corrected by Builder as directed by the OR at the sole cost of Builder.
- 21.4.13 Builder is solely responsible for securing the testing and/or inspection results for all testing and inspection scheduled by Builder. Builder shall furnish a copy of all testing or inspection results to the OR within one (1) working day of receipt by Builder.

- 21.4.14 If inspection is by an AHJ other than the City, Builder shall promptly inform the OR of the date fixed for such inspection.
- 21.4.15 Where inspection and testing is to be conducted by an independent laboratory or agency, materials or samples of materials to be tested or inspected shall be selected by such laboratory or agency, or by the OR, but not by Builder. All tests or inspections of materials shall be made in accordance with commonly recognized standards of national organizations.
- 21.4.16 Where off-site inspection and/or material testing is required during manufacture or fabrication of any Work, Builder shall notify the OR so that the Owner may arrange for testing at the source of manufacture or fabrication. Any materials which have not satisfactorily passed such required inspection and/or testing shall not be incorporated into the Work. Builder is responsible for timely notification to the Owner that off-site inspection and/or material testing is necessary, and such notification shall be in writing and shall be delivered to OR sufficiently in advance of the Work to allow Owner to marshal the necessary forces required for the inspection and/or material testing. Builder is solely responsible for any delays or extra cost incurred as a direct result of Builder's failure to provide Owner with timely notification that off-site inspection and/or material testing is needed.
- 21.4.17 Builder is solely responsible for maintaining a means of access to any area requiring inspection by the Owner's Representative or any AHJ, especially where the means of access includes, but is not limited to, temporary catwalks, ramps, scaffolding, lifts, cranes, ladders, etc. Builder is solely responsible for insuring that sufficient lighting is provided to accomplish the required inspection.

## **21.5 UNCOVERING OF WORK**

- 21.5.1 OR shall have the right to inspect any Work prior to being covered by other Work. If a portion of the Work is covered contrary to OR 's request or written direction, or contrary to the requirements of the Contract Documents, the covered Work shall be uncovered for inspection by the OR and be replaced at Builder's expense without adjustment to either the Contract Time or the Contract Sum.
- 21.5.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which OR has not requested in writing to observe prior to its being covered, OR may request to see such Construction Work and it shall be uncovered and replaced by Builder. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Sum by Contract Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Contract Change Order. If such Construction Work is not in accordance with the Contract Documents, Builder shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

- 21.5.3 If any Work is done or covered up without the required testing, inspection, or approval by any AHJ, including the City, Builder shall uncover or deconstruct the Work, and the Work shall be redone after completion of the required testing and/or inspection in compliance with the Contract Documents at the sole cost of Builder.

## **21.6 DEFECTIVE WORK**

- 21.6.1 Builder shall correct Defective Work that becomes apparent prior to Project Acceptance or as required by law. Work not conforming to the Contract Documents, including Substitutions not accepted by the Owner, are Defective Work by definition.
- 21.6.2 Builder shall bear all costs associated with any correction, replacement, repair, or restoration, and any additional costs resulting from additional project and/or construction management, testing, or inspection. Owner shall have the right to deduct actually incurred costs from money owed or to be owed Builder. Builder shall immediately pay to Owner any amount not compensated by money currently held or owed by Owner.
- 21.6.3 At Builder's sole cost, Builder shall correct, replace, repair, or restore to Owner's satisfaction any Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work.
- 21.6.4 Upon receipt of written notification from Owner, Builder shall promptly commence and diligently prosecute correction, replacement, repair, or restoration of Defective Work.
- 21.6.5 If Builder fails to commence correction of Defective Work within fourteen (14) calendar days after receipt of written notification from Owner or fails to diligently prosecute correction, replacement, repair, or restoration until completed, Owner may correct the Defective Work. Owner shall have the right to deduct actually incurred costs from money owed or to be owed Builder. Builder shall immediately pay to Owner any amount not compensated by money currently held or owed by Owner.
- 21.6.6 If immediate correction, replacement, repair, or restoration of Defective Work is required for life safety or the protection of property, Owner may undertake at Builder's expense and without prior notice to Builder, any Work necessary to correct, replace, repair, or restore the Defective Work giving rise to the life-safety or property protection issue. Where Work is performed by Owner or Separate Contractors under the direction of Owner, then Owner shall have the right to deduct actually incurred costs from money owed or to be owed Builder. Builder shall immediately pay to Owner any amount not compensated by money currently held or owed by Owner.
- 21.6.7 Builder shall correct, replace, repair, or restore Defective Work at such times that are acceptable to Owner and in such a manner as to avoid, to the greatest extent feasible, any disruption of Owner's activities.

- 21.6.8 At Builder's sole cost, Builder shall remove from the Site all Defective Work and associated materials and equipment required or resulting from Builder's correction, replacement, repair, or restoration of Defective Work. Owner shall have the right to deduct actually incurred costs for removal or storage from money owed or to be owed Builder. Builder shall immediately pay to Owner any amount not compensated by money currently held or owed by Owner.
- 21.6.9 If Builder fails to pay the costs for removal and/or storage of materials or equipment in accordance with this Article, then Owner may, without prejudice to other remedies, sell such materials and equipment at auction or at private sale, or otherwise dispose of such material or equipment. Builder shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Builder is liable to Owner. If such proceeds of sale do not cover costs and damages for which Builder is liable to Owner, Builder shall immediately pay the difference to Owner.
- 21.6.10 Builder's obligations under this this Article are in addition to, and not in limitation of, any Warranty obligations or any other obligation of Builder under the Contract Documents or law. Enforcement of Builder's express Warranties to correct, replace, repair, or restore Defective Work contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies Owner may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of Builder under the Contract Documents.

**END OF ARTICLE**



## **ARTICLE 22**

### **MEASUREMENT OF QUANTITIES**

- 22.1.1 Unless specified otherwise in the Contract Documents, Builder shall be responsible for all costs associated with determining and documenting all measurements of Work quantities. Full compensation for all expense involved in conforming to the requirements of this Article for measuring and weighing materials shall be considered as included in the unit prices paid for the materials being measured or weighed, and no additional allowances will be made therefor.
- 22.1.2 Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with all methods stipulated in the Contract Documents. In determining quantities, all measurements shall be made in a horizontal plane unless otherwise specified.
- 22.1.3 Measurements of the completed work shall be in accordance with, and by instruments and devices calibrated to United States Standard Measures, and the units of measurement for payment, and the limits thereof, shall be made as shown on the Contract Documents.
- 22.1.4 Unless specified otherwise in the Contract Documents, a pound is an avoirdupois pound; a ton is 2,000 pounds avoirdupois, and the unit of liquid measure is the U.S. gallon.
- 22.1.5 When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales, or when approved in writing by the OR, on a completely automated weighing and recording system. Builder shall furnish the OR with duplicate licensed weighmaster's certificates showing the actual net weights.
- 22.1.6 Material not used from a transporting vehicle shall be documented by Builder, brought to the immediate attention of the OR, deducted from the certified material log, and not paid for by the Owner.
- 22.1.7 Unless otherwise accepted by Owner, material remaining on hand after completion of the Work, will not be paid for by the Owner, and such quantities will be deducted from Builder's final quantities.
- 22.1.8 Quantities of material wasted or disposed of in a manner not called for in accordance with the Contract Documents shall not be paid for, and such quantities will be deducted from the final quantities.
- 22.1.9 Rejected loads of material, including material rejected after it has been placed by reason of failure of Builder to conform to the requirements of the Contract Documents, shall not be paid for, and such quantities will be deducted from the final quantities.
- 22.1.10 Material placed outside the lines indicated on the plans or not placed as directed by the OR shall not be paid for, and such quantities will be deducted from the final quantities.
- 22.1.11 No compensation will be allowed for hauling rejected material.

- 22.1.12 When material is to be measured and paid for on a volume basis, and it would be impractical to determine the volume, or when requested and approved by the OR in writing, the material will be weighed and converted to volume measurement for payment purposes. Factors for conversion from weight measurement to volume measurement or vice versa will be determined by the OR and shall be agreed to by Builder before such method of measurement will be adopted.

**END OF ARTICLE**

## **ARTICLE 23**

### **PROJECT RECORD DOCUMENTS**

#### **23.1 ORIGINAL CONTRACT DOCUMENTS**

- 23.1.1 Immediately following Award of Contract and before issuance of the Notice to Proceed, Builder shall secure from Owner one complete set of Contract Documents in electronic and/or hardcopy form. Builder shall identify each item of the Contract Documents as 'Original Contract Documents.'
- 23.1.2 The Project Record Documents shall be maintained in addition to, and independent from all documents stamped approved by any AHJ including the City Building Department and from the As-Built Documents.

#### **23.2 AS-BUILT DOCUMENTS**

- 23.2.1 Throughout construction, Builder shall maintain As-Built documents that reflect the Work as actually performed by Builder. All changes which are incorporated into the Work which differ from the Original Contract Documents shall be identified on the As-Built Documents.
- 23.2.2 Builder shall be responsible for maintaining and continuously recording deviations from or revisions to the As-Built Documents. When requested by the OR, Builder shall provide copies to the OR of all documented deviations or revisions to the Original Contract Documents on a daily or weekly basis.
- 23.2.3 The As-Built Documents shall not be used for any purpose except entry of new data and for review by the OR. Separate documents shall be maintained for the daily use of Builder, and form the documents necessary for inspection by any AHJ.
- 23.2.4 As-Built Documents shall be maintained at the job site or other location approved by the OR. Builder shall use all means necessary to protect the As-Built Documents from deterioration, loss, or damage until Project completion. The Builder shall bear all costs for the replacement of lost or damaged As-Built Documents.
- 23.2.5 All revisions to the As-Built Documents shall be dated and identify the reason for the revision (RFI, CCO, Field Directive, Scope Clarification, etc.). As necessary to clarify scope of work, the Builder shall call attention to each entry by a cloud around all affected areas. In the event of overlapping changes, Builder shall use assorted colors or similar technique to identify individual scope changes.
- 23.2.6 At the end of the Project, As-Built Documents shall be provided to the Owner in accordance with the Project Closeout procedures.

**23.3 RECORD DRAWINGS**

- 23.3.1 Where the Owner has requested that Record Drawings be created from the As-Built Documents, Builder shall cooperate fully with this request. Any actually incurred costs by Builder will be compensated by Contract Change Order.

**END OF ARTICLE**

## **ARTICLE 24**

### **PROJECT COMPLETION AND CLOSEOUT**

#### **24.1 EARLY WORK ACCEPTANCE**

- 24.1.1 At the sole discretion of the Owner or as specified in the Contract Documents, certain Work may be accepted by the Owner prior to Substantial Completion or Project Completion. Where not required by the Contract Documents or otherwise approved by the Owner, such early Work acceptance is for the sole benefit of the Owner.
- 24.1.2 OR and Builder shall agree in writing on the Work to be accepted early. Where Work is accepted early for the beneficial use of the Owner, the date of first use shall be identified and used as the date by which all Warranties and/or Guarantees apply to the Work accepted early.
- 24.1.3 OR and Builder shall agree on how areas with active Work will be shared by both Owner and Builder. OR and Builder shall agree on how the accepted early work will be protected from damage by Builder and on how affected areas outside of the accepted early Work will be protected by Builder from damage by Owner. OR and Builder shall also agree on security, maintenance, utilities, and insurance.
- 24.1.4 Where the Work is accepted early for the benefit of the Owner, the costs for the early acceptance including utilities shall be paid by the Owner.

#### **24.2 FINAL CLEANING**

- 24.2.1 Builder shall perform a final cleaning prior to Substantial Completion. All areas of work, both interior and exterior, shall be thoroughly cleaned by Builder. Cleaning by Builder includes, but is not limited to:
- (A) Builder shall clean the interior and exterior of structures including all fixtures, equipment, glazing, doors, walls, floors, ceilings, roofs, sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration.
  - (B) Removal of all rubbish, excess materials, form lumber, etc. from the Site, all material storage sites, adjacent property impacted by the Work, adjacent streets impacted by the Work, and any other areas occupied by the Builder as part of the Work. The entire Site shall be left in a neat and presentable condition.
  - (C) Builder shall remove putty stains and paint from all glazing. All glazing shall be washed and polished, inside and outside, and the Builder shall exercise extra care not to scratch any glazing.
  - (D) Builder shall remove all marks, stains, fingerprints, and any other soil or dirt from painted, decorated, or stained work.
  - (E) Builder shall clean and polish all woodwork.

- (F) Builder shall clean and polish all plumbing fixtures, finish hardware, and similar finish surfaces and equipment, and shall remove all stains, dust, dirt, paints, and blemishes.
- (G) Builder shall remove spots, soil, paint, plaster, and concrete from all tile work and shall wash all tile work afterwards.
- (H) Builder shall clean stains, paint, dirt, and dust from all fixtures and equipment.
- (I) Builder shall remove all temporary floor protection, and shall clean, shampoo, vacuum, wax and/or buff all floor surfaces.
- (J) Builder shall remove all dust, cobwebs, and traces of insects and dirt from all surfaces.
- (K) To the greatest extent feasible, Builder shall remove all 'Dig Alert' utility location identification placed as part of this Work including, but not limited to, spray paint, chalk, or other marking for utilities, survey points and construction limits.

### **24.3 PEST EXTERMINATION**

- 24.3.1 If required elsewhere in the Contract Documents, Builder shall engage a licensed exterminator to make a final inspection, and to rid the Project of rodents, insects, and other pests. The licensed exterminator shall provide a Certificate indicating what work was performed.

### **24.4 PUNCH LIST**

- 24.4.1 Upon request of Builder or when deemed appropriate by Owner, the OR shall prepare a list of Work that has not yet started, is incomplete, remains uncorrected, is deficient, or is defective. The OR has no duty or obligation to identify any Work not in full conformance with the Contract Documents at the most convenient time for Builder. Builder is and remains solely responsible for its own review of Work performed and its own quality control procedures.
- 24.4.2 OR shall add items to the Punch List as observed regardless of the date of observation. OR is responsible for maintaining the Punch List and for insuring that the Punch List is update. Builder shall be kept continuously informed of all work identified on the Punch List.
- 24.4.3 Builder remains solely responsible for compliance with the Contract Documents, and Builder is not relieved of any obligation to perform by the failure of OR to identify any Work that is not in compliance with the Contract Documents.

### **24.5 SUBSTANTIAL COMPLETION**

- 24.5.1 Builder shall keep OR informed of the anticipated date of Substantial Completion. Prior to Substantial Completion, the following tasks, as applicable, shall be completed:

- (A) Owner's Punch List shall be prepared in accordance with this Article.

- (B) If utility costs are to be transferred to the Owner at Substantial Completion, such utility work shall be complete and accepted by the respective utility purveyor and any AHJ having authority over the utility.
  - (C) Safety measures required to protect users from the remaining incomplete work shall be in place and accepted by the AHJ having jurisdiction over the safety measures.
  - (D) Final inspections (or appropriate milestone inspections) shall have been made by each AHJ having authority over the Work deemed substantially complete by both the Owner and Builder.
  - (E) Unless Owner and Builder agree otherwise, Builder shall obtain a Certificate of Occupancy or a Temporary Certificate of Occupancy from the City in accordance with the requirements and procedures of the City as AHJ. Unless the Contract Documents specify otherwise, City shall waive or pay any costs associated with the City's issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy. Fees owed to any other AHJ shall be initially paid by Builder. Builder shall have the right to recover such costs from Owner in accordance with the Contract Documents or as agreed to by Owner.
- 24.5.2 Owner's Punch List shall identify all items which must be completed prior to Substantial Completion. Builder is solely responsible for working directly with any AHJ who must also grant approval of the Work before the Owner can accept the Work as substantially complete.
- 24.5.3 Owner is under no obligation to accept the Work as Substantially Complete where Builder has failed to complete all items on the Owner's Punch List which were identified by the OR as necessary for Substantial Completion.
- 24.5.4 Upon notification that all required items on the Punch List are completed or corrected as required for Substantial Completion, OR will inspect the Work. If OR agrees that all Work required to achieve Substantial Completion has been completed and Builder can document proof that no AHJ has an outstanding issue that would impact the Owner's ability to beneficially use the Work, then OR will prepare a Notice of Substantial Completion.
- 24.5.5 Prior to issuance of the Notice of Substantial Completion, OR and Builder shall agree on the Work remaining to be corrected and/or completed and the individual responsibilities of Owner and Builder for security, maintenance, utilities, insurance, warranties, and damage to the Work. Within one workday of such agreement, OR shall deliver to Builder a Notice of Substantial Completion that includes written documentation of the outstanding work and the agreements made regarding security, maintenance, utilities, insurance, warranties, and damage.
- 24.5.6 Warranty and/or guarantee periods shall apply only to the Work that is deemed Substantially Complete. No warranty or guarantee period shall commence for any Work that has not been accepted by the Owner or deemed Substantially Complete.

24.5.7 For work where Builder is initially responsible for Warranty issues, Builder shall identify the individual who is responsible for responding to Warranty issues. Builder shall provide work-day and after-hours contact information for the designated individual that includes phone numbers that will be answered 24 hours a day, 7 days week. Builder will respond to Warranty issues as required by these Specifications.

24.5.8 Builder shall diligently complete all outstanding Work and shall achieve Project Acceptance as the earliest possible opportunity.

## **24.6 RE-KEYING DOOR HARDWARE AND LOCKS**

24.6.1 Unless specified elsewhere in the Contract Documents, Owner shall be responsible for re-keying all door hardware and locks after Substantial Completion. Where Owner re-keys doors and locks prior to Project Acceptance, Owner is responsible for insuring that Builder has ready access to all areas where Builder is still working.

## **24.7 PROJECT CLOSEOUT SUBMITTALS**

*NOTE: This Section is specific to Project Closeout Submittals.*

*A separate Article exists for Construction Submittals and Substitution Requests.*

24.7.1 Before Acceptance of the Project, Builder shall submit the following to the OR for review and acceptance:

- (A) An itemized list of the following:
  - (i) All plan check applications, construction permits, and final certifications. This list shall identify the type of application, permit, or certification; the date of application, the date of permit final, and the identification number associated with the specific application, permit or certification.
  - (ii) An itemized list of all material and/or installation certifications required by code or by the manufacturer.
  - (iii) An itemized list of all Warranties and Guarantees.
  - (iv) An itemized list of all Submittals organized by Specification Section.
  - (v) An itemized list of all paint colors and finishes that identify location of use.
  - (vi) An itemized list of all attic stock and spare parts left by Builder for Owner's future use.
  - (vii) An itemized list of all Operations and Maintenance Manuals.
  - (viii) An itemized list of all keys delivered to Owner.
  - (ix) An itemized list of all RFIs.



- (x) On Design-Build Projects, an itemized list of all Architect's Supplemental Instruction ('ASI') and similar supplemental documents regardless of designer issued by Builder's Design Team.
- (xi) An itemized list of all CORs regardless of approval status. This list shall include RFI Number, dates, descriptions of work covered, and approval status.
- (xii) An itemized list of any delay issues.
- (xiii) An itemized list of any disputed issues.
- (B) An original or high quality paper copy and one electronic copy of each plan check application, permit, or certificate obtained by Builder as part of any portion of the total project from any AHJ including the City.
- (C) Two hard copies and one electronic copy of all Warranties and Guarantees.
- (D) Two hard copies and one electronic copy of all Operations and Maintenance Manuals.
- (E) One hard copy and one electronic copy of all As-Built Plans including Survey plans with monuments.
- (F) One hard copy and one electronic copy of all Certificates of Air Balance and/or other HVAC Commissioning documentation.
- (G) One electronic copy of all material and/or installation certifications required by code or by the manufacturer.
- (H) One electronic copy of all RFIs and all Change Order Requests.
- (I) On Design-Build projects, Builder shall provide Owner with an electronic copy of all ASI and similar documents issued by Builder's Design Team.
- (J) An itemized list of all attic stock and spare parts required by the Contract Documents plus any other materials left by Builder and accepted by Owner for Owner's future use.
- (K) Keys shall be delivered to the OR in accordance with the following:
  - (i) Unless otherwise agreed to in writing, four (4) of each key shall be provided to the OR.
  - (ii) Each Key shall be individually tagged or labeled to indicate the function and location within the structure or site, and door or box numbers where appropriate.
  - (iii) Where not more than thirty (30) keys will be delivered to the OR, the keys shall be delivered on a suitable ring intended to be used as a Key Ring.

- (iv) Where more than thirty (30) keys will be delivered to the OR, the keys shall be delivered in a suitable key storage box that can accommodate the total number of keys to be delivered by Builder for this Project plus 25 additional keys.

(L) Termite Inspection Report if required by the Contract Documents.

24.7.2 Unless agreed otherwise, Retention will not be released until all Project Closeout Submittals have been delivered to and accepted by the OR.

24.7.3 Where Builder has failed to maintain the records required by this Article, Owner shall have the right to deduct dollar amounts that Owner deems appropriate and just compensation for each Builder failure to maintain and deliver required documents to the Owner. Builder acknowledges that the documents identified in this Article are necessary for Owner's maintenance and record keeping purposes, and Builder agrees that Owner will have been damaged by Builder's failure to turn over to Owner those documents specifically identified in this Article. Owner shall have the sole right to determine fair and reasonable compensation owed by Builder to Owner for Builders failure to maintain and deliver the documents identified in this Article, and Owner shall have the right to deduct such amounts from any money owed or to be owed Builder. Builder shall have no appeal or recourse for Owner's determination of fair and reasonable compensation resulting from Builder's failure to maintain and deliver to the Owner the documents identified in this Article. Should Builder recover any of the missing documents, Builder may deliver those documents to Owner, and deducted money will be refunded by Owner back to Builder.

## **24.8 ATTIC STOCK**

24.8.1 Builder shall provide Attic Stock in accordance with the Contract Documents. Attic Stock shall be stored on site as directed by OR at no cost to Owner. In the event that OR directs Builder to relocate Attic Stock to an offsite location, Builder shall be compensated for its actual costs in accordance with these Specifications.

24.8.2 Builder may include other excess construction materials along with the Attic Stock required by the Contract Documents. Owner specifically reserves the right to determine which excess materials will be retained by Owner and included with the required Attic Stock. All materials rejected by Owner shall be disposed of by Builder at no cost to the Owner.

## **24.9 OWNER-BUILDER TRANSITION**

24.9.1 Materials, equipment, utilities, and any other Work shall be transferred from Builder to Owner in accordance with the Contract Documents or as directed by the OR.

## **24.10 OWNER TRAINING**

24.10.1 Builder shall be responsible for scheduling and providing all training required by the Contract Documents or as requested by OR. Owner and Builder shall agree in advance for training payments above and beyond that required by the Contract Documents.

## **24.11 ACCEPTANCE OF MACHINERY AND EQUIPMENT**

24.11.1 The following list of requirements must be completed prior to final acceptance of any machinery or equipment. This list is mandatory and is explicitly independent from any Substantial Completion list of outstanding requirements.

- (A) The machinery and equipment is clean and ready for operation.
- (B) Start up and commissioning must be in compliance with all manufacturer's requirements.
- (C) All testing required by the Contract Documents has been successfully completed in the manner prescribed by the Contract Documents.
- (D) If required by the manufacturer, the machinery and/or equipment has been inspected and accepted by the manufacturer's authorized representative.
- (E) The machinery and/or equipment has been inspected and accepted by any AHJ have jurisdiction over the machinery and/or equipment.
- (F) Commissioning required by California Title 24 or any other state or federal code has been completed and all required forms have been received, reviewed, and accepted by all AHJs having jurisdiction over the work. A copy of all documentation shall also be given to the OR.
- (G) Commissioning procedures specified by the Contract Documents have been successfully completed in the manner prescribed by the Contract Documents.
- (H) The specifying architect or engineer has inspected and accepted the machinery and/or equipment. On Design-Bid-Build project, Builder shall request an inspection by the Designer of Record for the respective equipment through the OR.
- (I) If a Final Commissioning Report is required by the Contract Documents, such Report shall be received, reviewed, and accepted in accordance with the requirements of the Contract Documents.
- (J) O & M Documentation shall be received, reviewed, and accepted by the OR.
- (K) All Owner training required by the Contract Documents and any additional training requested by Owner shall have been provided and successfully completed for operation and maintenance of the equipment.
- (L) All warranties and/or guarantees required by the Contract Documents have been received, reviewed, and accepted by the Owner.
- (M) The machinery and equipment operates properly and as intended by the Contract Documents.

## **24.12 WORK AFTER SUBSTANTIAL COMPLETION**

- 24.12.1 Builder shall diligently continue with the outstanding Work following Substantial Completion until the Project is complete and accepted by the Owner. Where the OR is not on site at all times, Builder shall make sure OR is aware of what Work is being performed and when. Builder remains solely responsible for scheduling any inspections required by the OR, the Contract Documents, or by any AHJ.

## **24.13 FINAL ACCEPTANCE ISSUES**

- 24.13.1 The following issues are to be resolved or completed in accordance with law, the Contract Documents, or as mutually agreed between Owner and Builder:
- (A) Unless otherwise agreed, Owner will record a Notice of Completion in accordance with normal City administrative procedures.
  - (B) Builder must deliver a Final Payment Request for processing. Unless specified otherwise in the Contract Documents, no Unconditional Release is required to be provided with the Final Payment Request.
  - (C) Retention will not be released until Owner has received and accepted an Unconditional Release for the Final Payment amount.
  - (D) Builder is solely responsible for obtaining final approval for of all permits issued for this project by any AHJ including the City.
  - (E) Retention shall be released in accordance with these Specifications, but not before the project has been fully accepted by Owner.

## **24.14 LANDSCAPE MAINTENANCE**

- 24.14.1 Where the Contract Documents require a Landscape Maintenance Period, such period shall begin on a date mutually agreed to by Owner and Builder, but not before the landscaping has been fully installed and the landscaping has been reviewed and accepted by the Owner's representatives responsible for landscape design and approval.
- 24.14.2 Builder will be given written notification of the date that Landscape Maintenance begins and ends, and the total duration shall not be less than that required by the Contract Documents.

## **24.15 CERTIFICATE OF OCCUPANCY**

- 24.15.1 For occupied structures and where required by any AHJ, Builder shall be solely responsible for obtaining a Certificate of Occupancy prior to Project Acceptance.
- 24.15.2 A Certificate of Occupancy or a Temporary Certificate of Occupancy is required before the Owner will accept the work as Substantially Complete.

**24.16 EASEMENT AND LAND ISSUES**

- 24.16.1 Where the work included preparation of any type of easement, covenant, or map regulated by any provision of the California Subdivision Map Act, such documents shall be fully executed and recorded prior to Project Acceptance. A copy of the recorded documents shall be provided to the OR.

**24.17 PROJECT COMPLETION DOCUMENTS**

- 24.17.1 Prior to release of the final Retention payment and Project Acceptance, Builder shall deliver to and have accepted by OR all other Project Completion Documents required by the Contract Documents.

**END OF ARTICLE**

## **ARTICLE 25**

### **WARRANTIES AND GUARANTEES**

*See also any additional warranty requirements specified in **Supplemental Conditions Article**.*

#### **25.1 GENERAL**

25.1.1 All work performed by Builder shall be guaranteed in writing as follows:

- (A) Work shall be free from material and/or workmanship defects for not less than one (1) year from date of Project Acceptance except where the Owner agrees to accept an earlier Warranty start date for any portion of the Work. No warranty period for Work will commence until that specific work has been completed, inspected, accepted by any AHJ having jurisdiction of that portion of the work and has been accepted by the Owner.
- (B) Manufacturer Warranty periods of more than 12 months remain in full effect for the stated Warranty period in accordance with law.
- (C) All labor, materials, equipment, and furnishings used in or incorporated into the Work is new unless specified otherwise in the Contract Documents and of the quality specified by the Contract Documents.
- (D) All Work is free of liens, claims and security interests of third parties.

25.1.2 Except for defects or damage caused by improper or insufficient Owner maintenance, improper operation by Owner, ordinary wear and tear, and/or Owner abuse; Builder shall correct, replace, repair, or restore any Defective Work in accordance this Section.

25.1.3 Builder shall correct defects, including adjacent Work affected by the correction, observed by the Owner within the Warranty Period. At the end of the Warranty Period, defects shall be corrected as specified in law.

25.1.4 Prior to final release of Retention, Builder shall identify an individual for the Owner to contact regarding warranty issues that are the responsibility of the Builder to resolve.

25.1.5 Establishment of the Warranty Period relates only to the specific obligation of Builder to correct the Work and in no way limits either Builder's liability for Defective Work or the time within which proceedings may be commenced to enforce Builder's obligations under the Contract Documents.

## **25.2 WARRANTY ISSUES AFTER SUBSTANTIAL COMPLETION**

- 25.2.1 Except where specified otherwise in the Additional Warranty Obligations section of the Supplemental Conditions Article, Builder shall be responsible for all warranty work owed under Builder's Warranty to Owner for any work where the direct or related reason for the warranty repair involves the manner in which Builder installed the work. Owner shall be responsible for resolving issues directly related to a warranty provided directly by a manufacturer so long as the reason for the warranty repair does not involve the manner of installation by Builder.
- 25.2.2 Unless Owner agrees otherwise, Builder shall respond to all requests from Owner for Warranty related issues within one workday. Where Builder responds to an Owner request for Warranty work that is Owner's responsibility, Builder shall have the right to recover actually incurred costs in accordance with these Specifications.
- 25.2.3 Where Builder is responsible for warranty repairs, Builder shall commence non-emergency correction, replacement, repair, or restoration of Defective Work within seven (7) calendar days after receipt of Owner's written notification to Builder. For emergency repairs, Builder shall take immediate action.
- 25.2.4 Where the repair or replacement is covered by Builder's Warranty, Builder shall repair or replace the work in the least time feasible and shall limit the disruption to Owner resulting from such Warranty issue to the greatest extent possible. Where possible, Builder shall provide temporary work to supplement or replace the Work being repaired or replaced if requested by Owner.
- 25.2.5 If Builder fails to respond to Owner's request to investigate a Warranty issue within three (3) working days, Owner shall have the right to investigate and make repairs and to deduct actually incurred costs from any money owed or to be owed Builder. Where insufficient or no money has been withheld by Owner, Builder shall pay Owner's actually incurred costs within thirty (30) days of Owner's written demand for payment.

## **25.3 OWNER-PROVIDED MATERIALS**

- 25.3.1 Where Owner provided materials and/or equipment were incorporated into the Work by Builder, Owner shall be responsible for the Warranty of the work provided by Owner. Builder shall be responsible for the Warranty of all Work required to incorporate the Owner-Provided material into the Project.

## **END OF ARTICLE**

## INDEX

<b>Abnormal Delays</b> .....	126	<b>Bid Requirements</b> .....	55
Acceptance of Machinery and Equipment .....	224	Bid Schedule .....	19
Access to Site .....	95	<b>Bid Security</b> .....	55
<b>Act of God</b> .....	53	<b>Bid Security and Delivery of Bid Security</b> .....	5
<b>Activity</b> .....	53	<b>Bid Solicitation</b> .....	55
<b>Actual Equipment Rental Costs</b> .....	121	Bid Validity .....	12
<b>Addenda</b> .....	53	<b>Bid Withdrawal after Bid Opening</b> .....	12
<b>Addendum</b> .....	53	<b>Bidder</b> .....	55
Additional Agreement Provisions .....	67	Bidder's General Information .....	26
Additional Warranty Obligations .....	81	<b>Bidder's Signature and Authority</b> .....	9
<b>Advertisement</b> .....	54	<b>Bidding Requirements</b> .....	7
Agreed Labor Rates .....	119	<b>Builder</b> .....	55
<b>Agreement</b> .....	54	Builder Direct Cost Adjustments .....	123
<b>AHJ</b> .....	54	Builder Direct Costs .....	120
Air Pollution, Air Quality, and Dust Control Requirements .....	179	Builder Indirect Costs .....	122
<b>Applicable Codes</b> .....	54	Builder Objections .....	171
<b>Applicable Laws</b> .....	54, 93	Builder's Daily Reports .....	185
<b>Architect of Record</b> .....	54	Builder's Designated Representatives .....	158
Artistic Effect .....	148	Builder's Expertise and Knowledge of Laws, Codes, Ordinances, Rules and/or Other Regulations .....	156
<b>As-Built Documents</b> .....	54, 216	<b>Builder's Financial Obligations</b> .....	137
<b>As-Built Plans</b> .....	54	<b>Builder-owned Equipment Costs</b> .....	121
<b>As-Built Specifications</b> .....	54	Builder's Role and Responsibilities .....	155
As-Cast Concrete Surfaces .....	208	<b>Calendar Day</b> .....	55
<b>Assignment of Antitrust Actions</b> .....	16	California Apprenticeship Council, Title 8 Regulations .....	87
Assignment Of Subcontracts .....	72	<b>CCO</b> .....	56
Assistance with Reporting .....	161	Certificate of Occupancy .....	225
<b>Attic Stock</b> .....	54, 223	Certificates .....	207
<b>Authority Having Jurisdiction ('AHJ')</b> .....	54	Change In Name And Nature Of Builder's Legal Entity .....	67
Availability of Bid Documents .....	1	Change in Terms .....	110
Award of Agreement .....	54	<b>Change Order Request ('COR')</b> .....	56
Award of Contract .....	54	Change Order Requests .....	115
<b>Award Process and Execution of the Contract</b> .....	15	<b>Changed Work</b> .....	55
Baseline Construction Schedule .....	165	Changes in Contract Sum .....	114
<b>Baseline Construction Schedule Liquidated Damages Provision</b> .....	166	Changes in Contract Time .....	115
Baseline Schedule of Values ( <u>Design-Bid-Build</u> ) .....	172	Changes to the Contract .....	112
Baseline Schedule of Values ( <u>Design-Build</u> ) .....	172	<b>City ( as 'Authority Having Jurisdiction')</b> .....	56
<b>Beneficial Use</b> .....	55	City (as 'Owner of the Project') .....	56
<b>Best Value (Design-Build)</b> .....	55	'City' as Owner versus 'City' as Authority Having Jurisdiction ('ahJ') .....	85
<b>Bid</b> .....	55	<b>City's Representative</b> .....	56
Bid Acknowledgement and Signatures .....	21	Clean Up .....	186
Bid Bond .....	2	<b>Codes</b> .....	56
<b>Bid Delivery</b> .....	6	Color Schedules .....	207
<b>Bid Documents Provided by Owner</b> .....	1	Compensable Delays .....	128
<b>Bid Guarantee</b> .....	55	Compensation and Payment .....	136
<b>Bid Modification or Withdrawal Prior To Bid Opening</b> .....	12	Competent Foreman .....	160
Bid Opening .....	7	Complete Agreement .....	71
<b>Bid Pricing</b> .....	5	<b>Concurrent Delay</b> .....	56
<b>Bid Pricing of Add/Alternates</b> .....	5		



Conflicts, Errors, Omissions, Ambiguities, Inconsistencies, and Discrepancies .....	90
<b>Construction Documents</b> .....	56
<b>Construction Documents Phase (Design-Build)</b> .....	56
<b>Construction Phase (Design-Build)</b> .....	56
<b>Construction Schedule</b> .....	56, 164
Construction Schedule Preparation Guidelines .....	166
<b>Construction Schedule Revision</b> .....	56
<b>Construction Schedule Update</b> .....	57
<b>Contract</b> .....	57
<b>Contract Change Order ('CCO')</b> .....	57
Contract Change Orders .....	117
<b>Contract Completion Date</b> .....	57
<b>Contract Documents</b> .....	57
<b>Contract Duration</b> .....	57
<b>Contract Milestone</b> .....	57
<b>Contract Price</b> .....	57
<b>Contract Scope of Work</b> .....	57
<b>Contract Sum</b> .....	57
<b>Contract Time</b> .....	57
<b>Contractor</b> .....	58
<b>COR</b> .....	58
Cost and Resource Loading .....	169
Cost of Submittal Preparation and Review .....	203
<b>Critical Path</b> .....	58
<b>Critical Path Delay</b> .....	58
<b>Day</b> .....	58
<b>Debarment of Contractors and Subcontractors</b> .....	2
<b>Defective Work</b> .....	58, 212
Definitions .....	53
<b>Delay</b> .....	58
Delay Compensation .....	128
Delays, Suspension, and Termination of the Contract .....	126
Demobilization .....	195
Deposit of Securities in Lieu of Retention and Deposit of Retention into Escrow .....	143
<b>Design Development Documents (Design-Build)</b> .....	58
<b>Design Development Phase (Design-Build)</b> .....	58
Design Responsibilities .....	157
Design, Supervision and Construction Procedures .....	158
<b>Design-Builder</b> .....	58
<b>Designer (Design-Bid-Build)</b> .....	58
<b>Designer of Record</b> .....	59
Designer's Role .....	153
Designer's Right to Supplement Builder's Submittal Material .....	154
Designer's Role and Responsibilities .....	153
<b>Differing Site Condition Delays</b> .....	126
Differing Site Conditions .....	96, 125
<b>Direct Costs</b> .....	59
Disputes .....	99
Diversion Of Recyclable Waste Materials .....	83
Document Retention & Examination .....	96
<b>Documented Delivery Costs</b> .....	121

<b>Documented Direct Material Costs</b> .....	121
<b>Documented Direct Subcontractor Costs</b> .....	120
Early Work Acceptance .....	218
Easement and Land Issues .....	226
Emergencies .....	193
Emergency Action Plan .....	192
Emergency RESPONSE Phone Numbers .....	192
Employment Of Apprentices .....	87
<b>Engineer</b> .....	59
<b>Engineer of Record</b> .....	59
<b>Environmental Product Declarations</b> .....	59, 83
<b>Equipment Manufacturer</b> .....	59
<b>Erasures and Corrections</b> .....	12
Excavation Safety .....	192
<b>Excusable Delay</b> .....	127
<b>Extra Work</b> .....	59
Facilities for the OR .....	183
Facilities for the OR During Construction .....	77
<b>Favorable Review</b> .....	59
Fencing .....	82
<b>Field Directive</b> .....	59
Field Directives .....	175
Field Directives And Scope Clarifications .....	175
Field Engineering .....	184
Final Acceptance Issues .....	225
Final Cleaning .....	218
<b>Final Completion</b> .....	59
Financial Position of Builder .....	113
Finish Hardware List .....	207
<b>Float</b> .....	59
Form and Proof of Carriage of Insurance .....	102
<b>Fuel Costs</b> .....	121
General Conditions .....	85
<b>Government Approvals</b> .....	59
<b>Guarantee</b> .....	59
Hazardous and Toxic Materials .....	193
<b>Holidays</b> .....	60
<b>Home Office Overhead</b> .....	60
<b>Hourly Labor Payroll Costs</b> .....	120
Indemnification .....	68
<b>Indirect Cost</b> .....	60
<b>Indirect Home Office Overhead ('IHOO')</b> .....	60
<b>Informational Submittals</b> .....	60
Inspection and Testing .....	209
Inspection of Construction .....	151
<b>Insurance and Bonding Costs</b> .....	121
Insurance Policies Must Allow Owner Occupancy .....	111
INSURANCE Requirements .....	101
<b>Interest in More than One Bid</b> .....	12
Interpretations .....	151
<b>Invitation to Bid</b> .....	60
<b>Invoice Period</b> .....	137
<b>Iran Contracting Act Certification</b> .....	17
<b>Landscape Architect of Record</b> .....	60

Landscape Maintenance .....	225
Landscape Maintenance Period .....	77
<b>Lead Time</b> .....	60
Legal Holidays .....	84
Liability for and Repair of Damaged Work .....	97
Limited Schedule of Values ('LSOV') .....	172
Liquidated Damages .....	80
<b>List of Deficiencies</b> .....	60
<b>LSOV</b> .....	60
<b>Lump Sum</b> .....	60
<b>Mandatory License and Registration Requirements</b> .....	2
Mandatory Schedule of Values Line Requirements .....	172
Manuals .....	206
<b>Manufacturer</b> .....	60
Material Delivery .....	186
<b>Material Shortage Delays</b> .....	127
Means And Methods .....	155
Measurement of Quantities .....	214
Methods of Delivery for Specified Documents .....	72
Mined Material .....	97
Mobilization .....	177
Mutual Duty to Mitigate .....	126
<b>Negative Float</b> .....	60
<b>NIB</b> .....	60
<b>NIC</b> .....	61
<b>NISB</b> .....	60
Noise and Construction Hours .....	189
Noise and Hours of Operation .....	93
Noise Limitations .....	84
Nondiscrimination .....	161
Nondiscrimination / Equal Employment Opportunity / Employment Eligibility .....	98
<b>Non-Excusable Delays</b> .....	127
<b>Nonworking Day</b> .....	61
<b>Notice Inviting Bid</b> .....	61
Notice of Delays .....	127
Notice of Intent to Award Agreement .....	61
<b>Notice of Substantial Completion</b> .....	61
Notice of Taxable Possessory Interest .....	68
Notice to Proceed .....	88
<b>Notice to Proceed ('NTP')</b> .....	61
Notice to Subcontract .....	178
Notices of Labor Dispute .....	161
Notification of Dispute .....	100
<b>O &amp; M Documentation</b> .....	61
Obligation to Notify .....	113
Obligation to Protect Work And Property from Damage .....	186
<b>Omitted Work</b> .....	61
<b>OR</b> .....	61
OR's Review of Submittals .....	151
OR's Right to Supplement Builder's Submittal Material .....	152
<b>Original Contract Documents</b> .....	61, 216
OR's Role and Responsibilities .....	150
<b>Other Costs</b> .....	122

<b>Other Direct Labor Costs</b> .....	120
<b>Owner</b> .....	61
Owner Coordination .....	189
Owner Does Not Warrant Contract Documents .....	89
<b>Owner Forces</b> .....	61
<b>Owner Representative</b> .....	61
Owner Training .....	223
Owner's Representation .....	145
Owner's Right to Evaluate Quality .....	145
Owner-Builder TRANSITION .....	223
<b>Owner-Caused Delays</b> .....	127
Owner-Provided Materials .....	190, 228
Owner's Review of Change Order Requests .....	117
Owner's Right to Access the Site .....	145
Owner's Right to Back-Charge, Withhold or Suspend Payments .....	140
Owner's Right to Conduct Work .....	146
Owner's Right to Furnish Materials and Equipment .....	148
Owner's Right To Perform Work And To Award Separate Contracts .....	146
Owner's Right to Retain Imperfect Work .....	148
Owner's Right to Stop the Work .....	145
Owner's Right To Use Or Occupy Prior To Substantial Or Project Completion .....	148
Owner's Rights, Role, Responsibilities, and Representation .....	145
Ownership and Use of the Contract Documents .....	94
Patents, Patent Infringement, Patent Fees, and Royalties .....	67
Pay-if-Paid Provisions .....	114
Payment Bond Sample .....	52
Performance and Payment Bonding .....	92
<b>Performance And Payment Bonding</b> .....	13
Performance Bond Sample .....	5
Permanent Utilities .....	183
<b>Permit And Licensing Fees</b> .....	16
Permitted Subcontractor Cost Increases .....	124
Pest Extermination .....	219
Plan Checks, Permits, and Fees .....	94
<b>Plans</b> .....	62
Potential Changes in Scope of Work .....	112
Prevailing Wage Requirements .....	86, 177
<b>Prime Contractor</b> .....	62
Printing and Distribution Costs .....	161
Product Data Submittal .....	205
<b>Product Data Submittals</b> .....	62
<b>Progress Payment Request ('PPR')</b> .....	62
Prohibited Interests .....	67
<b>Project</b> .....	62
<b>Project Acceptance</b> .....	62
<b>Project Architect</b> .....	62
Project Closeout Submittals .....	221
Project Completion and Closeout .....	218
Project Completion Documents .....	226
<b>Project Description</b> .....	76

<b>Project Development Schedule</b> .....	62
<b>Project Duration</b> .....	62, 76
<b>Project Engineer</b> .....	62
Project Office and Legal Address .....	157
<b>Project Record Documents</b> .....	62, 216
Project Requirements .....	76
Project Requirements Include .....	77
<b>Project Schedule</b> .....	62
<b>Project Site</b> .....	62
<b>Prompt Payment by Owner</b> .....	136
<b>Proposal</b> .....	62
<b>Proposal Guarantee</b> .....	62
<b>Proposal Security</b> .....	63
<b>Proposer</b> .....	63
Protection and Use of Public Right Of Way .....	188
<b>Protests during Bidding</b> .....	13
<b>Punch List</b> .....	63, 219
Quality Control .....	208
Quality Control Program .....	208
Quality Control, Inspection, and Testing .....	208
Questions During Bidding .....	4
<b>Record Drawings</b> .....	63, 217
<b>Recyclable Waste Materials</b> .....	63
Registration with the California Department of Industrial Relations .....	98
Re-Keying Door Hardware and Locks .....	221
Relocation or Repair of Existing Utilities .....	182
<b>Request for Information ('RFI')</b> .....	63
<b>Request for Proposal</b> .....	63
Requests for Information ('RFI') .....	91
<b>Requests for Payment</b> .....	137
<b>Required Examination of All Bid Documents</b> .....	3
<b>Required Inspection of the Site</b> .....	3
Requirement for Workers' Compensation and Employers' Liability Insurance .....	108
Requirements Employer's Liability Insurance .....	109
Requirements for Builder's Risk Insurance .....	105
Requirements for Commercial Automobile Liability Insurance .....	108
Requirements for Commercial General Liability Insurance .....	104
Requirements for Pollution Liability Insurance .....	109
Requirements for Professional Liability Insurance .....	109
Requirements for Public Liability and Property Damage Insurance .....	107
Resolution of Construction Claims .....	73
<b>Responsibility for Preparation of the Bid</b> .....	9
Retention .....	80, 143
Review and Acceptance of the Baseline SOV .....	173
Review Procedures .....	204
Revisions to the Schedule of Values .....	174
<b>Rework</b> .....	63
RFI Review and Response .....	153
<b>RFP</b> .....	63

<b>RFP Documents</b> .....	63
<b>RFP Response</b> .....	63
Right to Record Sound and Video .....	92
Rights And Remedies .....	71
Safety and Injury Prevention .....	190
<b>Sales, Use, and Other Taxes</b> .....	16
<b>Samples</b> .....	63
Samples including Mockups .....	206
Sanitary Facilities .....	189
Schedule of Values .....	172
Scope Clarifications .....	175
<b>Scope of Work</b> .....	64
<b>Scope of Work Includes All Addenda</b> .....	4
Scope of Work is Based on Assumed Conditions .....	90
Seismic Design and Anchorage of Equipment or facilities .....	203
Self Performance .....	86
Severability of Provisions .....	71
<b>Shall</b> .....	64
<b>Shop Drawings</b> .....	64
<b>Site</b> .....	64
Site Operations .....	177
<b>SOV</b> .....	64
<b>Specifications</b> .....	64
Standard Specifications for Public Works Construction ( 'Greenbook' ) .....	84
Stop Payment Provisions .....	144
Stormwater Pollution Prevention Requirements .....	82
Subcontracting Requirements .....	97
<b>Subcontractor</b> .....	64
<b>Subcontractor Listing Requirements</b> .....	10
Subcontractor Replacement .....	97
<b>Submittal</b> .....	64
<b>Submittal Deadline</b> .....	55, 63
<b>Submittal Deadline (Bid)</b> .....	64
<b>Submittal Deadline (Proposal)</b> .....	64
Submittal Processing .....	201
<b>Submittal Register</b> .....	64, 199
Submittal Schedule .....	200
Submittals and Substitution Requests .....	197
<b>Substantial Completion</b> .....	64, 219
<b>Substitution Request</b> .....	64
Substitutions .....	199
<b>Successful Bidder</b> .....	64
<b>Successful Proposer</b> .....	64
Successors And Assigns .....	71
<b>Superintendent</b> .....	65, 159
Supplemental Conditions .....	80
<b>Supplemental Instruction</b> .....	65
<b>Supplier</b> .....	65
<b>Surety</b> .....	65
Survival .....	71
Suspension By Owner For Cause .....	131
Suspension By Owner For Convenience .....	131

SWPPP Requirements .....	178
<b>Task</b> .....	65
<b>Task Float</b> .....	65
Taxes.....	67
Temporary Keys, Codes, and Locks .....	160
Temporary Utilities .....	183
Termination by Builder .....	134
Termination by Owner for Cause .....	133
Termination by Owner for Convenience.....	132
This is a Public Works Project .....	85
<b>Tier</b> .....	65
<b>Time and Materials</b> .....	65
Time and Materials Procedures .....	118
<b>Time Extension</b> .....	65
Time Impact Analysis .....	170
Time is Of the Essence .....	126
<b>Total Float</b> .....	65
Types of Delay.....	126
Uncovering Of Work .....	211
<b>Unilateral Contract Change Order</b> .....	65
Unilateral Contract Change Orders.....	118
Unit Price Adjustments Due to Increased or Decreased Quantities .....	124

<b>Unusual Weather</b> .....	65
Updates and Revisions to the Construction Schedule ....	169
Use of City’s Franchised Waste Hauler .....	95
Use of Language and Context.....	93
Use of Owner Provided Geotechnical and Geohazard Investigation Report .....	78
<b>Usual Weather</b> .....	65
<b>Utility Costs</b> .....	122
Utility Fees and Permitting Requirements .....	95
Utility Pot-Holing, location, and identification .....	180
Waiver and Conditional/Unconditional Releases .....	139
Waiver of Right to Rescind for Material Breach .....	75
Warranties and Guarantees .....	227
<b>Warranty</b> .....	66
Warranty Issues after Substantial Completion.....	228
<b>Warranty/Guarantee Period</b> .....	66
Weather Delay Days .....	131
<b>Weather Delays</b> .....	127
Weekly Statement of Working Days.....	185
<b>Work</b> .....	66
Work after Substantial Completion.....	225
Workers.....	160
<b>Working Day</b> .....	66