

**CITY OF POMONA
WELL 34 GROUNDWATER TREATMENT PLANT – PROJECT NO. 95087
DESIGN-BUILD CONTRACT**

ARTICLE 1 -PRELIMINARY MATTERS

1.1 Contract for Design and Construction.

This Design-Build Contract is effective as of the **1st** day of **August 2025**, by and between City of Pomona, a charter city organized and existing under the laws of the State of California ("City"), and **RC Foster Corporation** ("Design-Build Entity").

The parties agree as follows:

- A. Design-Build Entity, for and in consideration of the payment to be made to Design-Build Entity as hereinafter provided, shall furnish all plant, labor, technical and professional design services, supervision, materials and equipment, other than such materials and equipment as may be specified to be furnished by City, and perform all operations necessary to complete the Work in strict conformance with the Contract Documents (defined below) for the public work of improvement titled:

Design/Build Well 34 Groundwater Treatment Plant

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

- A. The Design-Build Entity is made up of **Civiltec Engineering Inc. (License No. C11369045)**, which shall function as the designer and Architect/Engineer of Record for the Project and provide all architectural/engineering design services, and **RC Foster Corporation (License No. 569693)**, which shall function as the general contractor for the Project and provide all construction services for the Project together with its chosen subcontractors. For purposes of this Contract, **Robert C. Foster** shall execute the Contract on behalf of the **Design-Build Entity** and shall have the authority to make all decisions necessary on behalf of the Design-Build Entity. Notwithstanding the foregoing, City may accept bonds naming Design-Build Entity as principal and professional liability insurance naming the member of the Design-Build Entity designated for design/architectural services as named insured.

Design-Build Entity shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California.

- B. Time is of the essence in the performance of the Work. The Work shall be commenced by the date stated in City's Notice to Proceed. The Design-Build Entity shall complete all Work required by the Contract Documents within **600 calendar days** from the commencement date stated in the Notice to Proceed, which equates to a Project Completion Date of March 31, 2027.

By its signature hereunder, Design-Build Entity agrees the Project Completion Date is adequate and reasonable to complete the Work.

- C. City shall pay to the Design-Build Entity as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the Guaranteed Maximum Price ("GMP") of **Three Million Eight Hundred Ninety-Six Thousand Five Hundred Fifty Dollars (\$3,896,550)**. Payment shall be made as set forth in the General Conditions. Unless otherwise stated in the Contract Documents, the GMP shall pay for all costs and expenses required to design and construct the Project. Specifically included within the GMP is a City owned contingency in the amount of **One Hundred Ninety-Four Thousand Eight Hundred Twenty-Seven Dollars (\$194,827)** ("City Owned Contingency"). City Owned Contingency shall be for the exclusive use of City as needed to pay for unforeseen conditions and/or City added scope of work for the Project. City must authorize any use of these contingency funds in writing before the Design-Build Entity shall be entitled to any compensation from City Owned Contingency. Design-Build Entity shall be responsible at all times for tracking and accounting for any expenditure of City Owned Contingency. Any City Owned Contingency remaining at Project completion shall remain the sole property of City. Other than City Owned Contingency, the rest of the GMP is the sum payable to the Design-Build Entity to design and construct the Project.
- D. Design-Build Entity shall provide indemnification and defense as set forth in the General Conditions.
- E. No oral agreement or conversation with any representative or employee of City, either before or after the execution of the Contract shall affect or modify any of the terms or obligations herein contained. This Contract constitutes the entire agreement between the parties hereto and no changes, alterations or modifications hereof shall be effective unless in writing and signed by City.
- F. The "Contract Documents" include only the following documents, each of which is incorporated into this Contract by reference:
1. Request for Proposal ("RFP") and all addenda, attachments and appendices
 2. Design-Build Entity Proposal in response to RFP
 3. Design-Build Contract and all addenda
 - a. General Conditions
 - b. Special Conditions
 - c. General Requirements
 - d. City approved Change Orders
 4. Attachment 1 to this Contract - Design Professional Rate Schedule for Extra Work
 5. Attachment 2 to this Contract - Performance Bond

6. Attachment 3 to this Contract - Payment Bond
7. Attachment 4 to this Contract - [Reserved]
8. Attachment 5 to this Contract - Enhancements/Additional Scope of Work Terms and Conditions
9. Attachment 6 to this Contract - Exclusions/Clarifications of Scope by the Design-Build Entity
10. Attachment 7 to this Contract – Federal Requirements

- The Design-Build Entity shall complete the Work in strict accordance with all of the Contract Documents. Additionally, this Project is funded in part through the U.S. Environmental Protection Agency (“EPA”) Community Grants Program. Contractor and its subcontractors shall comply with all Federal cost cutting requirements as well as the applicable Federal laws as set forth in Attachment 7.
- All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of a conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions.

- G. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Design-Build Entity shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.
- H. By my signature hereunder, as Design-Build Entity, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.
- I. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by the Design-Build Entity hereunder without the prior written consent of City.
- J. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY:
City of Pomona
505 South Garey Ave.
Pomona, California 91766

DESIGN-BUILD ENTITY:
RC Foster
P.O. Box 77155
Corona, CA 92877-0101

ATTN: Chris Diggs

ATTN: Robert C. Foster, President

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- K. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

GENERAL CONDITIONS

ARTICLE 2. DEFINITIONS AND TERMINOLOGY

2.1 Defined Terms.

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 2. Additional Work -- New or unforeseen work will be classified as "Additional Work" when City's Representative determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Application for Payment -- The form acceptable to City's Representative which is to be used by the Design-Build Entity during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Architect of Record or Engineer of Record ("A/E") -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1 or any succeeding entity designated by City.

6. Bridging Documents -- Includes, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Work, Project Program, Performance Specifications and schematic drawings.
7. Certificate for Payment -- The form signed by City's Representative attesting to the Design-Build Entity's right to receive payment for certain completed portions of the Work on the Project in accordance with Article 12.
8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
9. Change Order Request ("COR") -- A request made by the Design-Build Entity for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a Design-Build Entity-claimed change to the Work. This term may also be referred to as a Change Order Proposal ("COP"), or Request for Change ("RFC").
10. City's Representative -- The individual or entity as identified in the Special Conditions to act as City's Representative.
11. Claim -- A demand or assertion by City or Design-Build Entity seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
12. Construction Documents -- The plans and technical specifications prepared by the Design-Build Entity for the Project and approved by City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by City. All amendments and modifications to the Construction Documents must be approved by City in writing.
13. Construction Documents Phase -- The second of three phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
14. Construction Phase -- The third phase of the Work and will commence upon final approval of the Construction Documents by City.
15. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

16. Contract -- The entire integrated written agreement between City and Design-Build Entity concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
17. Contract Documents -- The documents listed in Section 00 42 53, Article 1.1.G. Some documents provided by City, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
18. Contract Times -- The number of days or the dates stated in the Contract Documents and Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
19. Cost Breakdown -- A Cost Breakdown/Schedule of Values for each phase of Work shall be submitted by the Design-Build Entity as required pursuant to Article 12 herein and are incorporated into the Contract Documents by reference.
20. Daily Rate -- The Reverse Liquidated Damages amount stipulated in the Contract Documents as full compensation to the Design-Build Entity due to City's unreasonable delay to the Project that was not contemplated by the parties.
21. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
22. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
23. Demobilization -- The complete dismantling and removal by the Design-Build Entity of all of the Design-Build Entity's temporary facilities, equipment, and personnel at the Site.
24. Design-Build Entity -- The individual or entity with which City has contracted for performance of the Work.
25. Design-Build Entity Representative -- The person or firm identified as the primary contact person and representative of the Design-Build Entity as designated in the Contract and who shall not be changed without prior written consent of City.
26. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Build Entity: (1) to City under the Contract Documents or; (2) developed or

prepared by or for the Design-Build Entity specifically to discharge its duties under the Contract Documents.

27. Design Professional -- The individuals or entities who will provide the Design-Build Entity with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
28. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
29. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
30. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
31. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of City's provided equipment which is installed in the Project by the Design-Build Entity.
32. Governmental Approvals -- Those governmental actions required to be obtained by City and necessary for the completion of the Project.
33. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price City will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in Section 00 42 53, Article 1.1 and further described in the cost proposal submitted by the Design-Build Entity.
34. Hazardous Environmental Condition -- The presence at the Site of Hazardous Waste.
35. Hazardous Waste -- Has the same meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a class I, class II, or class III disposal site in accordance with provisions of existing law, whichever is more restrictive.
36. Holidays -- The Holidays occur on:
 - New Year's Day - January 1
 - Martin Luther King Jr. Day -- Third Monday of January

- President's Day – Third Monday of February
 - Memorial Day - Last Monday in May
 - Juneteenth – June 19
 - Independence Day - July 4
 - Labor Day - First Monday in September
 - Veteran's Day - November 11
 - Thanksgiving Day - Fourth Thursday in November
 - Friday after Thanksgiving
 - Christmas - December 23 and 24
37. If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.
 38. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
 39. Master Project Schedule – The overall schedule for completion of the Project as prepared by City and included in the RFP.
 40. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
 41. Notice of Award – The written notice by City to the Design-Build Entity stating that upon timely compliance by the Design-Build Entity with the conditions precedent listed therein, City will sign and deliver the Contract.
 42. Notice of Completion – The form which may be executed by City and recorded by the county where the Project is located constituting final acceptance of the Project.
 43. Notice to Proceed – A written notice given by City to the Design-Build Entity fixing the date on which the Design-Build Entity may proceed with the Work and when Contract Times will commence to run.
 44. Partial Utilization – Use by City of a substantially completed part of the Work prior to Completion of all the Work.
 45. Performance Specifications – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto included within the Bridging Documents.

46. Project – The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by City or by Separate Contractors for the Project.
47. Project Completion Date – The date by which the Design-Build Entity agrees that all Work described in the Contract Documents shall be completed. The Project Completion Date is set forth in Section 00 42 53, Article 1.1.
48. Project Schedule – The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times as a part of the Master Project Schedule. The detailed requirements for the Project Schedule are stated in Article 6.
49. Proposal – The proposal submitted by the Design-Build Entity in response to the Request for Proposal for this Project.
50. Request for Proposal (“RFP”) – The request for proposal issued by City for the Project and includes all documents, exhibits, attachments, and addenda thereto.
51. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
52. Schematic Design Phase – The first of three phases of the Work. The scope of the Schematic Design Phase is further defined in the RFP.
53. Separate Contractor – A person, or firm, under separate contract with City performing other work at the Project site which may affect the Work.
54. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Design-Build Entity and submitted by Design-Build Entity to illustrate some portion of the Work.
55. Site – Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of Design-Build Entity.
56. Stop Payment Notice – A written notice as defined in Civil Code section 8044.
57. Subcontractor – An individual or entity that has a contract with the Design-Build Entity or with a Subcontractor of the Design-Build Entity to perform a

portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

- 58. Submittal - Written or graphic information and physical samples prepared and supplied by the Design-Build Entity demonstrating various portions of the Work.
- 59. Supplier – A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Design-Build Entity or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
- 60. Technical Specifications – All documents developed by the Design-Build Entity during the Schematic Design Phase and which are ready for final construction.
- 61. Tier – The contractual level of a Subcontractor or supplier or consultant with respect to the Design-Build Entity. For example, a first tier Subcontractor is under subcontract with the Design-Build Entity, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
- 62. Unexcusable Delay – Any delay other than an Excusable Delay, as described in Articles 9 and 10 of these General Conditions, that does not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and does not entitle the Design-Build Entity to an adjustment of the Project Completion Date.
- 63. Warranty – A written guarantee provided to City by the Design-Build Entity that the Work remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
- 64. Work – The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

2.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
- B. Furnish, Install, Perform, Provide.
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or

equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. Regardless of whether "furnish," "install," "perform," or "provide" is used in connection with services, materials, or equipment, an obligation of Design-Build Entity is implied.
- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 3. PRELIMINARY MATTERS

3.1 Delivery of Contract Documents.

- A. Within fifteen (15) Days after receipt of the Notice of Award and before City will execute the Contract, the Design-Build Entity shall furnish and file with City a signed Contract in duplicate and the necessary Performance Bond, Payment Bond, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

3.2 Bonds.

- A. Design-Build Entity shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

3.3 Evidence of Insurance.

- A. Design-Build Entity shall obtain, at its sole cost and expense, all insurance required by Article 5. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by City.

3.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, City will execute the Contract, establishing the Effective Date of the Contract.

3.5 Commencement of Contract Times; Notice to Proceed.

- A. City will not issue a Notice to Proceed until after the Effective Date of the Contract.
- B. Work shall commence within fifteen (15) Days of the date stated in City's Notice to Proceed.
- C. The Contract Times begin to run on the Day the Design-Build Entity commences Work. If the Design-Build Entity fails to commence Work as required herein, the Contract Times commence on the fifteenth (15th) Day after the date stated in the Notice to Proceed.
- D. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.
- E. Nothing herein shall affect the Project Completion Date.

3.6 Copies of Documents.

- A. City will furnish to Design-Build Entity one (1) copy of the Bridging Documents. Additional copies will be furnished upon request at the cost of reproduction.

3.7 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by City, Design-Build Entity, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference City and Design-Build Entity each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

3.8 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, City's Representative, and others as appropriate will be held to review for acceptability to City's Representative the schedules submitted, as required by the Contract Documents. Design-Build Entity shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to

Design-Build Entity until acceptable schedules are submitted to City's Representative.

- B. Acceptance of the schedules by City's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefor.

3.9 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor's Site Work, the Design-Build Entity, the involved Subcontractor, and City's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

3.10 Project Signage.

- A. City will permit a single project sign, which shall be subject to City's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 4. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

4.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. Clarifications and interpretations of the Contract Documents shall be issued by City's Representative as provided in these General Conditions.
- D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.
- E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Design-Build Entity in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

4.2 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of City, Design-Build Entity, or City's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or City's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

4.3 Order of Precedence.

The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:
 1. Permits from other agencies as may be required by law;
 2. Change Orders or Pending Change Orders, most recent first;

3. Attachment 5 to the Contract: Enhancements/Additional Scope of Work Terms and Conditions; Attachment 6 to the Contract: Exclusions/Clarifications of Scope by the Design-Build Entity; and Attachment 7 to the Contract: Federally Required Provisions For Services
 4. Design-Build Contract;
 5. Special Conditions;
 6. General Requirements;
 7. General Conditions;
 8. RFP and all addenda, attachments and appendices;
 9. Design-Build Entity Proposal in response to RFP;
 10. Technical Specifications prepared by Design-Build Entity;
 11. Drawings prepared by Design-Build Entity;
 12. Request for Qualifications and all addenda, attachments and appendices; and
 13. Design-Build Entity Statement of Qualifications in response to Request for Qualifications.
- C. With reference to the Drawings the order of precedence shall be as follows:
1. Figures govern over scaled dimensions;
 2. Detail drawings govern over general drawings;
 3. Change Order drawings govern over Drawings;
 4. Drawings govern over standard drawings.
- D. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

4.4 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a Change Order.

4.5 Interpretation and Use of Contract Documents.

- A. City and the Design-Build Entity acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the RFP upon which the Design-Build Entity based its Proposal. Prior to the commencement of

construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by City, the Construction Documents become a part of the Contract Documents and define the entire scope of work, so long as such documents incorporate all minimum requirements of the design criteria and performance specifications set forth in the RFP as may be amended by the Contract Documents. The Design-Build Entity shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.

- B. As described in the RFP, the construction materials, items, supplies, etc., including the quality and/or quantity of such items, specified in the Design-Build Entity's proposal for the design and construction of the Project represent a substantive basis which City factored into its determination of the "best value" for award of the Contract. Any change in such materials, items, supplies, etc. from those specified in the Design-Build Entity's proposal (and subsequently incorporated into the Contract Documents) during the design and construction of the Project requires the express written authorization of City pursuant to Article 9.
- C. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the Design-Build Entity in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.
- D. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.
- E. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- F. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- G. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through

mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

- H. Before commencing any Work on the Project, the Design-Build Entity shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the Design-Build Entity observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the Design-Build Entity shall immediately notify City's Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The Design-Build Entity shall be solely liable for any such violation, inconsistency or special requirement, if Design-Build Entity fails to conduct such review or notification to City.
- I. Before commencing any Work on the Project, the Design-Build Entity shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the Design-Build Entity as to Project requirements. The Design-Build Entity shall immediately notify City's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the Design-Build Entity nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to Design-Build Entity. If the Design-Build Entity or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the Design-Build Entity shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any Subcontractor proceed with Work if uncertain without the Design-Build Entity's written direction and/or approval.

4.6 Reuse of Documents.

- A. Design-Build Entity and any Subcontractor shall not:
 - 1. have or acquire any title to or Ownership rights in any of the Drawings, Technical Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or
 - 2. reuse of any such Drawings, Technical Specifications, other documents, or copies thereof on extensions of the Project or any other project without

written consent of City and A/E and specific written verification or adaptation by the A/E.

- B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude Design-Build Entity from retaining copies of the Contract Documents for record purposes.

4.7 Electronic Data.

- A. Unless otherwise stated in the Special Conditions, the data furnished by City or City's Representative to Design-Build Entity, or by Design-Build Entity to City or City's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

4.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the Design-Build Entity are the property of City. City and the Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of City pursuant to the requirements of City. City shall have unlimited rights, for the benefit of City, in all drawings, designs, technical specifications, notes and any other documentation and other Work developed in the performance of this Contract for the Project, including the right to re-use details of the Design on any other City Work at no additional cost to City. The Design-Build Entity agrees to, and hereby does, grant to City a royalty free license to all such data that the Design-Build Entity may cover by copyright and to all designs as to which the Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design-Build Entity, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of City. Any use or reuse by City of the Construction Documents on any project other than this Project without employing the services of the Design-Build Entity shall be at City's own risk with respect to third parties. If City uses or re-uses the Construction Documents on any project other than this Project, it shall remove the A/E's seal from the Construction Documents and hold harmless

Design-Build Entity, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. Design-Build Entity shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the Design-Build Entity, a party for which the Design-Build Entity is legally responsible or liable, or anyone approved by the Design-Build Entity.

4.9 Administration of the Contract by City's Representative.

- A. During the term of this Design-Build Contract, City's Representative shall have the right to review the Design-Build Entity's Work at such intervals as deemed appropriate by City's Representative. However, no actions taken during such review or site visit by City's Representative shall relieve the Design-Build Entity of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the Design-Build Entity's responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and the Design-Build Entity shall communicate through City's Representative. Communications by the Design-Build Entity with City's consultants and City's Representative's consultants shall be through City's Representative. Communications by City and City's Representative with Subcontractors will be through the Design-Build Entity. Communications by the Design-Build Entity and Subcontractors with Separate Contractors shall be through City's Representative. The Design-Build Entity shall not rely on oral or other non-written communications.
- D. Based on City's Representative's Project site visits, review of the Work, and evaluations of the Design-Build Entity's Applications for Payment, City's Representative will recommend amounts, if any, due the Design-Build Entity and will issue Certificates for Payment in such amounts.
- E. City's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. City's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, City's Representative will have the authority to require additional inspection or testing of the Work on the Project in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of City or City's Representative to the Design-Build Entity, or any person or entity claiming under, or through, the Design-Build Entity.

- F. City's Representative will have the authority to conduct inspections in connection with Beneficial Occupancy and to determine the dates of Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design-Build Entity; and will issue a final Certificate for Payment upon the Design-Build Entity's compliance with the requirements of the Contract Documents.
- G. City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design-Build Entity. Should the Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the Design-Build Entity shall notify City's Representative in writing and request interpretation, or clarification. City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design-Build Entity proceed with the Work affected before receipt of a response from City's Representative, any portion of the Work on the Project which is not done in accordance with City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the Design-Build Entity shall be responsible for all resultant losses.
- H. City may at any time and from time to time, without prior notice to or approval of the Design-Build Entity, replace City's Representative with a new City Representative. Upon receipt of notice from City informing the Design-Build Entity of such replacement and identifying the new City's Representative, the Design-Build Entity shall recognize such person or firm as City's Representative for all purposes under the Contract Documents.

ARTICLE 5. AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

5.1 Availability of Lands.

- A. City shall furnish the Project site. City shall notify Design-Build Entity of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which Design-Build Entity must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
- B. Design-Build Entity shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to City.

5.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Design-Build Entity or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby

expressly reserved by City. Neither Design-Build Entity nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Design-Build Entity will, as determined by City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided City shall have the right to use or consume these materials without payment to a third party.

5.3 Hazardous Environmental Conditions at Site.

- A. Reports and Drawings. The Special Conditions identify those reports and drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. Limited Reliance by Design-Build Entity on Technical Data Authorized. Design-Build Entity may rely upon the accuracy of the "technical data" contained in such reports and drawings but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Special Conditions. Design-Build Entity shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Design-Build Entity may not rely upon or make any claim against City or City's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Design-Build Entity's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of design or construction to be employed by Design-Build Entity and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Design-Build Entity interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Design-Build Entity shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Construction Documents or identified in the Contract Documents to be within the scope of the Work. Design-Build Entity shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Design-Build Entity, Subcontractors, Suppliers, or anyone else for whom Design-Build Entity is responsible.
- D. If Design-Build Entity encounters a Hazardous Environmental Condition or if Design-Build Entity or anyone for whom Design-Build Entity is responsible creates a Hazardous Environmental Condition, Design-Build Entity shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an Emergency); and (iii) notify City and City's Representative (and promptly thereafter confirm such notice

in writing). City shall promptly consult with City's Representative concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Design-Build Entity shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered written notice to Design-Build Entity: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely.
- F. If after receipt of such written notice Design-Build Entity does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Project that is in the area affected by such condition to be deleted from the Work in accordance with the Contract Documents. City may have such deleted portion of the Project performed by City's own forces or others.
- G. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created, in whole or in part, by Design-Build Entity or by anyone for whom Design-Build Entity is responsible. Nothing in this Section shall obligate Design-Build Entity to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

5.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. Design-Build Entity shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. Design-Build Entity shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. Design-Build Entity shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of City. Design-Build Entity shall report to City's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 6. BONDS AND INSURANCE

- 6.1 **Time for Compliance.** Design-Build Entity shall not commence Work under this Contract until it has provided evidence to City that it has secured all insurance required under this

Section. Design-Build Entity shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. Design-Build Entity shall not allow any subconsultant or subcontractor to commence work on any subcontract until it has provided evidence to City that the subconsultant or subcontractor has secured all insurance required under this Article.

6.2 **Minimum Requirements.** Design-Build Entity shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise out of or result from the performance of the Work and Design-Build Entity's other obligations under the Contract Documents whether by Design-Build Entity, its agents, representatives, employees or subcontractors. Design-Build Entity shall also require all of its subconsultants and subcontractors to procure and maintain the same insurance for the duration of the Contract and verify the subconsultants' and subcontractors' compliance. Design-Build Entity's and subconsultants' and subcontractors' insurance shall meet at least the minimum levels of coverage set forth in this Article:

A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto) or if Design-Build Entity has no owned autos, non-owned, leased or hired autos Code 8 (hired) and Code 9 (non-owned); (3) Workers' Compensation and Employer's Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; (4) Installation Floater/Builder's Risk: "All Risk All Perils" form; and (5) Professional Liability/Errors and Omissions. The policies shall not contain any exclusion contrary to the Contract, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability or (2) cross liability for claims or suits by one insured against another.

B. **Minimum Limits of Insurance.** The Design-Build Entity shall maintain limits no less than:

1. For Commercial General Liability, Design-Build Entity shall have limits of at least the amount that corresponds to the Guaranteed Maximum Price in the following table:

| Guaranteed Maximum Price | | Amount of Liability Insurance | |
|--------------------------|---|-------------------------------|--------------|
| (per occurrence) | | | |
| \$ 0 | - | \$ 2 million | \$ 2 million |
| \$ 2 million | - | \$ 5 million | \$ 3 million |
| \$ 5 million | - | \$ 10 million | \$ 5 million |
| \$ 10 million | - | \$ 20 million | \$10 million |

If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 25 03, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be twice the required occurrence limit. Should any of the Work involve aircraft (fixed wing or helicopter) owned or operated by Design-Build Entity, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required. Should any of the Work involve watercraft owned or operated by Design-Build Entity, liability insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage is required.

2. Automobile Liability: \$1 million per accident for bodily injury and property damage.
 3. Workers' Compensation and Employer's Liability:
 - a. Workers' Compensation: statutory limits.
 - b. Employer's Liability limits of \$1 million per accident for bodily injury or disease.
 - c. Should any of the Work be upon or contiguous to navigable bodies of water, Design-Build Entity shall carry insurance covering its employees for benefits available under the Federal Longshoremen's and Harbor Worker's Act to the extent required by law;
 4. Excess/Umbrella Liability Policy may be provided to insure the total limits required for Commercial General Liability and Automobile Liability and must apply to all primary coverage afforded, including but not limited to general liability, owned and non-owned automobiles, leased and hired cars.
 5. Professional Liability/Errors and Omissions: \$2,000,000 per claim.
- C. Notices; Cancellation or Reduction of Coverage. At least fifteen (15) Days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with City. If such coverage is cancelled or materially reduced, Design-Build Entity shall, within ten (10) Days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Design-Build Entity or City may withhold amounts sufficient to pay premium from Design-Build Entity payments. In the alternative, City may suspend or terminate this Contract.

6.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Design-Build Entity shall provide endorsements on forms approved by City to add the following provisions to the insurance policies:

- A. General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37 (including completed operations), or endorsements providing the exact same coverage, City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the Work or ongoing and completed operations performed by or on behalf of the Design-Build Entity, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of City, before City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.
- B. Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Design-Build Entity or for which the Design-Build Entity is responsible; and (2) the insurance coverage shall be primary insurance as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions, or if excess, shall stand in an unbroken chain of coverage excess of the Design-Build Entity's scheduled underlying coverage. Any insurance or self-insurance maintained by City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions shall be excess of the Design-Build Entity's insurance and shall not be called upon to contribute with it in any way.
- C. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree, using WC 00 03 13 or the exact equivalent, to waive all rights of subrogation against City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions for losses paid under the terms of the insurance policy.
- D. Professional Liability/Errors and Omissions. Professional Liability Insurance insuring the A/E, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the A/E may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their

professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to City by the insurer, for a period of five (5) years after the completion of all of the Design-Build Entity's services hereunder and City's acceptance of the Project. All subconsultants shall have professional liability insurance with the same limits (additional requirements for Professional Liability/Errors and Omissions Insurance written on a "claims made" basis are set forth below).

E. All Coverages. Each insurance policy required by this Agreement shall be endorsed to include the following provisions:

1. coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to City and all additional insureds.
2. any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City and any other additional insureds.
3. standard separation of insureds provisions.
4. no special limitations on the scope of protection afforded to City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions.
5. waiver of any right of subrogation of the insurer against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow the Design-Build Entity or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, the Design-Build Entity hereby waives its own right of recovery against City or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants and subcontractors.

6.4 **Installation Floater Insurance Shall Be for the Total Value of Project.** The policy shall be written on an "All Risk, All Perils" form, to include coverage for earthquake, flood, and Acts of God (as defined in Public Contract Code Section 7105), insuring for physical loss or damage to the Work, false work, completed work, work in progress, material, supplies, and equipment of the Project site, but also to property at off-site storage locations and in transit, without regard to the location of the covered property. The premium for the Acts of God insurance shall be included as a separate item number in the Cost Proposal and shall be provided to City prior to commencement of the Construction phase of the Project. The policy shall be issued on a replacement cost basis, and shall insure against at least the following perils or causes of loss: fire, lightning, weather damage, explosion, extended replacement cost coverage, theft, vandalism, malicious mischief, collapse, debris removal, aircraft, demolition occasioned by enforcement of Applicable Laws, water damage from any source, snow, sleet, hail, wind, acts of terrorism, and such other perils not specifically listed. The policy shall include expenses incurred in the repair or replacement of any

insured property (including but not limited to fees and charges of engineers and architects), allow for Partial Utilization of the Work by City, and include testing and startup.

If the replacement cost increases during the course of construction, additional insurance limits must be purchased by the Design-Build Entity.

Should any of the Work involve construction or remodeling of, or addition to, a building or buildings, then Builder's Risk/Course of Construction Coverage shall be added to the Installation Floater Insurance. The Builder's Risk/Course of Construction coverage shall also include the perils of Acts of God, flood and earthquake.

Installation Floater Insurance deductible amounts may be selected by the Design-Build Entity, but shall not exceed the maximum allowable deductible for the Guaranteed Maximum Price of the Project in the table set forth below. The maximum allowable deductibles for the perils of earthquake and flood shall not be greater than five percent of the value at risk at the time of loss.

Guaranteed Maximum Price All Risk Perils

Maximum Deductible

| | | | | | | |
|----|------------|----|----|------------|----|---------|
| \$ | 0 | -- | \$ | 2,000,000 | \$ | 10,000 |
| \$ | 2,000,001 | -- | \$ | 5,000,000 | \$ | 20,000 |
| \$ | 5,000,001 | -- | \$ | 10,000,000 | \$ | 50,000 |
| \$ | 10,000,001 | -- | \$ | 50,000,000 | \$ | 100,000 |

Installation Floater Insurance policy shall name City, Design-Build Entity, Subconsultants, and Subcontractors as insureds, with deductible amounts, if any, for the sole account of and payable by Design-Build Entity. Loss under Installation Floater Insurance shall be adjusted with and payable to City for the interest of all parties.

The amount of Installation Floater Insurance shall be sufficient to protect against such loss or damage in full until all Work is accepted by City. The premium for Installation Floater Insurance will be paid by Design-Build Entity.

6.5 Pollution Liability insurance is required should any of the Project involve pollutants. Liability coverage shall include coverage for the environmental risk associated with the project and expenses related to such, including bodily injury, property damage, on and off site clean-up, transporting, carrying, or storing pollutants, coverage for non-owned disposal site in an amount not less than that set forth in the Special Conditions.

Pollutants include, but are not limited to, asbestos, mold, microbial matter, solid, liquid, gaseous or thermal irritants or contaminants, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

6.6 Receipt and Application of Insurance Proceeds.

Any insured loss under the policies of insurance required herein will be adjusted with City and made payable to City as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of the provisions herein. City shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Project and the cost thereof covered by an appropriate Change Order.

City as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing to City's exercise of this power within fifteen (15) Days after the occurrence of loss. If such objection be made, City as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, City as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, City as fiduciary shall give bond for the proper performance of such duties.

6.7 Partial Utilization, Acknowledgement of Property Insurer.

If City finds it necessary to occupy or use a portion or portions of the Project prior to Completion of all the Work, no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

6.8 Deductibles and Self-Insurance Retentions.

Any deductibles or self-insured retentions must be declared to and approved by City. Design-Build Entity shall guarantee that, at the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, officers, employees, agents, and volunteers and any other additional insureds named in the Special Conditions; or (2) the Design-Build Entity shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

6.9 Claims Made Policies. Claims made policies are not acceptable other than for Professional Liability. In addition to the requirements above, for any claims made policy:

- A. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.
- B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after City's acceptance of the Work.

- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design-Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after City's acceptance of the Work.
- 6.10 **Subcontractor Insurance Requirements.** Design-Build Entity shall not allow any subcontractors to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subcontractors maintain insurance meeting all requirements under this Section and has provided evidence to City of such insurance. For Commercial General Liability coverage subcontractors shall provide coverage naming City, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, City may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that City and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 6.11 **Subconsultant Insurance Requirements.** Design-Build Entity shall not allow any subconsultants to commence work on any subcontract relating to the Work until Design-Build Entity has verified that all subconsultants maintain insurance meeting all requirements under this Section and has provided evidence to City of such insurance. Additionally, all subconsultants must maintain professional liability/ errors and omissions coverage with limits of at least \$2,000,000 per claim. For Commercial General Liability coverage subcontractors shall provide coverage naming City, its officials, officers, employees, agents, and volunteers with a format at least as broad as CG 20 38 04 13. If requested by Design-Build Entity, City may approve different scopes or minimum limits of insurance for particular subcontractors. Design-Build Entity shall confirm that City and entities identified in the Special Conditions shall be named as additional insureds on all subcontractors' policies of Commercial General Liability Insurance and Commercial Automobile Insurance.
- 6.12 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to City.
- 6.13 **Verification of Coverage.** Design-Build Entity shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 6.14 **Reservation of Rights.** City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 6.15 **Performance Bond and Payment Bond.**
- A. The Design-Build Entity shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible

corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City conditioned upon the faithful performance by the Design-Build Entity of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The Design-Build Entity shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract.

- B. The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by City.
- C. The Design-Build Entity shall promptly furnish such additional security as may be required by City to protect its interests and those interests of persons or firms supplying labor or materials to the Project.
- D. The premiums for the Payment Bond and Performance Bond shall be paid by the Design-Build Entity.
- E. The Design-Build Entity maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Contract Documents.
- F. No payment will be made to the Design-Build Entity until the Design-Build Entity's Payment Bond and Performance Bond have been approved by City.
- G. Should, in City's sole opinion, any bond become insufficient or surety found to be unsatisfactory, the Design-Build Entity shall renew or replace the effected bond within 10 Days of receiving notice from City.
- H. In the event the surety or the Design-Build Entity intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to City, and the Design-Build Entity shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article 5.15 are accepted by City.
- I. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the Design-Build Entity shall, upon request of City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to City.
- J. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Build Entity will release the surety. If the Design-Build Entity fails to furnish any required bond, City may terminate the Contract for cause.

ARTICLE 7. DESIGN-BUILD ENTITY'S RESPONSIBILITIES

7.1 Design-Build Entity Responsibility; Independent Contractor.

- A. The Design-Build Entity shall be responsible to City for acts and omissions of the Design-Build Entity's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of Work on the Project under direct or indirect contract with the Design-Build Entity or any of its Subcontractors. City retains the Design-Build Entity on an independent contractor basis. The Design-Build Entity is not an employee, agent or representative of City. The Design-Build Entity represents that it is fully experienced and properly qualified to perform the class of Work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform Work on the Project. The Design-Build Entity shall maintain complete control over its employees and its Subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The Design-Build Entity shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

7.2 Review of Contract Documents and Field Conditions by The Design-Build Entity; Single Point Responsibility of The Design-Build Entity.

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in Section 00 42 53, Article 1.1, the Design-Build Entity shall carefully study and compare each of the Contract Documents provided by City with the others and with information furnished by City, and shall promptly report in writing to City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by City or inconsistencies with Applicable Law observed by the Design-Build Entity. The Design-Build Entity shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the Design-Build Entity fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to City in writing.
- B. The Design-Build Entity is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The Design-Build Entity shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The Design-Build Entity shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the Design-Build Entity before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to City's Representative.
- C. If the Design-Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of City's

Representative, the Design-Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

- D. City does not assume any obligation to employ the Design-Build Entity's services or pay the Design-Build Entity royalties of any type as to future programs that may result from Work performed under this Contract.
- E. The Design-Build Entity shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
- F. The Design-Build Entity agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The Design-Build Entity has the duty to act in City's best interests at all times throughout the course and performance of this Contract.

7.3 Design, Supervision and Construction Procedures.

- A. The Design-Build Entity shall supervise, coordinate, and direct all Work on the Project using the Design-Build Entity's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Design-Build Entity shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.
- B. The Design-Build Entity shall be responsible to City for acts and omissions of the Design-Build Entity, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The Design-Build Entity shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the Design-Build Entity.
- D. The Design-Build Entity shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. To facilitate communications and the management of the design process, the Design-Build Entity shall maintain an office in Los Angeles County for the duration of the design process.
- F. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work on the Project, whether temporary or

permanent and whether or not incorporated or to be incorporated in Work on the Project. The Design-Build Entity shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the City-approved Construction Documents, which are developed from the City-accepted Proposal, the Design-Build Entity shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.

- G. The Design-Build Entity is required to deliver to City, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- H. The Design-Build Entity is responsible for preparation of the Construction Documents for the entire Project.
- I. The Design-Build Entity is responsible for construction of the entire Project as required by the Contract Documents.
- J. The Design-Build Entity shall at all times maintain good discipline and order among its employees and Subcontractors. The Design-Build Entity shall provide competent, fully qualified personnel to perform all Work on the Project.

7.4 Labor; Working Hours.

- A. The Design-Build Entity shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The Design-Build Entity shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 7:00 a.m. and 3:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The Design-Build Entity will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without City's written consent given after prior written notice to City's Representative. The Design-Build Entity shall be responsible for, and shall reimburse City for, all inspection costs outside regular working hours, including overtime.
- C. The Design-Build Entity will provide all labor needed to complete the Work within the Contract Times.

7.5 Progress Meetings.

- A. The Design-Build Entity shall schedule and hold regular on-Site progress meetings at least weekly and at other times as requested by the City or as required by progress of the Work. The Design-Build Entity, City's Representative, and all Subcontractors active on the Site shall attend each meeting. The Design-Build Entity may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.
- B. City's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Design-Build Entity shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

7.6 Cost-Loaded CPM Project Schedule and Recovery Schedule.

- A. Design-Build Entity shall adhere to the Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:
 - 1. Design-Build Entity shall submit to City's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Change Order.
 - 3. Should any of the following conditions exist, City may require Design-Build Entity to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
 - a. The Design-Build Entity's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the Design-Build Entity's ability to complete the Work;
 - b. The Project Schedule shows the Design-Build Entity to be thirty (30) or more Days behind the critical path at any time during construction;
 - c. The Design-Build Entity desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of City, are major in nature.
 - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how Design-Build Entity intends

to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the Design-Build Entity to recover the schedule.

- e. Design-Build Entity shall submit the recovery schedule within seven (7) Days of City's request:
 - (i) If Design-Build Entity asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request will be considered a concurrent delay event attributable to Design-Build Entity, and Design-Build Entity shall only be entitled to non-compensable adjustments to the Project Completion Date.
 - (ii) If Design-Build Entity is responsible for the delay, this provision will not limit or affect Design-Build Entity's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.
 - f. Design-Build Entity is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.
 - g. Regardless of whether City directs Design-Build Entity to prepare a recovery schedule pursuant to this Article 6.6, Design-Build Entity shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current Project Schedule shows that the Design-Build Entity will not achieve a milestone and/or complete the Work within the Project Completion Date.
- B. Unless otherwise specified in the Contract Documents, Design-Build Entity shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.
- C. Failure of City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the Design-Build Entity that the Design-Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the Design-Build Entity from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.

- D. The Design-Build Entity shall perform all Work on the Project in accordance with the current accepted Project Schedule.

7.7 Materials.

- A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the Design-Build Entity shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.
- B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of City. If required by City's Representative, Design-Build Entity shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Design-Build Entity shall be entirely responsible for damage or loss by weather or other causes to materials or Work until City has accepted the Work.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Design-Build Entity warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to City free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of City or any independent contractor.

7.8 Submittals.

- A. Industry Standard Submittals.

Design-Build Entity will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

- B. Schedule of Submittals.

Design-Build Entity will prepare and deliver a Schedule of Submittals to City's Representative that has been fully integrated with the Cost-Loaded CPM Project Schedule and identifies each Submittal required by the Construction Documents as well as the date on which Design-Build Entity will deliver each Submittal to City's

Representative. Each Submittal must be delivered to City's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Design-Build Entity is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The Design-Build Entity will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Transmit three (3) copies of each with a Submittal Transmittal.
 - b. Transmittals will be sequentially numbered. The Design-Build Entity to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, the Design-Build Entity, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.
 - d. The Design-Build Entity must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When a Submittal is revised for resubmission, the Design-Build Entity shall promptly address City comments and resubmit. The Design-Build Entity shall identify changes made since previous submission.
 - g. City's review of Submittals shall not relieve the Design-Build Entity from responsibility for deviations from the Contract Documents unless the Design-Build Entity has, in writing, called City's attention to such deviations at time of submission and City's has taken no exception to the deviation. City's review of Submittals shall not relieve the Design-Build Entity from responsibility for errors in the Submittals.
 - h. Submittals not required by the Construction Documents or requested by City's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by City's Representative. Delays resulting from incomplete submittals are not the responsibility of City's Representative.

- j. The Design-Build Entity shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process.
- 2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to City's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Design-Build Entity.
- 3. Schedule Milestones for Submittals. Design-Build Entity must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If Design-Build Entity fails to submit the submittals in accordance with the Schedule of Submittals, Design-Build Entity will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. Design-Build Entity will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

7.9 Shop Drawing and Sample Submittal Procedures.

- A. Before submitting each Shop Drawing or Sample, Design-Build Entity shall have:
 - 1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - 3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 4. determined and verified all information relative to the Design-Build Entity's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- B. With each Submittal, the Design-Build Entity shall give City's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to City's Representative for review and approval of each such variation.
- C. Shop Drawings.

Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City's Representative the services, materials, and equipment Design-Build

Entity proposes to provide and to enable City's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

Design-Build Entity shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable City's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Representative's Review.

1. City's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals. City's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. City's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. City's Representative's review and acceptance shall not relieve the Design-Build Entity from responsibility for any variation from the requirements of the Contract Documents unless City's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

F. The Design-Build Entity shall make corrections required by City's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The Design-Build

Entity shall direct specific attention in writing to revisions other than the corrections called for by City's Representative on previous Submittals.

- G. City will review the first resubmittal of Shop Drawings at its cost. City reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

7.10 Construction Documents.

A. Construction Documents.

1. Upon receipt of the Notice to Proceed, the Design-Build Entity shall instruct the A/E to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. City's review of the Construction Documents shall be conducted in accordance with the approved Project Schedule with procedures set forth in this Article 6.10. Such review shall not relieve the Design-Build Entity from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by City of any deviation from, or of the Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the Design-Build Entity and approved by City.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design-Build Entity will submit the Construction Document packages to City for review and approval in accordance with the agreed upon schedule, unless otherwise approved in writing by City. The Project Schedule shall indicate the times for City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
3. The Design-Build Entity shall submit completed packages of the Construction Documents for review by City at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the Design-Build Entity and City to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The Design-Build Entity will conduct these design meetings with City in accordance with the schedule approved by City. The Design-Build Entity will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.

4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to City for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the Design-Build Entity by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
2. The Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The Design-Build Entity shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by City.

C. Field Engineering.

1. The Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The Design-Build Entity shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. City may provide a geotechnical report to Design-Build Entity that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by Design-Build Entity to form its basis of design. Design-Build Entity shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey,

as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the Design-Build Entity's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by Design-Build Entity at its sole cost and expense.

2. The Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the Design-Build Entity.

7.11 Dust Control.

- A. Design-Build Entity, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

7.12 Air Pollution.

- A. The Design-Build Entity shall comply with all air pollution control rules, regulations, ordinances and statutes. Design-Build Entity shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.
- B. Without limiting the foregoing, the Design-Build Entity must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). The Design-Build Entity shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine.

7.13 Patent Fees and Royalties.

- A. Design-Build Entity shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City or City's Representative, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Contract Documents.

- B. To the fullest extent permitted by Applicable Laws, Design-Build Entity shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.14 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Build Entity, unless otherwise specified in the Contract Documents.

- A. Design-Build Entity shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than City.
- B. The Design-Build Entity shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as City's responsibility in the Contract Documents.
- C. Before acceptance of the Work, the Design-Build Entity shall submit all licenses, permits, certificates of inspection and required approvals to City.

7.15 Design-Build Entity Standard of Care.

- A. The Design-Build Entity warrants to City that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The Design-Build Entity warrants to City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by City's Representative, the Design-Build Entity shall furnish satisfactory evidence of compliance with this Article 6.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of City's Representative.
- B. The Design-Build Entity shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with

the Contract Documents. The Design-Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

7.16 Applicable Laws.

- A. Design-Build Entity shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither City nor City's Representative shall be responsible for monitoring Design-Build Entity's compliance with any Applicable Laws.
- B. If Design-Build Entity performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Design-Build Entity shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

7.17 Labor Laws and Design-Build Entity's Obligations.

- A. Hours of Work.
 - 1. The Design-Build Entity and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.
 - 2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to City. Permissible working hours shall be between 7:00 a.m. to 8:00 p.m. and shall not be changed except with consent of City.
 - 3. Eight (8) hours of work shall constitute a legal day's work. The Design-Build Entity and each Subcontractor shall forfeit, as penalty to City, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the Design-Build Entity or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
 - 4. If the work done after hours is required by the Contract to be done outside the Design-Build Entity's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by City. If City allows the Design-Build Entity to do Work outside regular working hours for the Design-Build Entity's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by City and deducted from the next progress payment. If the Design-Build Entity elects to perform Work

outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Design-Build Entity by City and deducted from the next progress payment.

5. No Work on the Project or other activities by or on behalf of the Design-Build Entity which presents a hazard or unreasonable disruption to City staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to City staff shall be made by and pursuant to the sole discretion of a representative of City. All Work on the Project or other activities which could present a hazard or unreasonable disruption to City staff shall be performed before or after normal working hours, on weekends, or on a City recognized holiday. Neither the Design-Build Entity nor its Subcontractors or anyone working on behalf of the Design-Build Entity or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The Design-Build Entity, Subcontractors and persons working on behalf of the Design-Build Entity shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The Design-Build Entity is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the Design-Build Entity agrees to fully comply with such Prevailing Wage Laws. City has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at City's office in Pomona and shall be made available to any interested party on request. the Design-Build Entity shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform the Project available to interested parties upon request, and shall post copies at the Design-Build Entity's principal place of business and at the Project site. The Design-Build Entity shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
2. Pursuant to Labor Code Section 1775, the Design-Build Entity is hereby advised that in the event that the Design-Build Entity fails to pay prevailing wages, the Design-Build Entity will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the Design-Build Entity and each Subcontractor shall forfeit as

a penalty to City not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Build Entity.

3. The Design-Build Entity shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the Design-Build Entity and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The Design-Build Entity shall certify under penalty of perjury that records maintained and submitted by the Design-Build Entity are true and accurate. The Design-Build Entity shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. In accordance with Labor Code section 1771.4, the Design-Build Entity and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Design-Build Entity shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. Any stop orders issued by the DIR against Design-Build Entity or any Subcontractor that affect Design-Build Entity's performance of Work, including any delay, shall be Design-Build Entity's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Design-Build Entity caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Design-Build Entity shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Design-Build Entity or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the Design-Build Entity at a time designated by the City. The Design-Build Entity shall also provide the following:

- a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Design-Build Entity awarded the Contract or performing the contract shall not be marked or obliterated.
7. In the event of noncompliance with the requirements of this Article 6.17C, the Design-Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the Design-Build Entity shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
8. In submitting the Proposal on this Project, it shall be the Design-Build Entity's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
9. The Design-Build Entity shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to City.

D. Apprentices.

1. The Design-Build Entity's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Design-Build Entity or any Subcontractor. The Design-Build Entity shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed

one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

E. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Design-Build Entity and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. The Design-Build Entity will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

F. Workers' Compensation.

1. Pursuant to Labor Code section 1860, Design-Build Entity shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, Design-Build Entity shall sign and file with City the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

G. Public Works Registration.

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Design-Build Entity and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Design-Build Entity represents that it is aware of the registration requirement and is currently registered with the DIR. Design-Build Entity shall maintain a current registration for the duration of the Project. Design-Build Entity shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any Subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

7.18 Debarment

- A. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Design-Build Entity shall be responsible for the

payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

7.19 Taxes.

- A. The Design-Build Entity shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project.
- B. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the Design-Build Entity will be responsible.
- C. The Design-Build Entity shall include in its Proposal the patent fees or royalties on any patented article or process furnished or used in the Project. The Design-Build Entity shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with the Project, and shall defend, indemnify and hold harmless City, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

7.20 Use of Site and Other Areas.

- A. Limitation on Use of Site and Other Areas.
 - 1. The Design-Build Entity shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any claim be made by any such City or occupant because of the performance of the Work, Design-Build Entity shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- B. Removal of Debris. During the progress of the Work Design-Build Entity shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.
- C. Cleaning. Prior to Completion of the Work, Design-Build Entity shall clean the Site and the Work and make it ready for utilization by City. At the completion of the Work Design-Build Entity shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. Loading Structures. Design-Build Entity shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Build Entity subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

7.21 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Design-Build Entity. Design-Build Entity shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Design-Build Entity shall remove all temporary distribution systems.
- B. Design-Build Entity shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents.
- C. All permanent meters installed shall be listed in the Design-Build Entity's name until the Work is accepted.
- D. If Work is to be performed in existing City's facilities, Design-Build Entity may, to the extent authorized by City in writing, use City's existing utilities. If Design-Build Entity uses City utilities, it shall compensate City for utilities used.

7.22 Record Drawings.

- A. Design-Build Entity shall maintain in a safe place at the Site one record copy of all Contract Documents including Drawings, Performance Specifications, Technical Specifications, Addenda, Change Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all utilities that differ from the locations indicated, or which were not indicated on the Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
- B. For all Projects involving the installation of any pipeline, Design-Build Entity shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.

- C. These record drawings together with all approved Samples and a counterpart of all approved Shop Drawings will be available to City's Representative for reference at all times during the construction period.
- D. Upon completion of the Project and as a condition of final acceptance, the Design-Build Entity shall finalize and deliver a complete set of record drawings to City's Representative. The information submitted by the Design-Build Entity will be assumed to be correct, and the Design-Build Entity shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

7.23 Safety and Protection.

- A. Design-Build Entity shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Design-Build Entity shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and 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 trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Design-Build Entity shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Design-Build Entity shall comply with the applicable requirements of City's safety programs, if any. The Special Conditions identify any City's safety programs that are applicable to the Work.
- D. Design-Build Entity shall inform City and City's Representative of the specific requirements of Design-Build Entity's safety program with which City's and City's Representative's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design-Build Entity.

- F. Design-Build Entity's duties and responsibilities for safety and for protection of the Work shall continue until City files the Notice of Completion in accordance with Contract Documents.

7.24 Safety Representative.

- A. Design-Build Entity shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. Design-Build Entity shall provide City's Representative the name and contract information of the safety representative in writing. Design-Build Entity shall provide City's Representative the name and contact information of the safety representative in writing.

7.25 Hazard Communication Programs.

- A. Design-Build Entity shall be responsible for coordinating any 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 Project site in accordance with Applicable Laws.

7.26 Emergencies.

- A. In an emergency affecting safety of life or of Work or of adjoining property, Design-Build Entity, without special instruction or authorization from City, shall act to prevent such threatened loss or injury; and Design-Build Entity shall so act, without appeal, if directed or instructed by City. Any compensation claimed by Design-Build Entity on account of emergency work shall be determined in accordance with the Contract Documents.

7.27 Continuing The Work.

- A. Design-Build Entity shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless City and Design-Build Entity otherwise agree in writing.

7.28 Guarantee.

- A. The Design-Build Entity unconditionally guarantees all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Project Completion, unless a longer guarantee period is specifically called for in the Contract Documents. However, a shorter guarantee period shall apply to landscape plants, trees, turf, etc. Trees or shrubs greater than one gallon in size at the time of planting shall be guaranteed for one (1) year, and all other plant material shall be guaranteed for six (6) months. The Design-Build Entity shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract

Documents, without any expense whatsoever to City; ordinary wear and tear and abuse excepted.

- B. The Design-Build Entity further agrees, within fourteen (14) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by City, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the Design-Build Entity shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If City finds that the Design-Build Entity fails to perform any of the Work under the guarantee, City may elect to have the Work completed at the Design-Build Entity's expense and the Design-Build Entity will pay costs of the Work upon demand. City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Build Entity's refusal to pay the above costs.
- C. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of City employees, property, or licensees, City may undertake, at the Design-Build Entity's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the Design-Build Entity not being in accordance with the requirements of the Contract Documents.

7.29 Warranty.

- A. The Design-Build Entity warrants to City that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of City to maintain an action for breach of contract against the Design-Build Entity. Nothing contained in these Contract Documents pertaining to warranty or guarantee shall be construed as limiting any other rights City may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

7.30 Indemnification.

- A. To the fullest extent allowed by law (including without limitation Civil Code Sections 2782 and 2782.8), the Design-Build Entity shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, agents, employees, and representatives free and harmless from and against any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with any acts, omissions or willful misconduct of Design-Build Entity, its officials, officers, employees, agents, consultants, contractors, and Subcontractors arising out of or in connection with the performance of the Work or

this Contract, including claims made by Subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. The Design-Build Entity shall defend, at the Design-Build Entity's own cost, expense and risk, with counsel of City's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its officials, officers, agents, employees and representatives. the Design-Build Entity shall pay and satisfy any judgment, award or decree that may be rendered against City, its officials, officers, agents, employees and representatives, in any such suit, action or other legal proceeding. The Design-Build Entity shall reimburse City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Design-Build Entity agrees to pay, or reimburse City and City's Representative, for regulatory agency or court imposed fees, fines, or penalties imposed on City and City's Representative arising from the Design-Build Entity's failure to complete the Project in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. The Design-Build Entity's responsibility and obligation to pay, or reimburse City and City's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Project.

- B. If the Design-Build Entity's obligation to defend, indemnify, and/or hold harmless arises out of the Design-Build Entity's performance as a "design professional" (as that term is defined under Civil Code Section 2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, the Design-Build Entity's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Build Entity, and, upon Design-Build Entity obtaining a final adjudication by a court of competent jurisdiction, Design-Build Entity's liability for such claim, including the cost to defend, shall not exceed the Design-Build Entity's proportionate percentage of fault.
- C. In claims against any person or entity indemnified under this Article 6.30 that are made by an employee of the Design-Build Entity or any Subcontractor, a person indirectly employed by the Design-Build Entity or any Subcontractor, or anyone for whose acts the Design-Build Entity or any Subcontractor may be liable, the indemnification obligation under this Article 6.30 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations.
- D. The indemnification obligations under this Article 6.30 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- E. Joint and Several Liability. In the event the Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among

such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.30.

7.31 Superintendent.

- A. The Design-Build Entity shall employ a competent Superintendent satisfactory to City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the Design-Build Entity and communications given to, and received from, Superintendent shall be binding on the Design-Build Entity. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling City to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the Design-Build Entity fails to complete the Contract by the Project Completion Date, the Design-Build Entity will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the Design-Build Entity will provide all key personnel identified in the Contract for the time periods stipulated.

7.32 Project Staffing.

- A. The Design-Build Entity and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete all Work on the Project in accordance with all requirements of the Contract.
- B. City shall have the right, but not the obligation, to require the removal from the Project of the Design-Build Entity's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by City, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

7.33 Compliance With State Storm Water Permit for Construction.

- A. Refer to Section 01 00 00 for information regarding compliance with State Storm Water Permit for Construction.

7.34 Monthly Report.

- A. The Design-Build Entity shall prepare and submit to City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Build Entity's projected progress for the forthcoming month.

7.35 Other Reports.

- A. The Design-Build Entity will cooperate with City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

7.36 Notice of Labor Dispute.

- A. If the Design-Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the Design-Build Entity shall immediately give written notice including all relevant information to City.
- B. The Design-Build Entity agrees to insert the substance of this Article 6.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Design-Build Entity, as the case may be, of all relevant information concerning the dispute.

7.37 Documents and Samples At Project Site.

- A. The Design-Build Entity shall maintain the following at the Project site:
 - 1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
 - 2. One copy of the prevailing wage rates applicable to the Project.
 - 3. The current accepted Project Schedule.
 - 4. Shop Drawings, Product Data, and Samples.
 - 5. One current copy of all documents required by Article 6.21.
 - 6. All other required submittals.

These shall be available to City's Representative and shall be delivered to City's Representative for submittal to City upon the earlier of Final Completion or termination of the

Contract.

7.38 Cutting, Fitting, and Patching.

- A. The Design-Build Entity shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.
- B. The Design-Build Entity shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The Design-Build Entity shall not cut or alter the work of any Separate Contractor without the prior written consent of City's Representative.

7.39 Access to Work.

- A. City, City's Representative, their consultants, and other persons authorized by City will at all times have access to the Work on the Project wherever it is in preparation or progress. The Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

7.40 Concealed Or Unknown Conditions.

- A. Except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:
 - 1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in the Contract Documents, and/or can reasonably be inferred by the Design-Build Entity based on its experience and expertise; and
 - 2. That the Design-Build Entity's Guaranteed Maximum Price for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions, The Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, concealed and/or unknown conditions shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

- B. If concealed or unknown conditions are encountered which require, in the opinion of City's Representative, design details which differ from those details shown in the Bridging Documents and City's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if City agrees with City's Representative's determinations, City will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 9 and 10 following receipt of a Change Order Request.

- C. If the Design-Build Entity encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Design-Build Entity shall notify City's Representative within three (3) Days in writing of such conditions so that City's Representative can determine if such conditions require design details which differ from those design details shown in the Bridging Documents. Design-Build Entity shall be liable to City for any extra costs incurred as a result of the Design-Build Entity's failure to give such notice. Design-Build Entity's failure to give such notice shall constitute a waiver by Design-Build Entity of any additional compensation.

7.41 Liability for and Repair of Damaged Work.

- A. Design-Build Entity shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to City's acceptance of the Project as fully completed.

7.42 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of City or the requirements with respect to which City is not subject, the Design-Build Entity shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The Design-Build Entity shall deliver to City all original licenses, permits, and approvals obtained by the Design-Build Entity in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

7.43 Noise.

- A. The Design-Build Entity shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The Design-Build Entity shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Design-Build Entity shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Design-Build Entity.

ARTICLE 8. OTHER WORK AT THE PROJECT SITE

8.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to Design-Build Entity exclusive occupancy at the Project site. City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The Design-Build Entity shall cooperate with City's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the Design-Build Entity prior to starting any such other work. The Design-Build Entity shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The Design-Build Entity shall make necessary revisions to the Project Schedule after such joint review.
- B. Design-Build Entity shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. Design-Build Entity shall not be entitled to additional compensation from City for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, Design-Build Entity shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by City or Separate Contractors, the Design-Build Entity shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The Design-Build Entity shall promptly report to City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by City's Representative, the Design-Build Entity shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the Design-Build Entity to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.
- C. Design-Build Entity's Responsibility. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work.
- D. Design-Build Entity Shall Not Endanger Existing Work. Design-Build Entity shall not endanger any work of Separate Contractor by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of City's Representative and the Separate Contractor whose work will be affected.
- E. Design-Build Entity shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and

properly coordinate the Work with theirs. Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Design-Build Entity shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Design-Build Entity may cut or alter others' work with the written consent of City's Representative and the others whose work will be affected.

- F. If the proper execution or results of any part of Design-Build Entity's Work depends upon work performed by Separate Contractors, Design-Build Entity shall inspect such other work and promptly report to City's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Design-Build Entity's Work. Design-Build Entity's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Design-Build Entity's Work except for latent defects and deficiencies in such other work.
- G. If any claims are made by Separate Contractors arising out of Design-Build Entity's performance of the Work, Design-Build Entity shall be responsible to immediately resolve the dispute and indemnify City pursuant to the Contract Documents.

8.2 Coordination.

- A. If City intends to have work performed by Separate Contractors at the Project site, the following will be set forth in the Special Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Special Conditions, City shall have sole authority and responsibility for such coordination.
- C. Coordination Delays. City's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between Design-Build Entity and any Separate Contractor shall be submitted to City's Representative for a decision in the matter. Design-Build Entity shall comply with direction from City's Representative whose decision on coordination matters will be final.

8.3 For Delays by Others.

- A. By entering into this Contract, Design-Build Entity acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of Design-Build Entity. Design-Build Entity expressly warrants and agrees that

Design-Build Entity will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, City, or City's Representative. Design-Build Entity also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. Design-Build Entity will have no remedy, and hereby expressly waives any remedy, against City or City's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

8.4 Design-Build Entity's Delay Or Damage.

- A. Design-Build Entity shall be liable to City and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of Design-Build Entity's wrongful action or inactions.

ARTICLE 9. SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. All Subcontractors shall be retained in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).
- B. The Design-Build Entity shall not, without the consent of City: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; or permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the Design-Build Entity or its Subcontractors from their obligations under the terms of the Contract. All requests by the Design-Build Entity for substitution will be handled through City's Representative.
- C. All portions of the Work on the Project for which Subcontractors were not listed by the Design-Build Entity in its Proposal, shall be awarded by the Design-Build Entity pursuant to the requirements described in this Article.
- D. The Design-Build Entity shall submit to City's Representative after selecting Subcontractors pursuant to an open and competitive process, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the Design-Build Entity awards a contract for any portion of the Work to a Subcontractor not originally listed in the Design-Build Entity's Proposal.
- E. City has the right to request all documentation that supports the Design-Build Entity's selection of a Subcontractor. City shall have the right of final approval as to the qualifications of a Subcontractor to perform its designated scope of Work. Within City's discretion, any Subcontractor may be deemed not qualified to perform

Work on the Project if City or City's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

- F. The Subcontractors listed by the Design-Build Entity shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of City. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of City shall a substitution be made.
- G. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article or as required by City or City's Representative pursuant to this Article, shall be borne solely by the Design-Build Entity. The Design-Build Entity shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution.
- H. The Design-Build Entity shall require, in each subcontract for any portion of Work on the Project, the Subcontractor to indemnify City, City's Representative and its consultants, representatives, directors, officers, agents and employees, pursuant to the provisions set forth in Article 6.
- I. Each subcontract shall preserve and protect the rights of City under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Upon the request of City, the Design-Build Entity shall promptly furnish to City a true, complete, and executed copy of any subcontract. The Design-Build Entity shall cause each such subcontract to expressly include the following requirements:
 - 1. Subcontractor waives all rights that Subcontractor may have against City for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Build Entity or City, except for such rights Subcontractor may have to the proceeds of such insurance held by City under Article 5.1.
 - 2. City and entities and agencies designated by City will have access to and the right to audit and the right to copy at City's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to Work on the Project. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.
 - 3. Subcontractor recognizes the rights of City under Article 8.3, Contingent Assignment of Subcontracts, and agrees, upon notice from City that City has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by City, to execute a written Contract confirming that Subcontractor is bound to City under the terms of the subcontract.

4. The Design-Build Entity is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

9.2 Contingent Assignment of Subcontracts.

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

9.3 Subcontractor's Responsibilities.

Every Subcontractor is bound to the following provisions, subject to the limitations of Article 8.1 above:

- A. Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Performance Specifications, and other instructions, shall at once report to the Design-Build Entity any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Build Entity concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.
- B. Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Project site. The Subcontractor shall not employ on the Project any unfit person or anyone not skilled in the task assigned. The Design-Build Entity shall have the right to remove from the Project any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.
- C. Should the proper and accurate performance of the Work on the Project depend upon the proper and accurate performance of other Work not included in its agreement, each Subcontractor shall use all necessary means to discover any defect in such other Work and shall allow the Design-Build Entity or other Subcontractors as the Design-Build Entity elects a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Build Entity over its written objection.

- D. Each Subcontractor shall submit to the Design-Build Entity, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Design-Build Entity in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Build Entity with respect thereto.
- E. Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Build Entity in the subcontract. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Build Entity. When it becomes necessary due to the progress of the Project for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Build Entity or City. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.
- F. Each Subcontractor may be subject to the Design-Build Entity's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.
- G. Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.
- H. Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement.
- I. Without limitation of any other right or remedy available to the Design-Build Entity under the Contract or at law, should the Subcontractor: (1) fail to perform its portion of the Work on the Project in a skilled and expeditious manner in accordance with the terms of the subcontract with sufficient labor, materials, equipment, and facilities; (2) delay the progress of the job; (3) otherwise fail in any of its obligations; (4) have a receiver appointed for the Subcontractor; or (5) be declared bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceeding or declaration is not set aside within thirty (30) Days, then the Design-Build Entity, upon three (3) Days' notice to the Subcontractor (subject to the requirements of Public Contracts Code § 4107), may provide such labor, materials, or perform such Work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Build Entity may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work on the Project and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Build Entity's own forces.

- J. In the event of any dispute as to whether or not any portion of the Work on the Project is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a change order for any Work requested of it, the Subcontractor shall continue to proceed diligently with the performance as required by the Design-Build Entity. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of Work on the Project during the existence of the dispute. The Design-Build Entity shall continue to pay the undisputed amounts called for under the subcontract during the existence of the dispute. Any party stopping or delaying the progress of the Work on the Project because of a dispute shall be responsible in damages to City, and the Design-Build Entity for any losses suffered as a result of the delay.
- K. The Design-Build Entity agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.
- L. The Design-Build Entity shall require each Subcontractor to comply with all procedures established by the Design-Build Entity for coordination among City, City's consultants, the Design-Build Entity, and the various Subcontractors for coordination of the Work on the Project with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.
- M. The Design-Build Entity shall require each Subcontractor to comply with all on-site record keeping systems established by the Design-Build Entity and shall, upon the request of the Design-Build Entity, provide the Design-Build Entity with such information and reports as the Design-Build Entity may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Project site.
- N. The specific requirements of this Article are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the Contract Documents which are relevant to the proper performance of its portion of the Work on the Project.
- O. The Design-Build Entity shall require all Subcontractors to commence their Work within two (2) Days after the Design-Build Entity provides them with a notice to begin, and shall require all Subcontractors to diligently prosecute their Work in accordance with the Project Schedule, so as to allow the Project to be totally and adequately completed within the Project Completion Date.

ARTICLE 10. CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

- A. City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and Contract Time shall be adjusted accordingly. All such changes in the Work shall

be authorized by written Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity indicates the Design-Build Entity's agreement therewith, including any adjustment in the Guaranteed Maximum Price or the Contract Times, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

- B. Design-Build Entity shall promptly execute changes in the Work as directed in writing by City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the Design-Build Entity shall be presented in writing. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Design-Build Entity. Design-Build Entity shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.
- C. The Design-Build Entity may request a Change Order under the procedures specified herein.
- D. No changes in the work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract.
- E. A Field Order, as defined below, may be issued by City; such Field Order does not require the agreement of the Design-Build Entity, and shall be valid with or without the signature of the Design-Build Entity.
- F. The Design-Build Entity shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order, City Directed Change Order or Field Order.
- G. A Change Order becomes a Contract Document when: (i) it is a City Directed Change Order as described in Article 9.3; or (ii) after it has been signed by both City and the Design-Build Entity, and states their agreement upon all of the following:
 - 1. A change in the Work, if any.
 - 2. The amount of an adjustment of the Guaranteed Maximum Price, if any.
 - 3. The amount of an adjustment of the Project Completion Date, if any.
 - 4. The terms and conditions of the Change Order are accepted as full and final settlement of any and all claims arising out of or related to the subject of the Change Order and the compensation set forth therein comprises the total compensation due for the work or change defined in the Change Order, including all impacts on any unchanged work.

10.2 Design-Build Entity Change Order Requests.

- A. The Design-Build Entity may only request changes to the Guaranteed Maximum Price and/or Project Completion Date for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of City, City's Representative, their agents or employees, or caused by unforeseen conditions or Acts of God if, and only if, the Design-Build Entity follows the procedures specified in this Article.
- B. If the Design-Build Entity asserts that the Design-Build Entity is entitled to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of City, or as the result of unforeseen conditions that could not have been foreseen by the Design-Build Entity, then the Design-Build Entity may submit a Change Order Request in a form acceptable to City, to City's Representative.
- C. A Change Order Request must state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Project Completion Date. Upon request of City's Representative, the Design-Build Entity shall submit such additional information as may be requested by City's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a cost proposal meeting the requirements of this Article and written documentation demonstrating the Design-Build Entity's entitlement to a time extension under Article 10. If the Change Order Request seeks an adjustment of the Guaranteed Maximum Price for a Compensable Delay, upon request of City's Representative, the Design-Build Entity shall submit written documentation demonstrating the Design-Build Entity's entitlement to such an adjustment under Article 9.
- D. A condition precedent to obtaining an adjustment of the Guaranteed Maximum Price and/or Project Completion Date as the result of an act, error, or omission of City, City's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in this Article. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within five (5) Days of the date the Design-Build Entity discovers, or reasonably should discover, that an act, error, or omission of City has occurred that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within fourteen (14) Days of the date the Design-Build Entity discovers, or reasonably should discover, the existence of an unforeseen condition that may entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price and/or Project Completion Date (even if the Design-Build Entity has not been damaged, delayed, or incurred extra cost when the Design-Build Entity discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). Although the Design-Build Entity shall have fourteen (14) Days to submit such Change Order Requests, the Design-Build Entity shall provide City

written or oral notice of the issue being the basis for such Change Order within fourteen (14) business days of discovery.

- E. If City's Representative issues a final decision on all or part of a Change Order Request, the Design-Build Entity may contest the decision by filing a timely Claim under the procedures specified in Article 14. A final decision is any decision on a Change Order Request by City's Representative which states that it is final.

10.3 Unilateral Change Order; Field Order.

- A. An City Directed Change Order is a type of Change Order which may be issued by City and incorporated into the Contract Documents without the Design-Build Entity's signature, where City determine that it is in City's best interest to adjust the Guaranteed Maximum Price and/or Project Completion Date as City believes necessary, even though no agreement has been reached between City and the Design-Build Entity.
- B. A Field Order is preliminary to a Change Order that describes a change in the Work, the estimated adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, and orders a change in the Work before all of the terms of the change are fully agreed upon by City and the Design-Build Entity. A Field Order must eventually be memorialized as a Change Order or an City Directed Change Order and incorporated into the Contract Documents.
 - 1. A Field Order may be issued by City. If requested in writing, the Design-Build Entity shall promptly provide City's Representative with a cost proposal, setting forth the proposed adjustments of the Guaranteed Maximum Price and/or the Project Completion Date, if any, for performing the change in the Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Guaranteed Maximum Price and the Project Completion Date, as well as the change in the Work.
 - 2. A Field Order signed by the Design-Build Entity indicates the agreement of the Design-Build Entity therewith, including the Design-Build Entity's agreement to the proposed adjustments to the Guaranteed Maximum Price and/or the Project Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.
 - 3. Upon receipt of a Field Order, the Design-Build Entity shall promptly proceed with the change in the Work.
 - 4. If the Design-Build Entity does not agree to the adjustment of the Guaranteed Maximum Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Article 9.4; and the Design-Build Entity shall comply with the provisions of Article 9.4 regarding records and documentation of actual costs.

10.4 Changes to The Guaranteed Maximum Price.

- A. Process for Determining Adjustments in the Guaranteed Maximum Price.

1. Change Order Request Detail. Design-Build Entity's Change Order Request shall include all professional services, material, labor, and equipment separately priced for each element of Work. Allowable Overhead and Profit may be added to the total of these costs if allowed by the Contract Documents. As general guidance, all cost documentation shall be tabulated from detailed computerized spreadsheets in a "workbook" which will be compiled into useful summary spreadsheets as directed by City's Representative.
 - a. Lump Sum Change Orders. By mutual acceptance of a lump sum price negotiated on the basis of the Design-Build Entity's itemized estimate of the anticipated costs of the Additional Work.
 - b. Time and Materials Change Orders. City may direct Design-Build Entity to proceed with the Additional Work with payments to be made on the basis of the actual cost of the labor and materials required to complete the Additional Work.
 2. Change Order Request Form. Design-Build Entity's Change Order Request shall be on forms acceptable to City's Representative. Design-Build Entity's Change Order Request shall certify in writing that the amounts included cover all direct, supplemental, indirect, consequential, and cumulative costs and delays, as applicable, and that those costs and delays would be or were necessarily incurred, despite Design-Build Entity's reasonable and diligent efforts to mitigate them. Mitigation efforts undertaken by Design-Build Entity must be described.
- B. Lump Sum Change Orders. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be segregated as follows:
1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the additional work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost of the Additional Work will not be permitted unless the Design-Build Entity establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Section 00 42 53, Attachment 1.
 2. Materials. The cost of materials shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost

are not furnished within fifteen (15) Days of delivery, then City shall determine the materials cost, at its sole discretion.

3. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit markups established below. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the Work is performed.

C. Time and Materials Change Orders.

1. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Design-Build Entity for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items.
2. Timely and Final Documentation.
 - a. Design-Build Entity must submit timesheets, materials invoices, records of equipment hours and records of rental equipment hours to City's Representative for an approval signature each day Additional Work is performed. Failure to get City's Representative's approval signature each Day may result in a waiver of Design-Build Entity's right to claim these costs.
 - b. All documentation of incurred costs shall be submitted by Design-Build Entity and approved by City's Representative within three (3) Days of incurring the cost for labor, material, equipment, and special services. Design-Build Entity's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services (T&M Summary Sheets). Design-Build Entity's failure to provide the T&M Summary Sheets within three (3) Days of performance of the work will result in the Design-Build Entity's otherwise allowable profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Design-Build Entity's failure to submit the T&M Summary Sheets within three (3) Days of completion of the work will result in Design-Build Entity's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.
3. Labor. The costs of labor will be the actual cost substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, plus employer payments of payroll taxes, workers compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful

collective bargaining agreements. Compensation for the design element of any Additional Work as an adjustment to the Guaranteed Maximum Price, authorized by Change Order shall be computed as specified in Section 00 42 53, Attachment 1.

- a. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
 - b. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including without limitation the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
4. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- a. Trade discounts available to the purchaser shall be credited to City notwithstanding the fact that such discounts may not have been taken by Design-Build Entity.
 - b. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by City's Representative.
 - c. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Site, whichever price is lower.
 - d. If in the opinion of City's Representative the cost of materials is excessive, or Design-Build Entity does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Site less trade discounts.
 - e. City reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Design-Build Entity for costs of such materials or Indirect Costs or profit on City furnished materials.
5. Equipment. Design-Build Entity will be paid for the use of equipment at the rental rates listed for that equipment in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Contract was executed. Such rental rate will be used to compute payments for equipment whether the equipment is under Design-Build Entity's control through direct

Ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to City for the total period of use. If it is deemed necessary by Design-Build Entity to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by City's Representative. Design-Build Entity may furnish cost data which might assist City's Representative in the establishment of the rental rate.

- a. All equipment shall, in the opinion of City's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
- b. Before construction equipment is used on the Additional Work, Design-Build Entity shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to City's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
- c. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

6. Rental Equipment.

- a. Rental Time. The rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except, that moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.
- b. Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
- c. Computation Method. The following shall be used in computing the rental time of equipment on the Site:
 - (i) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be ½-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

- (ii) When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be ½-day of operation.
- 7. Design-Build Entity-Owned Equipment. For Design-Build Entity-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month which is found in the rental rate source identified in the Special Conditions for rental equipment.
- 8. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
 - a. Invoices for Special Services. When City's Representative and Design-Build Entity determine that a special service is required which cannot be performed by the forces of Design-Build Entity or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by City's Representative.
 - b. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for special services.
- 9. Excluded Costs. The term Time and Materials shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Design-Build Entity's allowance for Overhead and Profit:
 - a. Overhead Cost. Payroll costs and other compensation of Design-Build Entity's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks and other personnel employed by Design-Build Entity whether at the Site or in Design-Build Entity's principal office or any branch office, material yard, or shop for general administration of the Additional Work;
 - b. Office Expenses. Expenses of Design-Build Entity's principal and branch offices;
 - c. Capital Expenses. Any part of Design-Build Entity's capital expenses, including interest on Design-Build Entity's capital

employed for the Additional Work and charges against Design-Build Entity for delinquent payments;

- d. Negligence. Costs due to the negligence of Design-Build Entity or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - e. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included by the Contract Documents;
 - f. Small Tools. Cost of small tools valued at less than \$1000 and that remain the property of Design-Build Entity;
 - g. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - h. Anticipated Lost Profits. Expenses of Design-Build Entity associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retention;
 - i. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
 - j. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Design-Build Entity, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work; or
 - k. Design Costs. Design costs in excess of the hourly rates included in Section 00 42 53, Attachment 1.
10. Overhead and Profit for Lump Sum and Time and Materials Change Orders.
- a. The mark-up to be added to Lump Sum and Time and Materials Change Orders for Overhead (including supervision) and Profit on Additional Work shall be determined in accordance with the following provisions:
 - (i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment as defined herein only, excluding Overhead and Profit. The costs of applicable insurance and bond premium will be reimbursed to the Design-Build Entity and Subcontractors at cost only, without mark-up and in no

case shall the total costs exceed one and one-half percent (1.5%) of Net Cost. Design-Build Entity shall provide City with documentation of the costs, including not limited to payroll records, invoices, and such other information as City may reasonably request.

- (ii) For Work performed by the Design-Build Entity's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.
 - (iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Subcontractor's Net Cost of the Work, to which the Design-Build Entity may add five (5%) percent of the Subcontractor's Net Cost.
 - (iv) For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work, to which the subcontractor and Design-Build Entity may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.
 - (v) No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five (25%) percent of the Net Cost, as defined herein, of the party that performs the Work.
 - (vi) No additional markup will be allowed for design costs computed as specified in Section 00 42 53, Attachment 1.
- b. All of the following costs are included in the markups for overhead and profit described above, and Design-Build Entity shall not receive any additional compensation for: Submittals, drawings: field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on Site facilities (Offices, Telephones, Internet access, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

D. Change for Compensable Delay.

1. The Guaranteed Maximum Price will be adjusted for Compensable Delay, which for the purposes of this Article exists if, and only if, the Design-Build Entity demonstrates that all of the following four conditions are met:
 - a. Condition Number One: The delay results in an extension of the Project Completion Date pursuant to Article 10.
 - b. Condition Number Two: The delay is caused solely by one, or more of the following:
 - (i) An error or omission in the Contract Documents caused by City and not as a result of the Design-Build Entity's failure to conform to bridging documents, performance standards, Construction Documents, or Contract Documents; or
 - (ii) City's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - (iii) City's decision to suspend Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - (iv) The failure of City, City's Representative or Separate Contractors to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Build Entity.
 - c. Condition Number Three: The delay is not concurrent with a delay that is:
 - (i) Critical under Article 10; and
 - (ii) Caused by an event not listed in this Article 9.4D(1)(b).
 - d. Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 9.4D(1)(b).
2. For each day of delay that meets all four conditions prescribed in Article 9.4(D)(1), the Guaranteed Maximum Price will be adjusted in accordance with the Reverse Liquidated Damages specified in Section 00 73 13.
3. Except as provided in Articles 9 and 10, the Design-Build Entity shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. The Reverse Liquidated Damages specified in Section 00 73 13 will be full and final compensation for any compensable delay.
4. If for any reason one or more of the conditions prescribed in Article 9.4(D)(1) is held legally unenforceable, the remaining conditions must be

met as a condition to obtaining an adjustment of the Guaranteed Maximum Price.

10.5 City Reservation of Rights.

- A. By signing the Contract, the parties agree that City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - 1. To order changes in the Work, including without limitation:
 - a. Changes to correct errors or omissions caused by City, if any, in the Contract Documents.
 - b. Changes resulting from City's decision to change the Work subsequent to execution of the Contract.
 - c. Changes due to unforeseen conditions.
 - 2. To suspend Work on the Project or any part thereof.
 - 3. To delay Work on the Project, including without limitation, delays resulting from the failure of City or City's Representative to timely perform any Contract obligation and delays for City's convenience.

10.6 Design-Build Entity's Waiver of Further Relief.

- A. DESIGN-BUILD ENTITY'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY DESIGN-BUILD ENTITY OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.
- B. Design-Build Entity recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

ARTICLE 11. PROJECT COMPLETION DATE

11.1 Commencement of Work On The Project.

- A. The date of commencement of the Work shall be set forth in the Notice to Proceed. The date of commencement for the Work shall not be postponed by the failure of the Design-Build Entity, Subcontractors, or of persons or firms for whom the Design-Build Entity is responsible, to act.

11.2 Progress and Completion.

- A. By signing the Contract:
 - 1. The Design-Build Entity represents to City that the Project Completion Date is reasonable for performing the Work and that the Design-Build Entity is able to perform and complete the Work within the Project Completion Date.
 - 2. The Design-Build Entity agrees that City is purchasing the right to have the Design-Build Entity present on the Project for the full duration of the time period necessary to complete the Work described in the RFP.
- B. The Design-Build Entity shall not, except by agreement or instruction of City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 5.1 to be furnished by the Design-Build Entity. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.
- C. The Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If City's Representative determines and notifies the Design-Build Entity that the Design-Build Entity's progress is such that the Design-Build Entity will not achieve full completion of the Work by the Project Completion Date, the Design-Build Entity shall immediately and at no additional cost to City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from City's representative, the Design-Build Entity shall immediately notify City's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date. The Design-Build Entity shall reimburse City for any extra costs or expenses (including the reasonable value of any services provided by City's employees) incurred by City as the result of such measures.

11.3 Delay.

- A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price and may be compensated as Additional Work as described below. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 9 and 10, by signing the Contract, the Design-Build Entity agrees:

1. to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project; and
 2. that the Proposal was made with full knowledge of this risk.
- B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the Design-Build Entity understands that, except and only to the extent provided otherwise in Articles 9 and 10, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the Design-Build Entity from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the Design-Build Entity to an adjustment of the Guaranteed Maximum Price.

11.4 Adjustment of The Project Completion Date for Excusable Delay.

- A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the Design-Build Entity demonstrates that all of the following six conditions are met:
1. Condition Number One: When the event causing the delay commences, the Design-Build Entity has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
 2. Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
 - a. If the Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
 - b. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
 3. Condition Number Three: The delay is supported by the Project Schedule, current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Project Schedule corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 10.4A(2).

4. Condition Number Four: Within fourteen (14) Days of the date the Design-Build Entity discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Design-Build Entity has not been delayed when the Design-Build Entity discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design-Build Entity submits a timely Change Order Request that meets the requirements of Article 9.
5. Condition Number Five: The delay is not caused by:
 - a. A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or
 - b. The financial inability, misconduct or default of the Design-Build Entity, a Subcontractor or supplier; or
 - c. The unavailability of materials or parts, as long as such materials or parts were timely ordered by Design-Build Entity within thirty (30) Days of the issuance of the Notice to Proceed; or
 - d. An error or omission in the Contract Documents caused by the Design-Build Entity or the Design-Build Entity's design consultants.
6. Condition Number Six: The delay is caused by:
 - a. Fire; or
 - b. Strikes, boycotts, or like obstructive actions by employees or labor organizations; or
 - c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
 - d. A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or
 - e. An error or omission in the Contract Documents caused by City; or
 - f. City's decision to change the Work, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - g. City's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the Design-Build Entity; or
 - h. The failure of City, City's representative or a Separate Contractor to timely perform any Contract obligation unless such failure is due to the Design-Build Entity's default or misconduct.

- B. If and only if a delay meets all six conditions prescribed in Article 10.4A, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.
- C. If for any reason one or more of the six conditions prescribed in Article 10.4A is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date under Article 10.4B.

11.5 Non-Compensable Delay

- A. For Excusable, non-compensable delay, the extension of the Project Completion Date pursuant to Article 10.4 above, shall constitute full and final consideration to the Design-Build Entity for the delay.

11.6 Compensable Delay.

- A. Subject to the limitations set forth in Article 10.7, below, any adjustment of the Guaranteed Maximum Price as the result of Compensable Delay shall be limited to the amounts specified in Article 9.

11.7 No Damages for Reasonable Delay.

- A. City's liability to the Design-Build Entity for delays for which City is responsible shall be limited to only an extension of the Project Completion Date unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Design-Build Entity in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
- B. Damages caused by unreasonable City delay that impact the critical path, including delays caused by items that are the responsibility of City pursuant to Government Code section 4215, shall be compensated at the Reverse Liquidated Damages rate established in Section 00 73 13, no other calculations, proportions or formulas shall be used to calculate any delay damages.
- C. City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Design-Build Entity for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design-Build Entity on or in connection with any other project or anticipated project.

ARTICLE 12. TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

- A. Prompt notice of all Defective Work of which City or City's Representative has actual knowledge will be given to Design-Build Entity. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

- A. City, City's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. Design-Build Entity shall provide them proper and safe conditions for such access and advise them of Design-Build Entity's safety procedures and programs.

12.3 Tests and Inspections.

- A. Design-Build Entity shall give City's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Except as provided by the Contract Documents, City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City's Representative the required certificates of inspection or approval.
- D. Design-Build Entity shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City and City's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City.
- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to City ordinance.

12.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Design-Build Entity without written concurrence of City's Representative, Design-Build Entity shall, if requested by City's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given City's Representative timely notice of Design-Build Entity's intention to cover the same and City's Representative has not acted with reasonable promptness in response to such notice.
- C. If Design-Build Entity has given City's Representative timely notice of Design-Build Entity's intention to cover the work and City's Representative has not acted with reasonable promptness in response to such notice, and City's Representative later considers it necessary or advisable that covered Work be observed by City's Representative or inspected or tested by others, Design-Build Entity, at City's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and City shall be entitled to an appropriate decrease in the GMP.
 - 2. If the uncovered Work is not found to be defective, Design-Build Entity shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 City May Stop The Work.

- A. If the Work is defective, City may in its sole discretion order Design-Build Entity to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the Design-Build Entity.

12.6 Correction of Defective Work and Guarantee to Repair Period.

- A. Promptly after receipt of written notice, Design-Build Entity shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City or City's Representative, remove it from the Project and replace it with Work that is not defective. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration

or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. The term “Guarantee to Repair Period” means a period of two (2) years, unless a longer period of time is specified, commencing as follows:
 - 1. For any Construction Work not described as incomplete on the date of Project Completion.
 - 2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 12.6, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.
 - 3. For all Construction Work other than 1. or 2. above, from the date of Final Completion.
- C. When correcting Defective, Design-Build Entity shall take no action that would void or otherwise impair City’s special warranty and guarantee, if any, on said Work.
- D. The Design-Build Entity shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Guarantee to Repair Period and (2) replace, repair, or restore to City’s satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The Design-Build Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from City’s Representative or City, but in no case later than fourteen (14) Days after receipt of such notice; and the Design-Build Entity shall diligently and continuously prosecute such correction to completion. The Design-Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for City’s Representative’s services and expenses. The Design-Build Entity shall perform corrective Work on the Project at such times that are acceptable to City and in such a manner as to avoid, to the extent practicable, disruption to City’s activities.
- E. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by City or Separate Contractors, the Design-Build Entity shall pay to City all reasonable costs of correcting such Defective Work. The Design-Build Entity shall replace, repair, or restore to City’s satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
- F. The Design-Build Entity shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Design-Build Entity nor accepted by City.

- G. The Design-Build Entity's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to City under Article 6 or any other obligation of the Design-Build Entity under the Contract Documents. Enforcement of the Design-Build Entity'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 Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of the Design-Build Entity under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of the Design-Build Entity to correct the Work on the Project and in no way limits either the Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design-Build Entity's obligations under the Contract Documents.
- H. If the Design-Build Entity fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) Days after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have, correct such failure at the Design-Build Entity's sole expense. In such case, City will be entitled to deduct from payments then or thereafter due the Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of City's Representative and City's consultants made necessary thereby. If payments then or thereafter due the Design-Build Entity are not sufficient to cover such amounts, the Design-Build Entity shall pay the additional amount to City.

12.7 Acceptance of Defective Work.

- A. If, instead of requiring correction or removal and replacement of Defective Work, City prefers to accept it, City may do so. Design-Build Entity shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
- B. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Guaranteed Maximum Price, reflecting the diminished value of Work and all costs incurred by City.
- C. If the Project retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of retention to be paid to City.

- D. If the acceptance of defective Work occurs after release of the Project retention, an appropriate amount will be paid by Design-Build Entity to City.

12.8 City May Correct Defective Work.

- A. If Design-Build Entity fails within a reasonable time after written notice from City's Representative to correct Defective Work, or to remove and replace rejected Work as required by City, or if Design-Build Entity fails to perform the Work in accordance with the Contract Documents, or if Design-Build Entity fails to comply with any other provision of the Contract Documents, City may, after seven (7) Days written notice to Design-Build Entity, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work and suspend Design-Build Entity's services related thereto, take possession of Design-Build Entity's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the defective work.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the defective work will be charged against Design-Build Entity, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the GMP.
- D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
- E. If the Change Order is executed after all payments under the Contract have been paid by City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Design-Build Entity will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to City.
- F. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Design-Build Entity to City.
- G. Design-Build Entity shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting defective work.

12.9 Warranty Period.

- A. If within two (2) years after commencement of the Warranty, or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract

Documents, any Work is found to be defective or not performing suitably for its intended use, or if the repair of any damages to the Site or areas made available for Design-Build Entity's use during the performance of the Work is found to be defective, Design-Build Entity shall promptly, without cost to City and in accordance with City's written instructions:

1. repair such defective land or areas;
 2. correct such defective or non-performing work;
 3. if the Defective Work has been rejected by City pursuant to the Contract Documents, remove it from the Project and replace it with Work that is not defective; and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Design-Build Entity does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the Defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Design-Build Entity in accordance with Section 00 72 53, Article 11.8.C through 11.8.F.
- C. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- D. Design-Build Entity's obligations under this Article are in addition to any other obligation or warranty and do not limit City's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.

ARTICLE 13. PAYMENTS TO DESIGN-BUILD ENTITY AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Project Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City's Representative. Progress payments on account of Unit Price Work will be based on the number of units completed.

- A. Applications for Payments.
1. By the twenty-fifth (25th) day of each month Design-Build Entity shall submit to City's Representative for review an Application for Payment filled

out and signed by Design-Build Entity covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.

2. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the Design-Build Entity stating that it has paid all amounts due on account of the Work paid by City in the prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as set forth in the Special Conditions.

B. Review of Applications.

1. City's Representative will either indicate in writing a recommendation of payment to City or return the Application for Payment to Design-Build Entity indicating in writing City's Representative's reasons for refusing to recommend payment. In the latter case, Design-Build Entity may make the necessary corrections and resubmit the Application for Payment.
2. By recommending any such payment City's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to City's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Design-Build Entity to be paid additionally by City or entitle City to withhold payment to Design-Build Entity.
3. Neither City's Representative's review of Design-Build Entity's Work for the purposes of recommending payments nor City's Representative's recommendation of any payment, including final payment, will impose responsibility on City's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

- c. for Design-Build Entity's failure to comply with Applicable Laws applicable to Design-Build Entity's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Design-Build Entity has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to City free and clear of any Liens.
4. City's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. City retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in City's opinion to protect City from loss.

C. Payment Becomes Due.

- 1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to City's Representative, and subject to City's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by City to Design-Build Entity.

D. Retention and Securities in Lieu of Retention.

- 1. Unless Project has been deemed substantially complex as noted in the Special Conditions, City will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws.
- 2. Pursuant to Public Contract Code section 22300, Design-Build Entity may substitute securities for any moneys withheld as a retention by City to ensure performance under the Contract. At the request and expense of Design-Build Entity, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Design-Build Entity. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Build Entity.
 - a. Alternatively, Design-Build Entity may request, and City shall make payment of retentions earned directly to the escrow agent selected by the Design-Build Entity. At the expense of Design-Build Entity, Design-Build Entity may direct the investment of the payments into securities and Design-Build Entity shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by Design-Build Entity. Upon satisfactory completion of the Contract, Design-Build Entity shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when City authorizes the escrow agent to release these funds to the Design-

Build Entity, pursuant to the terms of Public Contract Code section 22300.

3. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Entity and City.
4. Design-Build Entity shall be the beneficial City of any securities substituted for moneys withheld and shall receive any interest thereon.
5. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. City's Reduction in Recommended Payment.

1. In addition to reductions recommended by City's Representative, City may refuse to make payment of the full amount recommended by City's Representative because:
 - a. Claims have been made against City on account of Design-Build Entity's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.
 - d. Failure of Design-Build Entity to make proper payments to its subcontractors or suppliers.
 - e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
 - f. Damage to another contractor or third party.
 - g. Amounts which may be due the City for claims against Design-Build Entity.
 - h. Failure of Design-Build Entity to keep the record ('as-built') drawings up to date.
 - i. Failure to provide updates on the construction schedule.
 - j. Site cleanup.
 - k. Failure of the Design-Build Entity to comply with requirements of the Contract Documents.
 - l. Liquidated Damages.

Upon completion of the Contract, City will reduce the final Contract Price to reflect costs

charged to the Design-Build Entity, back charges or payments withheld pursuant to the Contract Documents.

13.2 Design-Build Entity's Warranty of Title.

- A. Design-Build Entity warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

- A. City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Design-Build Entity of its responsibilities under the Contract.

13.4 Final Inspection.

- A. Upon written notice from Design-Build Entity that the entire Work is complete, City's Representative will promptly make a final inspection with City and Design-Build Entity and will notify Design-Build Entity in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design-Build Entity shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

- A. After Design-Build Entity has, in the opinion of City's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked up record documents, and other documents required by the Contract Documents, City shall execute and file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

- A. Application for Payment.
 - 1. Upon execution of the Notice of Completion, Design-Build Entity may make application for final payment following the procedure for progress payments.
 - 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;

- b. consent of the surety to final payment;
 - c. a fully completed Conditional Waiver and Release on Final Payment.
 - B. City's Representative's Review of Application and Acceptance.
 - 1. If, on the basis of City's Representative's observation of the Work during construction and final inspection, and City's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, City's Representative is satisfied that the Work has been completed and Design-Build Entity has satisfied all other requirements for final payment, City's Representative will indicate in writing City's Representative's recommendation of payment and present the Application for Payment to City for payment. Otherwise, City's Representative will return the Application for Payment to Design-Build Entity, indicating in writing the reasons for refusing to recommend final payment, in which case Design-Build Entity shall make the necessary corrections and resubmit the Application for Payment.
 - C. Payment Becomes Due.
 - 1. Within sixty (60) Days after the presentation to City's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by City's Representative, less any sum City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by City to Design-Build Entity.

13.7 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by Design-Build Entity against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

ARTICLE 14. SUSPENSION OF WORK AND COMPLETION

14.1 City May Suspend Work.

- A. City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Design-Build Entity. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Design-Build Entity shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, Design-Build Entity shall, unless the notice requires otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;

2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, Design-Build Entity shall be granted an adjustment in the GMP based on a negotiated daily rate that reflects the Design-Build Entity's actual costs associated with the demobilized condition of the Site (and as a result will be less than the Daily Rate contained in the Special Conditions) and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from Design-Build Entity's non-compliance with the requirements of the Contract.

14.2 City May Terminate for Cause.

- A. City may, without prejudice to any other right or remedy, serve written notice upon Design-Build Entity of its intention to terminate this Contract in whole or in part if the Design-Build Entity: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of City; or (ix) violates any of the provisions of the Contract Documents.
- B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within five (5) Days after the service of such notice, Design-Build Entity resolves the circumstances giving rise to the Notice of Default to City's satisfaction, or makes arrangements acceptable to City for the required corrective action, City may terminate this Contract. In such case, Design-Build Entity shall not be entitled to receive any further payment until the Work has been finished. City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. Design-Build Entity and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Work. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Design-Build Entity as may be on the Site.

14.3 City May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, City may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to Design-Build Entity. The Notice of Termination shall specify that the termination is for the convenience of City, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by City, the Design-Build Entity shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - 1. Stop Work as specified in the Notice.
 - 2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - 3. Leave the Site and any other property upon which the Design-Build Entity was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - 4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
 - 5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
 - 6. Submit to City, within fifteen (15) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Design-Build Entity for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the Design-Build Entity solely as a result of City's exercise of its right to terminate this Contract pursuant to this clause, which costs the Design-Build Entity is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience."
 - 7. City's total liability to Design-Build Entity by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The reasonable cost to the Design-Build Entity for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Cost Breakdown. Deductions shall be made for cost of materials to be retained by the

Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.

- b. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
 - d. Reasonable costs to the Design-Build Entity of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
 - e. A reasonable allowance for the Design-Build Entity's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall City be liable for unreasonable costs incurred by the Design-Build Entity or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design-Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
9. City shall have no obligation to pay the Design-Build Entity under this Article unless and until the Design-Build Entity provides City with updated and acceptable as-builts and record drawings for Work completed prior to termination as required by the Contract Documents.
10. In arriving at the amount due the Design-Build Entity under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:
- a. All unliquidated advances or other payments on account previously made to the Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,

- b. Any claim City may have against the Design-Build Entity in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design-Build Entity and not otherwise recovered by or credited to City.

Design-Build Entity shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

- 11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order Design-Build Entity to cease Work until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.
- 12. If City terminates Design-Build Entity for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Design-Build Entity shall be entitled to receive only the amounts payable under this section, and Design-Build Entity specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15. CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Initiating Claims.

- A. All Claims, except those waived pursuant to the Contract Documents, shall be referred to City's Representative for decision. A decision by City's Representative shall be required as a condition precedent to any exercise of any rights or remedies either may otherwise have under the Contract Documents or by Applicable Laws in respect of such Claims.
- B. Written notice stating the general nature of each Claim shall be delivered by the claimant to City's Representative promptly (but in no event later than fifteen (15) Days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the Design-Build Entity. A Claim for an adjustment in GMP and/or the Contract Times shall be prepared in accordance with the Contract Documents. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event.
- C. City's Representative will review each Claim and take one of the following actions in writing:
 - 1. deny the Claim in whole or in part; or
 - 2. approve the Claim.

- D. In the event that City's Representative does not take action on a Claim within forty-five (45) Days after the receipt of a proper and complete Claim, the Claim shall be deemed denied.
- E. City's Representative's written action will be final and binding upon City and Design-Build Entity, unless City or Design-Build Entity invoke the dispute resolution procedure set forth below.

15.2 Procedure for Resolving Claims.

Design-Build Entity shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the GMP or Contract Time, including but not limited to all requirements of Articles 9 and 10 and Section 14.1, as a prerequisite to filing any claim governed by this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Design-Build Entity's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with all applicable law, including but not limited to these statutes.
- B. Claims. For purposes of this Section, "Claim" means a separate demand by the Design-Build Entity for:
 - 1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;
 - 2. Payment by the City of money or damages arising from Work done by or on behalf of the Design-Build Entity pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Design-Build Entity is not otherwise entitled; or
 - 3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Design-Build Entity has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

- C. Filing Claims. Claims governed by this Section may not be filed unless and until the Design-Build Entity completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Design-Build Entity's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than thirty

(30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. Documentation. The Design-Build Entity shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
2. List of documents relating to the Claim:
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
3. Chronology of events and correspondence
4. Narrative analysis of claim merit
5. Analysis of Claim cost, including calculations and supporting documents
6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City Response to Claim. Upon receipt of a Claim pursuant to this Section, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Design-Build Entity a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Design-Build Entity a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return

receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Design-Build Entity a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Design-Build Entity. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Design-Build Entity. The City's written response to the Claim, as further documented, shall be submitted to the Design-Build Entity within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Design-Build Entity in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer Conference. If the Design-Build Entity disputes the City's written response, or the City fails to respond within the time prescribed, the Design-Build Entity may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Design-Build Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the City and the Design-Build Entity sharing the associated costs equally. The public entity and Design-Build Entity shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
2. For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

3. Unless otherwise agreed to by the City and the Design-Build Entity in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 4. The mediation shall be held no earlier than the date the Design-Build Entity completes the Work or the date that the Design-Build Entity last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Design-Build Entity must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Design-Build Entity submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- J. Government Code Claim Procedures.

1. This Section does not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.
 2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Design-Build Entity must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.
 3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Design-Build Entity. If Design-Build Entity does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Design-Build Entity may not file any action against the City.
 4. A Government Code claim must be filed no earlier than the date the Work is completed or the date the Design-Build Entity last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Design-Build Entity or that should reasonably be known to Design-Build Entity excepting only new unrelated Claims that arise after the Government Code claim is submitted.
- K. Non-Waiver. The City's failure to respond to a Claim from the Design-Build Entity within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Section.

15.3 Litigation.

- A. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

15.4 Duty to Continue Performance.

- A. Unless provided to the contrary in the Contract Documents, Design-Build Entity shall continue to perform the Work and City shall continue to satisfy its payment obligations to Design-Build Entity, pending the final resolution of any dispute or disagreement between Design-Build Entity and City.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1 Giving Notice.

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.2 Limitations On City's Responsibilities.

- A. City shall not supervise, direct, or have control or authority over, nor be responsible for, the Design-Build Entity's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the Design-Build Entity to comply with Applicable Laws applicable to the performance of the Work. City will not be responsible for the Design-Build Entity's failure to perform the Project in accordance with the Contract Documents.

16.3 Cumulative Remedies.

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

16.4 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the Design-Build Entity.

16.5 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

16.6 Jurisdiction; Venue.

- A. The Design-Build Entity and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Los Angeles County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

16.7 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

16.8 City's Right to Audit.

- A. The Design-Build Entity shall make available to City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to City.
- B. If the Design-Build Entity submits a Change Order Request or a Claim to City, City shall have the right to audit the Design-Build Entity's books, records, documents, and other evidence to the extent they are relevant.
- C. The right to audit shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted, including but not limited to job cost reports, estimates, proposals, bids, proposal papers, documents of other work administered by the Design-Build Entity's home office, and any and all other documentation relied upon by the Design-Build Entity to obtain this Contract. City shall have the right to make and take copies of any records examined.
- D. The right to audit shall include the right to inspect the Design-Build Entity's plans, or such parts thereof, as may be or have been engaged in the performance of the Project.
- E. The Design-Build Entity further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors.
- F. The right to audit provided herein shall be exercisable through such representatives as City deems desirable during the Design-Build Entity's normal business hours at the Design-Build Entity's office.
- G. In accordance with Government Code Section 8546.7, records of both City and the Design-Build Entity shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. The Design-Build Entity shall make available to City any of the Design-Build Entity's other documents related to the Project immediately upon request of City. In addition to the State

Auditor's rights described above, City shall have the right to examine and audit all books, estimates, records, contracts, documents, Proposals, subcontracts, and other data of the Design-Build Entity (including electronic records, computations and projections) related to negotiating, pricing, or performing the Project in order to evaluate the accuracy and completeness of the cost or pricing data, for a period of four (4) years after final payment.

16.9 Assignment.

- A. Design-Build Entity shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of City. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.
- B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

16.10 All Legal Provisions Included.

- A. Design-Build Entity shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Design-Build Entity observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Design-Build Entity performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.
- B. Design-Build Entity shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Design-Build Entity shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable..

- C. Design-Build Entity acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in GMP or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

16.11 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the Design-Build Entity's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.12 Change In Name Or Nature of Design-Build Entity's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Design-Build Entity's legal entity, the Design-Build Entity shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the Design-Build Entity's name or nature will affect City's rights under the Contract Documents, including but not limited to the bonds and insurance.

16.13 Complete Contract.

- A. 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 may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

16.14 Notice of Third Party Claims.

- A. Pursuant to Public Contract Code section 9201, City shall provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Contract.

16.15 Severability of Provisions.

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

16.16 Correction of Errors and Omissions.

- A. The Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to City.

16.17 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

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

CITY OF POMONA

By: _____

Printed Name: Anita D. Scott

Title: City Manager

Dated: _____

DESIGN-BUILD ENTITY

By:  _____
(Authorized Representative of Design-Build Entity)

Printed Name: ROBERT FOSTER

Title: PRESIDENT
(Attach Acknowledgment for Authorized Representative of Design-Build Entity)

License No. 569693 - A.B.H#2


Dated: 7-18-2025

ATTEST:

City Clerk

Dated: _____

APPROVED AS TO FORM:



Best Best & Krieger, LLP, City Attorney

Dated: 7/16/2025

SPECIAL CONDITIONS

1.1 Engineer of Record.

A. The Architect and Engineer of Record shall be Civiltec Engineering, Inc.

1.2 Location of the Project.

A. The Project is located at 1790 E. First St., Pomona, CA 91766.

B.

1.3 Description of the Project.

A. The Project consists of the items set forth below and related facilities.

1. This project involves the installation of a granular activated carbon (GAC) groundwater treatment facility, designed to remove 1,2,3-TrichloroPropane (1,2,3-TCP) and PFAS contaminants in groundwater to meet safe drinking water standards.
2. The project will be divided into the following tasks:
 - Phase 1 – Project Management
 - Phase 2 – Preliminary Engineering Services and Site Survey
 - Phase 3 – Design Drawings and Technical Specifications
 - Phase 4 – Construction Services
 - Phase 5 – Permit Requirements

1.4 Status of the Project Area and Rights-of-Way.

- A. City, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Design-Build Entity shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Caltrans or Southern Pacific Railroad Company, before Design-Build Entity enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.
- B. City has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.
- C. If such permits are required, all operations of Design-Build Entity shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.
- D. Design-Build Entity may be required, as a condition for receiving final payment, to obtain, and provide City's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by City.

- E. Design-Build Entity shall, also, as a condition for receiving final payment, obtain, and provide City's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by City.

1.5 Designation of City's Representative

Unless otherwise modified by City, City's Representative shall be Chris Diggs, Water Resources Director.

1.6 Modification of Hours of Work

NOT USED

1.7 Site Data

NOT USED

- A. Subsurface Exploration Data. The following data are provided:

- 1. NOT USED

- B. Other Site Data. The following data are available for inspection at District's office:

- 1. NOT USED

1.8 Project Retention

In accordance with Public Contract Code section 7201, City will withhold 5% of each progress payment as retention on the Project.

1.9 [RESERVED]

1.10 Liquidated Damages Due to Design-Build Entity Delay.

- A. Time is of the essence. Should Design-Build Entity fail to complete all or any part of the Work within the time specified in the Contract Documents, City will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, City shall therefore be entitled to \$10,000 per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.
- B. Liquidated damages may be deducted from progress payments due Design-Build Entity, Project retention or may be collected directly from Design-Build Entity, or from Design-Build Entity's surety. These provisions for liquidated damages shall not prevent City, in case of Design-Build Entity's default, from terminating the Design-Build Entity.

1.11 Utility Outages – Notices to Residents.

- A. Should Design-Build Entity's operations require interruption of any utility service, Design-Build Entity shall notify City at least ten (10) Days prior to the scheduled outage. Design-Build Entity will notify all impacted residents on a form provided by City at least seven (7) Days prior to the scheduled outage.
- B. Design-Build Entity shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.12 Schedule Constraints.

NOT USED

1.13 Noise Restrictions

The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler. If the Contractor is forced or allowed by the Engineer to work outside the normal work hours, the noise level from the Contractor's operations, between the hours of 9:00 P.M. and 6:00 A.M. shall not exceed 86 dBA at a distance of fifty (50) feet. This requirement in no way relieves the Contractor from responsibility for complying with local ordinances regulating noise level. Said noise level requirements shall apply to all equipment on the job or related to the job, including but not limited to trucks, transmit mixers or transient equipment that may or may not be owned by the Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

1.14 Environmental Conditions

- A. Design-Build Entity must comply with all applicable environmental laws, Project conditions and constraints including but not limited to:
 - City of Pomona Encroachment Permit, Grading Permit, Building Permit, and Stormwater Permits
 - State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW)
 - Chino Basin Groundwater Basin Watermaster

1.15 Coordination with Other Contractors.

NOT USED

A.

1.16 Temporary Field Office

A.

- A. Utility Services. Design-Build Entity, at its expense, shall arrange for, develop and maintain all utilities, including but not limited to water, electric power, sewage disposal and telephone communications, at the Site to meet the requirements of the Work.
- B. Sanitation. The Design-Build Entity shall provide sanitary facilities for all persons working on the project. These facilities shall be kept clean and shall not be unsightly or produce odors.

1.17 Fugitive Dust

- A. In addition to all other environmental and air quality requirements of the Contract Documents, Design-Build Entity must also comply with the most recent version of South Coast Air Quality Management District's Rule 403 – Fugitive Dust, to reduce the amount of particulate matter entrained in the ambient air as a result of the Project.
- B. City has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

END OF SPECIAL CONDITIONS

GENERAL REQUIREMENTS

SECTION 1.1 - GENERAL

1.1.1 LAYOUT OF WORK AND QUANTITY SURVEYS

- a. General. The Design-Build Entity shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

Primary control consists of benchmarks and horizontal control points in the vicinity of the Work. Before beginning any layout work or construction activity, the Design-Build Entity shall check and verify primary control, and shall advise the City Representative of any discrepancies.

- b. Quantity surveys. The Design-Build Entity shall perform such surveys and computations as are necessary to determine quantities of Work performed or placed during each progress payment period, and shall perform all surveys necessary for the City's Representative to determine final quantities of Work in place. The City's Representative will determine final quantities based upon the survey data provided by the Design-Build Entity, and the design lines and grades. If requested by the City's Representative, the Design-Build Entity shall provide an electronic copy of data used for quantity computations.

All surveys performed for measurement of final quantities of Work and material shall be subject to approval of City's Representative. Unless waived by City's Representative in each specific case, quantity surveys made by the Design-Build Entity shall be made in the presence of City's Representative.

- c. Surveying

- (1) Accuracy. Degree of accuracy shall be an order high enough to satisfy tolerances specified for the Work and the following:

- (a) Right-of-way and alignment of tangents and curves shall be within 0.1 foot.

- (b) Structure points shall be set within 0.01 foot, except where operational function of the special features or installation of metalwork and equipment require closer tolerances. When formwork has been placed and is ready for concrete, the Design-Build Entity shall check the formwork for conformance with the drawings and to ensure that the forms are sufficiently within the tolerance limits for the completed work.

- (c) Cross-section points shall be located within 0.1 foot, horizontally and vertically.

- (d) Aerial Mapping shall meet National Mapping Standards for 2-foot contour intervals.

- d. Records. Survey data shall be recorded in accordance with recognized professional surveying standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be

of sufficient quality to enable the Design-Build Entity to prepare accurate record drawings as required by the Contract Documents.

- e. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work and quantity surveys shall be included in the GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.1.2 SUBMITTAL REQUIREMENTS FOR MANUALS

- a. General. The Design-Build Entity shall furnish all materials and perform all Work required for furnishing submittals to City in accordance with Contract Documents.

- b. Technical Manuals.

- (1) The Design-Build Entity shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff.

- (2) The Technical Manual shall be subdivided first by specification section number; second, by equipment item; and last, by "Category." "Categories" shall conform to the following (as applicable):

- (a) Category 1 - Equipment Summary:

- 1. Summary: A summary table shall indicate the equipment name, equipment number, and process area in which the equipment is installed.

- (b) Category 2 - Operational Procedures:

- 1. Procedures: Manufacturer-recommended procedures on the following shall be included in Part 2:

- Installation.

- Adjustment.

- Startup.

- Location of controls, special tools, equipment required, or related instrumentation needed for operation.

- Operation procedures.

- Load changes.

- Calibration.

- Shutdown.

- Troubleshooting.

- Disassembly.

- Reassembly.

- Realignment.

- Testing to determine performance efficiency.

Tabulation of proper settings for all pressure relief valves, low and high pressure switches, and other protection devices.

List of all electrical relay settings including alarm and contact settings.

(c) Category 3 - Preventive Maintenance Procedures:

1. Procedures: Preventive maintenance procedures shall include all manufacturer-recommended procedures to be performed on a periodic basis, both by removing and replacing the equipment or component, and by leaving the equipment in place.
2. Schedules: Recommended frequency of preventive maintenance procedures shall be included. Lubrication schedules, including lubricant SAE grade, type, and temperature ranges, shall be covered.

(d) Category 4 - Parts List:

1. Parts List: A complete parts list shall be furnished, including a generic description and manufacturer's identification number for each part. Addresses and telephone numbers of the nearest supplier and parts warehouse shall be included.
2. Drawings: Cross-sectional or exploded view drawings shall accompany the parts list.

(e) Category 5 - Wiring Diagrams:

1. Diagrams: Part 5 shall include complete internal and connection wiring diagrams for electrical equipment items.

(f) Category 6 - Shop Drawings:

1. Drawings: This part shall include approved shop or fabrication drawings, complete with dimensions.

(g) Category 7 - Safety:

1. Procedures: This part describes the safety precautions to be taken when operating and maintaining the equipment or working near it.

(h) Category 8 - Documentation:

1. All equipment warranties, affidavits, and certifications required by the Technical Specifications shall be placed in this part.

(3) The Design-Build Entity shall furnish to City six (6) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.

c. Spare Parts List - The Design-Build Entity shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment.

The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The Design-Build Entity shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

- d. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

SECTION 1.2 - MATERIALS

1.2.1 MATERIALS TO BE FURNISHED BY THE CONTRACTOR

- a. Inspection of Materials. Materials furnished by the Design-Build Entity which will become a part of the Project shall be subject to inspection at any one or more of the following locations, as determined by City's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Design-Build Entity shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.

No later than fourteen (14) Days prior to manufacture of material, Design-Build Entity shall inform City's Representative, in writing, the date the material is to be manufactured.

- b. Design-Build Entity's Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Design-Build Entity will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate City's testing efforts, including any travel required by Design-Build Entity's forces, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

SECTION 1.3 - LOCAL CONDITIONS AND REQUIREMENTS

1.3.1 ACCESS TO THE WORK AND HAUL ROUTES

- a. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Design-Build Entity.

- b. Access, Damage, Restoration. The Design-Build Entity shall make its own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site. Claims for changes in GMP or Contract Times arising out of the unavailability of transportation facilities or limitations thereon shall not be considered by City.

The Design-Build Entity shall maintain and repair any damage arising out of Design-Build Entity's operations to all roads used during construction of the Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Design-Build Entity shall conduct a photograph and/or video survey of the roadway with a copy submitted to City's representative.

- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.3.2 CONSTRUCTION AT EXISTING UTILITIES

- a. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Design-Build Entity shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Design-Build Entity to determine the actual locations of, and make accommodations to maintain, all utilities.
- b. Permission, Notice and Liability. Before any utility is taken out of service, permission shall be obtained by the Design-Build Entity from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Design-Build Entity's plan for providing temporary utilities if required by the owner. The Design-Build Entity shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Design-Build Entity shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.3.3 TRAFFIC CONTROL

- a. General. Design-Build Entity shall abide by traffic control plans approved by the appropriate jurisdiction.

- b. Protections. Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and maintained by the Design-Build Entity. The Design-Build Entity shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Design-Build Entity has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.
- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

SECTION 1.4 - ENVIRONMENTAL QUALITY PROTECTION

1.4.1 LANDSCAPE AND VEGETATION PRESERVATION

- a. General. The Design-Build Entity shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
- b. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.

Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.4.2 PROTECTED SPECIES

- a. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Design-Build Entity shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
- b. Procedures. The Design-Build Entity shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the City Representative, Design-Build Entity will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

- c. False Siting. Any costs or delays incurred by City or the Design-Build Entity due to unreasonable or false notification of an endangered plant or animal will be borne by the Design-Build Entity.
- d. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.4.3 PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL RESOURCES

- a. General. If, in the performance of the Work, Design-Build Entity should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Design-Build Entity notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.
- b. Procedures. The Design-Build Entity shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the City Representative, Design-Build Entity will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Design-Build Entity will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The Design-Build Entity shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

- c. Design-Build Entity's Liability. Should Design-Build Entity, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Design-Build Entity shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Design-Build Entity shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.
- d. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in

Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.4.4 DUST AND POLLUTION CONTROL

- a. Design-Build Entity shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site.
- b. Design-Build Entity shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
- c. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Design-Build Entity's GMP. No additional compensation shall be made to the Design-Build Entity for this Work.

1.4.5 MANAGEMENT OF STORM, SURFACE AND OTHER WATERS

- a. Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. Design-Build Entity hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- b. Design-Build Entity shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order No. R8-2009-0030 (NPDES Permit No. CAS 618030), Order No. R9-2009-0002, Order No. R8-2009-0045, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof.
- c. Design-Build Entity shall comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or watercourses.
- d. Design-Build Entity shall be required to comply with all aspects of the State Water Resources Control Board ("State Board") Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, including any amendment or renewal thereof, ("Construction General Permit") for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

- e. City may require Design-Build Entity to file the Notice of Intent (“NOI”) and obtain coverage for the Project under the Construction General Permit. This may include filing all necessary documentation including the Permit Registration Documents (“PRDs”) through the Stormwater Multiple Applications and Report Tracking System (“SMARTS”); preparing and implementing a Storm Water Pollution Prevention Plan (“SWPPP”) for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer (“QSD”) and Qualified SWPPP Practitioner (“QSP”), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. City retains the right to develop its own documentation for the project site, including but not limited to the SWPPP, and in the alternative may require Design-Build Entity to adopt and implement portions of the City developed SWPPP. Specific requirements for the Work site shall be set forth in the Special Conditions. Design-Build Entity shall include all costs of compliance with specified requirements in the GMP.
- f. For those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Design-Build Entity shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order No. R8-2009-0030, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100 and any amendment or renewal thereof.
- g. Notwithstanding the above, before any PRDs, SWPPP, or other Construction General Permit related document may be submitted to the State Water Resources Control Board or implemented on the Work site, it must first be reviewed and approved by the City and/or the City’s designee. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Design-Build Entity fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Design-Build Entity has adequately maintained compliance with the Construction General Permit shall be the City’s sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Design-Build Entity.
- h. Failure to comply with laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Design-Build Entity agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

- i. City reserves the right to defend any enforcement action or civil action brought against the City for Design-Build Entity's failure to comply with any applicable water quality law, regulation, or policy. Design-Build Entity hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.
 - City may seek damages from Design-Build Entity for delay in completing the Work in accordance with the Contract Documents, caused by Design-Build Entity's failure to comply with the laws, regulations and policies described in this Article, or any other relevant water quality law, regulation, or policy.
- j. In addition to compliance with the Permit, Design-Build Entity shall comply with the lawful requirements of any applicable municipality, City, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
- k. Oil storage tanks management.
 - (1) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
 - (2) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
 - (3) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
 - (4) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Design-Build Entity shall prepare an SPCC Plan. The Design-Build Entity shall submit the SPCC Plan to the City at least 30 Days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112
- l. Underground tank prohibition. The Design-Build Entity shall not use underground storage tanks.
- m. Construction safety standards. The Design-Build Entity shall comply with the sanitation and potable water requirements of Section 7 of United States Bureau of Reclamation's publication "Reclamation Safety And Health Standards."

- n. Dredge and fill permit. The City will obtain a permit to discharge dredge and fill material into the waters of the United States, as required under Section 404 of the Clean Water Act. All work occurring within the waters of the United States shall comply with the conditions of the permit and conditions of the Section 401 Water Quality Certification.
- o. Other Permits.
 - (1) Other permits applicable to the Project are listed in the Special Conditions. The Design-Build Entity shall obtain all other necessary licenses and permits.
 - (2) Monitoring. The Design-Build Entity is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.
 - (3) Recordkeeping. The Design-Build Entity shall retain all records and data required by the permits for the time specified in the contract.
- p. Cost. Except as specified herein, the cost of complying with this section shall be included in the Design-Build Entity's GMP.

END OF GENERAL REQUIREMENTS

[END OF CONTRACT]

ATTACHMENT 1

DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK

Design-Build entity shall only apply mark-ups as allowed in the General Conditions for Overhead and Profit on design change directives.

| | |
|------------------------------------|----------------------------------|
| Principal Engineer (PE) | \$290.00 |
| Senior Engineer (PE) | \$275.00 |
| Senior Project Manager | \$265.00 |
| Principal Electrical Engineer..... | (PE) \$250.00 |
| Project Manager..... | \$245.00 |
| Senior Project Engineer (PE) | \$240.00 |
| Project Engineer (PE) | \$225.00 |
| Senior Designer | \$210.00 |
| Senior Staff Engineer (EIT) | \$195.00 |
| Staff Engineer (EIT) | \$180.00 |
| Designer | \$170.00 |
| Designer/CAD Operator | \$150.00 |
| Planning Technician..... | \$145.00 |
| Construction Observer | \$165.00 |
| CAD Operator | \$135.00 |
| Junior Engineer (Intern) | \$95.00 |
| Administrative Assistant | \$95.00 |
| Two Person Survey Party | \$295.00 |
| Survey Manager (PLS)..... | \$210.00 |
| Staff Land Surveyor (PLS) | \$180.00 |
| Survey Technician | \$155.00 |
| Subcontracted Services | Cost plus 15% max markup fee. |
| Mileage | \$0.70/mile |

All rates are effective until December 31, 2027. Any increases in rates after that date will be limited to 5% maximum.

[END OF DESIGN PROFESSIONAL RATE SCHEDULE FOR EXTRA WORK]

ATTACHMENT 2

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Pomona (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") an agreement for _____ (hereinafter referred to as the "Project").

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

WHEREAS, the Design-Build Entity is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

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

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

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of two (2) years after the acceptance of the work by City, during which time if Design-Build Entity shall fail to make full, complete, and satisfactory repair and replacements and totally protect City from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Design-Build Entity remains. Nothing herein shall limit City's rights or the Design-Build Entity or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

ATTACHMENT 2

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

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

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

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

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

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

ATTACHMENT 2

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

DESIGN-BUILD ENTITY/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Design-Build Entity and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

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

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

ATTACHMENT 2

Spec. No. _____

126

GENERAL REQUIREMENTS

[END OF PERFORMANCE BOND]

ATTACHMENT 2

Spec. No. _____

127

GENERAL REQUIREMENTS

ATTACHMENT 3
PAYMENT (MATERIAL & LABOR) BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Pomona (hereinafter referred to as "City ") has awarded to _____, (hereinafter referred to as the "Design-Build Entity") _____ an agreement for _____ (hereinafter referred to as the "Project").

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

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if Design-Build Entity, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition,

ATTACHMENT 3

Spec. No. _____

128

GENERAL REQUIREMENTS

alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim.

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Design-Build Entity and Surety above named, on the _____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Design-Build Entity,
if corporation)

Design-Build Entity/Principal

By _____
(Signature of Design-Build Entity)

(Seal of Surety)

Surety

By _____
Attorney in Fact

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

[END OF PAYMENT (LABOR AND MATERIALS) BOND]

ATTACHMENT 3

Spec. No. _____

129

GENERAL REQUIREMENTS

ATTACHMENT 4
ESCROW AGREEMENT FOR SECURITY

[NOT USED]

Spec. No. _____

ATTACHMENT 4

130

GENERAL REQUIREMENTS

ATTACHMENT 5

ENHANCEMENTS/ADDITIONAL SCOPE OF WORK TERMS AND CONDITIONS

Summary of Inclusions:

- Analyze the existing water quality, existing water quality issues, and water quality treatment goals.
- Size the GAC systems and corresponding pipes, fittings, valves and other appurtenances. Other treatment solutions will be evaluated at the very early stages of design development to ensure that the system selected is the most desirable.
- Develop hydraulic calculations and estimate head loss curve for the treatment system.
- Design the on-site improvements.
- Design structural requirements including concrete support pads for the GAC tanks, pre-filter vessels and pipe supports.
- Provide backwash to waste and start-up to waste piping and connections to extend to the adjacent drainage basin.
- Size pipelines with a carrying capacity that is equal to or greater than the existing pumping capacity at a maximum velocity of 5 feet per second.
- Provide magnetic meters for flow measurements.
- Color code all exposed piping per Ten State Standard requirements.
- Vent and design pressure relief piping.
- Label all water piping and utility connections appropriately with flow direction arrows, as applicable, and textual labels.
- Provide sample points at a minimum of 30%, 60% and 90% of each vessel's media depth, on the inlet/outlet of each vessel, and after the point of blending. The system will be configured to allow backwash of the media during start up.
- Prepare process and instrumentation drawings (P&ID) and loop diagrams reflecting all new instrumentation and controls and their integration into the existing SCADA architecture.
- Prepare a functional description of all GAC filter process with adequate detail to allow the City's SCADA systems integrator to create SCADA programming, as required.

Scope Of Work:

The Design-Build Entity shall provide the City with integrated design-build services to design and construct a wellhead treatment facility to remove synthetic/volatile organic compounds (SOC/VOCs), 1,2,3-Trichloropropane (1,2,3-TCP), and PFAS contaminants in groundwater to comply with State of California maximum contaminant levels (MCLs).

The Scope of Work encompasses the design and construction of water treatment facilities as

described herein, and the Design-Build Entity shall be responsible for the completion of this work, including all project coordination, labor and materials, overhead, meetings, planning/research, design approvals, and construction, as identified in the Contract Documents. The project scope and services shall include the following items.

Task 1 – Project Management and Controls

- Project Controls
 - Implement project controls for monitoring project progress, budget, and schedule.
 - Establish and maintain a document control system for online file-sharing and storage of project files, reviews, deliverables, and City comments.
 - Prepare a baseline Project schedule and monthly progress updates. Project schedule shall include all deliverables, meetings, and milestones. City review of all deliverables shall be provided a minimum of three (3) weeks.
 - Submit monthly progress reports summarizing project progress and accomplishments, current expenditures and remaining budget by task, updated schedule, and any anticipated budget or schedule overruns. Progress reports shall align with invoices and be submitted simultaneously.
 - Notify City of any out-of-scope work items and obtain City approval prior to proceeding with any work, without exception.
- Quality Assurance and Quality Control (QA/QC)
 - Provide a quality assurance and quality control (QA/QC) program for the duration of the project to ensure all project deliverables meet project goals and requirements by reducing errors and omissions and verifying adherence to all applicable standards, code requirements, and project requirements.
- Project Meetings
 - Conduct the Kickoff Meeting with City staff to introduce key team members, establish communication plan, review Scope of Work, confirm Project schedules, and establish overall goals, constraints, approach, and key milestones. Kickoff Meeting may be conducted virtually or may be conducted in-person in conjunction with the initial site investigation by the design team.
 - Conduct monthly virtual Progress Meetings through the duration of the Project for general project management coordination and to provide project status updates to the City. Progress meetings shall be 30 minutes in length each.
 - Conduct weekly virtual Construction Meetings during times of active construction for coordination of work, including 3-week lookahead schedule, construction progress updates, potential delays, and coordination of outstanding Requests for Information (RFIs), construction submittals, or change orders. Construction meetings shall be 30 minutes in length each.
- Design Review Meetings
 - Conduct a total of two (2) Design Review Meetings with City staff following City

review of 60% Design and 90% Design. Design Review Meetings shall be held virtually and shall be 90 minutes in length each.

- Meeting Documentation
 - Provide an agenda (at least two days prior) and minutes (within three days) for all Project Meetings. City comments and revisions to the agenda and minutes shall be incorporated before final versions are issued.

Task 1 Deliverables

- *Online Document Control System*
- *Monthly Invoices with Progress Reports (PDF)*
- *Kickoff Meeting with Agenda and Minutes (PDF)*
- *Progress Meetings with Agendas and Minutes (PDF)*
- *Design Meetings (60%, 90%) with Agenda and Minutes (PDF)*

Task 2 – Background Research & Site Investigations

- Procure and review relevant background information (drawings, data, reports) from City and other agencies, conduct site investigations by the design team, and interview City management and operational staff to develop and document a thorough understanding of site conditions and operational requirements.
- Conduct a field topographic survey of the extended project area, identified by the design team and confirmed by the City. Identify, at a minimum, all existing topography (one-foot contours), surface features, above-grade utilities, below-grade utilities, easements, property lines, and assessor parcel numbers. Site survey shall be based on NAD83 (horizontal) and NAVD88 (vertical) datums for survey reference. Tie in new survey data to existing topographic data from record drawings.
- The Site Survey shall be stamped and signed by a Professional Land Surveyor currently licensed by the State of California. Survey drawings shall be prepared in the latest version of AutoCAD in Arch D (24"x36") format and shall be submitted to the City in AutoCAD and PDF formats.

Task 2 Deliverables

- *Site Survey (AutoCAD, PDF)*

Task 3 - Design

- Preliminary Design
 - Prepare a Basis of Design Technical Memorandum (TM), including the outcomes of Task 2 to establish a technically sound and feasible design approach to be reviewed and verified by City project staff and management. At a minimum, the Basis of Design TM shall include the following items:

- Project background, goals, and constraints
- Summary of recommendations and design decisions
- Conceptual design
- Decision matrix
- Anticipated construction schedule, sequencing, and impacts to facility operations
- Permitting requirements
- List of applicable codes
- Index of design drawings for 60%, 90% and final design packages
- Design Drawings, Specifications, and Cost Estimates
 - Provide 60%, 90% and Final design drawings, technical specifications, and cost estimates for City review. Design drawings shall include all site plans, details, sections, schedules, schematics, etc., required for construction of the Project. All detailed design calculations (hydraulic, structural, electric, etc.) shall be submitted with the final design package.
 - *(Conduct Design Review Meetings as described in Task 1.)*
 - City comments to the 60% and 90% design drawings and outcomes from the corresponding design meetings shall be incorporated into subsequent design drawings.
 - Drawings shall be prepared in the latest version of AutoCAD in Arch D (24"x36") format, using the City title block, and shall be submitted to the City in AutoCAD and PDF formats.
 - All final drawings, specifications, and calculations shall be prepared, stamped, and signed by Professional Engineers currently licensed by the State of California in each of their respective fields of expertise (civil, structural, electrical, etc.).

Task 3 Deliverables

- *Basis of Design TM, Draft and Final (PDF)*
- *60% Design Drawings (AutoCAD, PDF)*
- *60% Technical Specifications (Word, PDF)*
- *60% Cost Estimate (Excel, PDF)*
- *90% Design Drawings (AutoCAD, PDF)*
- *90% Technical Specifications (Word, PDF)*
- *90% Cost Estimate (Excel, PDF)*
- *Final Design Drawings (AutoCAD, PDF)*
- *Final Technical Specifications (Word, PDF)*
- *Final Cost Estimate (Excel, PDF)*
- *Final Design Calculations (PDF, Excel, native formats)*

Task 4 – Submittals

- Produce and process Requests for Information (RFIs) and construction submittals. Route RFIs and submittals to the City for review. Maintain log of RFI and submittals, including subject, dates, chain of custody, and responses.

Task 4 Deliverables

- *RFI Reviews*
- *Submittal Reviews*

Task 5 – Construction

- Perform all work required to complete the construction of the Project per Final Design Drawings and Technical Specifications, including, but not limited to the following:
 - Construction of plant, associated pipelines, and appurtenances complete with electrical, telemetry, and instrumentation systems.
 - Compliance with all City and industry construction standards.
 - Compliance with all State labor and wage requirements.
 - Hydraulic testing of the system.
 - Connection of the system to existing infrastructure.
 - Disinfection of system in accordance with AWWA C652, latest edition, Method 2 or 3 prior to initial fill of carbon.
 - Carbon loading, start-up and troubleshooting.
 - Finalize Operation Plan and provide all associated operation manuals.
 - Provide operation and maintenance training to City Staff.
 - Hiring, oversight, and responsibility for all subcontractors and suppliers of products to be used on the project.
 - The City shall operate and maintain the facility after completion of construction, commissioning, and successful start-up.

Task 5 Deliverables

- *Operation Plan with operations manuals (PDF)*
- *Operation & Maintenance Training to City Staff*

Task 6 – Permitting

- Provide permitting support for the project. Identify permit requirements, incorporate comments from all authorities having jurisdiction, and revise the design documents as necessary.
- Anticipated permitting agencies may include, but are not limited to, the following:
 - City of Pomona – Encroachment Permit, Grading Permit, Building Permit, Stormwater Permits

- State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW)
 - Groundwater Basin Watermaster
- Prepare and submit all permit applications. All permits shall be included in the final contract documents.

Task 6 Deliverables

- *Permit applications and correspondence*

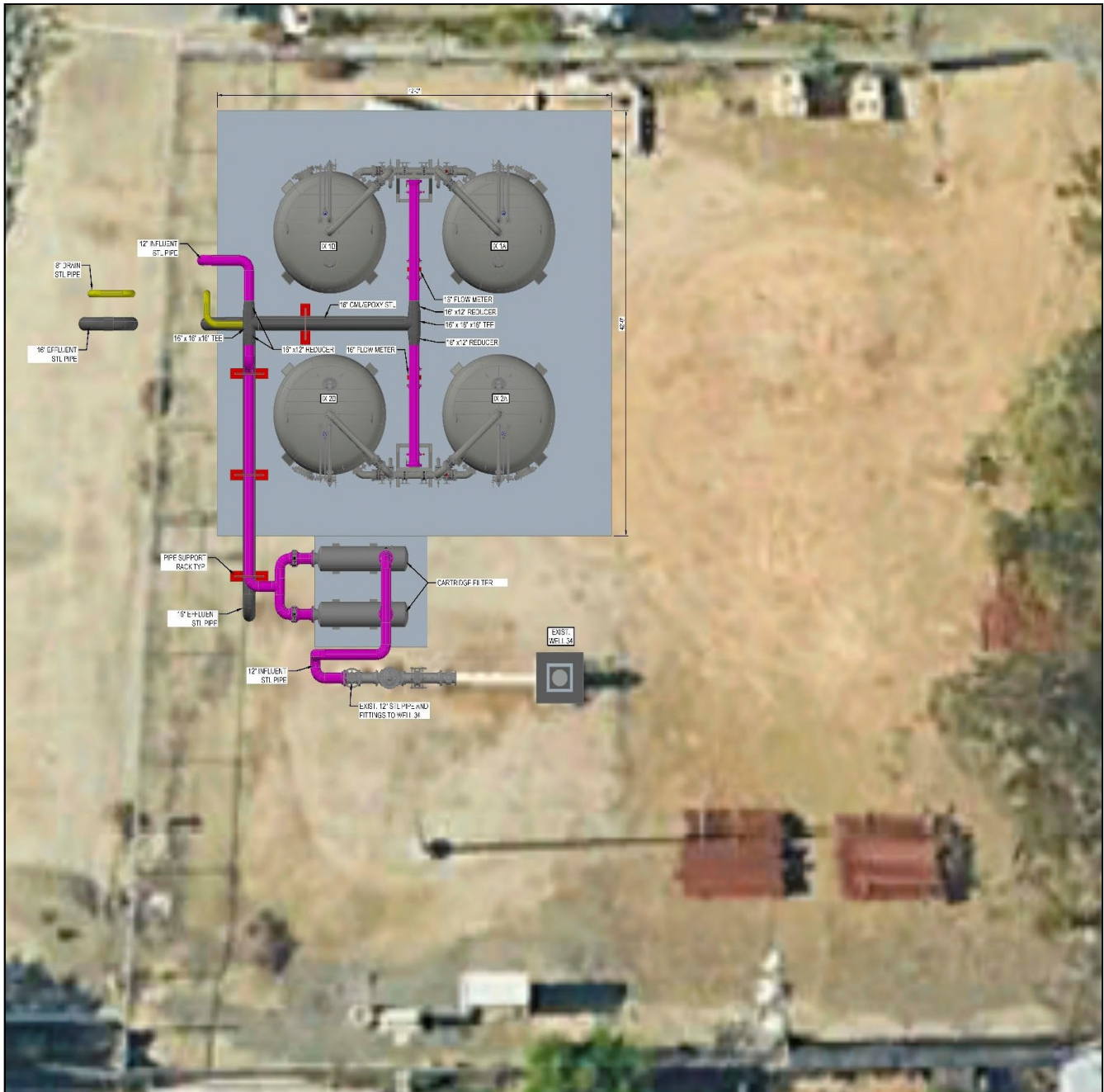
SCOPE OF WORK EXHIBITS

PRELIMINARY DRAWING INDEX

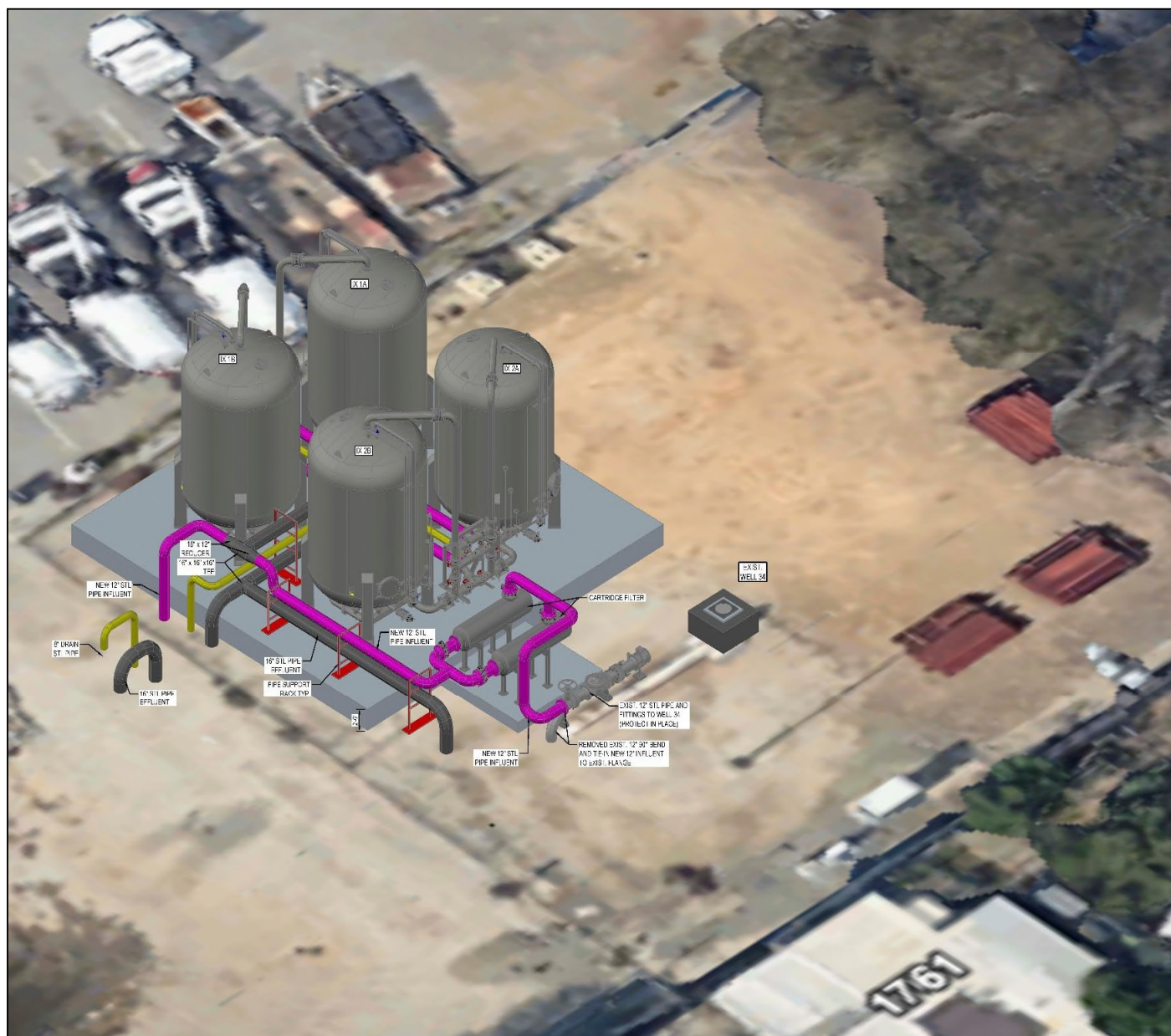
| SHEET | DESCRIPTION |
|--------|---|
| R-1 | Title/Index Sheet |
| R-2 | General Notes Sheet |
| R-3 | Plant Process Flow Diagram |
| R-4 | Hydraulic Profile |
| O-C-1 | General Notes and Symbols |
| O-C-2 | Civil Legend and Abbreviations |
| C-1 | Site Improvement Plan and Topography (1"=20') |
| C-2 | Site Grading Sections |
| C-3 | Plant Piping and Utilities Plan and Profiles |
| C-4 | Well 10 Pipeline and Profile |
| C-5 | Pipeline Connection Details |
| C-6 | General Civil Details |
| C-7 | BMP Plan and Details |
| O-S-1 | Structural General Notes |
| O-S-2 | City Mandatory Requirements |
| S-1 | Vessels Anchor Bolt Plan, Structural Plan and Sections and Details |
| S-2 | Concrete Slab Steel Reinforcing Details and Sections |
| S-3 | Structural Details 1 |
| S-4 | Structural Details 2 |
| O-PD-1 | General Mechanical Symbols |
| O-PD-2 | Standard Abbreviation Designation and Schedules |
| PD-1 | GAC Tank Vessel System General Arrangement |
| PD-2 | Cartridge Filter System General Arrangement Plan, Elevations and sections |
| PD-3 | Process Details 1 |
| PD-4 | Process Details 2 |
| PI-1 | PID General Notes |
| PI-2 | PID Abbreviations and Symbols |
| PI-3 | PID Cartridge Filters |
| PI-4 | PID GAC Treatment Vessels |
| E-1 | Notes, Symbols and Legend |
| E-2 | Electrical Power and Instrumentation Plan |
| E-3 | Electrical Grounding Plan |
| E-4 | Conduit Block Diagram |
| E-5 | SCADA and PLC Wiring Diagrams and Schedules 1 |
| E-6 | Network Diagram |
| E-7 | Standard Details - Sheet 1 |

SITE PLAN RENDERINGS GRAPHIC SUBMITTAL REQUIREMENTS

Vessels – Well 34 Site Plan Rendering



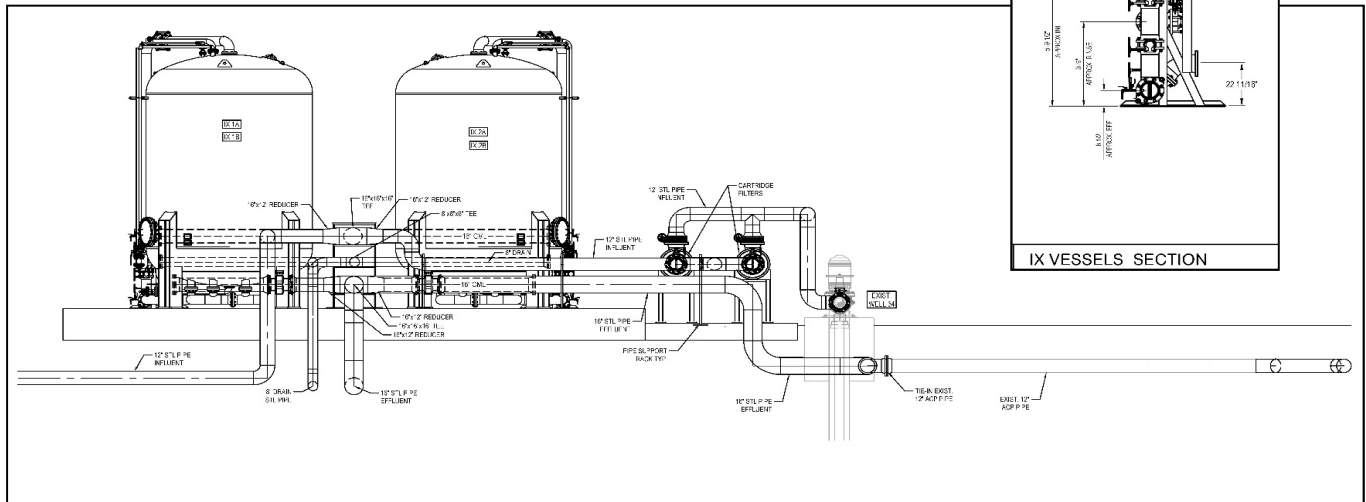
Vessels-Isometric – Well 34 Site Plan Rendering



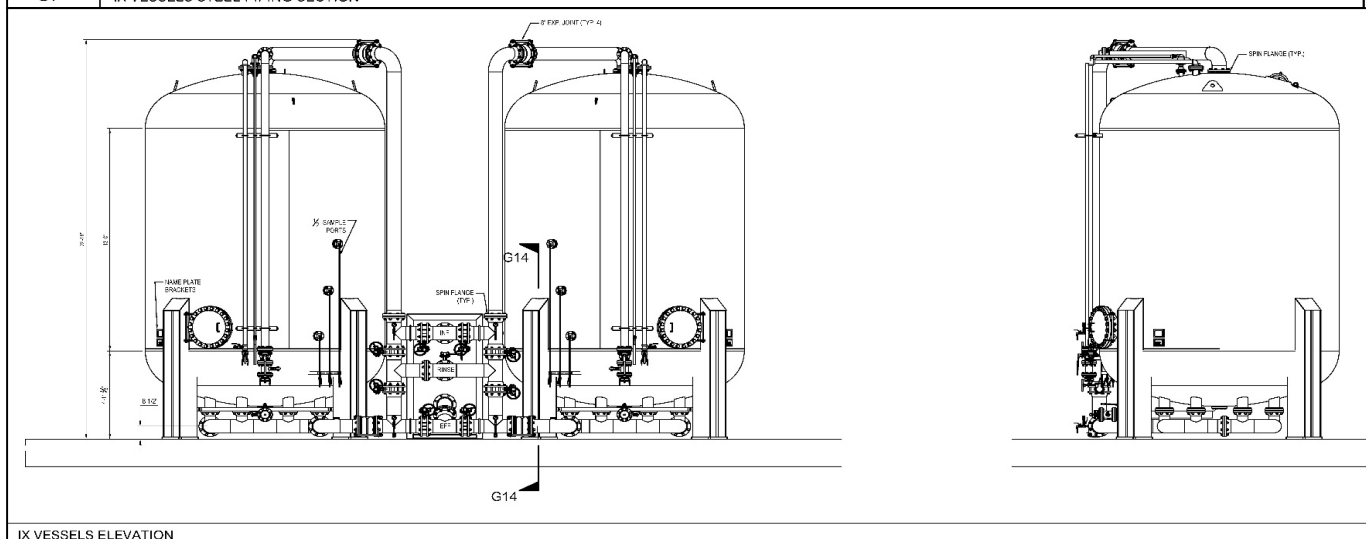
Vessels-Schematic – Well 34 Site Plan Rendering



Vessels Piping Sections and Elevation



G1 IX VESSELS STEEL PIPING SECTION



IX VESSELS ELEVATION



ATTACHMENT 5

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**[END OF ENHANCEMENTS/ADDITIONAL SCOPE OF WORK
TERMS AND CONDITIONS]**

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ATTACHMENT 6

EXCLUSIONS/CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY

Summary of Exclusions:

- Additional carbon for 2,100 GPM flow rate.
- Sand separator.
- Permit fees.
- Construction water fees.

[END OF EXCLUSIONS/CLARIFICATIONS OF SCOPE BY DESIGN-BUILD ENTITY]

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FEDERALLY REQUIRED PROVISIONS FOR SERVICES

This Project is funded in part through the U.S. Environmental Protection Agency (“EPA”) Community Grants Program. Contractor and its subcontractors shall comply with all the Federal cross-cutting requirements as well as other applicable Federal laws as provided in EPA’s [Community Grants Program Final Implementation Guidance](#), October 2022.

APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339](#)), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of

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Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of

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Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

§ 200.323 Procurement of recovered materials.

(a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

(K) See [§ 200.216](#).

§ 200.216 Prohibition on certain telecommunications and video surveillance equipment or services.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain covered telecommunications equipment or services;
- (2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

(b) As described in section 889 of [Public Law 115-232](#), “covered telecommunications equipment or services” means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the

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National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country;

(c) For the purposes of this section, “covered telecommunications equipment or services” also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of [Public Law 115-232](#), heads of executive agencies administering loan, grant, or subsidy programs must prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered telecommunications equipment or services, to procure replacement equipment or services, and to ensure that communications service to users and customers is sustained.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

(f) For additional information, see section 889 of [Public Law 115-232](#) and [§ 200.471](#).

(L) See [§ 200.322](#).

§ 200.322 Domestic preferences for procurements.

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in [2 CFR part 184](#).

Anti-kickback. All contracts for construction shall include a provision for compliance with the Copeland “Anti-Kickback” Act ([18 U.S.C. 874](#)). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

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Debarment and suspension. A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR part 180](#), as supplemented by [2 CFR part 417](#), "Debarment and Suspension." SAM exclusion records contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Procurement of recovered materials. Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Clean Air Act (42 U.S.C. 7401-7671q) and the federal water pollution control act (33 U.S.C. 1251-1388). Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR part 5](#)). Under [40 U.S.C. 3702](#), each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of [40 CFR part 33](#) in the award and administration of contracts awarded under EPA financial assistance

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agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Equal Employment Opportunity

The Contractor shall comply with all applicable state and federal laws addressing Equal Employment Opportunity.

The Parties hereby agree that they will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at [41 CFR Chapter 60](#), which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the

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employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or

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under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

PART 33 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES

Environmental Protection Agency Programs:

The Contractor and subcontractors shall make good faith efforts whenever procuring construction, equipment, services and supplies. Records documenting compliance with the six good faith efforts shall be submitted to City. The specific six good faith efforts are included below and can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

- (b)** Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (c)** Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

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- (d) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (e) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (f) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (g) If the prime contractor awards subcontracts, require the prime contractor to take the steps in [paragraphs \(a\)](#) through [\(e\)](#) of this section.

Performance Reporting ([2 CFR 200.329](#))

City shall submit performance reports to the EPA Project Officer no later than 30 calendar days after the end of each federal fiscal quarter (January 30, April 30, July 30, and October 30). The final performance report must be submitted no later than 120 calendar days after the period of performance end date.

Performance reports must relate financial data and accomplishments to performance goals and objectives; include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and formation of cost overruns or high unit costs.

City shall inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement workplan.

City shall collaborate with Contractor to meet the aforementioned reporting requirements.

Project changes: City shall obtain written EPA approval before implementing changes which alter the project performance standards; change the scope or objectives of the project or substantially alter the design of the project; transfer funds between construction and non-construction budget categories; significantly delay or accelerate the project schedule; substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

Right of Access ([2 CFR 200.337](#)): City shall provide EPA access to all records including fiscal, procurement, and engineering data and files which are pertinent to the assistance agreement, and EPA may conduct site visits and inspections related to progress of the assistance agreement workplan activities.

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Procurement Document Submission: City shall submit copies of all proposed contracts for services and supplies over \$250,000 to the EPA Project Officer for review. The submittal of the proposed contracts shall include procurement records.

Procurement

- (a) City shall procure all services (professional or otherwise), supplies, and construction awarded under this grant in accordance with [§§ 200.318 through 200.327](#) and [40 CFR Part 33](#).
- (b) Project procurement processes for architectural and engineering (A/E) services as identified in [40 U.S.C. 1101 et seq.](#), or an equivalent State requirement.
- (2) subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

Project Signage: City shall place a physical sign displaying the EPA logo at the construction site for this project in an easily visible location that can be directly linked to the work taking place. Contractor shall ensure the sign is maintained in good condition throughout the construction period. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable grant expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable grant expenses, provided the costs are reasonable.

Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs.

EPA Logo: The recipient will ensure that signage displays the EPA logo. The EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project.

City shall ensure compliance with the sign specifications provided by the EPA Office of Public Affairs (OPA) available at: <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>. As provided in the sign specifications from OPA, the EPA logo is the preferred identifier for assistance agreement projects and use of the EPA seal requires prior approval from the EPA. To obtain the appropriate EPA logo or seal graphic file, the recipient should send a request directly to [Londa Scott-Forte \(202-564-1504\)](#) and [Jini Ryan \(202-564-1075\)](#). Please explain in the message that the EPA logo is to be used

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on signage at a construction site funded with EPA assistance and copy the EPA Project Officer on the message.

Public or Media Events: City shall notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

FEDERAL CROSS-CUTTING REQUIREMENTS/OTHER APPLICABLE FEDERAL LAWS

By accepting this contract, the Contractor acknowledges that they must comply with federal cross-cutting requirements as well as other applicable federal laws as provided in EPA's [Community Grants Program Final Implementation Guidance](#), October 2022.

FEDERAL CROSS-CUTTING REQUIREMENTS

AMERICAN IRON AND STEEL (AIS): AIS requirements apply to State Revolving Fund assistance agreements signed on or after January 17, 2014, including all treatment works projects funded by a CWSRF assistance agreement and all public water system projects funded by a DWSRF assistance agreement signed on or after January 17, 2014. Based on the FY 2022 Consolidated Appropriations Act directive Congressional language ("Applicable Federal requirements that would apply to a Clean Water State Revolving Fund or Drinking Water State Revolving Fund project grant recipient shall apply to a grantee receiving a CPF grant under this section"), AIS requirements apply to this award agreement.

Definitions. As used in this award term and condition

- "iron and steel products" mean the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- "steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

Domestic preference. This award term and condition requires that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided in paragraph (b)(2) of this section and condition. This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:

1. applying the requirement would be inconsistent with the public interest;
2. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

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3. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

BUILD AMERICA, BUY AMERICA ACT

Build America, Buy America (BABA) Act: The Build America, Buy America (BABA) Act requirements do not supersede the AIS requirements, and both provisions still apply and work in conjunction. Compliance with AIS requirements meets the BABA requirements for iron and steel.

This term and condition supplements the “Build America, Buy America” (BABA) term and condition included in EPA’s [General Terms and Conditions](#).

Definitions (As used in this award term and condition):

- “*Construction materials*” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - lumber; or
 - drywall.
- “*Domestic content procurement preference*” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
- “*Infrastructure*” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.
- “*Project*” means the construction, alteration, maintenance, or repair of infrastructure in

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the United States.

Domestic Preference: This term and condition implements the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58, §§70901-52. None of the funds provided under this award may be used for a project for infrastructure unless:

- all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- all construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. All manufacturing processes for the construction material occurred in the United States.
- The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

(a) Waiver Request.

(1) When necessary, City may apply for a waiver from these requirements.

(2) A request to waive the application of the domestic content procurement preference must be in writing and submitted following the waiver instructions at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.

(3) Waiver requests are subject to public comment for at least 15 days prior to

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making a finding based on the request.

(4) Waiver requests are subject to review by the Office of Management and Budget's Made in America Office.

(5) There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>.

(6) The U.S. Environmental Protection Agency may grant a waiver based upon one of the exceptions as established in Section 70914(b) of the Infrastructure Investment and Jobs Act and further described in the Office of Management and Budget Memorandum M-22-11.

(7) Any recipient waiver request to use foreign iron, steel, manufactured products, and/or construction materials in an infrastructure project shall include adequate information for the Federal Government evaluation of the request, including—

- i. The Federal Award Identification Number (FAIN);
- ii. Location and description of the project;
- iii. Total cost of infrastructure expenditures, including federal and non-federal funds;
- iv. List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), relevant Product Services Code (PSC) and North American Industry Classification System (NAICS) code for each, unit of measure, quantity, time of delivery or availability, and name and address of the proposed supplier;
- v. A detailed justification of the reason for use of foreign iron, steel, manufactured products, and/or construction materials;
- vi. Anticipated impact if no waiver is issued; and
- vii. A certification that the federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

(8) Unless a waiver applies, use of foreign iron, steel, manufactured products, and/or construction materials that are consumed in, incorporated into, or affixed to an

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infrastructure project is noncompliant with this term and condition pursuant to the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58 §§70901-52.

(b) Waiver Evidence Submission.

(1) Maintain documentation of any use of materials which are considered de minimis and are covered by an [existing waiver](#) (e.g. miscellaneous, generally low-cost products that are essential for construction and are incorporated into the physical structure of the project) with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with [2 CFR 200.334](#).

(2) If recipient seeks coverage under an existing [BABA waiver](#), recipient agrees to submit available evidence to the EPA project officer to support such a determination as identified in the BABA waiver. Recipient shall maintain this evidence with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with [2 CFR 200.334](#).

Environmental Review: In accordance with the requirements of the National Environmental Policy Act, EPA has issued a categorical exclusion for this project in accordance with provisions in [40 CFR Part 6](#). If EPA determines that a categorical exclusion is not appropriate for this project, Recipient agrees to submit information necessary to issue a Finding of No Significant Impact. If the scope of the project changes, Recipient understands that additional environmental review may be necessary.

DAVIS-BACON: By accepting this contract, the Contractor acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants.

(a) Applicability of the Davis-Bacon (DB) Prevailing Wage Requirements.

The recipient agrees to include in all procurement contracts and subawards to provide assistance for the construction, alteration, and repair of treatment works carried out in whole or in part with funds made available by the FY 2022 Consolidated Appropriations Act a term and condition requiring compliance with section 513 of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), and section 1450(e) of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300j-9(e)) and require that procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts in excess of \$2,000 for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall include in full in

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the contract clauses as attached hereto entitled "Wage Rate Requirements Under the Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all sub-agreements to provide assistance under the authorities referenced herein, whether in the form of a sub-grant, or any other vehicle to provide financing for a project.

If the Contractor encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Contractor must discuss the situation with City before commencing any work on the site.

Obtaining Wage Determinations:

- (1) Unless otherwise instructed by EPA on a project specific basis, the Contractor shall use DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain proposed wage determinations for specific localities at SAM.gov. If the recipient is a non-governmental entity, after the recipient obtains its proposed wage determination, it must submit the wage determination to State Water Board at DavisBacon@waterboards.ca.gov or phone (916) 327-7323 or [EPA Grants Info@epa.gov](mailto:EPA_Grants_Info@epa.gov), for approval prior to inserting the wage determination into a solicitation, contract or before issuing task orders, work assignments, or similar instruments to existing contractors (ordering instruments) unless subsequently directed otherwise by EPA's Award Official.
- (2) Note: City must discuss unique situations that may not be covered by the DOL General Wage Classifications with EPA. If, based on discussions with a recipient, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the City which General Wage Classification to use based on the nature of the construction activity at the site.
- (3) Contractor shall obtain the wage determination for the locality in which a Community Grants activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

City shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

Contract and Subcontract Provisions

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Any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of treatment works, and construction projects that would be [eligible under the Drinking Water State Revolving Fund Program](#), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or Title VI of the CWA or Section 1452(a)(5) of the SDWA, the following labor standards provisions.

(i) Minimum wages.

(l) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the recipient obtained under the procedures specified in Item(b) Obtaining Wage Requirements, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(i)(IV) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(i)(II) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Contractor and subcontractors are required to include the name of the recipient employee or official responsible for monitoring compliance with DB on the poster. Contractors may obtain wage determinations from <https://sam.gov/content/wage-determinations>.

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(II)(A) The City, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(II)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division (WHD) at whd-cbaconformance_incoming@dol.gov. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the Award Official, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, at whd-cbaconformance_incoming@dol.gov will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(II)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(i)(II)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(III) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage

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determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(IV) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(ii) Withholding. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(iii) Payrolls and basic records.

(I) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics

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affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(II)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the recipient.

(II)(B) Each payroll submitted to the recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §

16.18 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §

16.19 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR

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(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(II)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (1)(iii)(II)(B) of this section.

(II)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(III) The contractor or subcontractor shall make the records required under paragraph (1)(iii)(I) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(iv) Apprentices and Trainees.

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training,

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Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(II) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any

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employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(III) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(v) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(vi) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(vii) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(viii) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(ix) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor

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(or any of its subcontractors), the recipient, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(x) Certification of eligibility.

(I) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(II) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(III) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Provisions for Contracts in Excess of \$100,000.

(1) Contract Work Hours and Safety Standards Act. The recipient shall insert the following clauses set forth in paragraphs (1)(i), (ii), (iii), and (iv) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item (c) Contract and Subcontract Provisions, above, or 29 CFR

4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(i) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and

one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1)(i) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen

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and guards, employed in violation of the clause set forth in paragraph (1)(i) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1)(i) of this section.

(iii) Withholding for unpaid wages and liquidated damages. The recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (1)(ii) of this section.

(iv) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1)(i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1)(i) through (iv) of this section.

(2) In addition to the clauses contained in Item (c) Contract and Subcontract Provisions, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(e) Compliance Verification.

(1) The City shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR

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5.6(a)(6), all interviews must be conducted in confidence. The recipient must use [Standard Form \(SF\) 1445](#) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The City shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract.

At a minimum, the City shall conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The City shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations, the recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The City shall periodically review contractor and subcontractor use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) The City will immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

Wage Determination as Published on July 15, 2025

"General Decision Number: CA20250022 06/06/2025

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Spec. No. _____

Superseded General Decision Number: CA20240022

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: Los Angeles County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

| | |
|---|--|
| If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: | <ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: | <ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025. |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0 | 01/03/2025 |
| 1 | 01/24/2025 |

| | |
|---|------------|
| 2 | 02/07/2025 |
| 3 | 02/21/2025 |
| 4 | 02/28/2025 |
| 5 | 03/28/2025 |
| 6 | 06/06/2025 |

* ASBE0005-002 09/01/2024

| | Rates | Fringes |
|--|----------|---------|
| Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems)..... | \$ 56.32 | 26.52 |
| Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls)..... | \$ 39.94 | 20.65 |

ASBE0005-004 07/04/2022

| | Rates | Fringes |
|--|----------|---------|
| Asbestos Removal worker/hazardous material handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not).... | \$ 23.52 | 13.37 |

BOIL0092-003 01/01/2024

| | Rates | Fringes |
|------------------|----------|---------|
| BOILERMAKER..... | \$ 51.98 | 42.11 |

* BRCA0004-007 05/01/2024

| | Rates | Fringes |
|--------------------------------|----------|---------|
| BRICKLAYER; MARBLE SETTER..... | \$ 45.53 | 20.29 |

*The wage scale for prevailing wage projects performed in
Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine
Palms, Needles and 1-15 corridor (Barstow to the Nevada
State Line) will be Three Dollars (\$3.00) above the
standard San Bernardino/Riverside County hourly wage rate

BRCA0018-004 06/01/2024

| | Rates | Fringes |
|----------------------|----------|---------|
| MARBLE FINISHER..... | \$ 43.38 | 15.36 |
| TILE FINISHER..... | \$ 37.96 | 13.77 |
| TILE LAYER..... | \$ 51.82 | 19.32 |

BRCA0018-010 09/01/2024

| | Rates | Fringes |
|-----------------------------|----------|---------|
| TERRAZZO FINISHER..... | \$ 42.11 | 14.67 |
| TERRAZZO WORKER/SETTER..... | \$ 49.62 | 15.26 |

CARP0213-001 01/01/2024

| | Rates | Fringes |
|--|----------|---------|
| CARPENTER | | |
| (1) Carpenter, Cabinet Installer, Insulation Installer, Hardwood Floor Worker and acoustical installer..... | \$ 48.86 | 22.88 |
| (2) Millwright..... | \$ 49.36 | 22.88 |
| (3) Piledrivermen/Derrick Bargeman, Bridge or Dock Carpenter, Heavy Framer, Rock Bargeman or Scowman, Rockslinger, Shingler (Commercial)..... | \$ 48.99 | 22.88 |
| (4) Pneumatic Nailer, Power Stapler..... | \$ 51.85 | 16.28 |
| (5) Sawfiler..... | \$ 51.69 | 16.28 |
| (6) Scaffold Builder..... | \$ 40.77 | 22.38 |
| (7) Table Power Saw Operator..... | \$ 51.70 | 16.28 |

FOOTNOTE: Work of forming in the construction of open cut
sewers or storm drains, on operations in which horizontal
lagging is used in conjunction with steel H-Beams driven or
placed in pre- drilled holes, for that portion of a lagged
trench against which concrete is poured, namely, as a
substitute for back forms (which work is performed by
piledrivers): \$0.13 per hour additional.

CARP0213-002 07/01/2021

| | Rates | Fringes |
|---------------------------|-----------|---------|
| Diver | | |
| (1) Wet..... | \$ 834.40 | 16.28 |
| (2) Standby..... | \$ 445.84 | 16.28 |
| (3) Tender..... | \$ 437.84 | 16.28 |
| (4) Assistant Tender..... | \$ 413.84 | 16.28 |

Amounts in "'Rates' column are per day

CARP0213-004 01/01/2024

| | Rates | Fringes |
|------------------------------|----------|---------|
| Drywall | | |
| DRYWALL INSTALLER/LATHER.... | \$ 48.86 | 22.88 |
| STOCKER/SCRAPPER..... | \$ 20.80 | 9.97 |

CARP0721-001 07/01/2021

| | Rates | Fringes |
|----------------------------------|----------|---------|
| Modular Furniture Installer..... | \$ 21.85 | 7.15 |

ELEC0011-004 06/30/2023

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

| | | |
|---|----------|----------|
| ELECTRICIAN (INSIDE ELECTRICAL WORK) | | |
| Journeyman Electrician..... | \$ 60.80 | 3%+29.77 |
| ELECTRICIAN (INTELLIGENT TRANSPORTATION SYSTEMS Street Lighting, Traffic Signals, CCTV,and Underground Systems) | | |
| Journeyman Transportation | | |
| Electrician..... | \$ 60.80 | 3%+29.77 |
| Technician..... | \$ 45.60 | 3%+29.77 |

FOOT NOTE:
 CABLE SPLICER & INSTRUMENT PERSON: Recieve 5% additional per hour above Journeyman Electrician basic hourly rate.
 TUNNEL WORK: 10% additional per hour.

SCOPE OF WORK - TRANSPORTATION SYSTEMS

ELECTRICIAN:
 Installation of street lights and traffic signals,including electrical circuitry, programmable controllers, pedestal-mounted electrical meter enclosures and laying of pre-assembled multi-conductor cable in ducts, layout of electrical systems and communication installation, including proper position of trench depths and radius at duct banks, location for man holes, pull boxes, street lights and traffic signals. Installation of underground ducts for electrical,telephone, cable television and communication systems. Pulling,termination and splicing of traffic signal and street lighting conductors and electrical systems including interconnect,detector loop, fiber optic cable and video/cable.

TECHNICIAN:
 Distribution of material at job site, manual excavation and backfill, installation of system conduits and raceways for electrical, telephone, cable television and communication systems. Pulling, terminating and splicing of traffic signal and street lighting conductors and electrical systems including interconnect, detector loop, fiber optic cable and video/data.

 * ELEC0011-007 01/01/2024

COMMUNICATIONS & SYSTEMS WORK (excludes any work on Intelligent Transportation Systems or CCTV highway systems)

| | | |
|-----------------------|----------|----------|
| | Rates | Fringes |
| Communications System | | |
| Installer..... | \$ 46.47 | 3%+17.08 |

SCOPE OF WORK The work covered shall include the installation, testing, service and maintenance, of the following systems that utilize the transmission and/or transference of voice, sound, vision and digital for commercial, education, security and entertainment purposes for TV monitoring and surveillance, background foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms and low voltage master clock systems.

A. Communication systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems SCADA (Supervisory control/data acquisition PCM (Pulse code modulation) Inventory control systems Digital data systems Broadband & baseband and carriers Point of sale systems VSAT data systems Data communication systems RF and remote control systems Fiber optic data systems

B. Sound and Voice Transmission/Transference Systems Background-Foreground Music Intercom and Telephone Interconnect Systems Sound and Musical Entertainment Systems Nurse Call Systems Radio Page Systems School Intercom and Sound Systems Burglar Alarm Systems Low-Voltage Master Clock Systems Multi-Media/Multiplex Systems Telephone Systems RF Systems and Antennas and Wave Guide

C. *Fire Alarm Systems-installation, wire pulling and testing.

D. Television and Video Systems Television Monitoring and Surveillance Systems Video Security Systems Video Entertainment Systems Video Educational Systems CATV and CCTV

E. Security Systems, Perimeter Security Systems, Vibration Sensor Systems Sonar/Infrared Monitoring Equipment, Access Control Systems, Card Access Systems

- *Fire Alarm Systems
- 1. Fire Alarms-In Raceways: Wire and cable pulling in raceways performed at the current electrician wage rate and fringe benefits.
 - 2. Fire Alarms-Open Wire Systems: installed by the Technician.

ELEC1245-001 01/01/2025

| | Rates | Fringes |
|--|----------|---------|
| LINE CONSTRUCTION | | |
| (1) Lineman; Cable splicer.. | \$ 70.16 | 24.71 |
| (2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment)..... | \$ 53.30 | 22.26 |
| (3) Groundman..... | \$ 40.76 | 21.76 |
| (4) Powderman..... | \$ 51.87 | 18.79 |

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and day after Thanksgiving, Christmas Day

ELEV0018-001 01/01/2025

| | Rates | Fringes |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 69.43 | 38.435+a+b |

FOOTNOTE:

a. PAID VACATION: Employer contributes 8% of regular hourly rate as vacation pay credit for employees with more than 5 years of service, and 6% for 6 months to 5 years of service.

b. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

| ENGI0012-004 08/01/2024 | | |
|---|----------|---------|
| | Rates | Fringes |
| OPERATOR: Power Equipment (DREDGING) | | |
| (1) Leverman..... | \$ 64.10 | 38.75 |
| (2) Dredge dozer..... | \$ 58.13 | 38.75 |
| (3) Deckmate..... | \$ 58.02 | 38.75 |
| (4) Winch operator (stern winch on dredge)..... | \$ 57.47 | 38.75 |
| (5) Fireman-Oiler, Deckhand, Bargeman, Leveehand..... | \$ 56.93 | 38.75 |
| (6) Barge Mate..... | \$ 57.54 | 38.75 |

| ENGI0012-024 07/01/2023 | | |
|--|----------|---------|
| | Rates | Fringes |
| OPERATOR: Power Equipment (All Other Work) | | |
| GROUP 1..... | \$ 53.90 | 32.80 |
| GROUP 2..... | \$ 54.68 | 32.80 |
| GROUP 3..... | \$ 54.97 | 32.80 |
| GROUP 4..... | \$ 56.46 | 32.80 |
| GROUP 6..... | \$ 56.68 | 32.80 |
| GROUP 8..... | \$ 56.79 | 32.80 |
| GROUP 10..... | \$ 56.91 | 32.80 |
| GROUP 12..... | \$ 57.08 | 32.80 |
| GROUP 13..... | \$ 57.18 | 32.80 |
| GROUP 14..... | \$ 57.21 | 32.80 |
| GROUP 15..... | \$ 57.29 | 32.80 |
| GROUP 16..... | \$ 57.41 | 32.80 |
| GROUP 17..... | \$ 57.58 | 32.80 |
| GROUP 18..... | \$ 57.68 | 32.80 |
| GROUP 19..... | \$ 57.79 | 32.80 |
| GROUP 20..... | \$ 57.91 | 32.80 |
| GROUP 21..... | \$ 58.08 | 32.80 |
| GROUP 22..... | \$ 58.18 | 32.80 |
| GROUP 23..... | \$ 58.29 | 32.80 |
| GROUP 24..... | \$ 58.41 | 32.80 |
| GROUP 25..... | \$ 58.58 | 32.80 |
| OPERATOR: Power Equipment (Cranes, Piledriving & Hoisting) | | |
| GROUP 1..... | \$ 55.25 | 32.80 |
| GROUP 2..... | \$ 56.03 | 32.80 |
| GROUP 3..... | \$ 56.32 | 32.80 |
| GROUP 4..... | \$ 56.46 | 32.80 |
| GROUP 5..... | \$ 56.68 | 32.80 |
| GROUP 6..... | \$ 56.79 | 32.80 |
| GROUP 7..... | \$ 56.91 | 32.80 |
| GROUP 8..... | \$ 57.08 | 32.80 |
| GROUP 9..... | \$ 57.25 | 32.80 |
| GROUP 10..... | \$ 58.25 | 32.80 |
| GROUP 11..... | \$ 59.25 | 32.80 |

| | | |
|--|----------|-------|
| GROUP 12..... | \$ 60.25 | 32.80 |
| GROUP 13..... | \$ 61.25 | 32.80 |
| OPERATOR: Power Equipment (Tunnel Work) | | |
| GROUP 1..... | \$ 55.75 | 32.80 |
| GROUP 2..... | \$ 56.53 | 32.80 |
| GROUP 3..... | \$ 56.82 | 32.80 |
| GROUP 4..... | \$ 56.96 | 32.80 |
| GROUP 5..... | \$ 57.18 | 32.80 |
| GROUP 6..... | \$ 57.29 | 32.80 |
| GROUP 7..... | \$ 57.41 | 32.80 |

PREMIUM PAY:

\$10.00 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator);Coil Tubing Rig Operator, Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable);Direct Push Operator (Geoprobe or similar types) Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator

(asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar types; Cable Bundling Machine Operator (excluding handheld); Cable Trenching Machine Operator (Spider Plow or similar types) Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; RCM Cementing Unit Operator, Rail/Switch Grinder Operator (Harsco or similar types) Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader

operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self- loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote- control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment

operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck);

Spyder Excavator Operator, with all attachments

CRANES, PILEDRIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.);

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc) ; Tower crane operator and tower gantry

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, at that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM.

Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34.T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along

the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

IRON0433-006 01/01/2025

| | Rates | Fringes |
|--|----------|---------|
| IRONWORKER | | |
| Fence Erector..... | \$ 45.78 | 26.51 |
| Ornamental, Reinforcing and Structural..... | \$ 50.70 | 35.15 |

PREMIUM PAY:

\$9.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland,
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center
Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LAB00300-001 07/01/2024

| | Rates | Fringes |
|-------------------|----------|---------|
| Brick Tender..... | \$ 41.53 | 22.54 |

* LAB00300-003 07/01/2024

| | Rates | Fringes |
|------------------|----------|---------|
| LABORER (TUNNEL) | | |
| GROUP 1..... | \$ 50.73 | 24.70 |
| GROUP 2..... | \$ 51.05 | 24.70 |
| GROUP 3..... | \$ 51.51 | 24.70 |
| GROUP 4..... | \$ 52.20 | 24.70 |
| LABORER | | |
| GROUP 1..... | \$ 43.88 | 25.15 |
| GROUP 2..... | \$ 44.43 | 25.15 |
| GROUP 3..... | \$ 44.98 | 25.15 |
| GROUP 4..... | \$ 46.53 | 25.15 |
| GROUP 5..... | \$ 46.88 | 25.15 |

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a

worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of

tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Changehouse person; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.)

GROUP 2: Chucktender, cabletender; Loading and unloading agitator cars;; Vibrator person, jack hammer, pneumatic tools (except driller); Bull gang mucker, track person; Concrete crew, including rodder and spreader

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

LAB00300-005 07/01/2024

| | Rates | Fringes |
|-------------------------------|----------|---------|
| Asbestos Removal Laborer..... | \$ 43.88 | 25.13 |

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LAB00345-001 07/01/2024

| | Rates | Fringes |
|------------------|----------|---------|
| LABORER (GUNITE) | | |
| GROUP 1..... | \$ 53.48 | 22.77 |
| GROUP 2..... | \$ 52.53 | 22.77 |
| GROUP 3..... | \$ 48.99 | 22.77 |

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0"" above base level and which work must be performed in whole or in part more than 75'-0"" above base level, that work performed above the 75'-0"" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

LABO1184-001 07/01/2024

| | Rates | Fringes |
|--|----------|---------|
| Laborers: (HORIZONTAL DIRECTIONAL DRILLING) | | |
| (1) Drilling Crew Laborer... | \$ 45.34 | 20.06 |
| (2) Vehicle Operator/Hauler. | \$ 45.51 | 20.06 |
| (3) Horizontal Directional Drill Operator..... | \$ 47.36 | 20.06 |
| (4) Electronic Tracking Locator..... | \$ 49.36 | 20.06 |
| Laborers: (STRIPING/SLURRY SEAL) | | |
| GROUP 1..... | \$ 46.65 | 23.17 |
| GROUP 2..... | \$ 47.95 | 23.17 |
| GROUP 3..... | \$ 49.96 | 23.17 |
| GROUP 4..... | \$ 51.70 | 23.17 |

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently

affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LAB01414-001 08/03/2022

| | Rates | Fringes |
|------------------------------|----------|---------|
| LABORER | | |
| PLASTER CLEAN-UP LABORER.... | \$ 38.92 | 23.32 |
| PLASTER TENDER..... | \$ 41.47 | 23.32 |

Work on a swing stage scaffold: \$1.00 per hour additional.

PAIN0036-001 07/01/2023

| | Rates | Fringes |
|--|----------|---------|
| Painters: (Including Lead Abatement) | | |
| (1) Repaint (excludes San Diego County)..... | \$ 29.59 | 17.12 |
| (2) All Other Work..... | \$ 38.52 | 18.64 |

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

PAIN0036-006 09/01/2024

| | Rates | Fringes |
|---|----------|---------|
| DRYWALL FINISHER/TAPER | | |
| Antelope Valley North of the following Boundary: Kern County Line to Hwy. #5, South on Hwy. #5 to Hwy. N2, East on N2 to Palmdale Blvd., to Hwy. #14, South to Hwy. #18, East to Hwy. #395..... | \$ 45.20 | 26.82 |
| Remainder of Los Angeles County..... | \$ 49.33 | 26.82 |

PAIN0036-015 01/01/2025

| | Rates | Fringes |
|--------------|----------|---------|
| GLAZIER..... | \$ 53.05 | 30.64 |

FOOTNOTE: Additional \$1.25 per hour for work in a condor, from the third (3rd) floor and up Additional \$1.25 per hour for work on the outside of the building from a swing stage or any suspended contrivance, from the ground up

PAIN1247-002 01/01/2025

| | Rates | Fringes |
|--|----------|---------|
| SOFT FLOOR LAYER..... | \$ 45.15 | 19.43 |
| ----- | | |
| PLAS0200-009 08/03/2022 | | |
| | Rates | Fringes |
| PLASTERER..... | \$ 47.37 | 19.64 |
| ----- | | |
| PLAS0500-002 07/01/2023 | | |
| | Rates | Fringes |
| CEMENT MASON/CONCRETE FINISHER... | \$ 44.00 | 27.11 |
| ----- | | |
| PLUM0016-001 09/01/2024 | | |
| | Rates | Fringes |
| PLUMBER/PIPEFITTER | | |
| Work ONLY on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space..... | \$ 57.67 | 25.63 |
| Work ONLY on strip malls, light commercial, tenant improvement and remodel work..... | \$ 44.24 | 23.96 |
| All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work..... | \$ 59.48 | 26.61 |
| ----- | | |
| PLUM0345-001 09/01/2023 | | |
| | Rates | Fringes |
| PLUMBER | | |
| Landscape/Irrigation Fitter.. | \$ 40.20 | 25.90 |
| Sewer & Storm Drain Work.... | \$ 44.29 | 23.28 |
| ----- | | |
| ROOF0036-002 08/01/2024 | | |
| | Rates | Fringes |
| ROOFER..... | \$ 49.43 | 20.58 |
| FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive \$1.75 per hour ""pitch premium"" pay. | | |
| ----- | | |
| SFCA0669-013 01/01/2024 | | |

DOES NOT INCLUDE THE CITY OF POMONA, CATALINA ISLAND, AND THAT
PART OF LOS ANGELES COUNTY WITHIN 25 MILES OF THE CITY LIMITS
OF LOS ANGELES:

| | Rates | Fringes |
|-------------------------|----------|---------|
| SPRINKLER FITTER..... | \$ 45.31 | 27.91 |
| ----- | | |
| SFCA0709-005 09/01/2023 | | |

THE CITY OF POMOMA, CATALINA ISLAND, AND THAT PART OF LOS
ANGELES COUNTY WITHIN 25 MILES OF THE CITY LIMITS OF LOS
ANGELES:

| | Rates | Fringes |
|------------------------------|----------|---------|
| SPRINKLER FITTER (Fire)..... | \$ 54.29 | 32.00 |
| ----- | | |
| SHEE0105-002 01/01/2025 | | |

LOS ANGELES (South of a straight line between Gorman and Big
Pines including Catalina Island)

| | Rates | Fringes |
|---|----------|---------|
| SHEET METAL WORKER | | |
| (1) Light Commercial: Work on general sheet metal and heating and AC up to 4000 sq ft..... | \$ 35.57 | 10.63 |
| (2) Modernization : Excluding New Construction - Under 5000 sq. ft. Does not include modification, upgrades, energy management, or conservation improvements of central heating and AC equipment..... | \$ 34.17 | 10.86 |
| ----- | | |
| SHEE0105-003 01/01/2025 | | |

LOS ANGELES (South of a straight line drawn between Gorman and
Big Pines)and Catalina Island, INYO, KERN (Northeast part, East
of Hwy 395), MONO ORANGE, RIVERSIDE, AND SAN BERNARDINO COUNTIES

| | Rates | Fringes |
|--|----------|---------|
| SHEET METAL WORKER | | |
| (1) Commercial - New Construction and Remodel work..... | \$ 59.31 | 30.43 |
| (2) Industrial work including air pollution control systems, noise abatement, hand rails, guard rails, excluding aritechtural sheet metal work, excluding A-C, heating, ventilating systems for human comfort... | \$ 56.95 | 30.04 |
| ----- | | |
| SHEE0105-004 07/01/2023 | | |

KERN (Excluding portion East of Hwy 395) & LOS ANGELES (North of a straight line drawn between Gorman and Big Pines including Cities of Lancaster and Palmdale) COUNTIES

| | Rates | Fringes |
|-------------------------|----------|---------|
| SHEET METAL WORKER..... | \$ 45.98 | 29.24 |
| ----- | | |
| TEAM0011-002 07/01/2024 | | |

| | Rates | Fringes |
|---------------|----------|---------|
| TRUCK DRIVER | | |
| GROUP 1..... | \$ 39.59 | 34.34 |
| GROUP 2..... | \$ 39.74 | 34.34 |
| GROUP 3..... | \$ 39.87 | 34.34 |
| GROUP 4..... | \$ 40.06 | 34.34 |
| GROUP 5..... | \$ 40.09 | 34.34 |
| GROUP 6..... | \$ 40.12 | 34.34 |
| GROUP 7..... | \$ 40.37 | 34.34 |
| GROUP 8..... | \$ 40.62 | 34.34 |
| GROUP 9..... | \$ 40.82 | 34.34 |
| GROUP 10..... | \$ 41.12 | 34.34 |
| GROUP 11..... | \$ 41.62 | 34.34 |
| GROUP 12..... | \$ 42.05 | 34.34 |

WORK ON ALL MILITARY BASES:
PREMIUM PAY: \$3.00 per hour additional.
[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB,
El Centro Naval Facility, Fort Irwin, Marine Corps
Logistics Base at Nebo & Yermo, Mountain Warfare Training
Center, Bridgeport, Point Arguello, Point Conception,
Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

- GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom
- GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver
- GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level
- GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person (\$0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work; Slurry truck driver
- GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level
- GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - \$1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers.

0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

[END OF FEDERALLY REQUIRED PROVISIONS FOR SERVICES]

Spec. No. _____

ATTACHMENT 7

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