

SECTION 00 72 00

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - GENERAL

1.01 DEFINITIONS

- A. Wherever the Contract Documents (as defined in Paragraph 1.02) use a word or phrase defined below, or a pronoun in place thereof, it shall have the meaning set forth in this Paragraph 1.01. References to related Paragraphs or Documents are provided for convenience but not to exclude other Paragraphs or Documents where such terms may be used. The colon (":") is employed in this Paragraph as a symbol for "shall mean." A colon also may be employed in these General Conditions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows.
1. **Accepted, Approved:** Accepted or approved, or satisfactory for the Work, as determined in writing by the City, unless otherwise specified. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, Bids, proposals and reports by Contractor, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Conditions. In no case shall the City's approval be interpreted as a release of Contractor from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the City's right under the Contract.
 2. **Addenda:** A written or graphic instrument(s) issued by the City prior to the receipt of Bids which modified or interpreted the Bid Documents by additions, deletions or other changes. Refer to Section 00 21 13, Instruction to Bidders.
 3. **Advertisement for Bid:** A set of documents that includes, without limitation, the published advertisement for bids on a Contract; the forms to be submitted with a Bid as required by the City; the construction contract general and special conditions; and, the drawings and specifications for the Work.
 4. **Agreement:** The Agreement or Contract between the City and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made part thereof as provided herein. The Contract is fully executed upon certification by the Controller of the City and County of San Francisco as to the availability of construction funds. Refer to Section 00 52 00 (Agreement Form).
 5. **Alternate Bid Item:** A Bid item that may be added to or deducted from the Total Bid Price to meet Project construction budget requirements.
 6. **Application for Payment:** Written request submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9, Payments and Completion.
 7. **Approved Equal:** Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the City Representative. The burden of establishing proof of equality is the responsibility of Contractor. Refer to Division 01 for procedures for proposing substitutions.

8. **Available Project Information:** Refer to Section 00 21 13 (Instructions to Bidders) and Section 00 31 00 (Available Project Information) for identification of Available Project Information, if any, provided by the City. Available Project Information are for informational purpose only and not part of the Contract Documents.
9. **Bid:** A complete and properly executed offer, submitted in accordance with the Bidding requirements, to provide products and services and to perform the Work in accordance with the requirements of the Contract Documents. Refer to Section 00 21 13, Instruction to Bidders.
10. **Bid Documents:** Documents consist of the Advertisement for Bids, Instructions to Bidders, the Bid and all accompanying Bid forms, Bid security or bond, Contract Monitoring Division requirements, the Drawings, the Project Manual, and all Addenda issued prior to receipt of Bids. Refer to Section 00 21 13, Instructions to Bidders.
11. **Bidding Requirements:** Information conveyed in the Sections listed in Section 00 01 10 (Table of Contents) under the heading “Bidding Requirements.”
12. **Bonds:** Bid security, performance and payment (labor and materials) bonds and other instruments of security acceptable to the City. Refer to Paragraph 10.02, Performance Bond and Payment Bond, and Sections 00 43 13, 00 61 13, and 00 61 13/R for Bond forms.
13. **Bulletin:** Refer to “Field Order.”
14. **By Others:** Work on this Project that is outside the scope of Work to be performed by Contractor under this Contract that will be performed by the City, other contractors, or by other means or at another’s expense.
15. **Change Order:** A written instrument prepared by the City issued after the effective date of the Agreement and executed in writing by the City and Contractor, stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; (iii) the extent of the adjustment in the Contract Time, if any; and (iv) an amendment to any other Contract term or condition. Refer to Article 6, Clarifications and Changes in the Work.
16. **Change Order Request (“COR”):** Refer to Paragraph 6.03, Change Order Requests and Proposed Change Orders.
17. **City:** The City and County of San Francisco, California, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. The term “Owner” means the City and its authorized agent or representative.
18. **City Representative:** The authorized on-Site representative of the City identified by the City in writing who will act as the City’s representative with respect to Contractor’s performance of the on-Site inspection and administration of the Contract. All liaisons between the City and Contractor shall be directed through the City Representative. City Representative shall also mean any person designated in writing by the City Representative as having the authority to act as a designee on behalf of the City Representative.
19. **Claim:** A written demand or assertion by Contractor seeking an adjustment of the terms of the Contract Documents, an adjustment in the Contract Sum or Contract Time, or

both, or other relief with respect to the Contract Documents, including a determination of disputes between the City and the Contractor arising out of or related to the Contract Documents for the performance of the Work, which the Contractor may submit in accordance with the requirements of the Contract Documents. Refer to Article 13.

20. **Clarification:** A document consisting of supplementary details, instructions or information issued by the City that clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work or Contract Sum or an extension of Contract Times unless requested by Contractor and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.
21. **Code:** The latest editions of the San Francisco Municipal Code, as well as any State of California, Federal, or local law, statute, ordinance, rule, or regulation having jurisdiction or application to the Project.
22. **Commission:** Refers to the San Francisco Public Utilities Commission. Refer to Section 00 52 00, Agreement Form.
23. **Commissioning:** A systematic quality assurance process including functional, performance, pre-start-up, and start-up tests for facilities, systems, and assemblies to ensure they meet the requirements as set forth in Section 01 75 60, Testing Coordination And Start-Up Testing.
24. **Commissioning Agent:** Refer to “Testing Coordinator” in Section 01 75 60, Testing Coordination And Start-Up Testing.
25. **Commissioning Plan:** The test procedures and start-up plan set forth in Section 01 75 60, Testing Coordination And Start-Up Testing.
26. **Contract:** Refer to “Contract Documents.”
27. **Contract Documents:** Refer to Paragraph 1.02, Contract Documents and Contracting Requirements.
28. **Contract Sum:** The sum stated in the Agreement and, including City-approved adjustments, the total amount payable by the City to Contractor for the performance of the Work under the Contract Documents. Refer to Section 00 52 00, Agreement Form.
29. **Contract Time(s):** The number of consecutive days as stated in Section 00 73 02 (Contract Time and Liquidated Damages) from the start date specified in the Notice to Proceed to: (i) achieve Substantial Completion for all the listed Work; (ii) complete the Work so that it is ready for final acceptance as evidenced by the City’s issuance of written acceptance as required by section 6.22(k) of the Administrative Code; and (iii) achieve any interim Milestones specified in the Contract Documents.
30. **Contracting Requirements:** The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 72 00) and the Sections as listed under Contracting Requirements in the Table of Contents (Section 00 01 10).
31. **Contractor:** The person or entity with whom the City has executed the Agreement and identified as such therein and referred to throughout the Contract Documents as if

singular in number and neuter in gender. The term “Contractor” means Contractor or its authorized representative.

32. **Critical Path:** A continuous chain of activities with zero float running from the start event to the finish event in the schedule.
33. **Critical Path Method (“CPM”):** Refers to the critical path method scheduling technique. Refer to Section 01 32 16, Construction Progress Schedule.
34. **Day:** Reference to “day” shall be construed to mean a calendar day of 24 hours, unless otherwise specified.
35. **Default:** Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.
36. **Delivery:** In reference to an item specified or indicated shall mean for the Contractor and/or Supplier to have delivered and to unload and store with proper protection at the Site. Refer to Paragraph 9.03, Progress Payments, for delivery to another (off-Site) location.
37. **Department Head:** The contracting officer for the Contract, i.e., the General Manager of the San Francisco Public Utilities Commission or his/her designee, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 52 00, Agreement Form.
38. **Designated, Determined, Directed:** Required by the City, unless otherwise specified. Refer to Paragraph 2.01, Administration of the Contract.
39. **Differing Site Conditions:** Refer to Paragraph 3.04, Differing Site Conditions.
40. **Division:** A grouping of sections of the Specifications describing related construction products and activities. Refer to Section 00 01 10 (Table of Contents) for a listing of Division and section numbers and titles.
41. **Drawings:** The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
42. **Effective Date of the Agreement:** The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed by the last of the two parties to sign, or when the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.
43. **Field Order:** A written order issued by the City which provides instructions or requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Paragraph 6.02, Requests for Information, Clarifications and Field Orders.
44. **Final Completion:** The date of written acceptance of the Work by the City, issued in accordance with section 6.22(k) of the Administrative Code, when the Contract Work has been fully and satisfactorily completed in accordance with the Contract Documents.
45. **Force Account Work:** Change Order Work that the City authorizes and will pay for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07, Force Account Work.

- 46. **Furnish:** Purchase and deliver to the Site, including proper storage only; no installation is included. The term “Furnish” also means to Supply and Deliver to the Site.
- 47. **General Requirements:** The General Requirements include all Documents in Division 01, which govern the Contractor’s performance of the Work set forth in all sections of the Specifications.
- 48. **Guarantee to Repair Period:** The period specified in Paragraph 8.03 or Section 01 78 36 (Warranties) during which Contractor must correct Non-conforming Work.
- 49. **Indicated:** Shown or noted on the Drawings or written in the Specifications.
- 50. **Install:** Apply, connect, or erect items for incorporation into the Project; Furnishing or Supplying is not included. The term “Install” also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
- 51. **Installer:** A person engaged by Contractor, its Subcontractor, or its Lower-Tier Subcontractor for performance of a particular element of construction at the Site, including installation, erection, application, and similar required operations.
- 52. **Item:** A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.
- 53. **Key Team Members:** The essential personnel on Contractor’s team identified in any prequalification or bid submission documents, subject to the City’s approval prior to the start of each phase of Work. Contractor and its Subcontractors agree not to transfer or remove said individuals from the Project without the prior written permission or direction of the City, which City will not unreasonably withhold.
- 54. **Lower-Tier Subcontractor or Supplier:** An entity or person that has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish materials or equipment to be incorporated in the Work by Contractor, Subcontractor, or Lower-Tier Subcontractor, as applicable.
- 55. **Milestone:** A principal date or time specified in the Contract Documents relating to an intermediate event prior to Substantial Completion.
- 56. **Modification:** A document incorporating one or more Change Orders or a written instrument modifying the Agreement, which has been executed and approved in the same manner as the Agreement in compliance with the Certification by Controller requirements of the City’s Charter as stated in Section 00 52 00 (Agreement Form) and all requirements set forth in Chapter 6 of the Administrative Code.
- 57. **Non-conforming Work:** Work that is unsatisfactory, faulty, defective, omitted, incomplete, or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referenced in the Contract Documents; or Work that Contractor’s operations has damaged or disturbed prior to Final Completion.
- 58. **Notice of Default:** Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.

59. **Notice of Potential Claim:** Refer to Paragraph 13.02, Notice of Potential Claim.
60. **Notice of Substantial Completion:** The written notice issued by the City to Contractor documenting City's determination that the Work is Substantially Complete. Said Notice shall not be considered to indicate the City's final acceptance of any portion of the Work or relieve Contractor from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.
61. **Notice to Proceed or "NTP":** The written notice issued by the City to Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Contract Time. The Contract Documents may specify more than one NTP applicable to different phases of the Work.
62. **Owner:** Refer to "City."
63. **Paragraph:** A paragraph under an Article of these General Conditions. Refer to "General Conditions-Table of Contents" for a listing of Article and Paragraph numbers and titles.
64. **Partial Utilization:** Right of the City to use a portion of the Work prior to Substantial Completion of the Work.
65. **Project:** Refer to "Work."
66. **Project Manual:** The bound written portion of the Contract Documents prepared for the Bid and Contractor's construction of the Work. A listing of the contents of the Project Manual, which consists of the Documents and Specification sections and may include schedules, is contained in the Section 00 01 10, Table of Contents.
67. **Proposed Change Order ("PCO"):** A document prepared by the City requesting a quotation of cost or time from Contractor for additions, deletions or revisions in the construction Work.
68. **Provide:** Furnish and Install or Supply and Install complete in place at the Site.
69. **Punch List / Final Completion:** A list prepared by the City at Substantial Completion identifying deficient Work Items that the Contractor must correct in order to achieve Final Completion. Refer to Paragraph 9.09, Final Completion and Final Payment.
70. **Punch List / Substantial Completion:** The list provided by the City identifying incomplete or defective Work Items that Contractor must correct or complete to achieve Substantial Completion. Refer to Paragraph 9.08, Substantial Completion.
71. **Quality Assurance ("QA"):** All those planned and systematic actions by Contractor necessary to provide the City with confidence that Contractor has conducted a Quality Control Program and has implemented Quality Control.
72. **Quality Control ("QC"):** Those actions that control and measure the characteristics of an item, process, or facility against established requirements to ensure that a product or service will satisfy given requirements for quality. Contractor and Subcontractors must perform QC.
73. **Reference Documents:** Refer to "Available Project Information."
74. **Regular Working Hours:** 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays.

75. **Request for Information (“RFI”)**: A document submitted by Contractor requesting information from the City about the Project or the Contract Documents.
76. **Request for Product Substitution (“RFPS”)**: A request from Contractor in accordance with the conditions specified in Section 01 25 13 (Product Substitution Procedures) to substitute a material, product, thing or service specified in the Contract Documents with an equal material, product, thing or service. Refer to Paragraph 3.12, Substitutions, and Section 00 49 18, Request for Product Substitution form.
77. **Required**: Mandatory.
78. **Resident Engineer**: See “City Representative.”
79. **Samples**: Physical examples of materials, equipment, or workmanship submitted or provided by Contractor for the City’s adjudication of their compliance with the specification.
80. **Shop Drawings**: All drawings, diagrams, illustrations, schedules and other data or information prepared or assembled by or for Contractor and submitted to City.
81. **Site**: Geographical location of the Project as indicated elsewhere in the Contract Documents.
82. **Special Provisions**: The part of the Contract Documents that amends, modifies, or supplements these General Conditions. The Special Provisions include the 00 73 00-series Documents as listed in Section 00 01 10, Table of Contents.
83. **Specifications**: The portion of the Project Manual comprising Division 00 through Division 48 and listed in Section 00 01 10 (Table of Contents), consisting of requirements and technical descriptions of materials, equipment, systems, standards, and workmanship for the Work, and performance of related administrative services.
84. **Specified**: Written or indicated in the Contract Documents.
85. **Subcontractor**: An entity or person that has a direct contract with Contractor to perform a portion of the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor. The term “Subcontractor” shall also include contracts assigned to Contractor if so provided in the Supplementary Conditions or specified in the General Requirements (Division 01). Unless a Contract Document expressly states to the contrary, the term “Subcontractor” includes an entity or person that has a direct contract with Contractor to provide professional services in connection with the Work such as (but not limited to) engineering services, design professional services, and/or construction administration services.
86. **Submittal**: A written or graphic document prepared by Contractor that the Contract Documents require the Contractor to submit to the City. Submittals may include, but are not limited to progress and submittal schedules, BIM information, shop drawings, product data, samples, design calculations, design data, test reports, and certificates. Submittals other than Drawings or Specifications are not Contract Documents.

87. **Substantial Completion:** The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, or use authorization issued by the agency or agencies having jurisdiction over the Work so that the City can utilize the Work (or a specified part thereof) for the purposes for which it is intended.
88. **Supplementary Conditions:** The portion of the Contract Documents that amends, deletes or modifies these General Conditions. The Supplementary Conditions are set forth in Section 00 73 00.
89. **Supplier:** A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.
90. **Supplier Quality Surveillance (“SQS”):** Ongoing monitoring and verification of the status of conditions, methods, procedures, and products, and analysis of associated records to ensure that the established requirements are being complied with.
91. **Supply:** Refer to “Furnish.”
92. **Total Bid Price:** The sum stated in the Bid for which the Bidder offers to perform the Work described in the Bid Documents. The Total Bid Price shall include the entire cost of all Work necessary for a complete and fully operational structure or facility in accordance with the requirements of the Contract Documents. Refer to Section 00 21 13, Instructions to Bidders.
93. **Testing Agencies:** An independent entity engaged by the City or Contractor, as specified in the Contract Documents, to perform specific inspections or tests, either at the Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.
94. **Unavoidable Delay:** Refer to Paragraph 7.02, Delays and Extensions of Time.
95. **Unilateral Change Order:** A written Change Order issued by the City to the Contractor after the effective date of the Agreement in accordance with Paragraph 6.05.
96. **Unit Price Work:** Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.
97. **Work:** The performance by Contractor of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, providing all labor, materials, equipment, administrative services, Commissioning/start-up services, and documentation required by the Contract Documents. References in the Contract Documents to “Work” may be to items of Work. Refer to Paragraph 1.03.
98. **Working Day:** Any day of the week except Saturdays, Sundays, and statutory holidays.

1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

- A. The Contract Documents set forth the requirements for the construction of the Work, and consist of the following documents:
1. The Agreement and other documents listed in the Agreement;

2. Change Orders, Unilateral Change Orders, Clarifications, and Field Orders issued after execution of the Contract;
 3. The General Conditions (Section 00 72 00);
 4. The Special Provisions (Sections 00 73 00 through 00 73 73) and General Requirements (Div. 01);
 5. The Construction Documents and all Addenda thereto prepared by the City;
 6. The Bid Documents, as defined in Section 00 21 13 (Instruction to Bidders), not in conflict with the foregoing.
- B. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier, or a person or entity other than the City and Contractor.
- C. The Contracting Requirements and the General Requirements contain information necessary for completion of every part of the Project and are applicable to each section of the Specifications. Where items of Work are performed under subcontracts, the Contractor shall be responsible to ensure that the work complies with the Contracting Requirements and General Requirements.

1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS

- A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents will be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the city and/or county where the Project is located.
- B. Contractor is obligated to interpret the Contract Documents described and provide for a functionally complete and operational Project (or part thereof) that Contractor must construct and turn over to the City in a new, complete, and satisfactory operating condition. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Contractor with no change in the Contract Sum or Contract Time.
- C. Arrangement and titles of Drawings, and organization of the Specifications into Divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by any trade. Contractor may arrange and delegate its Work in conformance with trade practices, but Contractor shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The City assumes no responsibility to act as arbiter to establish subcontract limits between portions of the Work.
- D. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

- E. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material for the Work. Where necessary, and where reasonably inferable from the Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to acceptance by the City. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.
- F. In the event of a conflict in the Contract Documents regarding the quality of a product, Contractor shall request Clarification from the City as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.
- G. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. If rerouting, i.e., relocating a duct, pipe, conduit, or similar utilities from the indicated room or space to another room or space to avoid structural interferences, results in a total linear footage which exceeds 125% of the indicated route if the structural interferences did not exist, then Contractor will be compensated for the amount in excess of 125% under the provisions for Change Orders of Article 6. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work; shall be performed in such sequence and manner as to avoid conflicts; shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.
- H. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, Contractor shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.
- I. In the interest of brevity, the Contract Documents frequently 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 shall not affect the interpretation of either statement.
- J. When there is a conflict between existing on-Site conditions and information indicated on the Drawings, other than Differing Site Conditions as defined in Paragraph 3.04, the existing condition shall govern. Contractor shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Contractor should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Bid in accordance with the requirements of Section 00 21 13 (Instruction to Bidders).
- K. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action

or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive.

1.04 AMENDMENT OF CONTRACT DOCUMENTS

- A. The parties may amend the Contract Documents after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) Change Order; (ii) Modification, or (iii) Unilateral Change Order.
- B. In addition, the City may supplement the requirements of the Contract Documents or authorize minor variations and deviations in the Work in one or more of the following ways: (i) a Field Order; (ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 3.11.

1.05 RESOLUTION OF CONFLICTING TERMS; PRECEDENCE OF CONTRACT DOCUMENTS

- A. The Contract Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract Documents shall not be deemed to be in conflict. It is expressly agreed by and between Contractor and the City that should there be any conflict between the terms of the Contract Documents and the Bid submitted by Contractor, the Contract Documents shall control and nothing herein shall be considered as an acceptance of any terms of the Bid that conflict with the Contract Documents.
- B. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):
 - 1. Modifications in inverse chronological order, and in same order as specific portions they are modifying.
 - 2. Executed Agreement Form.
 - 3. Addenda.
 - 4. Division 01 (General Requirements).
 - 5. Division 00 (Bidding and Contract Requirements).
 - 6. Divisions 02 through 48 (Technical Specifications).
 - 7. Construction Drawings.
 - 8. Bid Documents.
- C. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):
 - 1. Written numbers over figures, unless obviously incorrect.
 - 2. Figured dimensions over scaled dimensions.

3. Large-scale Drawings over small-scale Drawings.
4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.
5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails.

1.06 REUSE OF CONTRACT DOCUMENTS

The Contract Documents are for the Work of this Contract only. No part of the Contract Documents may be used for any other construction project or for any other purpose except with the written consent of the City. Any unauthorized use of the Contract Documents is at the sole liability of the user.

ARTICLE 2 - CITY'S RESPONSIBILITIES AND RIGHTS

2.01 ADMINISTRATION OF THE CONTRACT

- A. The City shall administer the Contract as described in the Contract Documents. Division 01 addresses administrative requirements and procedures.
- B. The Department Head will designate in writing an authorized representative with limited authority to act on behalf of the City. The City may at any time during the term of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with the City's Charter and codes. City will communicate such changes to Contractor in writing. Contractor assumes all risks and consequences of performing work pursuant to any order, including but not limited to instruction, direction, interpretation or determination, issued by anyone not authorized to issue such order.

2.02 INFORMATION AND SERVICES

- A. The City will make the Site available to Contractor so that Contractor can inspect the Site and perform the Work.
- B. The City will furnish survey and reports describing physical characteristics, legal limitations, and utility locations for the Site.
- C. The City will make available to the Contractor as Available Project Information only, information available to the City concerning the Site and the Project. The City will assist with, but not be responsible for, the filing of documents required to obtain necessary approvals of governmental authorities, jurisdictional agencies, or utility companies having jurisdiction over the Project. Such assistance may be in the form of executing permits where owner's signature is required or in the providing of information that would not otherwise be available to Contractor. The Contractor shall be responsible for payment of related services, fees or taxes except as specified in Paragraph 3.07.
- D. The City will be responsible for paying all real property taxes and assessments applicable during the performance of the Work or portions thereof.

- E. The City will apply and pay for any required building permit and pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Contractor in accordance with Paragraph 3.07.
1. The City's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

2.03 RIGHT TO STOP THE WORK; CONTRACTOR'S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH CONTRACT

- A. The City may order Contractor to stop the Work, or a portion thereof, if City determines Contractor is not performing the Work in accordance with the Contract until Contractor eliminates or addresses the cause for such order. City shall issue any such order to stop the Work in a written document signed by the City Representative, which provides the Contractor with an effective date for stopping Work. The City may issue an order to stop Work immediately. Unless otherwise agreed to by the City, Contractor shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of an order to stop the Work.
- B. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or other person or entity.
- C. The City may order Contractor to stop the Work, or a portion thereof, for reasons including but are not limited to the following:
1. Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents; or
 2. Contractor fails to carry out Work in accordance with the Contract Documents; or
 3. Contractor disregards the authority of the authorized City Representative; or
 4. Contractor disregards the laws or orders of a public body having jurisdiction over the Project; or
 5. Contractor violates any material provisions of the Contract Documents; or
 6. Contractor fails to maintain current certificates of insurance on file with the City; or
 7. Contractor is proceeding with original Contract Work, which will be modified by a pending Change Order.
- D. Alternatively, the City may issue a written notice to Contractor identifying the ground(s) for ordering Contractor to stop Work and providing the Contractor with a 14-day cure period to complete necessary corrective Work and/or actions. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Contractor or its Subcontractors and Suppliers, Contractor shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence and prosecute the corrective Work and/or actions diligently. The City, after accepting Contractor's proposed schedule, will amend the stop work notice in writing to set forth the agreed-upon cure period. If Contractor fails to completely cure the ground(s) for stopping Work either (i) within the

14-day cure period set forth in the notice; or (ii) within the agreed-upon cure period set forth in an amended notice, the City may, without prejudice to any other rights or remedies that the City may have, order Contractor to stop the Work until the cause for such order has been eliminated.

- E. In the event that Contractor (i) fails to maintain current certificates of insurance on file with the City; (ii) commits criminal or unlawful acts; (iii) creates safety hazards; or (iv) commits acts or creates conditions that would have an immediate adverse impact on the well-being of the Project, the City, the public, and/or Contractor's employees, the City shall have the right to order Contractor to stop the Work immediately, without prior notice.

2.04 RIGHT TO CARRY OUT THE WORK

- A. In the event that Contractor fails to carry out the Work in accordance with the Contract Documents and fails to correct or prosecute the Work promptly within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies.
- B. In such case the City will deduct all costs of such corrections, including the labor costs of City staff and consultants, from amounts due to Contractor. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Contractor shall promptly reimburse the City.

2.05 EXAMINATION OF RECORDS; AUDIT

- A. The City shall have the right to examine, copy, and audit all documents whether paper, electronic, or other media, and electronically stored information, including but not limited to, any and all books, estimates, records, contracts, documents, bid documents, proposal cost data, subcontracts, schedules, job cost reports, and other data, including computations and projections, of Contractor, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (i) a Proposed Change Order Cost Proposal; (ii) a Proposed Change Order Time Adjustment Proposal; (iii) Force Account Work; or (iv) a Contract Claim. In the event that Contractor is a joint venture, said right to examine, copy, and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.
- B. Upon written notice by the City, Contractor immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05A for examination, audit, or reproduction. City's Notice will be in writing, delivered by hand or by certified mail, and will provide not fewer than 5 days of notice of the examination and/or audit. The City may take possession of the records and materials noted in subparagraph 2.05A by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Contractor shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.

- C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.
- D. The City may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three years after final payment under this Agreement.
- E. Failure by the Contractor to make available any of the records or materials noted in subparagraph 2.05A or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination for Cause.
- F. Contractor shall insert and require the insertion of a clause containing all the provisions of this Paragraph in all subcontracts in excess of \$10,000 with Subcontractors and Suppliers of all tiers.

2.06 NO WAIVER OF RIGHTS

- A. None of the following shall operate as a waiver of any provision of the Contract Documents or of any power herein reserved by the City or any City right to damages herein provided:
 - 1. inspection by the City or its authorized agents or representatives; or
 - 2. any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
 - 3. any extension of time; or
 - 4. any position taken by the City or its authorized agents or representatives.

2.07 CITY NOT LIABLE FOR CONSEQUENTIAL DAMAGES

The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential, or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation, or rescission of the Work or this Contract; negligence or strict liability by the City, its boards and commissions, and their representatives, consultants, or agents.

2.08 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK

By executing this Agreement, Contractor agrees that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties: (i) order changes, additions, deletions, and extras to the Work after execution of the Contract and issue from time to time throughout the period of construction, regardless of their scope, number, cumulative value, or complexity, to correct errors, omissions, conflicts, and ambiguities in the Contract Documents, or to implement discretionary changes to the scope of Work requested by the City; (ii) issue changes, additions, deletions, and extras in a manner that is not in sequence with the as-built or as-planned progress of the Work; (iii) issue changes due to Unforeseen or Differing Conditions; (iv) suspend the Work, or parts thereof, or limit access to portions of or all of the Work, for the convenience of the City or in the interests of the Project; or (v) delay or disrupt the Work due to failure of the City to timely perform any contractual obligation.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

3.01 GENERAL CONSTRUCTION RESPONSIBILITIES

- A. Services and Standards. The Contractor shall perform or furnish all construction and related services as set forth in the Contract Documents. Contractor shall provide all construction services necessary for receipt of all occupancy permits and authorizations to operate for a facility meeting or exceeding all specification requirements as agreed upon by the City and Contractor, and as set forth in the Contract Documents. Contractor assumes responsibility for on-budget, on-schedule delivery of the Project regardless of its contractual agreements with parties other than the City.
- B. Key Team Members. Contractor acknowledges and agrees that the City-selected Contractor upon the representation that the Key Team Members identified in any prequalification or bid submission documents (e.g., Experience Statement, Section 00 49 12) would be the Key Team Members involved in the services for the Project. Any changes in assignment or replacement of the Key Team Members, may be done only with the prior written consent of the City, which consent may be given or withheld in the sole, subjective (but not arbitrary) discretion of the City. In the event of a withdrawal from the Project by Key Team Members due to circumstances outside the control of Contractor, such as death, long-term illness, or resignation by any such Key Team Members, Contractor shall promptly notify the City in writing and shall submit for City approval its candidate to replace such individual.
- C. Cooperation. Contractor shall provide the City, its employees, consultants, and other representatives, and representatives of other authorities having jurisdiction, with full cooperation in the performance of their duties and responsibilities related to the Work covered by the Contract and shall maintain civil decorum on the Project site. Such cooperation may take the form of providing appropriate personnel to attend meetings, reviews, hearings, inspections, or similar project-related functions, and to provide documents as requested.

3.02 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

- A. The Contract Documents are not complete in every detail but show the purpose and intent only, and Contractor shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy, or ambiguity which appear in the Contract Documents, instructions, or work performed by others.
- B. Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Contractor shall be responsible for the accuracy of such dimensions and determinations.
- C. Contractor shall carefully review the appropriate portions of the Contract Documents a minimum of 30 days in advance of performing its Work for the express purposes of checking for any manifest errors, omissions, discrepancies, or ambiguities. Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies, or additional administrative effort caused by Contractor's untimely review of the Contract Documents.

- D. Contractor shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies, or ambiguities, and the City will issue a Clarification or RFI reply as to the procedure to be followed. If Contractor proceeds with any such Work without receiving such Clarification or RFI reply, it shall be responsible for correcting all resulting damage and Non-conforming Work.
- E. Contractor shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and field conditions and to implement and administer a Request for Information (“RFI”) system throughout the Contract Time in accordance with the requirements of Division 01. Contractor shall be responsible for costs incurred by the City for the work of the City’s consultants and City’s administrative efforts in answering Contractor’s RFIs where Contractor reasonably could have determined the answer by reviewing the Contract Documents.
- F. Prior to start of Work, Contractor and the City Representative shall visit the Site and adjacent properties as necessary to document existing conditions including photographs. Contractor shall document these conditions and shall submit to the City prior to the start of Work a complete report of existing conditions determined by the Site survey as indicated in Division 01.

3.03 SUPERVISION OF THE WORK

- A. Unless there are specific provisions in the Contract Documents to the contrary, Contractor shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Contractor shall be solely responsible for Contractor’s failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Contractor, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Contractor shall be responsible for maintaining safe conditions on the Site at all times, in accordance with Article 12.
- B. Contractor shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper sequence and without delay of materials, devices, or provisions for future Work.
- C. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or contractors, then Contractor shall require the Subcontractor to:
 - 1. Coordinate its Work with the dependent work;
 - 2. Provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
 - 3. Supply and install items to be built into dependent work of others;
 - 4. Make provisions for dependent work of others;
 - 5. Examine dependent drawings and specifications and submittals;
 - 6. Examine previously placed dependent work;
 - 7. Check and verify dependent dimensions of previously placed work;

8. Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
 9. Not proceed with its Work until any unsatisfactory dependent conditions have been corrected.
- D. Contractor shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing stated herein shall be interpreted to relieve Contractor of any of its obligations or liabilities under this Contract, or of performing its duty to direct and supervise the Work.
- E. Contractor shall at all times permit the City, its agents, and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; and (ii) reject materials that do not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, Contractor shall not permit the Work to be covered up before inspection and approval by the City as set forth in Article 8.
- F. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the City of such desire and request and obtain the City's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the City may make the necessary arrangement for testing and inspection.
- G. If Contractor receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.
- H. During all disputes or disagreements with the City, Contractor shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing.

3.04 DIFFERING SITE CONDITIONS

- A. Consistent with section 7104 of the California Public Contract Code, if Contractor encounters any of the following conditions at the Site, Contractor shall promptly notify the City in writing of the specific differing conditions before such conditions are disturbed and before performing any affected Work to permit the City to timely investigate the conditions.
1. Material that Contractor believes may be classified as hazardous waste, as defined in California Health and Safety Code section 25117, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of law.

2. Subsurface or latent physical conditions at the Site (including hazardous waste) that differ materially from those indicated by City-provided information about the Site made available to contractors prior to the deadline for submitting Bids.
 3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.
- B. Contractor's written notice shall include the following information concerning such conditions: (i) location; (ii) nature and extent; (iii) a description of how such conditions affect the Work; (iv) recommended methods to overcome such conditions; (v) the baseline conditions described in the Contract Documents that formed the basis of Contractor's expectations regarding the conditions that would be encountered; and (vi) the results of any testing, sampling, or other investigation conducted by Contractor.
- C. Differing Site Conditions shall not include:
1. All that is indicated in or reasonably interpreted from the Contract Documents or Available Project Information;
 2. All that could be seen on Site from a reasonable pre-bid visual site inspection;
 3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Available Project Information; and
 4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Available Project Information.
- D. The City will promptly investigate the conditions reported in Contractor's written notice and will issue written findings to Contractor.
- E. Contractor shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.
- F. Only if the City determines, in its sole and reasonable discretion, that the conditions reported do materially so differ, and cause a decrease or increase in Contractor's cost or time required to perform all or part of the Work, will the City issue a Change Order as provided in Article 6 of these General Conditions. If the City determines that a Differing Site Condition exists, Contractor shall promptly submit a Cost Proposal and/or Time Adjustment Proposal, as appropriate, per Article 6 to facilitate the timely negotiation and execution of a Change Order.
- G. If Contractor disagrees with the City's determination and wishes to pursue an adjustment to the Contract Sum and/or Contract Time, Contractor must timely submit a written Notice of Potential Claim to the City as provided in Paragraph 13.02 of these General Conditions. Contractor's Notice of Potential Claim must include the information required by Paragraph 13.02, and must also identify the Escrow Bid Documents that formed the basis of Contractor's Bid to perform the Work affected by the alleged differing condition. In the event of such disagreement, Contractor shall proceed with all Work to be performed under the Contract Documents and shall not be excused from any scheduled completion date provided for by the Contract Documents.

- H. If Contractor fails to comply with the requirements of this Paragraph concerning the timing and content of any notice of Differing Site Conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged Differing Site Conditions, Contractor agrees that by such failure it has waived any and all rights to pursue any Contract Claim or seek any remedies in any subsequent proceedings (e.g., Government Code Claims and litigation) including any adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

3.05 PROJECT MANAGER AND OTHER KEY TEAM MEMBERS

- A. Contractor shall at all times be represented at the Site by Contractor's competent project manager or superintendent whom it has authorized in writing to make decisions and receive and carry out any instructions given by the City. Contractor shall be responsible for faithful compliance with such instructions. Prior to the issuance of Notice to Proceed, Contractor shall inform the City in writing of the name, address, and cell phone number of its project manager whom it has authorized to act as its representatives at the Site and who the City may contact in case of emergencies at the Site during non-working hours, including Saturdays, Sundays, and holidays. If Contractor is a joint venture, it shall designate only one such representative. Contractor shall also provide City with contact information for persons to contact if City is unable to reach Contractor's project manager, such as general construction superintendents, project coordinators, and foremen.
- B. The City reserves the right to reject Contractor's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.06A. The City shall be given written notice of, and shall have the right to approve, replacement of Contractor's project manager, superintendents, and foremen.
- C. In the event that the Contractor proposes to substitute for any Key Team Member during the term of the Contract, Contractor shall submit to the City Representative, at least 7 days prior to engaging the person, an Experience Statement form (Section 00 49 12) for the City's review and acceptance. Any proposed substitution is subject to the approval of the City Representative based upon qualifying experience on similar projects as set forth in the Bid Documents for the project. Failure to obtain the City's acceptance shall not constitute an excuse for Contractor delay in prosecuting the Work. In addition, the City may issue an order to stop the work under Article 2.03 until such time as the Contractor engages persons possessing skills and qualifications acceptable to the City.

3.06 LABOR, MATERIALS AND EQUIPMENT

- A. Contractor shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's written directive, Contractor shall discharge from the Work and replace at no additional cost to the City an employee, Subcontractor, or Supplier used on the Work who, in the City's sole judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent, or member of the public; or (iii) commits racist or other discriminatory actions or communicates or displays racist or other discriminatory statements or insignia; or (iv) is refusing to carry out the provisions of the Contract.
- B. In order that the City can determine whether Contractor has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of

the Work and materials, Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

- C. Before ordering materials, equipment, or performing Work, Contractor shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work as specified in Paragraph 3.01. If a discrepancy exists, Contractor shall notify the City immediately and request the City to provide a clarification. Upon commencement of a particular item of Work, Contractor shall be responsible for dimensions related to such item of Work.
- D. Contractor shall be responsible for delivery, handling, storage, installation, and protection of all materials and equipment to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged materials and equipment at the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Contractor shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.
- E. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities, and incidentals necessary for the performance, testing, start-up, and completion of the Work in accordance with Division 01.
- F. In the event that Division 01 does not require a field office for the City Representative, Contractor shall provide adequate separate sanitary facilities at the Site for the City Representative.

3.07 PERMITS, FEES, AND NOTICES

- A. Contractor shall pay all utility charges for temporary connections to the Work.
- B. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits (other than the building permit), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work. See Section 00 73 00 (Supplementary Conditions), Appendices A and B, as applicable.
 - 1. Contractor shall coordinate and obtain all permits prior to starting Work for which permits are required.
 - 2. The City will reimburse Contractor for reasonable costs incurred for obtaining permits that are not specified in the Bid Documents to be obtained at Contractor's expense.
- C. Contractor shall give all notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities that relate to performance of the Work including those specified in California Civil Code section 832.

- D. Contractor shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Contractor shall timely deliver, post, and maintain all notices required by such permits. Contractor shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Contractor's failure to coordinate or comply with the conditions of such excavation permits, Contractor shall pay all costs, assessments, fines, and penalties resulting therefrom.
- E. If Contractor observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, Contractor shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules, or regulations, the City will make necessary changes to the Contract Documents by appropriate amendment.
- F. If Contractor performs Work it knows, or reasonably should have known, to be contrary to the Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Contractor shall assume responsibility for such Work and shall bear all costs of correction.
- G. Contractor shall keep the permits, an approved set of Drawings and Specifications, and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.
- H. Contractor shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. Contractor shall notify the City Representative in accordance with Article 8, so that the appropriate City representatives and inspectors can be present at these inspections.
- I. Contractor shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.
- J. Contractor shall submit to the City Representative as a condition precedent to Final Completion signed copies of permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

3.08 RECORD DOCUMENTS

- A. Contractor shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and approved shop drawings, samples, and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed, all in accordance with the Specifications. Additionally, Contractor shall provide record documents that conform to the requirements specified in Division 01.
- B. Contractor shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in

subparagraph 3.08A. The City shall have the right to withhold 25% of progress payments due to Contractor until Contractor has complied with this Paragraph 3.08

- C. Contractor shall make record documents available for inspection by the City at all times and shall deliver such documents to the City prior to Substantial Completion.

3.09 CONTRACTOR'S DAILY REPORT

- A. Contractor shall complete, and submit to the City on the next day, consecutively numbered daily construction reports in accordance with Division 01.
- B. In addition, whenever Force Account Work is in progress, Contractor shall complete and submit to the City detailed written daily Force Account Work reports as provided under Paragraph 6.07.

3.10 PROGRESS AND SUBMITTAL SCHEDULES

- A. At the Pre-Construction Conference, Contractor shall submit to the City for review a 60 day bar chart type Plan of Operation as required by Division 01.
- B. Prior to commencing Work, Contractor shall submit to the City for review and approval the following documents:
 - 1. A cost-and-resource-loaded baseline construction schedule for the Work which shall use, unless otherwise specified in Division 01, the critical path method ("CPM"), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various stages of the Work, including all milestones and special constraints specified in the Contract Documents; and
 - 2. A submittal log, coordinated with the progress schedule in accordance with the requirements of Division 01, listing all submittals required by the Contract, their cognizant specification reference, and indicating the times for submitting such submittals.
- C. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Contractor shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.10A. Contractor shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.
- D. City will not issue any progress payments to Contractor unless and until Contractor submits and the City accepts the baseline schedule in accordance with Section 01 32 16, Construction Progress Schedule.
- E. Contractor shall adhere to the baseline construction schedule accepted by the City in accordance with subparagraph 3.10C and as may be adjusted during the performance of the Work in accordance with the Contract Documents. Contractor shall submit to the City for acceptance proposed revisions or adjustments in the baseline construction schedule. Contractor must submit to the City proposed adjustments in the baseline construction schedule that will change the Contract Times in accordance with Paragraph 7.02.

- F. City's acceptance of baseline construction and submittal schedules will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from its full responsibility therefor.
- G. Contractor shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03 and Section 01 20 00, Price and Payment Procedures. Contractor shall submit all updates to the City for the City's acceptance; if rejected, Contractor shall correct and resubmit updates to the City's satisfaction before City will approve any pending application for payment.
 - 1. Each progress schedule update shall continue to show all Work activities including those already completed and those of changed Work.
 - 2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates activities were actually started and completed and the actual percent complete of activities.
 - 3. Contractor's submission of progress schedule updates, reports, curves, or narratives, or the City's acceptance of such progress schedule updates, reports, curves, or narratives, shall not amend or modify, in any way, the Contract Time or milestone dates or modify or limit, in any way, Contractor's obligations under this Contract.
 - 4. Contractor waives its rights to time extensions based on changed Work if Contractor has failed to meet its obligations to provide monthly schedule updates as specified herein.
- H. Early Completion Schedule: If Contractor submits a baseline schedule that shows a completion time that is earlier than the Contract Time, the "float" or slack time shall belong to the Project and is an expiring resource available to City or Contractor as needed to meet Milestones or complete the Work within the Project Time. Contractor shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float."

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- A. Shop drawings, product data, samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.
- B. Contractor shall review, approve, stamp, and submit to the City as specified in Division 01 shop drawings, product data, samples, and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. City may return submittals from Contractor that are not required by the Contract Documents without taking any action.
- C. By approving and submitting shop drawings, product data, samples, and other submittals, Contractor represents that it has determined and verified materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

- D. Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples, and other submittals until the respective submittal has been received, reviewed, and approved or received, reviewed, and accepted by the City and returned to Contractor. Such Work shall be in accordance with approved/accepted submittals. Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect, or late submittals.
- E. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk, and responsibility of Contractor.
- F. The review, acceptance, approval, or other action taken by the City upon Contractor's submittals such as shop drawings, product data, samples, and other submittals, shall apply to general design concepts only, and shall in no way relieve Contractor from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.02, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City will review submittals with reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Section 01 33 00 (Submittal Procedures), to permit adequate review. Approval/acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Contractor's obligation. Contractor shall be responsible to provide engineering Items or other service necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction without changes to the Contract Sum or Contract Time. City is not precluded, by virtue of such approvals/acceptances, from obtaining a credit for construction costs resulting from approved concessions in the Work or materials therefor.
- G. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples, and other submittals unless Contractor has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.
 - 1. Contractor shall indicate any deviations clearly and boldly on shop drawing, product data, samples, or related submittals.
 - 2. For resubmitted shop drawings, product data, samples, and other submittals, Contractor shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.
- H. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples, or similar submittals by the City's approval thereof.

3.12 SUBSTITUTIONS

- A. Pursuant to section 3400 of the California Public Contract Code, Contractor shall submit for approval to the City a properly completed Request for Product Substitution (Section 00 49 18) for each material, product, thing, or service that it proposes to substitute in place of, and as the equal, of a material, product, thing, or service specified in the Contract

Documents by trade name or by the names of any particular patentee, manufacturer, or dealer. Failure to submit said Request for Product Substitution form within the period specified in Section 00 49 18 will be deemed adequate and reasonable grounds for refusal by the City to consider any subsequent proposed substitutions.

- B. The requirements for obtaining approval of substitutions shall be as specified in Section 01 25 13, Product Substitution Procedures.

3.13 USE OF SITE

- A. Contractor shall confine its operations at the Site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.
- B. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. Contractor shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties including but not limited to notice in accordance with section 832 of the California Civil Code. Contractor shall obtain all such permits, rights-of-way, and easements at no cost to the City.
- C. Contractor shall carry out pumping, draining, and control of surface and ground water and excavating or other earthwork so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.
- D. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part of the Work or adjacent property to stresses or pressures that will endanger it.
- E. Contractor shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

3.14 ACCESS TO WORK

During the performance of the Work, the City and its authorized representatives, including City consultants performing necessary project-related functions on behalf of the City (e.g., construction management personnel and design professionals), or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Project site, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any materials for use in the Work are being, or are to be, manufactured. Contractor shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or

similar agreements requiring the signatory to defend, hold harmless, and/or indemnify Contractor for claims arising out of or relating to the Work, the Project, or the Site.

3.15 CUTTING AND PATCHING

- A. Contractor shall be responsible for performing, in accordance with the requirements of the Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.
- B. Contractor shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching, or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Contractor shall not withhold from the City Contractor's consent to cut or otherwise alter the Work.

3.16 CLEANING UP AND REMOVING DEBRIS

- A. Contractor shall keep the Site and surrounding area, including public areas immediately adjacent to the Site such as temporary pedestrian walkways and sidewalks, free from accumulation of excess materials, rubbish, graffiti, and debris.
 - 1. Contractor shall perform such clean up and removal in accordance with the requirements of the Specifications.
 - 2. Prior to Substantial Completion Contractor shall remove from and about the Site excess materials, rubbish, Contractor's tools, construction equipment, and machinery and shall perform final cleaning as specified in accordance with the requirements of the Specifications.
 - 3. Contractor shall remove and dispose of excess materials, rubbish, and other debris in conformance with applicable laws and regulations.
- B. If Contractor fails to comply with this provision or to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due to Contractor under the Contract after providing written notice to Contractor and Contractor's failure to provide clean up as provided in the Contract Documents within 3 days of Contractor's receipt of such written notice.
- C. Contractor shall salvage and deliver to the City removed equipment, appurtenances, and other materials that are not reused in the Work and indicated by the City to be salvaged. Contractor shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances, and other materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

3.17 INTELLECTUAL PROPERTY; ROYALTIES AND INDEMNIFICATION

- A. Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device,

material, article, or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

- B. Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article, or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.
- C. To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the City and all its officers and employees connected with the Project, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks, or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or does not have the lawful right to sell the same.
 - 1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract. The notice, cooperation, and control of defense provisions set forth in Paragraph 3.20 shall apply to this intellectual property indemnity.
- D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's sole expense and at no cost to the City, (i) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (ii) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.
- E. Subparagraphs 3.17C and 3.17D, above, shall not apply to any suit, claim, or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) arising from any unauthorized modifications to the Work by the City or its agents or (ii) arising from the combination of Work with any products or services not provided or recommended by Contractor where the combination is the basis for infringement.

3.18 WARRANTY

- A. Contractor warrants and guarantees to the City that materials and equipment provided under the Contract shall be at least of the quality specified and new unless otherwise required or permitted by the Contract Documents and if no quality is specified, then the

materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity; that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents.

1. Contractor additionally warrants manufacturers' product warranties: (i) for the Guarantee-to-Repair Period; and (ii) for any duration that may be specified in the Contract Documents for any particular product.
- B. Contractor's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear. Testing shall not be construed as operation.
- C. Contractor shall deliver product warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Final Completion. Compliance with this requirement is a condition precedent to Contractor's achievement of Final Completion the City's obligation to issue a final payment.
- D. The warranty provisions of this Paragraph 3.18 are separate and additional to the provisions for the Guarantee to Repair Period and correction of Non-conforming Work as specified in Article 8.

3.19 TAXES

Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening.

3.20 INDEMNIFICATION

- A. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses, and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct of any person indemnified herein. Contractor's obligations under this Paragraph apply regardless of whether or not such claim, suit, action, loss, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between Contractor and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.
 1. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend

City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false, or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

- B. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
- C. The City and other indemnified parties specified in subparagraph 3.20A shall provide Contractor with prompt written notice after receipt of any claim, action, or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Contractor, City, and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Contractor; otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, information, and witnesses, as needed to the extent there is no material conflict of interest.
 - 1. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.

2. If Contractor does not assume and conduct the defense of any claim as required above,
 - (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner reasonably deemed appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and
 - (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Paragraph 3.20.
- D. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- E. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate reasonably and in good faith the amount of damages and to pay the same, and City will deduct the amount so paid from the amount due to Contractor under this Contract, or the City will retain an appropriate amount from the amount due to Contractor under this Contract until all suits or claims for said damages shall have been settled or otherwise disposed of and Contractor has provided satisfactory evidence to that effect to the City.
- F. The defense and indemnity obligations of this Paragraph shall survive Final Completion and termination of this Contract. Contractor's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during the course of the Work.

3.21 COMPLIANCE WITH LAWS; INDEMNIFICATION

- A. Contractor shall keep itself fully informed of and comply with the Charter, ordinances, and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders, or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.
- B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and Contractor and any and all persons, firms and corporations employed by or under it shall observe and comply said laws and requirements.
- C. As required by and in accordance with the procedures specified in Paragraph 3.20 Indemnification, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting

within the scope of the duties entrusted to them, from all claims or liability arising from the violation of law, regulation, order, or decree by Contractor or its Subcontractors or Suppliers of all tiers in connection with or resulting from performance of the Work.

- D. If the City incurs any fines or penalties because of Contractor's (or a Subcontractor's or Supplier's) failure to comply with a law, regulation, order, or decree, the City may deduct the amount of the fine or penalty from the Contract Sum.
- E. Authorized persons may at any time enter upon any part of the Work to ascertain whether Contractor is following with applicable laws, regulations, orders, or decrees. Contractor shall promptly notify the City Representative if a regulatory agency requests access to the job site or to records. Contractor shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Contractor.
- F. Contractor shall not be entitled to any increase in the Contract Time or Contract sum as a result of Contractor's compliance with this Paragraph 3.21.

3.22 LIABILITY OF CONTRACTOR – CONSEQUENTIAL DAMAGES

Contractor shall have no liability to City for any type of special, consequential, or incidental damages arising out of or connected with Contractor's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, or cancellation of the services under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude: (i) Contractor's obligation to pay Liquidated Damages as set forth in the Contract Documents; (ii) damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (iii) Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in the General Conditions (Section 00 72 00); (iv) Contractor's liability for any type of damage to the extent such damage is required to be covered by insurance as specified in the Contract Documents; (v) wrongful death caused by Contractor; (vi) punitive or treble damages; (vii) Contractor's liability for damages expressly provided for in this Agreement, including without limitation statutory damages imposed by the City upon Contractor under the City Ordinances and Municipal Codes specified in this Agreement; and (viii) Contractor's warranties and guarantees under the Contract Documents.

ARTICLE 4 - SUBCONTRACTORS

4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- A. Under section 1725.5 of the California Labor Code, all Subcontractors who bid or work on a public works project must register and pay an annual fee to the California Department of Industrial Relations. No unregistered Subcontractor, regardless of the dollar amount of subcontract work, may be awarded a contract for public work on a public works project. Contractor shall not employ a Subcontractor that does not maintain a current registration with the California Department of Industrial Relations to perform Work on this Project.

- B. Unless otherwise specifically provided by the Contract Documents, Contractor shall only engage in subcontracting in accordance with the governing regulations regarding subcontracts, section 6.21 of the Administrative Code, and section 1771.1 of the California Labor Code. Section 6.21 and section 1771.1 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer, and performance of subcontracts.
- C. Contractor shall not employ a Subcontractor, Supplier, or other person or entity that the City has determined unqualified or non-responsible. The City may give written notice of such determination prior to award of the Contract or at any time during the Contract Time, and upon receipt thereof Contractor shall provide replacement with a qualified person or entity. The City shall have the right of approval and shall not be responsible for added costs to Contractor, if any, of employing such replacement person or entity.

4.02 SUBCONTRACTUAL RELATIONS

Contractor shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Contractor by the applicable terms and conditions of the Contract Documents, in the same manner Contractor is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Supplier. Contractor shall be responsible for ensuring that all Subcontractors and Suppliers have similar agreements with Lower-Tier Subcontractors and Lower-Tier Suppliers and shall be responsible to the City for any and all damages arising out of Contractor's failure to meet this obligation. Contractor shall give all Subcontractors and Suppliers copies of the contract documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, Contractor shall identify written terms and conditions of its proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

4.03 ASSIGNABILITY OF SUBCONTRACTS

- A. Contractor shall ensure all subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers are freely assignable to the City under the following conditions:
 - 1. The City terminates the Contract for cause under provisions of Article 14;
 - 2. The City requests such assignment; and
 - 3. The surety providing the performance bond for the Project fails timely to fulfill its obligations under the performance bond.
- B. The City will notify the Subcontractors and Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

4.04 SUCCESSORS AND ASSIGNS

- A. Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.

- B. Contractor shall conduct all transactions with Subcontractors, and no Subcontractor may relieve Contractor of any of its liabilities or obligations under the Contract.
- C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Contractor shall remove such Subcontractor immediately upon written request of the City, and following a reasonable cure period designated by the City in its sole discretion, Contractor shall request City for approval of a replacement Subcontractor to perform the Work in accordance with Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq., at no added cost to the City.
- D. Contractor shall not assign the Contract to any other party except upon the written approval of the City in accordance with Administrative Code section 6.22(d).

ARTICLE 5 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as included in Contractor's Bid price and no direct or additional payment will be made therefor.
- B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work not indicated in the Contract Documents or underway at the time of advertising for Bids materially increases Contractor's costs, then Contractor may submit a Change Order Request therefor in accordance with Paragraph 6.03.
- C. If the City gives Contractor written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Contractor is already performing Work, Contractor shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Contractor shall provide the City Representative written notice when it has completed cleanup and demobilization. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Contractor shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.
- D. If Contractor requires access to a location where another contractor is performing work, Contractor shall request such access in writing from the City Representative. The City Representative will provide written notice to Contractor when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification,

Contractor shall have full access and shall commence or resume its operations in that location.

- E. If Contractor believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01C or 5.01D above, it shall comply with the notification requirements of Paragraph 7.02.
- F. When it is necessary for Contractor and another contractor or utility owner to work in the same location at the Site, each party shall coordinate and cooperate with the other party at no additional cost to the City.
- G. In case of dispute or lack of coordination between Contractor and other contractor(s) or the City, the City Representative will issue a written directive(s) resolving the dispute or addressing the lack of coordination, and Contractor shall follow any such directive(s) subject to its right to seek time and/or money under the terms of the Contract Documents as compensation for the impact of complying with the directive(s).
- H. Contractor agrees to indemnify, defend, and hold the City harmless for all claims or losses that the other contractors may incur as a result of their inability to reasonably obtain work areas under the control of the Contractor.

5.02 COORDINATION

- A. Contractor shall afford other contractors and the City reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.
- B. Notice of Conflicting Conditions: Where Contractor's Work is adjacent to or placed on top of that of another contractor, Contractor shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Contractor proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.
 - 1. The foregoing does not apply to latent defects. Contractor shall report to the City latent defects in another contractor's work promptly upon discovery.
- C. Contractor shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract as directed.
- D. Any difference or conflict that may arise between Contractor and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.
- E. If so directed by the City, Contractor shall prepare coordination drawings as necessary to coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Contractor may submit a Change

Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

- F. At any time during the progress of the Work, the City may, by providing reasonable notice, require Contractor to attend any conference of any or all of contractors engaged in the Work.
- G. If the City determines that Contractor is failing to coordinate its Work with the work of other contractors as directed, the City may upon 72 hour written notice:
 - 1. Withhold any payment otherwise owed under the Contract until Contractor complies with the City's directives; or
 - 2. Direct others to perform portions of the Contract and charge the cost of the Work against the Contract Sum; or
 - 3. Terminate any or all portions of the Contract for Contractor's failure to perform in accordance with the Contract.

5.03 CLEAN UP RESPONSIBILITIES

- A. Contractor and other contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.
- B. In the event of conflicts, the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct from the Contract Sum the proportionate cost of said cleanup that is attributed to Contractor's failure to clean up its work area.

ARTICLE 6 - CLARIFICATIONS AND CHANGES IN THE WORK

6.01 GENERALLY

- A. The City may, at any time between the date of issuance of Notice to Proceed and the date of issuance of Final Completion and without notice to Contractor's surety, order additions, deletions, or revisions in the Work by Change Order, Unilateral Change Order, or Field Order. Contractor shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents.
- B. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Contractor performs work that is not required by the Contract Documents as amended, modified, or supplemented in writing.
- C. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Contractor provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Contractor of additional, undisputed amounts.

- D. Failure by the Contractor to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Contractor arising out of such Clarification or Change Order.

6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS, AND FIELD ORDERS

- A. Should there appear to Contractor to be a discrepancy in the Contract Documents, should questions arise as to the meaning or intent of the Contract Documents, or should the City's comments on submittals returned to Contractor appear to Contractor to change the requirements or scope of the Contract Documents, Contractor shall submit a Request for Information ("RFI") to the City promptly in accordance with Section 01 31 00, Project Management and Coordination. Contractor shall coordinate and schedule its Work to provide the City sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.
- B. The City will issue a reply to the RFI within 10 working days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work.
- C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Contractor and shall be promptly executed by Contractor. The City's right to clarify any element of the Contract Documents shall not be construed to entitle Contractor to a modification of the Contract Sum or a change in the Contract Time.

6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS

- A. COR Initiation: Should the City's Clarification or other written directive or determination, in the opinion of Contractor, materially exceed or change the requirements of the Contract Documents, Contractor shall submit to the City a written Change Order Request ("COR") within 10 working days of receipt of the Clarification or other written directive or determination. A COR shall reference the Clarification or other written directive or determination and the relevant Specification and Drawings, and clearly state reasons why a change is needed. A COR shall also include a cost proposal and/or a time adjustment proposal, as a good faith estimate of any additional compensation or time associated with the affected Work, documented in accordance with subparagraphs 6.03E and 6.03F, below, and a narrative describing the scope of the COR including means and methods, sequence of Work, and other information necessary to fully understand the scope of the COR. The COR shall also include, as a minimum standard, quantity take offs and extensions identifying equipment and material against a specific Work task within the scope. Failure to submit a timely, fully documented COR shall constitute a waiver of any future claim by the Contractor for additional compensation or time relating to such Work.
- B. COR Review: The City will review the COR. Within 10 working days after receipt of the COR and all required supporting documentation, the City will issue a written determination accepting or rejecting the COR in whole or in part. If the City requires additional time to issue a determination, it shall notify the Contractor of the same in writing, within the initial 10 working-day period. A final determination is any City determination on a COR stating that it is final. If the City issues a final determination denying a COR in whole or in part,

Contractor may contest the decision by filing a timely Notice of Potential Claim under Article 13 of these General Conditions. If the City does not issue a determination within the 10 working-day period, or such other period as set forth in a written notice, then the COR is deemed rejected and Contractor shall treat the City's failure to issue a determination as the City's issuance, on the last day of the applicable period, of a final decision denying the COR in its entirety.

- C. **PCO Initiation:** The City may initiate a change in the Work by issuing a Proposed Change Order ("PCO"). A PCO will include a detailed description of the proposed additions, deletions, or revisions with supplementary or revised Drawings and Specifications, and will request from Contractor a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Contractor shall not submit a COR for the same Work addressed in the City's PCO.
- D. **PCO Quotation Time Period:** Contractor shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within 10 working days after receipt of a PCO. If Contractor fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the 10 working-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Contractor to proceed with the Work on a Force Account basis or issue a Unilateral Change Order instructing Contractor to proceed with the PCO Work based on the City's estimate of the cost and/or time adjustment.
- E. **COR and PCO Cost Proposal Requirements:** The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor Cost Proposals, which shall be furnished on the same form as required for Contractor. Contractor, Subcontractors, and Lower-Tier Subcontractors shall calculate the markup for overhead and profit for all Cost Proposals exclusively pursuant to subparagraph 6.06C.
 - 1. At a minimum, Contractor shall provide the following documentation to the City in support of Contractor and Subcontractor cost proposals:
 - a. material quantities and type of products;
 - b. labor breakdown by trade classification, wage rates, and estimated hours; and
 - c. equipment breakdown by make, type, size, rental rates, and equipment hours;
- F. **COR and PCO Time Adjustment Proposal Requirements:** If Contractor asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Contractor shall provide the following documentation to the City in support of any Contractor and Subcontractor time adjustment proposals:
 - 1. Contractor shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and

most current City-accepted progress schedule network, with appropriate logic so that a true analysis of critical path can be made.

2. Contractor's failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute Contractor's waiver of any claim for delay, disruption, extended overhead, and other associated costs or damages.

6.04 CHANGE ORDERS

- A. Execution of Change Orders; Modifications: When the City and Contractor agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a Change Order to implement the changed Work. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Change Orders that result in an increase to the amount certified by the Controller for the Project are subject to the Certification by Controller requirements of the City's Charter (see Section 00 52 00, Agreement) and are effective upon incorporation into an approved Modification.

- B. Release of Claims: The parties agree to make good faith efforts to settle all Change Orders full and final at the time of Change Order execution. Accordingly, City and Contractor acknowledge and agree that Change Orders shall contain the following provision, unless and only if the City determines that good cause exists to use different release language for a specific change order:

"The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Contractor, all Subcontractors and all Suppliers and Lower-Tier Subcontractors and Suppliers, for the Work or change defined in the Change Order, including impact on unchanged Work. By executing this Change Order, Contractor acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for the interruption of schedules, extended field and home overhead costs (if any), delay, and all impact, ripple effect, or cumulative impact on all other Work under this Contract. The execution of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Contractor, all Subcontractors, and all Suppliers as a result of the change. The Contractor, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type for any reasonably foreseeable cause shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

- C. City's issuance of Change Orders under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Contractor under the provisions of the Contract Documents, nor shall they relieve or release Contractor's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Contractor shall be

responsible for giving notice of any change affecting the Work, Contract Sum, or Contract Times that is required to be given to its sureties by the provisions of any bond.

6.05 UNILATERAL CHANGE ORDERS

- A. General: When time does not allow for a Change Order to be negotiated, or when the City and Contractor are unable to agree on the cost or time required to complete the change in the Work, the City may issue a Unilateral Change Order instructing Contractor to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Contractor shall proceed with the ordered Work.
- B. Protest: If time did not allow for Contractor to submit a complete Cost and/or Time Adjustment Proposal prior to the issuance of a Unilateral Change Order, and Contractor disagrees with any terms or conditions set forth in a Unilateral Change Order and wishes to protest the Unilateral Change Order, Contractor shall submit, within 10 working days of receipt of the Unilateral Change Order, a complete Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03 (including a complete Cost and/or time Adjustment Proposal, as applicable). If a COR is not timely submitted as required, Contractor waives all rights to additional compensation for said Work, and as set forth in the Unilateral Change Order, City will make a payment which shall constitute full compensation for Work included in the Unilateral Change Order. The City will review any COR submitted pursuant to this Paragraph and issue a determination per Paragraph 6.03. If the City denies the COR in whole or in part, Contractor may contest the decision by filing a timely Notice of Potential Claim per subparagraph 6.05C. As a point of clarification, the protest procedures specified in this subparagraph do not apply to circumstances where Contractor submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Change Order at issue, and the City subsequently issued a Unilateral Change Order because the parties were unable timely to agree on the cost and/or time to complete the change in the work. In such circumstances, if Contractor disagrees with any terms or conditions set forth in the Unilateral Change Order and wishes to pursue the dispute, Contractor must submit a timely Notice of Potential Claim per subparagraph 6.05C (but does not have to submit a revised/new COR).
- C. Claim Notification: Contractor waives all costs exceeding the City's estimate for Unilateral Change Order Work unless Contractor timely submits a written Notice of Potential Claim in accordance with the requirements of Article 13. Contractor must submit any such Notice no later than 10 working days after occurrence of one of the following potential claim events, whichever occurs first:
 - 1. Contractor submits an invoice for completion of the Unilateral Change Order Work; or
 - 2. Upon Contractor's receipt of written notice from the City that the City considers the Unilateral Change Order Work completed.

6.06 COST OF CHANGE ORDER WORK

- A. For Change Order Work and Change Order Work proposal pricing, City will pay Contractor the sum of the direct costs for labor, materials, and equipment used in performing the Work as determined by the procedures set forth in this subparagraph 6.06A.

1. Labor. City will pay Contractor the cost of labor for the workers used in the actual and direct performance of the Change Order Work. Working foremen will be considered a direct cost of the Change Order Work only if the individual is on Site physically installing the Work. The costs for all supervision, including general superintendents and foremen, shall not be considered a direct cost and shall be included the markup defined in subparagraph 6.06B, below. The cost of labor, whether the employer is Contractor, a Subcontractor, or other forces, will be the sum of the following:
 - a. Actual Wages. The actual wages paid shall include any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.
 - b. Labor Surcharge. To the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth in full. That labor surcharge shall constitute full compensation to Contractor for all of its costs for worker's' compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. City shall not be obligated to pay any other fixed labor burdens unless approved in writing by the City.
 - c. Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.
2. Materials: City will pay Contractor on Change Orders only for those materials furnished by Contractor and directly required for performing the Change Order Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Contractor, Subcontractor, or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Contractor, Contractor shall credit to the City such discount notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Contractor, City's payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.
3. Equipment: City will pay for equipment costs on Change Orders at the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at <https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surcharge>.

As deemed appropriate, City will adjust such rental rates and will use them to compute payments for equipment, regardless of whether the equipment is under Contractor's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, City will reimburse Contractor at the actual rental or leased invoice

rates when such rates are reasonably in line with the applicable rates specified in the publications identified above as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Contractor has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Contractor shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each PCO cost proposal.

For equipment that is not listed in the publication identified above, City will base payment for equipment costs on the City's assessment of the reasonableness of rates in arm's length rental or lease transactions on the lowest quote obtained by the City from CALTRANS. Contractor shall provide all necessary equipment ownership and other information as requested by the City so that the City may obtain a quote. CALTRANS will quote rental rates at no cost to the City.

- a. City will pay for equipment based on daily, weekly, or monthly rates, whichever are lower. City will not pay for equipment based on hourly rates including operator. Unless otherwise specified, Contractor shall use manufacturer's ratings and manufacturer-approved modifications to classify equipment for determination of applicable rental rates. If, however, Contractor or Subcontractor or Lower-Tier Subcontractor uses equipment of unwarranted size or type and cost, it shall calculate the cost at the rental rate for equipment of proper size and type.
- b. City will pay for equipment only for the time the equipment is in productive operation on the Work under the Change Order. City shall not be obligated to pay for equipment for time while equipment is inoperative due to breakdown or for non-work days. In addition, City shall not be obligated to pay for any equipment rental time required to move the equipment to and from the Site. City will pay for equipment loading and transportation costs, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. City shall not be obligated to pay for mobilization or demobilization for equipment already on the Site. City will reimburse Contractor for equipment that is idle, non-operating, or in standby mode at the lesser of Caltrans' rates, as adjusted by Caltrans' Delay Factor as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.
- c. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment; City will not pay for such tools and equipment since the costs of these tools and equipment are included as part of Contractor's markup for overhead and profit as defined in subparagraph 6.06B.
- d. Payment to Contractor for the use of equipment as set forth herein shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment

operators), and any and all costs to Contractor incidental to the use of the equipment.

- B. **Costs Included as Part of Markup for Overhead and Profit:** To the total of the direct costs computed as provided in subparagraph 6.06A, City will add a markup for overhead and profit as specified in subparagraph 6.06C. The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in subparagraph 6.06A as direct costs. City shall not be obligated to pay for any separate allowance or itemization for any overhead costs. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:
1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.
 2. All field and home office expenses including, but not limited to, field trailers; parking; storage sheds; office equipment and supplies; telephone service at the Site; long-distance telephone calls; fax machines; computers and software; internet and e-mail services; temporary utilities; sanitary facilities and services; janitorial services; small tools and equipment with a cost under \$1,000 each; portable scaffolding; blocking; shores; appliances; job vehicles; security and fencing; conformance to all regulatory requirements including compliance with safety regulations, safety programs, and safety meetings; cartage; warranties; record documents; and all related maintenance costs.
 3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.
 4. Bond and Insurance costs.
 5. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.
- C. **Contractor's Markup for Overhead and Profit:** City will apply the following maximum percentage to the total direct costs for each direct cost category to compensate Contractor, Subcontractors, and Lower-Tier Subcontractors fully for all indirect and overhead costs and profit:

Changed/Extra Work – Direct Costs	Markup Percentage
Contractor direct labor	35%
Contractor direct materials	15%
Contractor direct equipment	15%
Subcontractor (of any tier) direct labor	35%
Subcontractor/Supplier (of any tier) direct materials	15%

1. For Work performed by a Subcontractor, the City will pay Contractor a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such additional 7.5% markup shall be reimbursement of Contractor for all additional indirect, administrative, and overhead costs and profit associated with Change Order Work performed by the Subcontractor.
 2. For Work performed by a Lower-Tier Subcontractor, City will pay Contractor and Subcontractor each a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall be reimbursement of Contractor and Subcontractor for all additional indirect, administrative, and overhead costs and profit associated with Change Order Work performed by the Lower-Tier Subcontractor.
 3. In no case shall the sum of the individual markups as specified in subparagraphs 6.06C.1 and 6.06C.2, above, exceed 20%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.
- D. For Work to be deleted by Change Order ("deductive Change Order"), the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (i) Unit Prices stated in the Contract Documents; (ii) where Unit Prices are not applicable, a lump sum based upon the costs that Contractor would have been incurred in performing the deleted portions of the Work as calculated in accordance with Paragraph 6.06, supported by a Cost Proposal as required by Paragraph 6.03; and (iii) the deductive Change Order will include a 10% mark-up on the direct costs to reflect a credit to the City for Contractor's overhead and profit on the deleted Work. City shall not be obligated to compensate Contractor nor a Subcontractor or Lower-Tier Subcontractor for administering a deductive Change Order.
1. When both additions and credits are involved in any one Change Order, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2. If the City issues written notice of deletion of a portion of Work after the commencement of such Work or after Contractor has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Contractor because it is unnecessary due to actual Site conditions, City will pay Contractor for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.
 3. City shall not be obligated to compensate Contractor for costs incurred after Contractor receives the City's written notice deleting the portion of Work.
 4. Materials ordered by Contractor prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, Contractor shall return the material and the City will pay Contractor only for the actual charges made by the vendor for returning the material including restocking charges.
- E. **Costs Not Included in the Work:** Contractor shall be solely responsible for determining which of its Subcontractors and Suppliers receive Change Orders. City will not provide additional compensation to Contractor for the cost of its Subcontractors and Suppliers to review, post, coordinate, and perform related tasks to administer Change Orders that do not result in direct cost charges from such Subcontractors or Suppliers. City will consider such costs as normal business costs which are contractually determined between Contractor and its Subcontractors and Suppliers prior to Bid, and Contractor shall include such costs in its Total Bid Price.
- F. **Records:** Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Contractor.

6.07 FORCE ACCOUNT WORK

- A. **General:** When City pays for additions, deletions, or revisions in the Work on a Force Account basis, all direct costs itemized in subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.
1. The City will direct Contractor to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.
 2. All requirements regarding direct costs and markup for overhead and profit provided in subparagraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.
 3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.
- B. **Notification and Verification:** Contractor shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the

day that the Work is performed. City shall not be obligated to compensate Contractor for Force Account Work if Contractor fails to provide timely notice to the City before commencing the Force Account Work. In addition, Contractor shall notify the City when the cumulative costs incurred by Contractor for the Force Account Work equal 80% of the budget pre-established by the City. City shall not be obligated to compensate Contractor for Force Account Work exceeding the “not to exceed” budget amount if Contractor fails to provide the required notice before exceeding 80% of the Force Account budget.

- C. Reports: Contractor shall diligently proceed with City-directed Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer’s model type and serial number. Contractor’s authorized representative shall complete and sign the report. City shall not be obligated to compensate Contractor for Force Account Work for which Contractor does not timely complete and submit the aforementioned report to the City.
- D. Records: Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.
- E. Agreement: If Contractor and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor’s signed written reports shall be discontinued and all previously signed reports shall become invalid.

6.08 UNIT PRICE WORK

- A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the City will deem the Contract Sum to include for all Unit Price Work an amount equal to the product of the established unit price proposed for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price items in the City’s procurement documents are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Section 01 20 00, and the Contract Sum will be adjusted based on the actual quantities of units provided and Work performed.
 - 1. Each unit price on a Schedule of Bid Prices shall include an amount considered by Contractor to cover Contractor’s markup for overhead and profit as defined in Paragraph 6.06.
- B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25%, City will pay for the Work in excess of 125% of such estimated quantity by adjusting the unit price proposed therefor as follows:

1. City will adjust the unit price by the difference between the unit price proposed for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. City will determine the actual unit cost based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Contractor with the payments made for 125% of the quantity indicated on the Schedule of Bid Prices, and markup for overhead and profit as provided in Paragraph 6.06.
 2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125% of the quantity as indicated on the Schedule of Bid Prices is less than \$5,000 at the unit price proposed therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that City will consider an adjustment if Contractor submits a Change Order Request (“COR”) in accordance with the requirements of Paragraph 6.03.
 3. At the City’s option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.
- C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75% of the estimated quantity indicated on the Schedule of Bid Prices, City will not consider an adjustment in compensation unless Contractor submits a COR in accordance with Paragraph 6.03. If Contractor so requests, The City will pay for the quantity of said Item performed by adjusting the unit price proposed therefor as follows:
1. City will adjust the unit price by the difference between the unit price proposed for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price proposed therefor.
 2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75% of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price proposed therefor.
 3. At the City’s option, City will pay for the Work involved in such deficiency on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

ARTICLE 7 - TIME

7.01 PROGRESS AND COMPLETION

- A. Contractor shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the City and shall diligently and continuously prosecute the Work to its completion.
- B. No demolition, removal, or reconstruction Work at the Site shown in the Construction Documents shall be started until Contractor has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and a Notice to Proceed has been issued by the City for Work to start.

- C. The continuous prosecution of the Work by Contractor shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.
- D. Contractor shall bring the Work of this Contract to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in Section 00 73 02 (Contract Time and Liquidated Damages), from and after the official start date established in the written Notice to Proceed.
1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.
 2. During the time between Substantial Completion and Final Completion, Contractor shall complete the punch list work, but Contractor shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.
 3. Final Completion is a condition precedent to final payment. When Contractor achieves Final Completion, the City will issue final payment to Contractor acknowledging that the Project is complete and the Work is acceptable to the City.
 4. The limits of Contract Time as specified in Section 00 73 02 (Contract Time and Liquidated Damages) shall not be affected by the acceptance of any of the Alternate Bid Items (if any) included in the Contract Documents provided that said Alternate Bid Items were incorporated into the Contract within the number of months after the date of award of the Contract as specified on Section 00 41 10 (Schedule of Bid Prices).
 5. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.03.
- E. Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Contractor shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.
- F. Contractor shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. The City shall not be obligated to compensate Contractor for such cooperation. Notwithstanding, Contractor may file a COR for undertaking additional work at the Direction of the City or allegedly incurred due to any other contractors' refusal or failure to cooperate with Contractor's Work.

- G. If, in the opinion of the City, Contractor has fallen behind schedule according to Contractor's most current and City-approved update of the progress schedule submitted as set forth in Paragraph 3.10, or if Contractor delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Contractor shall take some or all of the steps as follows to improve its progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which Contractor will regain the desired rate of progress:
1. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
 2. Increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;
 3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities;
 4. Expedite delivery of materials and equipment such as by airfreight;
 5. Accelerate the priority of manufacture, fabrication, and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and
 6. Any other means deemed appropriate by the City.
- H. The City may direct Contractor to take steps enumerated in subparagraph 7.01G for the convenience of the City and if Contractor is not at fault. Should the City Representative direct Contractor to take measures previously described, the City will reimburse Contractor for reasonable costs of complying.
- I. Should Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default, following written notice and a 3-day opportunity to cure, and terminate the Contract for cause as set forth in Paragraph 14.01.

7.02 DELAYS AND EXTENSIONS OF TIME

- A. Unavoidable Delays: Pursuant to section 6.22(h)2(C) of the Administrative Code and for the purposes of the Contract Documents the term Unavoidable Delay shall mean an interruption of the Work beyond the control of Contractor that could not have been avoided by Contractor's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.10, Contractor shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor (i.e., Avoidable Delays).

1. Non-compensable Delay/Time Extension. Contractor will be entitled to only a non-compensable time extension for the following types of Unavoidable Delay: Acts of God (as used herein, includes only earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in subparagraph 7.02C or the Supplementary Conditions); fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work when the City has issued a bilateral change order for an agreed upon sum, as such change orders include an overhead mark-up for the additional time required by the changes as provided in subparagraph 6.06B; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others for which the City is not responsible, excepting Contractor's Subcontractors and Suppliers of all tiers; and inability to procure or failure of public utility service.
 - a. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.
 - b. In addition, Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that Contractor may appropriately utilize as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, City will consider any delay impact caused by said failure on the progress schedule a Contractor-caused delay under any and all applicable provisions of the Contract Documents.
2. Compensable Delay/Time Extension. Contractor shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by (i) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (ii) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents where such failure is not the result of any default or misconduct of Contractor; (iii) the failure of the City to perform some other contract obligation where such failure is not the result of any default or misconduct of Contractor; (iv) the suspension of the Work by the City for its own convenience or

benefit where such decision is not the result of any default or misconduct of Contractor; or (v) a materially Differing Site Condition per Paragraph 3.04, provided such City-caused Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Contractor-caused delay (Avoidable Delay) or other type of Unavoidable Delay as previously defined (not caused by the City), and if City has not issued a Change Order to compensate Contractor for direct costs plus mark-up for overhead and profit arising from the materially Differing Site Condition. If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Contractor to a compensable time extension. Refer to Paragraph 7.03 for more information regarding compensable delay.

- a. Float or slack time within the baseline schedule belongs to the Project and is an expiring resource available to City or Contractor as needed to meet Milestones or complete the Work within the Project Time. Accordingly, Contractor acknowledges and agrees that any City-caused delays on the project may be offset by City-caused time savings (including, but not limited to, the return of critical path submittals in less time than allowed under the Contract Documents, approval of substitution or value engineering requests that result in savings of time along the Critical Path). In such event Contractor shall not be entitled to receive a compensable time extension until all City-caused time savings are exceeded and the Contract Time is also exceeded.
 - b. Early Completion Schedule: If Contractor submits a baseline schedule that shows a completion time that is earlier than the Contract Time, the float shall belong to the Project. Contractor shall not be entitled to a compensable time extension for any Change Order, Unilateral Change Order, or City-caused delay that causes the early completion date to be extended within the float.
3. Concurrent Delay. Contractor shall be entitled to only a non-compensable time extension in the event that a City-caused (otherwise compensable) delay is concurrent with either a Contractor-caused delay or a non-compensable Unavoidable Delay.
- B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:
1. Any delay that could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor or its Subcontractors or Suppliers of any tier; or
 2. Any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or
 3. Any delay caused by the untimely review by Contractor of the Contract Drawings and Specifications pursuant to subparagraph 3.02C; or
 4. Any delay resulting from the City responding to Contractor-generated RFIs as long as the response is in accordance with subparagraph 6.02B; or

5. Any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City but does not delay the date of Substantial Completion based on the specified limit of Contract Time.
6. Contractor shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs, or damages for delay, disruptions, hindrances, or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity, and the impact, ripple, or cumulative effect on other Work) that are the result of Avoidable Delay.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Contractor shall make every effort to continue work under prevailing conditions. Such efforts by Contractor shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.
2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Contractor made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Contractor is prevented by adverse weather or conditions from proceeding with at least 75% of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and City will grant Contractor a non-compensable time extension.
3. Regardless of the type and severity of the adverse weather, Contractor shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.
4. Adverse weather shall mean rain, windstorm, flood, air pollution episode, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather and poor air quality as provided herein and which are proven by Contractor to be detrimental to the progress of the Work. Contractor shall plan the Work to allow for the following number of days of inclement weather and air quality during normal working hours:

Month	<u>Weather and Air Quality Days</u>	Month	<u>Weather and Air Quality Days</u>
January	3	July	0
February	3	August	0
March	3	September	1
April	1	October	2
May	0	November	2
June	0	December	2

- a. Contractor's progress schedule shall incorporate a prudent allowance for the anticipated number of days of inclement weather specified herein.
- b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Section 00 73 02) is predicated on the anticipated number of days of inclement weather specified herein.
- c. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.
- d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Contractor has requested a time extension because of adverse weather.
- e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Contractor has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22(h)(2)(D) of the Administrative Code, Contractor shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. Such notice may permit the City to take steps to prevent the occurrence or continuance of the delay, and/or determine to what extent Substantial Completion is delayed thereby.
2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if the notice requests such time extension, specifies whether Contractor believes the time extension is compensable or non-compensable, sets forth Contractor's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Article 13, including the requirement that such Notice be submitted to the City within 10 days of the event which the Contractor contends affected the performance of the Work.
3. The City's determination of whether to grant an extension of time and whether the extension is compensable or non-compensable will be based on Contractor's demonstration to the City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path schedule.
4. If Contractor does not submit a notice as set forth in subparagraph 7.02D.2, above, Contractor thereby admits the occurrence had no effect on the length of its duration of

Work and no extension of time is necessary, and Contractor understands and agrees that City will not grant an extension of time or adjust the Contract Sum.

E. Extensions of Time:

1. In the event City determines that it is necessary to extend the time for completion of the Work to be performed under these Contract Documents beyond the specified limits of Contract Time, such extension(s) shall in no way release Contractor's contractual obligation to provide guarantees or warranties pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release Contractor's surety or the sureties from payment and performance bond obligations.
2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.
3. The length of any extension of time shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22(h)(2)(D) of the Administrative Code.
4. Adjustments to the Contract Sum for compensable time extensions shall be calculated in accordance with the provisions specified in Paragraph 7.03.
5. Extensions of time that cumulatively extend the Contract Time in excess of 10% of the original contract duration as specified in Section 00 73 02 (Contract Time and Liquidated Damages) shall be subject to the approval of the Commission (or the Commission's designee), as appropriate.
6. In no event shall such extensions of time be granted after the date of Final Completion.
7. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests.
8. Should Contractor or any Subcontractor of any tier or any Supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Paragraph 7.02, Contractor and its Subcontractor or Supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.
9. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge, and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective Commissioners, directors, officers, members, employees, and authorized representatives from responsibility for their own sole negligence, violation of law, or other willful injury to the person or property of another.

**7.03 ADJUSTMENTS TO THE CONTRACT SUM FOR COMPENSABLE
DELAY/COMPENSABLE TIME EXTENSION**

- A. The City will adjust the Contract Sum for a compensable delay as specified in subparagraph 7.03C, below, if, and only if, Contractor demonstrates that it is entitled to a compensable time extension per subparagraph 7.02A.2 and timely complies with the Notice of Delay requirements of these General Conditions.
- B. Change Order, Unit Price and Force Account Work Excluded. The provisions of this Paragraph 7.03 and subparagraph 7.02A.2 do not apply to Change Order Work paid under Paragraphs 6.06 (Cost of Change Order Work) or 6.08 (Unit Price Work), or to Force Account Work performed under Paragraph 6.07. Contractor's right to recovery of compensation, costs, expenses, and damages for delay, disruption, hindrance, and interference (including without limitation interruption of schedules, extended, excess or extraordinary field and home office overhead costs, loss of productivity, and the impact, ripple, or cumulative effect on other Work) that are the result of extras, changes, additions, or deletions in the Work shall be limited to the adjustment of the Contract Sum (including without limitation the mark-ups specified) as set forth in Paragraphs 6.06 or 6.08 of these General Conditions. Those Paragraphs include markups to cover field and home office overhead costs. Overhead claims in excess of the markups specified are not allowed for Change Order Work, Force Account Work, or Unit Price Work. The Contract Sum adjustment provisions set forth in Paragraphs 6.06 and 6.08 constitute the sole, exclusive, and complete compensation that the City is obligated to pay Contractor for all costs, expenses, and damages incurred by Contractor and its Subcontractors and Suppliers of all tiers associated with Change Order Work, Force Account Work, or Unit Price Work.
- C. Field Office Overhead – Daily Rate. If Contractor meets the conditions for a compensable time extension specified in subparagraph 7.03A, above, then the City shall pay Contractor such amount as the City may find to be fair and reasonable compensation for such part of Contractor's actual loss that was unavoidable. The City will calculate fair and reasonable compensation as follows:
1. Within the time and in the format specified by the City, Contractor must submit a detailed listing of daily field office overhead cost components that are time related. The individual cost components shall represent costs that have been or will be incurred or increased as a sole or direct result of the compensable time extension. This listing may include without limitation onsite project management, supervision, engineering, and clerical salaries; onsite office utilities and rent; onsite company vehicles and their operating expenses; and site maintenance, safety and security expenses.
 2. The listing of the daily field office overhead cost components described above must be based on the Contractor's actual field office overhead costs. This listing must be submitted with the first Notice of Delay that includes a request for a compensable time extension. If Contractor's time-related daily field office overhead cost changes for subsequent compensable delays, then the Contractor shall submit a new overhead rate based on the Contractor's overhead costs at the time of the subsequent delay.
 3. The daily field office overhead rate shall be multiplied by the number of days the Contract is to be extended. No markup for overhead and profit shall be allowed on the extended daily field office overhead cost.

4. Contractor shall submit the information specified above in sufficient detail to allow review and shall prepare the information in accordance with generally accepted accounting principles. The City shall have the right to audit Contractor's costs under Paragraph 2.05 of these General Conditions.
- D. **Extended Home Office Overhead.** Absent extraordinary circumstances, City will not pay Contractor for extended home office overhead for compensable delays. City will not allow extended home office overhead and its application to a compensable time extension unless Contractor demonstrates to the satisfaction of the City that each and every of the following conditions apply to the delay period: (i) the delay was caused by the City and meets the conditions of Paragraph 7.02A.2; (ii) such City-caused delay was of an indefinite (unknown) duration; (iii) the City-caused delay suspended most, if not all, project Work; (iv) the City-caused delay resulted in a substantial disruption or decrease in the income stream from the project; (v) during the City-caused delay, Contractor was required to remain ready to resume Contract Work immediately; and (vi) Contractor was unable to secure comparable replacement work due solely to the said delay from this project during the impacted period to replace the reduced cash flow from this project. If Contractor believes that it may be entitled to extended home office overhead, it must notify the City through the Notice of Delay process specified in subparagraph 7.02D, above. Within the time and in the format specified by the City, Contractor must submit detailed evidence of entitlement and the requested rate, including all supporting evidence from which the City may make a determination (including an audit by a California-licensed Certified Public Accountant if the City so requests). Supporting evidence shall be prepared in accordance with generally accepted accounting principles, and the City shall have the right to audit Contractor's submittal under Paragraph 2.05 of these General Conditions. If the City determines that extended home office overhead is available, then the City shall have the discretion to determine the methodology for calculation of the rate.
- E. **Credit for Change Order and Force Account Markups.** If Contractor timely requests additional compensation for a compensable delay in accordance with the Contract, and the City determines Contractor entitlement to additional compensation for such delay, then the City will adjust the amount payable to Contractor for the compensable delay by deducting a fair and reasonable credit to account for additional overhead paid to Contractor under the markups specified in Paragraph 6.06 for Change Order Work and Force Account Work, including markups from changes performed and paid under bids items (e.g., unit priced and contingency allowance bid items). The baseline credit amount will be 5% of the value of all Change Order Work and Force Account Work performed by Contractor under the Contract prior to and during the compensable delay period (but excluding any future Change Order Work and Force Account Work). If the City seeks a credit in excess of 5%, then the City will provide Contractor with supporting documentation. Such supporting documentation may include, at the City's discretion, the results of an audit or examination of documents performed under Paragraph 2.05. If Contractor seeks either a credit of less than 5% or objects to the credit amount proposed by the City, then Contractor shall timely provide the City with supporting documentation. Such supporting documentation shall include the results of an audit performed by a CPA at Contractor's cost if so requested by the City.

7.04 LIQUIDATED DAMAGES

A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages that the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.
2. Damages that the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering, and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection, and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

B. Agreed Amount of Damages: It is understood and agreed by Contractor and City that if Contractor does not complete all the Work specified or indicated in the Contract Documents within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, the City will sustain actual damages in the event of and by reason of such delay.

1. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 (Contract Time and Liquidated Damages) represents the Parties' reasonable estimate of the approximate damages that the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for Substantial Completion, as such date may be modified in accordance with the Contract Documents.
2. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for completing the punch list of remedial Work and achieving Final Completion, as such date may be modified in accordance with the Contract Documents.
3. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages that the City will sustain for each and every day (or other measure) of delay beyond the number of days (or other measure) specified in Section 00 73 02 for completing the specified critical, independent milestone Work (e.g., shutdown Work), if any, as such date may be modified in accordance with the Contract Documents.
4. The parties therefore agree that Contractor shall pay such amount of liquidated damages as specified in Section 00 73 02, and in case such amount is not paid, Contractor agrees that the City may deduct the amount therefor from any money due or that may become due to Contractor under the Contract.

C. Payment of Damages:

1. Should Contractor become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained payments as provided in Paragraph 9.06 that would otherwise be due or become due to Contractor until the liability of Contractor has finally been determined.
2. The City shall have the right to use and apply such retained funds, in whole or in part, to reimburse the City for all liquidated damages due or to become due to the City. City shall pay any remaining balance of such retained funds to Contractor only after discharge in full of all liability incurred by Contractor.
3. If the retained funds are not sufficient to discharge all such liabilities of Contractor, Contractor and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full.
4. Should the retention of moneys due or to become due to Contractor be insufficient to cover such damages, Contractor shall pay forthwith the remainder to the City.

ARTICLE 8 - INSPECTION AND CORRECTION OF WORK

8.01 UNCOVERING OF WORK

- A. Contractor shall not cover any Work or portion of Work until inspected by the City or other public authorities having jurisdiction as required by the Contract Documents.
- B. If Contractor covers any part of the Work contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Contractor must, upon written request, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this subparagraph shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.
- C. Should the City or other public authorities having jurisdiction wish to either (i) re-inspect a portion of the Work that has been covered by Contractor in compliance with subparagraph 8.01A, above, or (ii) inspect a portion of the Work that has been covered by Contractor which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Contractor shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Contractor shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

8.02 TESTS AND INSPECTIONS

- A. Contractor shall arrange and pay for all testing and inspection of the Work required by the Contract Documents (other than special inspections as set forth in subparagraph 8.02B below) through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.
- B. City will pay for special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or by another agency having jurisdiction. Contractor shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 working days' notice, excluding weekends and City holidays, of when and where such special inspections are required so the City may arrange for the appropriate City Representatives and inspectors, and representatives from other public authorities having jurisdiction if any, to be present to perform the necessary inspections or tests.
 - 1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.
- C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.
- D. If such testing, inspection, or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Contractor shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.
 - 1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.
 - 2. Contractor shall bear all costs thereof, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Contractor, any Subcontractor, or any of their agents or employees, or any other person performing any of the Work.

- E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Contractor from Contractor's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.
- F. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:
 - 1. To imply acceptance of such Non-conforming Work or materials; or
 - 2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
 - 3. To relieve Contractor from the responsibility of correcting Non-conforming Work or materials.
- G. Unless otherwise required by the Contract Documents, Contractor shall secure and furnish to the City required certificates of testing, inspection, or approval in accordance with the Specifications.
- H. Contractor shall provide promptly all facilities, labor, equipment, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. City or its agents will perform tests or inspections conducted pursuant to the Contract Documents promptly to avoid unreasonable delay in the Work.
 - 1. The City reserves the right to charge to Contractor any additional cost of inspection or test, including travel, transportation, lodging, etc., when the Work, material or workmanship is not ready for testing or inspection at the specified time.

8.03 CORRECTION OF NON-CONFORMING WORK AND GUARANTEE TO REPAIR PERIOD

- A. Contractor shall (i) correct Non-conforming Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of Non-conforming Work or correction of Non-conforming Work. Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from the City Representative, but in no case later than 10 working days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all damages resulting from such Non-conforming Work, including without limitation additional testing, inspection, engineering, and compensation for City Representative's services and expenses (including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services). This subparagraph shall not be interpreted to provide for recovery of attorney's fees.
- B. The term "Guarantee to Repair Period" means a period of 2 years, unless a longer period of time is specified in the General Requirements or other Contract Documents or prescribed by applicable laws and regulations, commencing as follows:

1. For any Work not described as incomplete in the Punch List / Final Completion, on the date of Substantial Completion.
 2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion per Paragraph 9.07 (Partial Utilization), as established in a Notice of Partial Utilization.
 3. For all Work other than described in subparagraphs B.1 and B.2, above, from the date of Final Completion.
- C. Contractor's obligation to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced items, or such longer period as may be specified in the Contract Documents or mutually agreed to by Contractor and City.
- D. If Contractor fails to commence correction of Non-conforming Work or fails to prosecute such correction diligently within 10 working days of the date of written notification from the City, the City may correct the Non-conforming Work or may remove it and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of such removal and storage within 5 working days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Contractor's account for the excess proceeds of such sale, if any. The City will deduct from Contractor's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Contractor shall reimburse the City.
- E. If the City must take immediate action to correct Non-conforming Work for life safety or the protection of property, which work is performed by City or a separate contractor, Contractor shall pay to the City all reasonable costs of correcting such Non-conforming Work. Contractor shall replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of such Non-conforming Work or the correction of such Non-conforming Work.
- F. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of Subcontractors of any tier or Suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.
- G. Contractor's obligations under this Paragraph 8.03 are in addition to and not in limitation of its warranty obligations under Paragraph 3.18 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Non-conforming Work. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents. Establishment of correction periods for Non-conforming Work relate only to the specific obligations of Contractor to correct the Work and in no way limits either Contractor's liability for Non-conforming Work or the time within which

City may commence proceedings to enforce Contractor's obligations under the Contract Documents.

8.04 ACCEPTANCE OF NON-CONFORMING WORK

If, in the sole and unfettered judgment of the City, it is undesirable or impractical to repair or replace any Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Contractor shall rebate moneys previously paid by the City.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

- A. Payment to Contractor of the Contract Sum shall be full compensation for furnishing all labor, materials, equipment, and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Contractor for any purpose incidental to performing and completing the Work.
- B. Whenever the Contract Documents specify that Contractor is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance, or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Contractor's Total Bid Price.

9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

- A. Within 30 days after receipt of the Notice to Proceed, or as otherwise specified in Division 01, Contractor shall submit a detailed cost breakdown of each of the lump sum Items in the Schedule of Bid Prices, including Alternate Bid Items selected by the City (if any), coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum Items. City will not issue any progress payments for lump sum Items until the City has reviewed and accepted Contractor's schedule of values.
 - 1. The specific format, detail, and submittal requirements for the schedule of values shall be as specified in Section 01 29 73 (Schedule of Values) or as directed by the City to facilitate and clarify progress payments to Contractor for completed Work.
 - 2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the lump sum price Bid therefor under the Bid Item named in the Schedule of Bid Prices.
 - 3. Unless otherwise provided in the Contract Documents, Contractor's overhead, profit, insurance, bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal Contractor's Total Bid Price.
- B. The City will review and return Contractor's schedule of values with comments. Contractor shall make all corrections requested by the City and resubmit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Contractor's schedule of values.
 2. Contractor's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Contractor's Bid amount to component parts of the Work.
- C. Upon concurrence by the City, City will issue a written formal approval of Contractor's schedule of values.

9.03 PROGRESS PAYMENTS

- A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, the City shall issue payments to Contractor upon demand of Contractor and pursuant to the Contract Documents as follows.
- B. On the 25th day of each month, Contractor shall submit to the City for review an Application for Payment, on a form approved by the City and signed by Contractor, covering the Work completed by Contractor as of the date of the Application and accompanied by such supporting documentation as specified in Section 01 20 00, Price and Payment Procedures.
1. Contractor shall estimate the monthly value of lump sum Work pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Contractor's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.
 2. Progress payments on account of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices proposed by Contractor, adjusted as specified in Paragraph 6.08 for the actual quantities of Work performed.
 3. City will make progress payments on account of allowances named in Schedule of Bid Prices for such sums as may be acceptable to the City. Prior to final payment, the City will issue an appropriate Change Order in an amount determined by the City Representative to reflect actual amounts due to Contractor on account of Work covered by allowances, and the City will adjust the Contract Sum accordingly.
- C. The Application for Payment shall identify the amount of Contractor's total charges to date.
- D. City will base monthly progress payment amounts to Contractor on completed Work or percentages of Work completed prior to the end of the payment period. Except as provided in Paragraph 9.10, the City will not approve payments for materials or equipment not incorporated into the Work.
- E. Contractor shall base its monthly Applications for Payment on information developed at monthly progress meetings and prepared by Contractor as specified in Division 01. Submission of approved monthly progress schedule updates for the same period as the Application for Payment shall be a condition precedent to making progress payment

applications. City will not make any partial progress payments to Contractor until Contractor has submitted and City has reviewed all cost information requested by the City.

- F. In addition to other requirements specified in Division 01, consistent with San Francisco Mayor's Executive Directive 12-01, Contractor shall include its Subcontractors' and Suppliers' acceptable invoices with the Monthly Application for Payment that it submits no later than 30 days after receipt of such invoices from its Subcontractors and Suppliers.
- G. As soon as practical after estimating the progress of the Work, the City will pay to Contractor in a manner provided by law an amount based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. The City may, however, withhold payments at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.06.
 - 1. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls, and Contract Monitoring Division program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in Administrative Code section 6.22(j)(7).
- H. No inaccuracy or error in said monthly estimates shall operate to release Contractor or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.
- I. In accordance with the provisions of section 22300 of the California Public Contract Code, Contractor will be permitted to substitute securities for any moneys retained by the City to ensure performance under the Contract under the following conditions:
 - 1. At the request and expense of Contractor, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Contractor which are equivalent to the amount retained under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Contractor. Upon satisfactory completion of the Project and all Work under the Contract, City will return the securities to Contractor.
 - 2. Contractor shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.
 - 3. Contractor shall enter into an escrow agreement with the City Controller according to Section 00 63 30 (Escrow Agreement for Security Deposits in Lieu of Retention), specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of the Contract.
- J. City's issuance of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen

Contractor's obligation to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time City made such payment.

- K. It is mutually understood and agreed that the City may withhold from any payment otherwise due to Contractor such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.
1. If City withholds any payment or portion of payment, City will notify Contractor in writing of the cause(s) of such action.
- L. Contractor shall include only amounts for Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City on its payment applications, and only that portion of the Change Order Work actually performed. Contractor shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.
- M. Submission of Electronic Certified Payrolls. City will not process any monthly progress payment applications until Contractor has submitted weekly certified payrolls to the City for the applicable time period. Contractor shall prepare certified payrolls in accordance with the requirements of section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.
1. Contractor shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the internet. The City will assign the Contractor and each Subcontractor and Supplier a log-on identification and password to access the PRS.
 2. Use of the PRS may require Contractor, Subcontractors, and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
 3. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
 4. Contractor shall comply with the requirements of this subparagraph 9.03M at no additional cost to the City.
 5. The City will not be liable for interest, charges, or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.
- N. The City will not process monthly progress payment applications until Contractor has submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

1. Contractor shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.
- O. Contractor Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of section 6.22(q) of the Administrative Code, Contractor shall pay its Subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the Subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount but shall pay the undisputed amount. If Contractor violates the provisions of section 6.22(q), then Contractor shall pay to the Subcontractor directly the penalty specified in section 6.22(q).

9.04 RETENTION

- A. As required by and in conformance with the procedures set forth in section 6.22(j) of the Administrative Code, the City shall hold 5% in retention from each progress payment.
- B. When the City determines that the Work is 98% or more complete, the City may reduce retention funds to an amount equal to 200% of the estimated value of work yet to be completed, plus any amounts necessary to cover offsets by the City for liquidated damages, defective Work, stop notices, forfeitures, and other charges.
- C. The City shall release the balance of retention only upon the following conditions: (i) the Contractor has reached Final Completion as provided in Paragraph 9.09, below, and (ii) the Contract is free of offsets by the City for liquidated damages and defective work and is free of stop notices, forfeitures, and other charges.
- D. The Contractor may apply for early release of retention for Work performed by (i) any Subcontractor certified by the City as an LBE or (ii) any Subcontractor under a Contract with a construction duration of more than two years. The Contractor shall make such application in writing and shall certify the following:
1. That the Subcontractor satisfactorily completed the specified portion of the Work in accordance with the Contract Documents;
 2. The total amount paid to the Subcontractor by Contractor as of the date of the written request; and
 3. The amount of retention associated with the Work performed by the Subcontractor.
 4. Contractor acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of the Contractor or its surety(ies) under the Contract or applicable law.

9.05 PAYMENT AUTHORIZATION

- A. The City will, after receipt of Contractor's Application for Payment, approve such amount as the City determines is properly due.
- B. The City will issue payment based on the City's determination that the Work has progressed satisfactorily to the point stated in the application for payment. Payment shall not be a representation that the City has:

1. Inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or
2. Reviewed Contractor's means, methods, techniques, sequences, or procedures of construction; or
3. Ascertained how or for what purpose Contractor has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.

9.06 WITHHOLDING PAYMENT

- A. The City may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure if, in the City's judgment, the determination required by subparagraph 9.05B cannot be made. If the City does not authorize payment in the amount of the application, the City will notify Contractor of the reasons for withholding payment. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure, for one or more of the following reasons:
1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.
 2. A third party has filed a claim for damages alleged to arise from Contractor's Work, or there is reasonable evidence indicating probable filing of such claims.
 3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
 4. The Contract Sum has been reduced by Change Orders.
 5. The City determines that Contractor is responsible for damage to the City or another contractor.
 6. The City determines that Contractor will not complete the Work within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.
 7. The City determines that Contractor persistently has failed to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01A).
 8. The City determines that Contractor has failed to submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.
 9. The City determines that Contractor has failed to comply with any other requirements of the Contract Documents.

9.07 PARTIAL UTILIZATION

- A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, Contractor shall grant the City's

written request to permit the City to take possession of and use the Work, or a part thereof, at no additional cost to the City. When so used, City will be responsible for the cost of maintenance and repair due to ordinary wear and tear caused by the City. The use by the City of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.

- B. Such Partial Utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.
- C. If, in response to the City's written request(s) to take possession of and use part of the Work, Contractor believes that a specified part of the Work is Substantially Complete and ready for Partial Utilization, Contractor shall notify the City in writing and request a joint inspection of that part of the Work per the procedures described in Paragraph 9.08. When the City determines that the Work is ready for Partial Utilization, the City will issue a Notice of Partial Utilization, which shall establish the Partial Utilization date. The City will also issue a Punch List for the Work identifying deficient items to be corrected by Contractor prior to Final Completion.
- D. Partial utilization of the Work shall not constitute City's acceptance of Work not complying with the requirements of the Contract Documents.
- E. Contractor shall perform final cleaning of such partially utilized Work as specified in the Division 01 when directed to do so by the City.
- F. The Guarantee to Repair Period, as defined in Paragraph 8.03, will commence upon the date specified in the Notice of Partial Utilization except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which the City has not taken Partial Utilization or issued a Notice of Partial Utilization shall not commence until the City has taken Partial Utilization for that portion of the Work or has issued a Notice of Substantial Completion for the entire project.
- G. Except as provided in this Paragraph 9.07, there shall be no additional cost to the City due to Partial Utilization.

9.08 SUBSTANTIAL COMPLETION

- A. Contractor shall notify the City in writing when Contractor considers that the Work is Substantially Complete and request that the City inspect the Work and prepare a Notice of Substantial Completion. Contractor shall attach to Contractor's request for a Substantial Completion inspection a preliminary list of items to be completed or corrected before Final Completion.
- B. Within 10 working days from receipt of Contractor's written notification, the City will inspect the Work to determine whether it is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Contractor with a Punch List / Substantial Completion within 15 working days from Contractor's notice, which lists

all Items that Contractor must correct or complete before the City considers the Work Substantially Complete.

- C. Once Contractor has completed all items on the Punch List / Substantial Completion, Contractor shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in subparagraph 9.08B. Contractor shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.
- D. As a condition precedent to Substantial Completion, Contractor shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other equivalent agency having jurisdiction over the Work in the event that such temporary occupancy permit or equivalent permit is necessary for the City to utilize the Work for the purposes for which it is intended.
- E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.
- F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Contractor (i) a Punch List / Final Completion identifying deficient items to be corrected by Contractor prior to Final Completion; and (ii) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance, and warranties.

9.09 FINAL COMPLETION AND FINAL PAYMENT

- A. When Contractor considers all Work to be complete, including all items of Work on the Punch List / Final Completion and all closeout requirements, Contractor shall notify the City in writing and request that the City issue a certificate of acceptance.
- B. Within 10 working days of receipt of Contractor's written notice, the City will verify whether Contractor has completed all Punch List / Final Completion items. If the City finds that any of the Punch List / Final Completion items are not complete, the City will notify Contractor in writing within 15 working days from Contractor's notice. Contractor shall promptly take actions necessary to complete such Punch List / Final Completion items. The City will add to or modify the Punch List if it discovers additional non-compliant work prior to Final Completion.
- C. Once Contractor considers all deficient Punch List / Final Completion items complete, Contractor shall notify the City in writing and request a second inspection. If the City finds the Punch List / Final Completion items are still not complete, Contractor shall be responsible for all costs for conducting such additional inspections incurred by the City and its consultants before Final Completion. The cost of such inspections shall not be considered a delay cost and shall be charged in addition to any liquidated damages that may become due as a result of Contractor's failure to achieve Final Completion within the time prescribed in Section 00 73 02, Contract Time and Liquidated Damages. The City may deduct all such costs of the City and its consultants from amounts that are due or become due to Contractor.

- D. While deficient Punch List / Final Completion Work is outstanding, the City may, at its option, pay Contractor any earned Contract funds, including retention, subject to offset for the following: (i) funds subject to a certification of forfeiture by the Office of Labor Standards Enforcement and/or stop notice claims and/or funds to be withheld as otherwise required by law or court order; (ii) an amount not to exceed 200% of the total estimated cost of labor and materials to correct any Non-conforming, unacceptable, or incomplete Work; and (iii) amounts assessed for liquidated damages.
- E. After Contractor has completed to the satisfaction of the City all Punch List / Final Completion items and close-out requirements in accordance with the Contract Documents, and the Commission issues a Resolution accepting the Work, the City will issue a written certificate of acceptance as required by section 6.22(k) of the Administrative Code stating that the Work is acceptable, and City will pay Contractor the final payment.
- F. Contractor and each assignee under any assignment in effect at the time of final payment shall, if required by the City, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in the form specified in Section 01 77 00 (Closeout Procedures) and containing such exemptions as may be found appropriate by the City, discharging the City and the City's consultants, and their directors, officers, members, employees, agents, and authorized representatives of all liabilities, obligations, and Claims arising under this Contract.

9.10 PAYMENT FOR UNDELIVERED LONG LEAD ITEMS; PAYMENT FOR ITEMS DELIVERED AND STORED ON OR OFF THE SITE

- A. Long Lead Items Not Delivered to Contractor. In general, the City will not make payments for undelivered equipment or materials. Notwithstanding that general rule, the Contract Documents may, in limited circumstances, authorize partial payment for undelivered equipment or materials that require lengthy fabrication periods. City will issue payment according to and limited to the specific authorization and process set forth in the Agreement Form (Section 00 52 00). The City will not make partial payment for undelivered Items unless the Agreement specifically authorizes such payment.
- B. Items Delivered and Stored On or Off the Site. In general, the City will not make partial payment to Contractor for material or equipment procured by Contractor but stored on or off the Site and not incorporated into the Project. Notwithstanding that general rule, the following exception applies in limited circumstances:
 - 1. The City will, upon written request by Contractor, make partial payment for material or equipment procured by Contractor and not incorporated into the Project subject to the following conditions:
 - a. City will not issue partial payment for any materials or equipment unless each individual piece of the material or equipment will become a permanent part of the Work, the materials and/or equipment are required by the Contract Documents, and the materials and/or equipment are specially manufactured for the Project and could not readily be used for or diverted to another job.
 - b. City will not issue partial payment for living or perishable plant material, or for degradable materials such as rock, sand, cement, or for reinforcing steel,

- miscellaneous piping, off the shelf and catalog items, or similar items, until they are incorporated into the Work.
- c. Applicable materials and/or equipment are either stored on the Site or at an off-Site location approved in advance and in writing by the City and in compliance with the requirements set forth in this subparagraph.
 - d. City's partial payment for materials or equipment stored off the Site shall be limited to the lesser of 75% of the invoice cost or the Bid Item amount less an estimate by the City for installation. Partial payment for materials or equipment stored on the Site shall be limited to the lesser of 95% of the invoice cost or the Bid Item amount less an estimate by the City for installation. Contractor shall provide all documentation necessary to establish the cost of the materials or equipment. The City shall be sole judge of installation costs. The actual percentage paid (subject to the 75% or 95% limit, as applicable) shall be at the discretion of the City.
 - e. The General Requirements may set forth additional conditions applicable to partial payment for materials and equipment.
2. The City will not approve a request for partial payment for material or equipment not incorporated into the Project unless Contractor complies with each of the applicable requirements set forth below. City will not issue partial payment until Contractor submits sufficient and satisfactory documentation to the City as required below.
- a. Contractor shall submit to the City Representative proof of off-Site material or equipment purchases, including bills of sale, invoices, unconditional releases, and/or other documentation as requested by the City warranting that Contractor has received the material or equipment free and clear of all liens, charges, security interests, and encumbrances.
 - b. Contractor shall submit to the City Representative proof that title to stored Items vested in the City at time of delivery to the Site or off-Site warehouse. Contractor shall be responsible for all costs associated with storage of the Items.
 - c. Contractor shall store the materials and/or equipment in a bonded warehouse or facility approved by the City Representative. Contractor shall physically segregate the materials and equipment from all other materials or equipment within the facility and shall identify them as being the "PROPERTY OF THE CITY AND COUNTY OF SAN FRANCISCO." Contractor shall exercise all measures necessary to ensure preservation of the quality, quantity, and fitness of such materials or equipment and shall perform the manufacturers' recommended maintenance of the materials or equipment. Contractor shall inspect the materials and equipment and shall submit regular reports to the City Representative as specified in the General Requirements, listing all of the equipment stored, results of its inspection, and the maintenance performed.
 - d. Contractor, at no additional cost to the City, shall insure stored material and/or equipment against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the City Representative naming the City as an additional insured. Insurance shall not be cancelable for at least 30 days and cancellation shall not be effective until certificate thereof is

provided to the City. The insurance shall cover the material or equipment while stored at the approved location, while in transit to the Site, while being off-loaded at the Site and until the material or equipment is incorporated into the Work and the Work is accepted by the City.

- e. Contractor shall submit to the City Representative written consent from Contractor's sureties approving the partial payment for Items stored on or off Site. The written consent must include a statement confirming that remittance of the advance payment will not relieve the sureties of any of their obligations under the Bonds.
 - f. Stored material or equipment shall be available for inspection by the City at all times. Contractor shall, upon request, assist the City Representative in conducting a full view, piece-by-piece, inventory of all such material or equipment.
 - g. Contractor shall protect stored material and equipment from damage. Damaged material and/or equipment, even though paid for, shall not be incorporated into the Work. In the event of loss or damage to paid material and/or equipment, Contractor shall be responsible for replacing such lost or damaged material and/or equipment at its own cost and shall be responsible for all delays incurred to the Project as a result of such loss or damage. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Contractor fails to replace lost or damaged material and/or equipment at its own cost.
 - h. Contractor shall deliver stored material and equipment to the Site. After delivery, if Contractor or City discovers any inherent or acquired defects in such material and/or equipment, Contractor shall remove and replace any defective Items with suitable Items at no additional cost to the City. Contractor shall be responsible for all delays incurred to the Project resulting from the removal and replacement of defective material and/or equipment. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Contractor fails to remove and replace defective Items.
3. Nothing in this Paragraph 9.10 shall relieve Contractor of its responsibility for incorporating material and equipment into the Work that conform to the requirements of the Contract Documents.
4. Contractor shall absorb any and all costs incurred to meet the requirements of this Paragraph 9.10 without modification to the Contract Sum.

ARTICLE 10 - INSURANCE AND BONDS

10.01 INSURANCE REQUIREMENTS

Contractor shall purchase and maintain in force throughout the Contract Time such liability and other insurance as provided in Section 00 73 16, Insurance Requirements.

10.02 PERFORMANCE BOND AND PAYMENT BOND

- A. At the time of execution of the Contract, Contractor shall file with the City the following bonds using the forms provided in Section 00 61 13 (Performance and Payment Bond Form) and Section 00 61 13/R (Performance and Payment (Labor and Material) Bond Rider Form):
 - 1. a corporate surety bond, in a sum not less than 100% of the Contract Sum, to guarantee the faithful performance of the Contract (“Performance Bond”); and
 - 2. a corporate surety bond, in a sum not less than 100% of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract (“Payment Bond”).
- B. Said Performance Bond shall cover all corrective Work required during the Guarantee to Repair Period, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.
- C. Corporate sureties issuing these bonds and Bid bonds as specified in Section 00 21 13 (Instruction to Bidders) and Section 00 52 00 (Agreement Form) must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties must have either a current A.M. Best Rating not less than “A-, VIII” or must be listed in the current version of the United States Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), and must be satisfactory to the City.

ARTICLE 11 - LABOR STANDARDS

11.01 PREVAILING WAGES

- A. It is hereby understood and agreed that all provisions of section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.
- B. It is hereby understood and agreed that all provisions of sections 6.22(e) and 6.22(f) of the Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:
 - 1. Contractor shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
 - 2. Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
 - 3. Contractor shall keep or cause to be kept complete and accurate payroll records for all persons performing labor in or about the Work. Such records shall include the name,

address, and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Every Subcontractor that shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the California Department of Industrial Relations.

4. Should Contractor, or any Subcontractor who undertakes the performance of any portion of the Work herein required, fail or neglect to pay any person who performs labor under this Contract, subcontract, or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Contractor and the Subcontractor shall jointly and severally forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per day per worker.
 5. Any person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required may not perform labor for a longer period than 5 days (Monday-Friday) per calendar week of 8 hours each (with two 10-minute breaks per 8-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Contractor or any Subcontractor shall compensate any person working hours in excess of the foregoing limitation in accordance with the prevailing overtime standard and rates. Contractor or any Subcontractor that violates this provision shall forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per worker per day.
- C. The most current highest prevailing wage rate determinations made at the time of the advertisement for Bids are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.
1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.
 2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.
- D. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations and the San Francisco Office of Labor Standards Enforcement.
- E. Contractor shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

11.02 PAYROLLS

- A. Certified Payroll Records: Contractor shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the preparation, keeping, filing, and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.
1. Contractor shall certify the accuracy and completeness of payroll records under penalty of perjury and submit payroll information electronically to the City and, where required, to the California Department of Industrial Relations, as set forth in Paragraph 9.03M. In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job site office of Contractor on the following basis:
 - a. Contractor shall make available for inspection or shall furnish a certified copy of an employee's payroll record to any employee or his or her authorized representative upon request.
 - b. Contractor shall make available for inspection or shall furnish a certified copy of all payroll records to a representative of the City upon City's request.
 - c. Contractor shall make a certified copy of all payroll records available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. Contractor shall not provide the public access to such records at the job site office of Contractor.
 - d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.
 2. In providing copies of payroll records to any requestor, the Contractor shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.
 3. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of any change of location and address.
 4. In the event that Contractor receives a written notification of noncompliance with section 1776, Contractor shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Contractor shall forfeit the penalties set forth in Administrative Code section 6.22(e) and (f) and/or California Labor Code section 1776. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, City shall withhold such penalties from the Contract Sum.
 5. Contractor is solely responsible for compliance with section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

11.03 APPRENTICES

- A. Contractor and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and Administrative Code, section 6.22(n). Contractor shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.
 - 1. Contractor shall comply with all requests by the City to provide proof that Contractor and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.
 - 2. Contractor shall include in all of its subcontracts the obligation for Subcontractors of every tier to comply with the requirements of the State Apprenticeship Program.
 - 3. Section 1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than \$30,000.
- B. Should Contractor fail to comply with the apprenticeship requirements of section 1777.5, Contractor shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- C. Contractor, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent to qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

11.04 LABOR STANDARDS ENFORCEMENT

- A. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations (“DIR”) and the San Francisco Office of Labor Standards Enforcement.
- B. In accordance with Administrative Code section 6.22(e)(7) and section 6.24 and the applicable sections of the California Labor Code, Contractor further acknowledges and agrees as follows:
 - 1. Contractor will cooperate fully with the DIR and the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.
 - 2. Contractor agrees that the DIR and the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in

- random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records, and employee paychecks.
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.
 4. Contractor shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.
 5. The DIR and the Labor Standards Enforcement Officer may audit such records of Contractor deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.
- C. Under California Public Contract Code section 6109, Contractor or Subcontractors who are ineligible to Bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.
1. Any contract for the Project entered into between Contractor and a debarred Subcontractor is void as a matter of law.
 2. Contractor may not pay any public money to a debarred Subcontractor for performing work as a Subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred Subcontractor by Contractor.
 3. Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor that Contractor allowed to work on the Project.

ARTICLE 12 - SAFETY

12.01 PRECAUTIONS AND PROGRAMS

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties, or damages that result from Contractor's failure to comply with applicable health and safety laws and regulations during performance of the Work. Refer also to Section 00 73 19, Health and Safety Requirements.
- B. Contractor shall designate in writing a responsible competent person of Contractor's organization at the Site as Project safety representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a day, 7 days a week by telephone or other approved means.
- C. Contractor shall perform all Work relating to hazardous materials as required by the Contract Documents. Contractor and its Subcontractors shall comply with all federal, state, and local statutes and regulations on training, handling, storage, public notification, and disposal of hazardous materials and hazardous wastes. In the event that Contractor or its Subcontractors (i) introduces and/or discharges, spills, or releases a hazardous material in a manner not specified by the Contract Documents; and/or (ii) disturbs a hazardous material identified in the Contract Documents or Available Project Information, the Contractor shall

immediately notify the City Representative and any required agencies of the spill, release, or discharge and Contractor shall stop the Work, and cordon off the affected area to secure entry. At the discretion of the City, either (i) the City at Contractor's expense will or (ii) the Contractor through a qualified remediation Subcontractor at Contractor's expense shall remove and dispose of the hazardous material if deemed necessary by the City. Under no circumstance may the Contractor perform remediation Work for which it is not qualified.

- D. Should Contractor or any of its Subcontractors, while performing Work on the Site, unexpectedly encounter any hazardous material not shown in the Contract Documents or Available Project Information, or have reason to believe that any other material encountered may be a hazard to human health and safety and/or the environment, Contractor shall stop the Work, cordon off the affected area to secure entry, and shall immediately notify the City Representative. If deemed necessary by the City, City will direct removal and disposal of the hazardous material not shown in the Contract Documents or Available Project Information at the City's expense. In the event that Contractor is delayed in the completion of the Contract Work solely because of such hazardous materials or conditions not previously identified in the Contract Documents or Available Project Information, the Contractor shall be entitled to an extension of time in accordance with Article 7 of these General Conditions.

12.02 PERSONS AND PROPERTY

- A. Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury, or loss to the following:
1. All persons on the Site or others who may be affected by the Work;
 2. The Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. Other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not indicated to be removed, relocated, or replaced on the Contract Documents.
- B. Contractor shall give notices required by California Civil Code section 832 and shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.
- C. Contractor shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, AT&T, Municipal Transportation Agency / Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.
- D. Contractor shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.

- E. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, such as posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying owners and users of adjacent sites, underground facilities, and utilities of Contractor's operations.
- F. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.
- G. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.
- H. In the event of damage or loss to property referred to in the previous subparagraphs, whether caused by Contractor, its Subcontractors or Lower-Tier Subcontractors, Contractor shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Contractor are in addition to Contractor's obligations under Paragraph 3.20 of these General Conditions.
- I. Pursuant to section 6705 of the California Labor Code, Contractor shall not begin excavation for trenches 5 feet or more in depth until Contractor has received acceptance from the City of Contractor's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Contractor shall submit a shoring plan in accordance with the requirements of the Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan may allow the use of shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If Contractor's shoring plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and sealed by an engineer retained by Contractor who is registered as a civil or structural engineer in the State of California. The City's acceptance of Contractor's shoring plan shall not be construed to relieve Contractor of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.
- J. Contractor shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect its Work and materials and fully or partially completed work of the City or separate contractors from damage due to construction operations from its Work, the action of the elements, the carelessness of its Subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Completion of the Work. If a separate contractor covers over or integrates Contractor's improper Work with its own work, then Contractor is responsible for the cost to correct any damage or defects its improper Work caused to the separate contractor's work, and also the cost of removing and replacing the separate contractor's work in order to access and correct the improper Work, without any expense to the City.

12.03 SAFETY PERMITS

- A. Contractor shall obtain and pay for a California industrial safety permit for any of the following activities if applicable:
1. The construction of a building, structure, false work, or scaffolding more than 3 stories or the equivalent of 35 feet height; or
 2. The demolition of a building, structure, false work, or scaffolding more than 3 stories or the equivalent of 35 feet height; or
 3. The excavation of a trench 5 feet deep or deeper into which a person must descend.
 4. Contractor shall obtain and pay for all other required safety permits.

12.04 EMERGENCIES

In emergencies affecting the safety or protection of persons or property at the Site, Contractor shall act promptly to prevent threatened damage, injury, or loss. Contractor shall give prompt written notice to the City if Contractor believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations in the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Contractor in response to such an emergency, the City will issue a Change Order or Unilateral Change Order as provided in Article 6.

ARTICLE 13 - CONTRACT AND GOVERNMENT CODE CLAIMS

13.01 CLAIMS GENERALLY

- A. The City and Contractor acknowledge and agree that early identification and resolution of potential claims or disputes benefits all parties and advances the success of the Project.
- B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential claims prior to the Contractor performing disputed Work and having documentation from the Contractor concerning a dispute as Work is being performed is critical for the City to make informed decisions that could impact the budget and schedule for the Project.
- C. Contractor's compliance with the Notice of Potential Claim and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and Administrative Code Chapter 10. As set forth in Paragraph 13.04, Contractor's submittal of timely and proper Notices of Potential Claims and Contract Claims may, in some circumstances, toll Contractor's compliance with the Government Code Claim requirements until the Contract Claim process is finally completed. Refer to Paragraph 13.04, below. Contractor's timely submittal of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract and not expressly excluded from the Contract Claim process by Contractor by subparagraph 13.01D, below. Disputed issues not timely raised and properly documented by Contractor in conformance with this

Article shall be deemed waived by the Contractor and may not be asserted in a Government Code Claim, subsequent litigation, or legal action. Furthermore, by executing this Contract, Contractor waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.

- D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (i) claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine; (ii) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury of death; (iii) claims by the City; or (iv) stop notices.
- E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

13.02 NOTICE OF POTENTIAL CLAIM

- A. If, during the course of the Project, the Contractor seeks an adjustment of the terms of the Contract Documents, an adjustment to the Contract Sum and/or Contract Time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Contractor arising out of or related to the Contract Documents or the performance of Work (including without limitation determination of delay, assessment of liquidated damages, Proposed Change Orders, Unilateral Change Orders, denial of Change Order Requests, payment, nonpayment, termination for cause, termination for convenience, or other act by the City impacting or potentially impacting payment, nonpayment, withholding, or the performance of the Work), then the Contractor must submit to the City a timely Notice of Potential Claim to preserve its right to seek such additional compensation and/or time.
- B. Contractor must submit a Notice of Potential Claim to the City within 7 days of the event, activity, occurrence, or other cause giving rise to a potential Claim. For potential Claims that involve or relate to a change, addition or deletion to the Work, Contractor's 7-day period to submit a Notice of Potential Claim will commence when the City Representative issues a final written decision denying, in whole or in part, Contractor's Change Order Request or other proper request for adjustment to the Contract Sum and/or Contract Time. Any failure by Contractor to comply with required notice and submittal requirements for Change Order Requests (Article 6) or Differing Site Conditions (Paragraph 3.04) shall constitute grounds for City to deny any related Claim.
- C. A Notice of Potential Claim shall describe the nature and circumstances of the potential claim event, set forth the reason(s) for which Contractor believes additional compensation and/or time will or may be due, and provide a good faith estimate of the cost and/or time impact to which Contractor believes it may be entitled. Contractor's Notices of Potential Claims submitted pursuant to Paragraph 3.04 (Differing Site Conditions) must also identify the Escrow Bid Documents that formed the basis of Contractor's Bid to perform the Work affected by the alleged Differing Site Condition.
- D. The Notice of Potential Claim provides early notice to the City of a disputed issue and provides the City with the opportunity to mitigate associated costs, allowing for early resolution. Failure by Contractor to submit a timely Notice of Potential Claim shall

constitute a waiver of any claim arising out of the event, activity, occurrence, or other cause giving rise to the potential Claim.

- E. The requirements of Paragraph 13.02 apply regardless of whether or not the disputed issue underlying a potential claim event has been or will be submitted to an issue resolution/escalation ladder, Dispute Review Board, Dispute Resolution Advisor, or similar dispute resolution process that may be required by the Contract Documents.

13.03 CONTRACT CLAIM

- A. General. The Contract Claim shall be the Contractor's sole and exclusive administrative remedy for seeking additional compensation or time associated with its performance of the Work under the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Contractor as to any claims relating to its performance of the Work under the Contract and a failure to exhaust its administrative remedies.
- B. Deadline to Submit Contract Claim. The time to submit a Contract Claim will depend on the dispute resolution process(es) that are incorporated into the Contract Documents.
1. If the Contract Documents require the establishment of an issue resolution/escalation ladder, Dispute Review Board, Dispute Resolution Advisor, or similar mandatory or optional supplemental dispute resolution process(es), and Contractor timely refers a disputed issue to the applicable process(es), then the time to submit a Contract Claim shall be extended as set forth in the Contract Document that implements the supplemental dispute resolution process(es). For example, as set forth in Section 00 73 10 (Dispute Resolution Advisor), if used, for disputes reviewed by a Dispute Resolution Advisor and heard using a formal Dispute Meeting, Contractor must submit any certified Contract Claim for the dispute no later than 15 days after expiration of the acceptance period for the DRA Report. Contractor's timely referral of a disputed issue to a supplemental dispute resolution process that the Contract Documents identify as mandatory (e.g., Dispute Review Board) is a prerequisite to filing a Contract Claim under this Article. By failing to refer timely a disputed issue to the applicable mandatory supplemental dispute resolution process specified in the Contract Documents, Contractor waives future Contract Claims relating to the disputed issue.
 2. The following Contract Claim submittal requirements apply (i) if the Contract Documents do not establish a supplemental dispute resolution process or (ii) the Contract Documents establish an optional supplemental dispute resolution process(es) and Contractor elects to not refer the disputed issue to an optional supplemental dispute resolution process. In such cases, Contractor may file a Contract Claim only as to disputed issues presented to and rejected by the City Representative through the Notice of Potential Claim process set forth in Paragraph 13.04, below. The City Representative will respond, in writing, to Contractor's Notice of Potential Claim, submitted in accordance with Paragraph 13.04, within 30 days of receipt of the Notice. If the City Representative requires additional time to issue a determination, he or she will notify the Contractor of the same in writing, within the initial 30-day review period. If Contractor disputes the City Representative's written determination and wishes to preserve its right to pursue the disputed issue, Contractor must submit any subsequently filed Contract Claim within 15 days of receipt of the City

Representative's written determination on the Notice of Potential Claim. In the event that the City Representative does not issue a written determination on Contractor's Notice of Potential Claim within the prescribed period, the Contractor must submit a Contract Claim either within 15 days of the expiration of the prescribed period, or 45 days of submitting its Notice of Potential Claim, whichever is later, if Contractor wishes to preserve its right to pursue the disputed issue.

C. Contract Claim Certification Requirement:

1. Contractor, under penalty of perjury, must submit with the Contract Claim certification by Contractor and its Subcontractor(s), as applicable, that:
 - a. the Claim is made in good faith;
 - b. supporting data are accurate and complete to the best of Contractor's, or Contractor's and Subcontractor's, as applicable, knowledge and belief; and
 - c. the amount requested accurately reflects the Contract adjustment for which Contractor believes the City is liable.
2. An individual or officer who is authorized to act on Contractor's behalf must execute the certification. Failure of an authorized Contractor representative to certify a claim under penalty of perjury shall render the Contract Claim a nullity and the underlying claim waived by the Contractor.
3. In regard to a Claim or portion of a Claim by a Subcontractor, Contractor shall fully review the Subcontractor's Claim and shall certify the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Claim, under penalty of perjury, in the same manner the Contractor would certify its own claim under the foregoing subparagraph 13.03C.1. The City will not consider a direct claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.
4. Contractor hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Contractor as to the subject Claim.
5. Contractor further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Contractor may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

D. Format of a Contract Claim:

1. The Contractor shall document its Contract Claim in the following format:
 - a. Cover letter and certification.
 - b. Narrative Summary of Claim merit and amount, and clause under which the Claim is made.
 - c. List of documents relating to Claim:
 - 1) Specifications
 - 2) Drawings
 - 3) Clarifications/RFIs

- 4) Correspondence
 - 5) Schedules
 - 6) Other
 - d. Chronology of events and correspondence.
 - e. Analysis of Claim merit.
 - f. Analysis of Claim cost (money and time).
 - g. Attachments:
 - 1) Specifications
 - 2) Drawings
 - 3) Clarifications/RFIs
 - 4) Correspondence
 - 5) Schedules
 - 6) Other
- E. Additional Requirements for Contract Claims Seeking Time Extensions or Contesting the Assessment of Delay:
- 1. All Contract Claims seeking time extensions or challenging the assessment of delay and/or liquidated damages shall include, in addition to all other applicable requirements of this Article 13, a written analysis of all changes and all delays impacting the as-built critical path (the “As-Built Schedule Analysis”). Contractor shall base its As-Built Schedule Analysis on an as-built schedule that incorporate all actual start and finish dates, actual durations of activities, and actual sequences of construction. Contractor shall obtain the as-built schedule from the most recent baseline schedule or progress schedule update as of the time of the activity, occurrence, or other cause giving rise to the Claim. Contractor shall create the as-built schedule as an early start schedule, and the schedule shall use the original activity durations for all incomplete Work and the actual logic driving all activities. The As-Built Schedule Analysis shall incorporate all delays (including City, Contractor and third-party Unavoidable Delays without exception) in the time frame that they occurred with actual logic ties. As part of its review of Contractor’s As-Built Schedule Analysis, the City will determine the critical path and identify any City-caused and/or third-party-caused delays (if any) on the critical path. The City will not review or consider any Contract Claim seeking time extensions or contesting the assessment of delay (including liquidated damages) that does not include an As-Built Schedule Analysis that meets the requirements of this subparagraph.
- F. Procedure for Review of a Contract Claim:
- 1. The City shall review only a timely, certified, and properly documented Contract Claim.
 - 2. The City shall respond to a Contract Claim in writing, within 45 days of receipt of such Claim. In its response, the City shall either grant or deny the Claim in whole or in part.

If the City does not respond to a Claim within the 45-day period, the Claim is deemed denied in its entirety.

3. Within 10 days of the date of the City's response or expiration of the 45-day period, whichever is earlier, the Contractor may request review of the Contract Claim and the City's response by the Department Head. The request must be in writing, directed to the Department Head and copied to the City Representative. Failure by the Contractor to make a timely request to the Department Head, copied to the City Representative, shall constitute acceptance by the Contractor of the City's original response.
4. Upon a timely and proper request, the Department Head, or his/her designee (other than personnel assigned to the Project), shall review the relevant documents, meet with the Contractor and City personnel assigned to the Project, and confirm or revise the City's response to the Contract Claim. The Department Head shall issue such determination within 60 days of the date of the request for review. The determination by the Department Head shall constitute the final administrative determination of the City. If the Department Head takes no action on a request for review within the 60-day period, the City's original response shall constitute the final administrative determination by the City.

13.04 GOVERNMENT CODE CLAIM

For the purposes of this Contract, the City and the Contractor hereby agree that any action at law against the City arising out of or relating to Contractor's performance of the Work shall accrue either on the effective date of termination (under Article 14 of these General Conditions) or on the date of Substantial Completion, whichever is earlier. Notwithstanding the foregoing, the timely submittal of a complete and proper Notice of Potential Claim and Contract Claim under the administrative procedure specified in this Article 13 shall operate to toll Contractor's compliance with the Government Code Claim requirements under California Government Code section 900, et seq., and Administrative Code Chapter 10 until the City issues a final administrative determination per subparagraph 13.03F.4.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.01 NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE

A. Grounds for Default. Contractor will be in Default of the Contract if Contractor:

1. Refuses or fails to supply enough properly skilled workers, adequate and proper materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
2. Is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
3. Refuses or fails in a material way to replace or correct Work not in conformance with the Contract Documents; or
4. Repeatedly fails to make prompt payment due to Subcontractors or for labor; or

5. Materially disregards or fails to comply with any law, ordinance, rule, regulation, or order of any public authority having jurisdiction; or
 6. Intimidates or sexually harasses a City employee, agent, or member of the public; or
 7. Is otherwise in material breach of any provision of the Contract Documents.
- B. Notice of Default. When any of the aforementioned grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Contractor. The City shall provide a copy of any Notice of Default to the Contractor's surety.
1. The Notice of Default shall identify the ground(s) for Default and provide the Contractor with a 14-day cure period to complete necessary corrective Work and/or actions.
 2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Contractor or its Subcontractors/Suppliers, Contractor shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently performance of the corrective Work and/or actions. The City, after accepting Contractor's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Contractor's surety.
- C. Termination for Cause. If Contractor fails to cure the Default completely either (i) within the 14-day cure period set forth in the Notice of Default; or (ii) within the agreed-upon cure period set forth in an amended Notice of Default, the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Contractor and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:
1. Take possession of the Site and use any materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to complete the Project;
 2. Accept assignment of subcontracts and agreements pursuant to Paragraph 4.03; and
 3. Finish the Work by whatever reasonable method the City may deem expedient.
- D. If the City terminates the Contract for one of the grounds set forth in subparagraph 14.01A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including all liquidated damages for delays, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to the City. The amount to be paid to Contractor or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.
1. Upon completion of all Work, Contractor shall be entitled to the return of all its materials that have not been used in the Work, its plant, tools, equipment, and other property provided, however, that Contractor shall have no claim on account of usual and ordinary depreciation, loss, or wear and tear.

- E. If, after termination of the Contractor's right to proceed, the City determines that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, will be the same as if the termination had been issued for the convenience of the City, as provided under Paragraph 14.03.

14.02 SUSPENSION BY THE CITY FOR CONVENIENCE

- A. The City may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the City may determine.
- B. City will make an adjustment as specified in subparagraph 7.02A for increases in the cost of performance of the Contract caused by suspension, delay, or interruption. City will not make an adjustment to the extent that:
1. Performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible; or
 2. City denies a request for an adjustment under another provision of this Contract.

14.03 TERMINATION BY THE CITY FOR CONVENIENCE

- A. Pursuant to section 6.22(l) of the Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Paragraph 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. City shall deliver written notice of any such termination to Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.
- B. Except as otherwise directed by the City, after Contractor receives a notice of termination, it shall comply with all of the following requirements:
1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.
 2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.
 3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
 4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the rights, title, and interest of Contractor under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts.
 5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Paragraph 14.03.
 6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination,

- and (ii) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.
7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. Contractor shall apply the proceeds of any such transfer or disposition in reduction of any payments to be made by the City to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.
 8. Complete performance of any part of the Work not included in the City-issued notice of termination.
 9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of Contractor and in which the City has or may acquire an interest.
- C. After receipt of a notice of termination, Contractor may submit to the City a termination claim in the form and with the certification the City prescribes. Contractor shall submit such termination claim promptly, but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Contractor within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Claim at any time after such 3-month period or extension period. If Contractor fails to submit a termination Claim within the time allowed, the City may determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination. The City shall then pay to Contractor any amount so determined.
- D. Subject to the previous provisions of this Paragraph 14.03, Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to Contractor because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The City will undertake to amend the Contract accordingly, and City will pay Contractor the agreed amount. Nothing following, which prescribes the amount to be paid to Contractor in the event of failure of Contractor and the City to agree upon the whole amount to be paid to Contractor because of the termination of Work under this Paragraph 14.03, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that the parties may agree upon to be paid to Contractor pursuant to this subparagraph 14.03D.
- E. If Contractor and the City fail to agree in accordance with subparagraph 14.03D on the whole amount City will pay to Contractor because of the termination of Work under Paragraph 14.03, the City shall determine, on the basis of information available to the City

the amount, if any, due to Contractor by reason of the termination and will pay to Contractor the amounts determined as follows:

1. For all Contract Work performed before effective date of the notice of termination, the total (without duplication of any items) of the following items:
 - a. The cost of such Work.
 - b. The cost of settling and paying Claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Contractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.
 - c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable. But, if it appears that Contractor would have sustained a loss on the entire Contract if Contractor had completed all the Work, City shall not be obligated to pay Contractor an amount for profit.
 2. The reasonable cost of the preservation and protection of property incurred as previously provided.
 3. The total sum City will pay to Contractor shall not exceed the total Contract Sum as reduced by:
 - a. the amount of payments already made;
 - b. the Contract price or value of Work terminated; and
 - c. the fair value, as determined by the City, of destroyed, lost, stolen, or damaged Work or materials for which Contractor was responsible.
- F. Contractor shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the City makes under subparagraph 14.03E. But, if Contractor has failed to submit a termination Claim within the time provided and has failed to request extension of such time, it shall have waived such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Contractor the following:
1. If there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or
 2. If a proceeding is initiated in a court of competent jurisdiction within the State of California, the amount finally determined in said proceeding.
- G. In arriving at the amount due to Contractor under this clause, the City shall deduct:
1. All unliquidated advances or other payments on account theretofore made to Contractor, applicable to the terminated portion of the Contract;
 2. Any Claim that the City may have against Contractor in connection with the Contract; and

3. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the City.
- H. Contractor understands and agrees that the foregoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.01 GOVERNING LAW AND VENUE

- A. The Contract Documents shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the Administrative Code, which is incorporated by this reference as if set forth herein in full.
- B. All litigation relative to the formation, interpretation, and performance of the Contract Documents will be decided by a court of competent jurisdiction within the State of California.

15.02 RIGHTS AND REMEDIES

- A. All of City'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 City under the Contract Documents or otherwise available at law or in equity.
- B. No action or failure to act by the City or the City Representative 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 City or the City Representative 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.

15.03 COMPLETE AGREEMENT

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. The Contract Documents may be modified or amended only as specified in Paragraph 1.04 of these General Conditions.

15.04 SEVERABILITY OF PROVISIONS

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

END OF SECTION