

**DESIGN-ASSIST CONSTRUCTION AGREEMENT  
(PROJECT: Solaire (formerly WB-50) Park)**

This Design-Assist Construction Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Roseville, a municipal corporation (“CITY”) and Carter/Kelly, Inc., a California corporation (“CONTRACTOR”).

**RECITALS**

WHEREAS, CITY has issued a Request for Proposals pursuant to which CITY solicited proposals from design-assist contractors to construct the Solaire Park project (“Project”); and

WHEREAS, CONTRACTOR has submitted a Proposal in response to RFP #13-106, dated March 9, 2022, attached hereto and made a part hereof as Exhibit F, and CITY has selected CONTRACTOR to provide design and construction services as set forth in this Agreement; and

WHEREAS, CONTRACTOR is ready, willing and able to perform the aforementioned services required in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, CITY and CONTRACTOR agree as follows:

**ARTICLE 1**

**DEFINITIONS**

- 1.1 “Applicable Laws”** means all laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work.
- 1.2 “Application for Payment”** means the document prepared by CONTRACTOR and submitted to CITY showing CONTRACTOR’s entitlement to progress payments, the requirements of which are more fully described in Section 5.3 hereof.
- 1.3 “Architect/Engineer”** means a licensed professional(s) (and/or entity(ies)) retained by CITY, who provides architectural, design and/or engineering services as may be required by the Work. The Architect/Engineer shall be registered in the State of California and the architect and/or engineer of record for the Work pursuant to their design responsibilities. The Architect/Engineer may be substituted or replaced at the discretion of CITY.
- 1.4 “Authorized Representatives”** means the Design-Assist Team and those individuals appointed by CITY and CONTRACTOR from time to time in accordance with the provisions of Section 3.1.1.
- 1.5 “Business Day”** means any day when the office of the City Clerk of the City of Roseville is open for business.

**1.6 “Certificate of Substantial Completion”** means a certificate prepared by CONTRACTOR in accordance with Section 5.12 and forwarded to CITY.

**1.7 “Certificate of Final Completion”** means a certificate prepared by CONTRACTOR and forwarded to CITY stating that the Project is finally complete and that CONTRACTOR is entitled to Final Payment in accordance with Article 5 hereof.

**1.8 “Change Directive”** means a written order signed by CITY directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the GMP or Schedule. CITY may order changes in the Work within the general scope of the Contract, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**1.9 “Change Order”** means a written order signed by CONTRACTOR and CITY authorizing a change in the Work, which also may adjust the GMP and/or the Schedule, and which shall constitute a Modification. The GMP and/or Schedule may be changed only by Change Order.

**1.10 “Change Proposal”** means a proposal for a Change Order submitted by CONTRACTOR to CITY, either at the request of CITY, or at CONTRACTOR's own initiative.

**1.11 “Construction Allowance Items”** [reserved]

**1.12 “Construction Documents”** means the plans and specifications prepared by the Design-Assist Team for the Project, approved by CITY, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by CITY prior to incorporation into this Agreement. CONTRACTOR’s attention is hereby directed to the confidentiality requirements of Section 2.2.

**1.13 “Construction Notice to Proceed”** means the notice given by CITY to CONTRACTOR stating that the Site is available to CONTRACTOR and directing CONTRACTOR to commence construction of the Project in accordance with Section 4.2.1.

**1.14 “Construction Phase”** means the period beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project.

**1.15 “Construction Work”** means that portion of the Work consisting of the provision of labor, materials, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

**1.16 “Contingency Costs”** means those items of Cost of the Work attributable to a contingency for which CITY is responsible and which are payable by CITY to CONTRACTOR pursuant to a Change Order as provided in Article 6.

**1.17 “Contract Documents”** means this 1) Agreement, 2) its Exhibits, and 3) the Construction Documents, all of which, together with this Agreement, form the entire integrated agreement between CITY and CONTRACTOR. In the event of a conflict between any of these documents, this Agreement controls, followed by its Exhibits.

**1.18 “Contract” or “Agreement”** means this Design-Assist Construction Agreement, its exhibits, and all amendments and/or modifications hereto executed by the parties.

**1.19 “Contract Time”** means the period of time, including authorized adjustments, allotted in the Schedule for the Final Completion of the Work.

**1.20 “CONTRACTOR”** means the individual or entity identified in the preamble to this Agreement.

**1.21 “CONTRACTOR Event of Default”** shall have the meaning set forth in Section 12.1 hereof.

**1.22 “Cost of the Work”** consists of those items of Work, which are paid for by CITY to CONTRACTOR, and consist of those categories of costs set forth as allowable on Exhibit A.

**1.23 “CPM”** means a critical path method schedule in the form of precedents, networks and time sequences.

**1.24 “Day” or “Days”** means calendar days.

**1.25 “Delay Costs”** means those items of Cost of the Work attributable to an Excusable Delay for which CITY is responsible and which are payable by CITY to CONTRACTOR pursuant to a Change Order as provided in Article 6.

**1.26 “Design-Assist Team”** includes the following: Architect/Engineer; CONTRACTOR; and/or others as coordinated by CONTRACTOR and CITY.

**1.27 “Design Development Documents”** means the drawings, specifications and other documents prepared by the Design-Assist Team for CITY's review and approval prior to the preparation of the Construction Documents. The Design Development Documents shall illustrate the scale and relationship of Project components, outline the nature and structural exterior and three dimensional scale of the Project and shall fix and describe in detail the configuration and character of the Project concerning all items of the Project necessary for the complete and final preparation of the Construction Documents in accordance with the requirements of the Contract Documents, including architectural and electrical systems, materials and such other elements as may be appropriate. CONTRACTOR's attention is hereby directed to the confidentiality requirements of Section 2.2.

**1.28 “Design Materials”** means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models

and other information developed, prepared, furnished, delivered or required to be delivered by CONTRACTOR to CITY under the Contract Documents or developed or prepared by CONTRACTOR specifically to discharge its duties under the Contract Documents. CONTRACTOR's attention is hereby directed to the confidentiality requirements of Section 2.2.

**1.29 “Design-Assist Work”** means that portion of the Work consisting of the design-assist services required to be provided in connection with the Architect/Engineer's design of the Project as set forth in the Contract Documents, which shall be performed consistent with the standards of care set forth herein.

**1.30 “Excusable Delay”** shall have the meaning set forth in Section 4.4.2 hereof.

**1.31 “Fee”**, if applicable, means the fee payable to CONTRACTOR pursuant to this Agreement and as part of the GMP, if shown on Exhibit A attached hereto.

**1.32 “Final Completion”** means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including completion of all Punch list items.

**1.33 “Force Majeure”** means labor dispute (excluding labor shortage), fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming CONTRACTOR has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than CONTRACTOR or Subcontractors), material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the reasonable control of and without the fault or negligence of CONTRACTOR.

**1.34 “Governmental Approvals”** means those CITY approvals necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building or zoning regulations.

**1.35 “Guaranteed Maximum Price” or “GMP”** means the amount set forth on Exhibit A hereto, which may be increased or decreased in accordance with the provisions of the Contract Documents.

**1.36 “Hazardous Materials”** means those items identified on Exhibit C hereto.

**1.37 “Indemnified Parties”** includes, but is not limited to, CITY, its agents, officers, employees, and volunteers.

**1.38 “Liquidated Damages”** means the damages payable by CONTRACTOR to CITY in the event CONTRACTOR does not achieve Final Completion of the Project by the date required on the Schedule, as adjusted, as more fully described in Section 4.6 hereof.

**1.39 “Modification”** means an amendment to this Agreement executed by the parties after the date hereof.

**1.40** “Party” shall mean CITY or CONTRACTOR individually, and “Parties” shall mean CITY and CONTRACTOR collectively.

**1.41** “Payment and Performance Bonds” means the payment bond and performance bond issued by an admitted Surety covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by CONTRACTOR. Such bonds shall be in the form described in Exhibit E.

**1.42** “Project” means the design and construction of the project described in the Recitals, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as required thereby or reasonably inferred therefrom.

**1.43** “Project Manager” means the person assigned by the director of the CITY administering department to monitor the Project and Work.

**1.44** “Punch List” means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent beneficial occupancy or use.

**1.45** “Retention” means the amount withheld from progress payments from CITY to CONTRACTOR from time to time, as more fully described in Article 5 hereof.

**1.46** “Schedule” means the schedule pursuant to the Proposal and/or other Contract Documents to which CONTRACTOR has agreed to complete the Work. The Schedule shall be adjusted pursuant to the provisions of the Contract Documents. In the event the Schedule is not contained within the Proposal, then CONTRACTOR shall provide to CITY, within fifteen (15) days of issuance of a notice to proceed by CITY, with a complete milestone schedule identifying, among other things, critical paths (if any) and total calendar days until Substantial and Final Completion. In the event the Schedule is contained in the Proposal, the start of the Schedule shall be adjusted by the CONTRACTOR to reflect the date of the Notice To Proceed.

**1.47** “Scheduled Date of Substantial Completion” means the date CONTRACTOR has agreed to achieve Substantial Completion of the Project in accordance with the Schedule, as adjusted.

**1.48** “Scope Change Costs” means those items of Cost of the Work attributable to changes in scope of the Work and payable by CITY to CONTRACTOR pursuant to a Change Order, as provided in Article 6.

**1.49** “Separate Contractors” means those individuals or entities (including, but not limited to, concessionaires) who have entered into arrangements with CITY for the provision of labor, materials or other services in connection with the Project.

**1.50** “Site” is the real property on which the Project will be located.

**1.51** “Subcontract” means an agreement between CONTRACTOR and another person or entity engaged to perform a portion of the Work.

**1.52** “Subcontractor” means an individual or entity who has entered into an agreement with CONTRACTOR or another Subcontractor for the provision of labor, materials or other services required to be performed by CONTRACTOR under the Contract Documents.

**1.53** “Substantial Completion” means the stage in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so that CITY may use the Project for its intended purpose.

**1.54** “Surety” means one or more issuers of the Payment and Performance Bonds, each of which shall be admitted and licensed to do business in the State of California.

**1.55** “Unexcusable Delay” shall have the meaning set forth in Section 4.4.

**1.56** “Work” or “Scope of Work” means the Project, inclusive of all labor, materials and services required to be performed or provided by CONTRACTOR officers, employees, agents, Subcontractors or Suppliers pursuant to the provisions of this Agreement and its Exhibits (including, the entirety of Exhibit F).

## **ARTICLE 2 SCOPE OF WORK / PROJECT REQUIREMENTS**

**2.1 Performance of Work.** CONTRACTOR shall perform the Work in accordance with this Agreement. CONTRACTOR covenants and agrees that it shall be responsible for performing and completing, and for causing all Subcontractors to perform and complete, the Work in accordance with the Contract Documents, standard professional and trade practices, and Applicable Laws. CONTRACTOR covenants that the Work and the materials provided thereunder shall be appropriate for the purposes stated in the Request for Proposal and Proposal. Although it is the responsibility of CONTRACTOR to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Contract, and such change has the effect of increasing the cost or time of performance of the Work, such change may be the subject of a Change Order under the provisions of Article 6 hereof.

**2.1.1. Noise and Night Work.** CONTRACTOR shall comply with CITY’s noise ordinance.

**2.2 Professional Standard; Ownership of Documents.**

**2.2.1 Standards of Performance.** The Work shall be performed by CONTRACTOR in accordance with the professional standards applicable to projects, buildings or work of

complexity, quality and scope comparable to the Work and the Project. CONTRACTOR may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability with CITY toward any Subcontractor.

## **2.2.2 Design Documents and Materials, and Confidentiality.**

**2.2.2.1** CITY shall have unlimited rights to copy and use in connection with the Project all Design Materials, including the right to use same on the Project at no additional cost to CITY, regardless of degree of completion, provided that said services performed have been fully paid for as required by the terms of this Agreement. CONTRACTOR and its Subcontractors shall keep all design documents confidential, and shall not disclose such documents except as may be required in performance of the Work or pursuant to legal process.

## **2.3 Local Conditions; Environmental Site Conditions.**

**2.3.1 Local Conditions.** CONTRACTOR represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent CONTRACTOR encounters subsurface or concealed conditions which differ materially from that actually known by CONTRACTOR on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents; then CONTRACTOR shall give notice to CITY promptly before conditions are disturbed and in no event later than two (2) Days after the first observance of the conditions if a Change Order is contemplated by CONTRACTOR due to such condition. Such materially different conditions may entitle CONTRACTOR to an equitable adjustment in the GMP and/or Schedule pursuant to the Change Order provisions of this Agreement.

**2.3.2 Hazardous Materials.** The Parties' agreement as to the handling of Hazardous Materials discovered at the Site (and not brought there by CONTRACTOR or any Subcontractor) is set forth in Exhibit C hereto, and the only duties and responsibilities of CONTRACTOR in connection therewith are as therein specified, notwithstanding any other provision of this Agreement.

## **2.4 Design Development Documents and Construction Documents.**

**2.4.1 General.** The Design-Assist Team understands that all construction documents, working drawings and specifications ("Submittals") must be coordinated with, and approved by, CITY prior to construction. CONTRACTOR shall allow CITY a minimum of fourteen (14) days for review of Submittals and corrections made thereto. CONTRACTOR shall work with the Design-Assist Team to prepare, for the approval of CITY, working drawings and specifications

setting forth in detail the requirements for the construction of the Project in its entirety including the necessary bidding information. CITY's review of the Design Development Documents and the Construction Documents shall not relieve CONTRACTOR from its responsibilities under this Agreement, or be deemed to be an approval or waiver by CITY of any deviation from, or of CONTRACTOR'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 for approval by CONTRACTOR and approved by CITY. CONTRACTOR shall comply with all CITY construction standards as deemed applicable by the CITY. CONTRACTOR shall provide CITY with a complete, accurate, full size, and current set of as-built drawings in a hard copy acceptable to City prior to Final Completion.

The Architect/Engineer is the entity professionally responsible for the design of the Project. CITY acknowledges that CONTRACTOR is a general contractor and not an architect or engineer. Except with respect to any subcontractors of CONTRACTOR providing architectural or engineering services for the Project as design-build work, CONTRACTOR's review of or input for any design documents, or CONTRACTOR's recommendation for any design concepts, is made solely in CONTRACTOR's capacity as a licensed contractor and not as a licensed design professional. CONTRACTOR is not responsible for any errors in the design or failure of the design to comply with applicable laws, codes, rules and regulations, or lawful orders of public authorities. However, if CONTRACTOR observes any such nonconformity or errors it shall promptly notify CITY and the Architect/Engineer.

**2.4.2 Reliance on Approvals.** CONTRACTOR shall be entitled to rely on the approvals of CITY with respect to the Design Materials. If CITY revokes, modifies or otherwise changes in a material way its approval of a given system after such system has been designed and approved, or modifies the original Scope of Work in a material manner requiring modification to one or more systems which have been designed and approved, CONTRACTOR shall be entitled to a Change Order in accordance with the provisions of Article 6 hereof. No Change Order shall be issued to the extent such modification is due to the fault or neglect of CONTRACTOR.

**2.4.3 Review of Contract Documents and Field Conditions.** CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to CONTRACTOR with the Contract Documents before commencing activities. CONTRACTOR shall perform the Work in accordance with the Contract Documents and submittals approved in accordance with the procedures set forth in this Agreement.

**2.5 Legal Requirements.** CONTRACTOR shall comply with Applicable Laws, and shall give applicable notices pertaining thereto. Except with respect to Governmental Approvals, CONTRACTOR shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project. Notwithstanding the foregoing, CITY has informed CONTRACTOR that fees in connection with building permits, street use permits, and similar permits relating to construction will be waived and are not to be included in the GMP. If



and to the extent charges in the future for such permits are imposed in the future, such charges shall be paid by CITY, or shall be the subject of a Change Order to the Contract in accordance with the Change Order provisions of this Agreement.

## **2.6 Services and Facilities.**

**2.6.1 General.** CONTRACTOR shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

**2.6.2 Supervision.** CONTRACTOR shall supervise and direct the Work in accordance with its best skill and attention. CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures. CONTRACTOR shall be responsible to CITY for the acts and omissions of, and whenever this Contract refers to the negligence, fault or omission of CONTRACTOR, such term shall include the negligence, fault or omission of, CONTRACTOR's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under an agreement with CONTRACTOR. CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than CONTRACTOR.

**2.6.3 Coordination.** CONTRACTOR shall coordinate construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

**2.6.3.1 Design-Assist Development Coordination.** CONTRACTOR understands and agrees that all Design Development Documents and time schedules prepared by Architect/Engineer must be coordinated with CONTRACTOR and CITY. CONTRACTOR shall participate and provide recommendations in the development of the drawings and other documents to fix and describe the size and character of the Project in its entirety as to structural, and electrical systems, materials and other essentials in CONTRACTOR's capacity as a general contractor and not as a design professional, focusing on constructability and cost implications of the evolving design.

**2.6.3.2 Construction Documents Coordination.** [reserved]

**2.6.4 Cooperation.** CONTRACTOR shall cooperate with the Architect/Engineer, and CITY's financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

**2.6.5 Management.** CONTRACTOR shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work.

**2.6.6 Reports.** CONTRACTOR shall prepare and submit to CITY monthly progress reports on the Work accomplished during the previous monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to CITY. Such reports shall be furnished at the time of submission of each monthly Application for Payment. As part of such report, CONTRACTOR shall provide an updated Schedule, including CPM, if any, illustrating the progress that has been made, by reference to the initial CPM, and specifying whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth CONTRACTOR's projected progress for the forthcoming month.

**2.7 Warranty.** CONTRACTOR warrants to CITY that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Construction Work will be free from defects not inherent in the quality required or permitted, and that the Construction Work will conform with the requirements of the Contract Documents. Construction Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by CITY at its sole discretion.

**CONTRACTOR shall warranty the Construction Work for a period of one-year commencing upon recording of the notice of completion.** If within this one-year warranty period any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, CONTRACTOR shall correct it promptly after receipt of written notice from CITY to do so. CITY shall give such notice promptly after discovery of the condition. CONTRACTOR shall bear the cost of correction.

CONTRACTOR's attention is directed to Section 9.3 below regarding Warranty Bond requirements.

**2.8 Taxes.** CONTRACTOR shall pay, as Cost of the Work, all existing and future applicable federal, state and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work (excluding taxes based on CONTRACTOR's income). In the event CONTRACTOR is obligated to pay any new or increased taxes or duties adopted after the date hereof, the amount of such new or increased taxes shall increase the GMP pursuant to the Change Order provisions of this Contract. In the event CONTRACTOR receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the GMP pursuant to the Change Order provisions of this Contract

**2.9 Access by CITY.** CONTRACTOR shall afford CITY and its authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

**2.10 Use of Site.** CITY shall be permitted beneficial use of the Work.

**2.11 Patents, Trademarks, Copyrights.** CONTRACTOR shall pay, as a Cost of the Work, all-applicable royalties and license fees on any matters arising in connection with the Work. CONTRACTOR shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Indemnified Parties, and shall save the Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by CITY, other than pursuant to the recommendation or suggestion of CONTRACTOR or a subcontractor; provided however, if CONTRACTOR has reason to believe that the design, process or product so specified is an infringement of a patent, CONTRACTOR shall be responsible for any loss resulting unless CONTRACTOR has provided CITY with prompt written notice of CONTRACTOR's belief, and CITY has nevertheless elected to go forward with such design, process or product so specified.

**2.12 Rubbish; Debris; Cleanup.** During the performance of all on-site Work, CONTRACTOR shall at all times, as a Cost of the Work, keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of CITY, CONTRACTOR shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, CONTRACTOR shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If CONTRACTOR fails to clean up as provided in the Contract Documents, CITY may do so and the cost thereof shall be charged to CONTRACTOR as a Cost of the Work.

**2.13 Permits, Fees and Notices.** Unless otherwise provided in the Contract Documents, and subject to the provisions of Section 2.5 hereof, CONTRACTOR shall secure all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. To the extent there is a change in the type or cost of any of such permits, fees, licenses or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the GMP and Schedule on account of such change in accordance with the Change Order provisions. CONTRACTOR shall comply with and give notices required by Applicable Laws.

**2.14 Shop Drawings, Product Data, Samples and Other Submittals.**

**2.14.1 Documents and Samples at the Site.** From and after commencement of the Construction Work, CONTRACTOR shall maintain at the site one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the Construction Phase. In addition, CONTRACTOR shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to CITY upon completion of the Work.

**2.14.2 Shop Drawings, Product Data, Samples and Other Submittals.**

**2.14.2.1 Shop Drawings** are drawings, diagrams, schedules and other data specially prepared for the Work by CONTRACTOR, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**2.14.2.2 Product Data** are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate materials or equipment for some portion of the Work.

**2.14.2.3 Samples** are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**2.14.2.4 Shop Drawings, Product Data, Samples and similar submittals** are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way CONTRACTOR proposes to conform the construction to the Construction Documents.

**2.14.2.5 Submission of items listed in section 2.14.2.4.** [reserved]

**2.14.3 Responsibility.** CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by CITY's approval of Shop Drawings, Product Data, Samples or similar submittals unless CONTRACTOR has specifically informed CITY of such deviation at the time of the submittal and CITY has given written approval to the specific deviation. CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by CITY's approval thereof.

## **2.15 Tests and Inspections**

**2.15.1 Initial Tests and Inspections.** Tests, inspections and approvals of portions of the Construction Work shall be made as required by the Contract Documents, Applicable Laws or normal construction practices and/or as directed by CITY. Unless otherwise provided, CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to CITY, or with the appropriate public authority. The costs of such tests, inspections and approvals shall be a cost paid by CONTRACTOR. CONTRACTOR shall give CITY timely notice of when and where tests and inspections are to be made so that CITY may observe such procedures. All costs of tests, inspections or approvals imposed upon CONTRACTOR by changes in Applicable Laws occurring after execution of this Agreement shall be an increase to the GMP in accordance with the Change Order provisions herein.

**2.15.2 Additional Tests and Inspections.** If CITY, or any other public authority having jurisdiction, determines that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 2.15.1, CITY will instruct CONTRACTOR to make arrangements for such additional testing, inspection or approval by an entity acceptable to CITY, and CONTRACTOR shall give timely notice to CITY of when and where tests and inspections are to be made so CITY may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the

requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work, subject to the limitations set forth in Section 2.22 hereof. If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract Documents, the costs thereof shall be an increase to the GMP in accordance with the Change Order provisions of this Agreement.

**2.15.3 Required Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by CONTRACTOR and promptly delivered to CITY.

**2.1 5.4 Timing of Testing.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **2.16 Execution, Correlation and Intent.**

**2.16.1 Execution of Agreement.** Execution of this Agreement by CONTRACTOR is a representation that CONTRACTOR has visited the Site, become familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**2.16.2 Intent of Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by CONTRACTOR. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**2.16.3 Organization of Materials.** Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings does not necessarily control CONTRACTOR in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

**2.16.4 Meaning of Words.** Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

**2.17 Labor and Materials; Liens (Stop Payment Notice Claims); Indemnity.** Unless otherwise provided in the Contract Documents, CONTRACTOR shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. CONTRACTOR shall enforce strict discipline and good order among CONTRACTOR's employees, subcontractors, and other persons carrying out the Work. CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR shall not permit any Subcontractor, materialman, or laborer to place liens on the Project covering any portion of the Work for which CITY has made payment to CONTRACTOR. If any liens (e.g., stop payment notice claims) are imposed, CITY may withhold payment in the amount of 125% of the claim until such time an unconditional release is provided in a form satisfactory to CITY. CONTRACTOR shall indemnify, defend, and hold harmless CITY regarding any claim or lien that proceeds to, or is the subject of litigation. CITY may withhold payment(s) pending compliance with this provision.

## **2.18 Cutting and Patching.**

**2.18.1 Cutting and Patching of the Work.** CONTRACTOR shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**2.18.2 Damage to Work of CITY or Separate Contractors.** CONTRACTOR shall not damage or endanger a portion of the completed Work, fully or partially completed construction of CITY, or work or construction by Separate Contractor(s) by cutting, patching or otherwise altering such construction or work, or by excavation. CONTRACTOR shall not cut or otherwise alter such construction by CITY or a Separate Contractor except with written consent of CITY and of such Separate Contractor, such consent not to be unreasonably withheld.

## **2.19 Uncovering of Construction Work.**

**2.19.1 Uncovering.** If a portion of the Construction Work is covered contrary to CITY's written request to observe such work prior to it being covered or contrary to requirements of the Contract Documents, it must, if directed in writing by CITY, be uncovered for CITY's observation and be replaced without change in the Schedule or GMP. The costs of such uncovering and replacement shall be Cost of the Work, subject to the limitation set forth in Section 2.22 hereof.

**2.19.2 Covering of Work Requested to be Observed.** If a portion of the Construction Work has been covered which CITY has not specifically requested to observe prior to its being covered, CITY may request to see such Construction Work and it shall be uncovered by CONTRACTOR. If such Construction Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to CITY and shall increase the GMP. An appropriate time extension shall also be given. If such Construction Work is not in accordance with the Contract Documents, CONTRACTOR shall pay such costs as Cost of the Work, unless such condition was caused by CITY or a Separate Contractor in which event CITY shall be responsible for payment of such costs by appropriate Change Order, and an appropriate time extension shall also be given.

## **2.20 Correction of Work.**

**2.20.1 Work Rejected by CITY.** CONTRACTOR shall promptly correct Construction Work rejected by CITY or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed

or completed. CONTRACTOR shall bear the costs of correcting such rejected Construction Work, as a Cost of the Work, including additional testing and inspection and compensation for services and expenses of CITY made necessary thereby.

**2.20.2 [Intentionally deleted].**

**2.20.3 Removal of Work.** CONTRACTOR shall remove from the Site portions of the Construction Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by CONTRACTOR nor accepted by CITY. The costs incurred in removing such Work shall be a Cost of the Work, subject to the limitation set forth in Section 2.22 hereof.

**2.20.4 Failure to Correct Nonconforming Work.** If CONTRACTOR fails to correct nonconforming Construction Work within a reasonable time, CITY may correct it in accordance with the terms of this Agreement. If CONTRACTOR does not proceed with correction of such nonconforming Construction Work within a reasonable time fixed by written notice from CITY, CITY may remove it and store the salvageable materials or equipment at CONTRACTOR's expense. If CONTRACTOR does not pay costs of such removal and storage within ten (10) Days after written notice, CITY may, upon ten (10) additional Days written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by CONTRACTOR, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which CONTRACTOR should have borne, CONTRACTOR shall pay such excess to CITY. If such proceeds are in excess of the costs which CONTRACTOR should have borne, such excess shall be paid by CITY to CONTRACTOR. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 5.1.

**2.20.5 Damaged or Destroyed Work.** CONTRACTOR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of CITY or Separate Contractors caused by CONTRACTOR's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 5.1.

**2.20.6 No Limitation.** Nothing contained in this section 2.20 shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents.

**2.21 Value Engineering.** CONTRACTOR shall suggest to CITY value engineering to reduce the cost of the Project, which CITY may accept at its sole discretion. To the extent that CONTRACTOR provides value engineering suggestions or comments with respect to the Project's design, CITY acknowledges that such services are advisory only and not professional design services. CITY shall refer all such suggestions and comments to the Architect/Engineer for review and evaluation prior to CITY's acceptance thereof. CITY shall cause the

Architect/Engineer to revise the Project's design documents to reflect all value engineering suggestions and comments accepted by CITY without delay or disruption to the timely and orderly progress of the Work, including revisions needed to address the impact of an agreed value engineering solution on other portions of the Work. The GMP and Contract Time shall be adjusted by Change Order promptly after CONTRACTOR's review and pricing of the change to the Work reflected in the revised design documents.

**2.21.1 Subcontractors Bids.** CONTRACTOR shall make recommendations to the Architect/Engineer regarding the appropriate quality of materials, equipment, component systems and types of construction for the most reasonable prices for inclusion in the Construction Documents, and CONTRACTOR shall also recommend to the Architect/Engineer and CITY reasonable adjustments in the scope of the Project so that the total cost bid by the bidding Subcontractors will not exceed the estimate.

**2.22 Acceptance of Nonconforming Work.** If CITY prefers to accept Work, which is not in accordance with the requirements of the Contract Documents, CITY may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**2.23 Contractor Registration.** No contractor or subcontractor may work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. During the performance of this Contract, CONTRACTOR and its subcontractors shall have a continuing legal obligation to maintain current registration with the Department of Industrial Relations. CONTRACTOR is hereby notified that this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

### ARTICLE 3 CITY'S RIGHTS AND RESPONSIBILITIES

#### **3.1. Information and Services Required of CITY.**

**3.1.1 CITY Designation of Authorized Representative.** Both Parties shall designate, from time to time, one or more representatives authorized to act on their behalf with respect to the Project, together with the scope of his/her respective authority. CONTRACTOR shall not be entitled to rely on directions from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions and decisions made by Authorized Representative(s) of CITY shall be subject to any further approval(s) required by any provisions of CITY's Charter or the Roseville Municipal Code.

**3.1.2 Communication.** During the term of this Contract, CITY shall communicate with Subcontractors, suppliers and others performing any part of the Work only through CONTRACTOR's Authorized Representative.

**3.1.3 Governmental Approvals.** CITY shall be responsible for obtaining the Governmental Approvals. Any delay in obtaining the Governmental Approvals may entitle



CONTRACTOR to an equitable adjustment in the Schedule and GMP in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or neglect of CONTRACTOR.

**3.2 [Intentionally deleted.]**

**3.3 [Intentionally deleted.]**

**3.4 Activities on the Site by CITY or Separate Contractors.**

**3.4.1 CITY's Right to Award Separate Contracts.** CITY reserves the right to perform work or operations related to the Project, with CITY's own forces, and to award separate contracts to Separate Contractors in connection with other portions of the Project.

**3.4.2 Integration of the Work with Separate Contractors.** Following the request of CITY, CONTRACTOR shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to CITY for approval. The plan shall be fair and reasonable for CONTRACTOR and the Separate Contractors, and CONTRACTOR shall work with the Separate Contractors to reach agreement on such plan. CONTRACTOR shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

**3.4.3 Coordination.** CONTRACTOR shall provide for the coordination of the activities of CONTRACTOR and its Subcontractors with the activities of the Separate Contractors. CONTRACTOR shall participate with all Separate Contractors and CITY in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. CONTRACTOR shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work. To the extent (a) the date of Substantial Completion is extended by such Schedule revision; (b) CONTRACTOR is required to perform its Work materially out of sequence, and in a manner which is not as efficient or cost effective as originally planned; or (c) the Scope of Work is increased, an equitable adjustment in the GMP and the Schedule shall be made in accordance with the Change Order provisions of this Agreement.

**3.4.4 Use of Site.** CONTRACTOR shall afford CITY and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. CONTRACTOR shall also connect and coordinate its Work and operations with CITY and all Separate Contractors' operations as required by the Contract Documents. CITY shall direct the Separate Contractors to cooperate with CONTRACTOR and to avoid actions or omissions, which could interfere with or delay the activities of CONTRACTOR.

**3.4.5 Deficiency in Work of Contractors.** If part of CONTRACTOR's Work depends upon proper execution or results upon construction or operations by CITY or a Separate Contractor, CONTRACTOR shall, prior to proceeding with that portion of the Work, promptly

report to the Separate Contractor and CITY apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by CONTRACTOR. CONTRACTOR and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of CONTRACTOR to report such discrepancies or defects shall constitute acceptance by CONTRACTOR of the work of Separate Contractors as fit and proper to receive CONTRACTOR's Work (except as to those defects or discrepancies that are not apparent).

**3.4.6 Claims Involving Separate Contractors.** In the event that CONTRACTOR unnecessarily and unreasonably delays the work of Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, CONTRACTOR shall, in such event, pay, as Cost of the Work, all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays. If any Separate Contractor shall assert a claim or bring an action against CITY alleging damage due to the fault or neglect of CONTRACTOR, CITY shall immediately notify CONTRACTOR, who shall defend such claim. If it is determined that CONTRACTOR was at fault, CONTRACTOR shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, as a Cost of the Work.

**3.5 Assignment of Separate Contracts.** If CITY determines that it wishes to assign to CONTRACTOR one or more contracts between CITY and a Separate Contractor, it shall give CONTRACTOR written notice of such desire, including in such notice a copy of such contract for CONTRACTOR's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide one hundred percent (100%) payment and performance bonds covering such work from sureties meeting the standards set forth in Section 1.53 hereof. Such contract shall contain provisions similar to those contained in CONTRACTOR's agreements with its Subcontractors with respect to liability, indemnification, retention, payment, labor, warranty, and other material items. Upon CONTRACTOR's approval of the assignment of such contract, which approval shall not be unreasonably withheld, delayed or conditioned, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of CONTRACTOR, and the GMP shall be increased by Change Order in the amount of (a) such assigned contract, and (b) the additional Fee pursuant to the provisions of Section 6.5.1.

**3.6 CITY's Right to Stop the Work.** If CONTRACTOR persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, CITY, by written order signed by CITY, may deliver a notice to CONTRACTOR setting forth that such a persistent and material failure is occurring and has occurred, and demanding that CONTRACTOR commence a cure of such persistent and material failure within twenty (20) Days and diligently pursue such cure thereafter. In the event that the cure is not commenced and pursued diligently, CITY may, by written notice to CONTRACTOR, order CONTRACTOR to stop the Work, or any portion thereof, until the use for such order has been eliminated; provided, however, that the right of CITY to stop the Work shall not give rise to a duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other person or entity and shall

not give rise to any liability of CITY to CONTRACTOR resulting from any delay (except to the extent that such order is found to be improper).

**3.7 CITY's Right to Carry out the Work.** If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) Day period after receipt of written notice from CITY to commence and diligently continue correction of such default or neglect with diligence and promptness, CITY may after such seven (7) Day period give CONTRACTOR a second written notice to correct such deficiencies within such second seven (7) Day period. If CONTRACTOR within such second seven (7) Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, CITY, without prejudice to other remedies CITY may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to CONTRACTOR the cost of correcting such deficiencies, including Compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to CONTRACTOR are insufficient to cover such amounts, CONTRACTOR shall pay the difference to CITY.

## **ARTICLE 4 TIME**

**4.1. Progress and Completion.** Time limits stated in the Contract Documents are of the essence of this Agreement. By executing this Agreement, CONTRACTOR confirms that the Contract Time is a reasonable period of time for achieving Final Completion of the Work.

### **4.2 Schedule Obligations.**

**4.2.1 Contract Schedule and Notice To Proceed.** CONTRACTOR shall provide a schedule as stated in Section 1.46. CONTRACTOR shall begin work pursuant to this Agreement and in accordance with the Schedule (as described in Exhibit F) within fifteen (15) calendar days of the date of issuance of a Notice To Proceed by CITY, unless extended at the request made to and at the sole discretion of City. CONTRACTOR shall update said schedule to commence from the date of this Agreement, and the overall timeline shall remain consistent with the original schedule. CITY may issue the Notice To Proceed within fifteen (15) days of full execution of this Agreement.

**4.2.2 Prosecution of the Work.** CONTRACTOR shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by CONTRACTOR within any time period required by the Schedule is less than the amount therein specified, CONTRACTOR shall so notify CITY. If the delay is an Unexcused Delay, CONTRACTOR shall prepare a recovery schedule for CITY's review and approval, showing how CONTRACTOR will compensate for the delays and achieve Final Completion by the date shown on the Schedule. If CONTRACTOR is unable to demonstrate how it will overcome Unexcused Delays, CONTRACTOR shall employ such extraordinary measures as are necessary to bring the Work into conformity with the Final

Completion Date set forth therein, the costs of which shall be a Cost of the Work and not exceed the GMP. If the delay is an Excusable Delay, CITY shall either (a) authorize an equitable extension in the Schedule to account for such delay, and equitably adjust the GMP on account of such delay, to the extent permitted by Article 6; or (b) request that CONTRACTOR prepare a recovery schedule showing how (if possible) CONTRACTOR can achieve Substantial Completion by the date shown on the Schedule (as modified), and equitably adjust the GMP in accordance with the Change Order provisions of this Agreement on account of any extraordinary activities required of CONTRACTOR on account of such recovery schedule. Schedule float (total float) shall be owned by CITY. As float is an expiring resource, if the Work is delayed on the critical path due to a delay caused by the CONTRACTOR and/or Architect/Engineer, the CONTRACTOR may not use any float created by such a delay on any other path without the express written approval of CITY.

**4.3 Pre-construction Activities.** Within thirty (30) Days after execution of this Agreement, CONTRACTOR shall submit to CITY for review a detailed schedule of pre-construction activities, by expanding the pre-construction activities set forth on the Schedule. This pre-construction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion times sequences of Subcontract award activities of CONTRACTOR, and identify all interface activities of CITY.

#### **4.4 Extensions of Time.**

**4.4.1 General.** An extension in the scheduled date of Final Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path.

**4.4.2 Excusable Delays.** Subject to 4.4.1 and 4.5.2, to the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such shall constitute an “Excusable Delay” (to the extent not set forth below, a delay will be considered an “Inexcusable Delay”).

**4.4.2.1** Failure or inability of CITY to make available any or all of the Site in accordance with the requirements of the Schedule.

**4.4.2.2** Failure or inability of CITY or CONTRACTOR to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of CONTRACTOR.

**4.4.2.3** Delays resulting solely from the acts or omissions of Separate Contractors; provided however, only to the extent Separate Contractors perform their work improperly and not in accordance with any applicable critical path schedule.

**4.4.2.4** Delays resulting from Force Majeure.

**4.4.2.5** Differing, unusual or concealed site conditions that could not reasonably have been anticipated by CONTRACTOR in preparing the Schedule.

**4.4.2.6** Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by CONTRACTOR or any Subcontractor.

**4.4.2.7** Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

**4.4.2.8** Delays occurring solely due to the acts or omissions of CITY and those within the control of CITY, including, but not limited to, Separate Contractors.

**4.4.2.9** Delays resulting from weather conditions, which shall be determined as follows: Should CONTRACTOR prepare to begin work at the regular starting time of any working day on which inclement weather, or the conditions resulting from the weather, prevents the Work from beginning at the usual starting time and the crew is dismissed as a result thereof and CONTRACTOR does not proceed with at least 75% of the normal labor and equipment force engaged in the current operations for at least 60% of the total daily time being spent, CONTRACTOR will not be charged for a working day, even if the conditions change during the course of the day. At the start of such days, CONTRACTOR shall notify CITY if CONTRACTOR believes that inclement weather or conditions resulting from the weather exist. A non-working day determination of such conditions shall be made by CITY, who will immediately notify CONTRACTOR.

**4.4.2.10** Delays resulting from unproductive work days, which shall be determined as follows: When CONTRACTOR is prevented from working on current operations due to site conditions, CITY action, or force majeure for at least 60% of the total daily time on the controlling operations. Controlling operations are determined by the critical path method schedule described in the applicable CITY construction standards. The critical path schedule used in this determination shall be no more than thirty (30) days old. CONTRACTOR shall notify CITY if CONTRACTOR believes an unproductive work day exists upon discovery of such condition. A non-working day determination of such conditions shall be made by CITY, who will immediately notify CONTRACTOR.

**4.4.3 Requirements for Schedule Amendment due to Excusable Delays.** In order to obtain an extension of time due to an Excusable Delay, CONTRACTOR shall comply with the following requirements:

**4.4.3.1** CONTRACTOR shall notify CITY of the Excusable Delay as soon as practicable, but in no event more than four (4) Business Days after CONTRACTOR becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days CONTRACTOR expects to be delayed. After the cessation of the Excusable Delay, CONTRACTOR shall notify CITY of the number of Days CONTRACTOR believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by CITY, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

**4.4.3.2** CONTRACTOR shall demonstrate to the satisfaction of CITY that the Excusable Delay in fact delayed the critical path for performance of the Work (by use of CPM analysis). Any delay that impacts the CPM will be presented to the Project Manager at the monthly meeting, and prior to completion of each activity.

**4.4.4 Decision by CITY.** Within thirty (30) Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the parties as to the then current status of Excusable Delays and Inexcusable Delays, CITY will provide CONTRACTOR with written notice of CITY's determination of the respective number of Days of Excusable Delay and/or Unexcusable Delay within ten (10) Days after receipt by CITY of CONTRACTOR's written request for such determination. The issuance by CITY of such a determination shall not, however, be deemed a concurrence by CONTRACTOR of the matters set forth therein, and CONTRACTOR may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, CONTRACTOR may take such acceleration or other measures required on account of CITY's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in CITY's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by CITY as an increase to the GMP in accordance with the Change Order provisions of this Agreement.

#### **4.5 Adjustment in GMP on Account of Extensions of Time.**

**4.5.1 Certain Excusable Delays.** Section 4.5 governs the extent to which CONTRACTOR is entitled to an extension of time due to Excusable Delays. Provisions governing the payment of additional compensation on account of such Excusable Delays, (if any) are set forth in Article 6.

**4.5.2 Concurrent Delays.** To the extent CONTRACTOR is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of CONTRACTOR, any subcontractor and/or by an Inexcusable Delay, CONTRACTOR shall not be entitled to any additional costs for the period of such concurrency.

#### **4.6 Liquidated Damages.**

**4.6.1 General.** CONTRACTOR and CITY acknowledge that in the event that CONTRACTOR fails to achieve Final Completion of the Project by the date established, CITY will incur substantial damages that shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that CITY would incur as a result of late Completion of the Project. Such liquidated damages shall be in-lieu of actual damages resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

**4.6.2 Amount of Liquidated Damages.** If CONTRACTOR fails to achieve Final Completion of the Work on or before the Notice of Completion date, as adjusted for Excusable Delays, CONTRACTOR shall pay to CITY liquidated damages in the amount of \$500.00 (five hundred dollars) per Day for each calendar day the date of Final Completion is inexcusably delayed. Payment of liquidated damages shall be made contemporaneously with CITY's required payment to CONTRACTOR, and such payments may be offset against each other.

## **ARTICLE 5 PAYMENT AND COMPLETION**

**5.1 Guaranteed Maximum Price ("GMP").** CITY shall pay for CONTRACTOR's performance under this Agreement the Cost of the Work and Fee (as described in Exhibit A hereto); provided, however, that the sum of the Cost of the Work and the Fee shall not exceed the GMP, as adjusted by Change Order/Directive in accordance with the Contract Documents.

**5.2 Schedule of Values.** Before the first Application for Payment, CONTRACTOR shall submit to CITY, and CITY shall approve, a schedule of values, setting forth the various portions of the Work, and the portions of the GMP allocated to each portion. This schedule of values shall be used as a basis for payment.

**5.3 Applications for Payment.** CONTRACTOR shall deliver to CITY not more than once each month an Application for Payment covering the Cost of Work and Fee applicable to the Work performed during the immediately preceding month. With each Application for Payment CONTRACTOR shall submit such evidence as may be necessary to demonstrate costs incurred on account of Cost of the Work during such month and the percentage of completion of each category of Work. CITY may reject requests for payment, or portions thereof, for Work, or portions thereof, not performed or completed.

**5.4 Amount of Progress Payments.** CITY shall pay CONTRACTOR the actual Cost of the Work and Fee, if any, through the period covered by the Application for Payment, less Retention as set forth in Section 5.5 below, provided that the aggregate payment amount before retention will not exceed the percentage of completion of the Work multiplied by the GMP (excluding items of the GMP not subject to retention). CITY may additionally withhold from progress payments such amounts pursuant to stop payment notice claims as required by law and CITY administrative regulation 4.01.

**5.5 Retention; Escrow Agreement; Final Payment.** Five percent (5%) Retention shall be withheld from each progress payment until the expiration of thirty-five (35) days following the recordation of the notice of completion; provided however, City shall continue to retain such amount as required by law and/or CITY administrative regulation 4.01. CONTRACTOR may elect to establish an escrow account for securities in-lieu of the five percent (5%) Retention in a form of escrow agreement compliant with law and subject to approval by the City Attorney (form of escrow agreement is attached as Exhibit D). Release of Retention monies shall constitute the Final Payment.

**5.6 Early Release of Subcontractor Retention.** [reserved]

**5.7 Payment for On-Site and Off-Site Stored Materials.** [reserved]

**5.8 Title to Construction Work.** CONTRACTOR warrants that title to all Construction Work covered by an Application for Payment shall pass to CITY no later than the time of payment. CONTRACTOR further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from CITY shall, to the best of CONTRACTOR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of CONTRACTOR, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Construction Work.

**5.9 Withholding of Payment.** CITY may withhold payment on account of an Application for Payment if required or authorized by any Applicable Law, or to the extent necessary to protect CITY from loss because of:

**5.9.1** defective Work not remedied;

**5.9.2** third party claims filed or reasonable evidence indicating probable filing of such claims;

**5.9.3** failure of CONTRACTOR to make payments of undisputed amounts to Subcontractors for labor, materials or equipment;

**5.9.4** damage to CITY or a Separate Contractor caused by the fault or neglect of CONTRACTOR to the extent not reimbursed by insurance; or

**5.9.5** reasonable evidence that the Work will not be Substantially Completed within the Contract Time due to Inexcusable Delay, and that the unpaid balance of the GMP would not be adequate to cover liquidated damages for the anticipated Inexcusable Delay.

**5.10 Failure of Payment; Interest.** In accordance with Public Contract Code §20104.50, CITY shall pay CONTRACTOR interest on any progress payment, which is made by CITY more than thirty (30) days after CITY receives an undisputed and properly submitted written payment request. Said interest shall be equal to the rate set forth in Code of Civil Procedure §685.010(a), and shall begin to accrue upon the expiration of said thirty (30) day period. Any written request for a progress payment which CITY determines to be disputed, improper or not suitable for payment for any reason shall be returned to CONTRACTOR within seven (7) days after receipt by CITY, along with a written statement of the reason or reasons why such request is disputed, improper or not suitable for payment.

**5.11 Occupancy by CITY Prior to Acceptance.** CITY reserves the right to Beneficial Occupancy and without charge by CONTRACTOR. In those areas of the Work which are completed, CITY may store materials, equipment, and supplies, and may perform partial operation.



**5.12 Substantial Completion.** When CONTRACTOR considers the entire Work complete and ready for its intended use, CONTRACTOR shall certify in writing to CITY that the entire Work is substantially complete provide CITY with a Certificate of Substantial Completion. Within a reasonable time thereafter, CITY and CONTRACTOR shall make an inspection of the Work to determine the status of completion. If CITY does not consider the Work substantially complete, CITY will notify CONTRACTOR in writing giving reasons therefor. If CITY considers the Work substantially complete, CITY will accept a corresponding partial Certificate of Substantial Completion. There shall be attached to the Certificate a Punch List of items to be completed or corrected before Final Acceptance and Final Payment.

**5.13 Final Completion.** When the Work is fully completed, CONTRACTOR shall provide CITY with a Certificate of Final Completion and shall request final inspection in writing. Additionally, CONTRACTOR shall provide legally effective releases or waivers satisfactory to CITY of all lien rights arising out of or liens filed in connection with the Work. Within ten (10) calendar days of receipt of such completed request form, CITY shall make final inspection. If following final inspection CITY determines that the Work (including all Punch List items) has been fully completed, CITY will process a Notice of Completion. If CITY determines that the Work is not complete after receipt of certification from CONTRACTOR, CONTRACTOR shall be notified in writing of deficiencies. After the deficiencies have been corrected, the procedure for final inspection as set forth above shall again be initiated by CONTRACTOR. In the event CITY determines the Work is fully completed, CITY shall initiate process of attaining a notice of completion.

**5.13.1 Waiver of Claims at Final Payment.** Acceptance of final payment by CONTRACTOR shall constitute a waiver of all claims by CONTRACTOR, except those previously made in writing and identified as unsettled at the time of final payment.

**5.14 Construction Allowance Items.** [reserved]

**5.15 Superintendent.** CONTRACTOR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Construction Work. The superintendent shall represent CONTRACTOR, and communications given to the superintendent shall be as binding as if given to CONTRACTOR.

**5.16 Documents and Samples at the Site.** CONTRACTOR shall maintain at the site for CITY one record copy of the drawings, specifications, addenda, Change Order and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. CONTRACTOR shall also prepare one reproducible set of as-built drawings. These shall be provided to CITY upon completion of the Work.

**5.17 Contingency.** [reserved]

**ARTICLE 6**  
**CHANGES IN THE WORK; CLAIMS**

**6.1 Changes.** Changes in the Work shall be performed under applicable provisions of the Contract Documents. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to CITY or CONTRACTOR, the applicable unit prices for such change order/directive shall be equitably adjusted. No GMP adjustment on account of a Change Order shall include CONTRACTOR's or Subcontractor's profit, Fee, home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder.

**6.2 Change Directives.** The following procedures shall apply with respect to Change Directives:

**6.2.1** Upon receipt of a Change Directive signed by CITY, CONTRACTOR shall promptly proceed with the change in the Work involved and advise CITY of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the GMP or the Schedule. If CONTRACTOR receives a written communication signed by CITY which CONTRACTOR believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from CITY a written confirmation that such communication is in fact a Change Directive.

**6.2.2** A Change Directive signed by CONTRACTOR indicates the agreement of CONTRACTOR with the contents thereof, and shall convert the Change Directive to a Change Order.

**6.2.3** If CONTRACTOR does not respond promptly or disagrees with the method for adjustment in the GMP or Schedule, the method and adjustment shall be determined as provided in Sections 6.5 or 6.10 below, as applicable. In such case, CONTRACTOR shall keep and present, in such form as CITY may request, an itemized accounting, together with appropriate supporting data.

**6.2.4** Pending final determination of cost to CITY, amounts not in dispute shall be included in Applications for Payment. The amount of credit to be allowed by CONTRACTOR to CITY for a deletion or change which results in a net decrease in the GMP shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Fee shall be figured on the basis of net increase, if any, with respect to that change.

**6.2.5** If CITY and CONTRACTOR do not agree with the adjustment in the Schedule or the GMP, such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Contract.

**6.3 Change Proposals.** If CITY requests CONTRACTOR to submit a Change Proposal which would entitle CONTRACTOR to an increase in the GMP for costs of preparation of such

Change Proposal pursuant to the provisions of this Section 6.3, CONTRACTOR shall first estimate the costs of preparing such Change Proposal and inform CITY in writing of such costs. CITY shall then direct CONTRACTOR either to proceed with the Change Proposal or cancel the Change Proposal. If CITY directs CONTRACTOR to proceed with the Change Proposal and then elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse CONTRACTOR for costs reasonably incurred by CONTRACTOR on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work requiring modification to one or more systems which have been designed and approved in accordance with the standards set forth in the technical specifications. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the design or Design-Assist Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

**6.4 Claims.** CONTRACTOR shall submit any claims for additional compensation to CITY in writing. The claim shall set forth the reason(s) that CONTRACTOR believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The notice must be given to the Project Manager prior to the time that CONTRACTOR shall have performed the work giving rise to the potential work for additional compensation, if based on an act or failure to act by CITY, or in all other cases within fifteen (15) calendar days after happening of the event, thing or occurrence giving rise to the potential claim. Any and all Claims not presented as required herein shall be waived.

**6.5 Change Orders Increasing or Decreasing Scope.**

**6.5.1 Increased Scope.** With respect to Change Orders which increase the Scope of Work described on Exhibit F, are not due to the errors or omissions of CONTRACTOR and are not attributable to Excusable Delays or the contingencies set forth in Section 6.6 below, the GMP shall be increased by the following “Scope Change Costs”:

**6.5.1.1 Construction Work and Mark Ups.**

**6.5.1.1.1** The estimated increase in the Cost of the Work attributable to the Change Order and which would not have been incurred but for the Change Order and/or Work Directive. In addition, CONTRACTOR may add a markup of up to ten percent (10%), subject to the discretion of the Project Manager, to the increase in the Cost of the Work due to the Change Order. This markup shall constitute full compensation for all delay costs, overhead costs and profit. The GMP shall be revised accordingly.

**6.5.1.1.2** When Change Order work is performed by a Subcontractor(s), each Subcontractor may add a markup of up to ten percent (10%), subject to the discretion of the Project Manager, to their direct costs for labor, materials and equipment used in performing the Change Order work. The GMP shall be revised accordingly.

**6.5.2 Decreased Scope.** With respect to Change Orders, which decrease the Scope of Work described on Exhibit F, the GMP shall be decreased by the Cost of Work attributable to

such Change Order and/or Work Directive. Furthermore, if the Change Order deletes a part of the Scope of Work, CONTRACTOR shall be entitled to retain a value of five percent (5%) of the full value of the reduction in Cost of Work attributable only to the portion of the Scope of Work deleted from the Scope of Work. The GMP shall be revised accordingly.

**6.6 Change Orders on Account of Contingencies.** With respect to Change Orders which are attributable to the following contingencies, the GMP shall be adjusted (increased or decreased) by the following “Contingency Costs,” consisting of the following:

**6.6.1** With respect to new or increased taxes arising after the date of this Agreement (other than taxes assessed based on the income of CONTRACTOR), the Change Order shall consist of the incremental amount of such new or increased taxes only. With respect to reductions in taxes arising after the date of this Agreement (other than taxes assessed based on the income of CONTRACTOR), the Change Order shall consist of the incremental amount of such reduced taxes only.

**6.6.2** With respect to increases or decreases in fees for permits or other governmental certificates or instruments arising after the date of this Agreement, the Change Order shall consist of the incremental amount of such increases or decreases. To the extent this Agreement states that a permit or certificate is not required and CONTRACTOR is later required to procure such permit or certificate, all out-of-pocket costs reasonably associated therewith shall be included in the Change Order.

**6.7 Change Orders on Account of Excusable Delay.** With respect to Change Orders, which are attributable to Excusable Delays, and subject to the exceptions set forth in Section 6.7.3 below, the GMP shall be increased by the following “Delay Costs”:

**6.7.1 Construction Work.**

**6.7.1.1** Increased allowable labor costs resulting from wage increases paid due to the delay;

**6.7.1.2** Premiums for overtime and extra shifts incurred in accelerating the Work, but only if acceleration is required in advance by CITY;

**6.7.1.3** Proven increased material costs;

**6.7.1.4** Additional general conditions costs which would not have been incurred but for the delay (itemized, and not based on a formula allocation);

**6.7.1.5** Demobilization and remobilization costs; and

**6.7.1.6** Additional items of Cost of the Work attributable to the Excusable Delay and which would not have been incurred but for the Excusable Delay.

**6.7.2 Intentionally left blank.**

**6.7.3 Exceptions.** The following exceptions to the provisions of Section 6.7.1 above shall apply:

**6.7.3.1** With respect to the Excusable Delay described in Section 4.4.2.1, the cost described in Section 6.7.1 shall not be compensable delay costs if such Excusable Delay occurs prior to the commencement of the Construction Work.

**6.7.3.2** With respect to the Excusable Delay described in Section 4.4.2.2, the cost described in Section 6.7.1 shall not be compensable delay costs if such Excusable Delay occurs prior to the commencement of the Construction Work.

**6.7.3.3** With respect to the Excusable Delay described in Section 4.4.2.4, costs incurred in connection with such delay are chargeable against the Cost of the Work but shall not increase the GMP.

**6.7.3.4** With respect to the Excusable Delay described in Section 4.4.2.5, in addition to the compensation provided in Section 6.7.1, CONTRACTOR shall be entitled to the additional costs set forth in Section 6.10.

**6.7.3.5** With respect to the Excusable Delay described in Section 4.4.2.7, additional compensation shall only be paid if the change in Applicable Law is not a change in law of general application (e.g., CAL/OSHA), but is a change in law specifically affecting the Project.

**6.8 Force Majeure.** There shall be no additional compensation to CONTRACTOR on account of Force Majeure.

**6.9 Intentionally left blank.**

**6.10 Change Orders on Account of Differing Site Conditions.** If CONTRACTOR encounters conditions described in Section 4.4 which constitute Excusable Delay, in addition to the increase in the GMP on account of delay costs incurred by CONTRACTOR (as described in Section 6.7.1), the GMP shall also be increased by the additional Cost of the Work attributable to such conditions which would not have been incurred but for such conditions.

**6.11 Time Extensions on Account of Change Orders.** CONTRACTOR shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order. CONTRACTOR shall present to CITY a CPM analysis showing how the Change Order affects the critical path of the Work.

## **ARTICLE 7 CORRECTION OF WORK**

**7.1 Correction of Work Prior to Completion.** Prior to the date of Final Completion, CONTRACTOR shall correct Work which (a) CITY reasonably rejects as being defective or

nonconforming to the requirements of the Contract Documents in a written notice delivered to CONTRACTOR or (b) CONTRACTOR recognizes is defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such defective Work, CONTRACTOR shall also correct, repair or replace such affected or damaged Work, as well as any other property of CITY or others damaged by such defective or nonconforming Work. Prior to the date of Final Completion, the cost of correcting any damaged or defective work shall be paid as a Cost of the Work.

**7.2 Correction of Work After Completion.** For defects identified by CITY and for which CITY has notified CONTRACTOR within a period of twelve (12) months after the date of Final Completion, or within such longer period as may be provided by special warranties contained in the Contract Documents, CONTRACTOR shall re-execute, correct, repair or replace all Work found to be defective or nonconforming to the Contract Documents (whether arising from a construction defect, error, omission or deficiency). If other portions of the Work are adversely affected by or damaged by such defective Work, CONTRACTOR shall also correct, repair or replace such affected or damaged Work, as well as any other property of CITY or others damaged by such defective or nonconforming Work.

**7.3 Acceptance of Nonconforming Work.** If CITY prefers to accept Work, which is not in accordance with the requirements of the Contract Documents, CITY may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**7.4 No Effect on Limitations.** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which CONTRACTOR may have under the Contract Documents.

## ARTICLE 8 SUBCONTRACTORS

### 8.1 Subcontracts

**8.1.1 Incorporation of Contract Documents.** CONTRACTOR may enter into Subcontracts with various Subcontractors for portions of the Work. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards CONTRACTOR all the obligations and responsibilities which CONTRACTOR assumes towards CITY. All Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

**8.1.2 Approval of Subcontractors.** Those portions of the Construction Work that the CONTRACTOR does not intend to perform with CONTRACTOR's own personnel shall be performed under Subcontracts. A proposed list of Subcontractors shall be submitted to CITY for approval. Proposed Subcontractors will be deemed accepted unless CITY objects in writing within five (5) days after submission by CONTRACTOR.

**ARTICLE 9  
INSURANCE AND BONDS; INDEMNIFICATION**

**9.1 Insurance to be provided by CONTRACTOR:**

**A. Evidence of Coverage.** CONTRACTOR shall, at all times, maintain in full force and effect at a minimum the insurance required by this section; and CONTRACTOR shall not allow any subcontractor to commence Work until similar insurance required of the subcontractor has been obtained and filed. An original Certificate of Insurance, and copies of all required endorsements, all in a form approved by the Risk Manager, evidencing all required coverage or policies shall be filed after the award of the bid and prior to approval of the Contract by the City Council. CONTRACTOR shall provide ten (10) Days prior written notice to CITY of any reduction of coverage limits or cancellation of the coverage or policies shall be given to the City of Roseville as Certificate holder.

**B. Qualifying Insurers.** With the exception of the State Compensation Insurance Fund, all required insurance policies shall be issued by companies licensed to do business in the State of California and who hold a current policy holders alphabetic and financial size category rating of not less than AVII according to the most recent issue of Best's Insurance Reports.

**C. Insurance Required.** Commercial General Liability, automobile liability, and worker's compensation insurance shall be maintained as follows:

1.	Commercial General Liability	\$2,000,000 each occurrence
	Minor Construction Project	\$4,000,000 aggregate
	(Projects under \$1,000,000)	
		Personal Injury:
		\$2,000,000 each occurrence
		\$4,000,000 aggregate
	Commercial General Liability for	\$5,000,000 each occurrence
	Major Construction Projects	\$10,000,000 aggregate
	(Projects over \$1,000,000)	Personal Injury:
		\$5,000,000 each occurrence
		\$10,000,000 aggregate

The Commercial General Liability policy shall include coverage or endorsements for:

- a. Completed operations.
- b. Losses related to independent contractors, products and equipment.
- c. Explosion, collapse and underground hazards.

The Commercial General Liability Insurance shall include the following, copies of which shall be provided:

- a. Inclusion of the City of Roseville, and its officers, agents, employees and volunteer, as additional insured (except for workers' compensation as respects services or operations under the Contract. The additional insured endorsement for the general liability policy shall be at least as broad as the Insurance Services Office ("ISO") CG 20 38 04 13 or an equivalent, blanket endorsement or section of the policy. Endorsements must include coverage for on-going and completed operations. Endorsements shall cover the City of Roseville, its officers, agents, employees, and volunteers.
- b. Cross liability and severability of interest clauses providing that the insurance applies separately to each insured except with respect to the limits of liability.
- c. Stipulation that the insurance is primary and noncontributory, as evidenced by a separate endorsement (CG 20 01 04 13 or an equivalent) or section of the policy, and that neither CITY nor its insurers will be called upon to contribute to a loss.
- d. Such insurance shall specifically cover the contractual liability of the CONTRACTOR.
- e. Any available insurance proceeds in excess of the specified minimum insurance coverage requirements and limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the full coverage and maximum limits of any insurance proceeds available to the named insureds, whichever is greater.
- f. Waiver of subrogation endorsement.
- g. CONTRACTOR shall furnish a certificate for the period covered.

**SPECIAL NOTICE - CLAIMS MADE COVERAGE:**

**Liability insurance coverage may not be written on a "claims made" basis. The Certificate of Insurance must clearly provide that the coverage is on an "occurrence" basis.**

2. Comprehensive Automobile Liability for bodily injury (including death) and property damage which provides total limits of not less than One Million Dollars (\$1,000,000) combined single limits per accident, applicable to all owned, non-owned, and hired vehicles.
3. Statutory Workers' Compensation and Employer's Liability Insurance, including a waiver of subrogation endorsement and a Broad Form "All-States" Endorsement for all employees engaged in services or operations under the Contract. The employer's liability insurance shall provide limits of not less than One Million Dollars (\$1,000,000) per occurrence. Both the worker's compensation and employer's liability policies shall contain the Insurer's waiver of subrogation in favor of CITY, its officers, agents, employees, and volunteers.
4. Builder's Risk/Course of Construction Insurance: CONTRACTOR shall be responsible for all loss, damage or destruction whatsoever to the Work called for by this Contract until the approval of a Notice of Completion. CONTRACTOR shall secure "All Risk" type of builder's Risk Insurance of the type covering one hundred percent (100%) of the value of the Work performed under this Contract (the value is presumed to be the Contract amount unless otherwise stated in Supplemental Conditions) and all materials, equipment, or other items to be incorporated therein while the same are located at the construction site, a bonded warehouse, or



its place of manufacture. At any time, the policy shall cover the value of the Work completed. The policy shall cover hazards including the losses due to fire, explosion, hail, rain, lightning, flood (separate insurance as needed), vandalism, malicious mischief, wind, collapse, aircraft, and smoke.

The policies providing such insurance shall name CITY as a loss payee as its respective interests may appear, and certified copies of such policies shall be filed with CITY. The maximum deductible allowable under the Builder's All Risk policy shall be five percent (5%) of the Contract amount.

Builder's Risk Insurance is not required for coverage of losses in excess of five percent (5%) of the Contract amount for damages resulting from earthquake in excess of a magnitude of 3.5 on the Richter scale, or tidal waves. Coverage in the amount of five percent (5%) of the Contract amount for such losses is required.

#### **D. Other Insurance Provisions.**

1. The requirements of the Contract Conditions as to types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of insurance by CITY, are not intended to, and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to the Contract, including, but not limited to, the provisions concerning indemnification, nor preclude CITY from taking any other action available to it under any other provision of the Contract or law.

2. CITY acknowledges that some insurance requirements contained in the Contract Conditions may be fulfilled by self-insurance on the part of CONTRACTOR. However, this shall not in any way limit liabilities assumed by CONTRACTOR under the Contract. Any self-insurance must be approved in writing by CITY, in its sole discretion and shall not reduce the limits of liability. Any deductibles or self-insured retentions ("SIR") must be declared on the certificate of insurance and approved by CITY in writing. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or CITY. CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. The failure to exercise this right shall not constitute a waiver of such right.

3. CONTRACTOR agrees to include in its contracts with all subcontractors the same requirements and provisions of this Contract, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Furthermore, CONTRACTOR shall require its subcontractors to agree to be bound to CONTRACTOR and CITY in the same manner and to the same extent as CONTRACTOR is bound to CITY under this Contract. Additionally, CONTRACTOR shall obligate its subcontractors to comply with these same provisions with respect to any tertiary subcontractor, regardless of tier. A copy of CITY's indemnity and insurance provisions will be furnished to the subcontractor or tertiary subcontractor upon request. Alternatively, CONTRACTOR may insure subcontractor(s) under its own policy.

4. CITY, its officers, agents, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; and with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Insurance Code Section 11580.04. In addition, the insurance policy may not contain language which prohibits additional insureds or other insurers from satisfying the self-insured retention or deductible.

5. The limits of insurance required in this Contract may be satisfied by a combination of primary and excess insurance. Any excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of CITY (if agreed to in a written contract) before the CITY's own insurance shall be called upon to protect it as a named insured.

6. In the event CONTRACTOR retains the Architect/Engineer, CONTRACTOR shall require its Architect/Engineer to provide professional liability (errors and omissions) insurance (certificate and additional insured endorsement) in the amount of \$2,000,000.

**7. CITY RESERVES THE RIGHT TO WITHHOLD ANY PROGRESS PAYMENTS TO CONTRACTOR IN THE EVENT OF NONCOMPLIANCE WITH ANY INSURANCE REQUIREMENTS.**

**9.2 Insurance to be provided by CITY.** [not applicable]

**9.3 Payment, Performance and Warranty Bonds.** CONTRACTOR shall furnish and deliver to CITY Performance, Labor & Materials, and Warranty Bonds issued by a surety prior to, and as a condition precedent to, commencement of the Construction Work on the Site; provided, however, the Warranty Bond shall be waived if such bond is not required pursuant to CITY's request for proposals for the Project. The Payment and Performance Bonds shall be in a penal sum equal to one hundred percent (100%) of the GMP, and the Warranty Bond shall be in the penal sum equal to ten percent (10%) of the GMP. All bonds shall be in the form as set forth in Exhibit E hereto. All premiums for the Performance, Labor & Materials, and Warranty Bonds shall be a Cost of the Work. CITY shall have the right to withhold any payment(s) under this Agreement until CONTRACTOR has fully complied with this sub-section.

**9.4 Indemnification.** To the fullest extent allowed by law, CONTRACTOR shall defend, indemnify, and hold harmless, CITY, its officers, employees, agents, and volunteers, and each and every one of them, from and against all actions, damages, claims, losses, expenses or other liabilities of every type and description, including reasonable attorney fees, to which they may be subjected or put, by reason of, or resulting from, the performance of the Work, whether upon or off the Work, including the loss of use thereof, that is caused in whole or in part by willful or reckless misconduct and/or any negligent or wrongful act or omission of CONTRACTOR, any Subcontractor, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not it is caused in part by a party indemnified

hereunder, except for such claims arising from the sole or active negligence of CITY. The parties intend that this provision shall be broadly construed.

CONTRACTOR's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnity obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 Safety Precautions and Programs.**

**10.1.1 Site Safety.** CONTRACTOR shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs.

**10.1.2 Safety Notices.** In connection with the performance of the Work, CONTRACTOR shall provide notices and comply with all Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

### **10.2 Safety of Persons and Property.**

It is the intent of the parties that CITY is not an exposing, creating, controlling, or correcting employer under California Labor Code Section 6400. In accordance with generally accepted fabrication and construction practices and all applicable Laws and Standards and Codes, CONTRACTOR shall have the authority and be solely and completely responsible for the safety of all property utilized and all persons performing under this Agreement. Moreover, the CONTRACTOR shall be the controlling employer and has the authority and responsibility to enforce safety for all fabrication, construction work, and Work performed under this Agreement. The services of CITY's contract administrator, if any, in conducting a review of CONTRACTOR's performance under this Agreement is not intended to include a review of the adequacy of CONTRACTOR's work methods, equipment or safety measures. If CITY and/or its contract administrator observes a safety violation related to the CONTRACTOR's performance under this Agreement, then CITY and/or its contract administrator will report the violation to the CONTRACTOR who is then responsible for assuring the violation is abated.

CONTRACTOR is hereby informed that work on this Project could be hazardous. CONTRACTOR shall carefully instruct all personnel performing under this Agreement in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property.

All Equipment, Work and materials provided under this Agreement shall be in strict accordance with all applicable Laws and Standards and Codes, and attention is drawn to the requirements of CAL/OSHA.

CONTRACTOR shall perform under this Agreement so as not to expose personnel to, or to discharge into the atmosphere from any materials brought to the Site by CONTRACTOR, smoke, dust, asbestos, toxic chemicals or other air contaminants in violation of applicable Laws and Standards and Codes.

**10.2.1 Reasonable Precautions.** CONTRACTOR shall take all precautions and implement all safety measures and requirements imposed by any Applicable Law. Without limiting the generality of the foregoing, CONTRACTOR shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to:

**10.2.1.1** Employees on the Work and other persons who may be affected thereby;

**10.2.1.2** The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of CONTRACTOR; and

**10.2.1.3** Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

**10.2.2 Safeguards.** CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities, and shall comply fully with the requirements of CAL/OSHA.

**10.2.3 Use of Explosives.** Use of explosives is prohibited, unless approved in advance in writing by CITY. CITY may impose reasonable conditions on the use of explosives.

**10.2.4 Remedy of Damage.** CONTRACTOR shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by CONTRACTOR, or anyone employed by or in control of CONTRACTOR, or any Subcontractor. All costs incurred by CONTRACTOR in connection with its obligations under this Section shall be cost of the Work, but shall not increase the GMP.

**10.2.5 Designation of Safety Coordinator.** [reserved]

**10.2.6 Loads.** CONTRACTOR shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger its safety.

**10.3 Security.** CONTRACTOR shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. CONTRACTOR shall furnish and install all necessary facilities to provide safe means

of access to all points where Work is being performed. CONTRACTOR shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

**10.4 Damage to Property at the Site.** CONTRACTOR shall be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of CITY or its representatives, agents or employees. The costs and expenses incurred by CONTRACTOR under this Article shall be paid as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles. If such damage or loss is caused by CONTRACTOR, payment of such costs as Cost of the Work shall be limited by the provisions of Section 2.20.5 hereof.

**10.5 Damage to Property of Others.** CONTRACTOR shall avoid damage, as a result of CONTRACTOR's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of CITY. CONTRACTOR shall repair any such damage caused by the operations of CONTRACTOR, which costs shall be paid as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

**10.6 Failure of CONTRACTOR to Repair Damage.** If CONTRACTOR fails to commence the repair of damage to property as set forth in this Article, and/or diligently pursue such repair, then CITY, after ten (10) Days prior written notice to CONTRACTOR (provided CONTRACTOR has not commenced such repair during such ten (10) Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to CONTRACTOR amounts paid or incurred by CITY in correcting such damage.

**10.7 Emergencies.** In an emergency affecting the safety of persons or property, CONTRACTOR shall act, at CONTRACTOR's discretion, to prevent threatened damage, injury or loss. Additional costs or extensions of time caused by CONTRACTOR on account of an emergency not caused by the fault or neglect of CONTRACTOR shall be determined as provided in Section 6.2 hereof.

## **ARTICLE 11 DISPUTES**

**11.1 Disputes between CITY and CONTRACTOR.** In the event of any dispute arising between CITY and CONTRACTOR regarding any part of the Contract or the Contract Documents, or the Parties' obligations or performance thereunder, and subject to any claims presentation requirements set forth in the Contract Documents, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligation hereunder notwithstanding the existence of a dispute.

**11.2 Dispute Resolution Procedures.** CONTRACTOR must submit all claims as defined in and in accordance with the claim resolution process set forth in Section 9204 of the Public

Contract Code. Each such claim must be sent to CITY by registered mail or certified mail with return receipt requested and must contain reasonable documentation to support the claim. All claims must be received prior to acceptance of the Work and will be handled in accordance with the procedures set forth in Section 9204 of the Public Contract Code.

**ARTICLE 12  
EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

**12.1 CONTRACTOR Events of Default.** The following shall be considered “CONTRACTOR Events of Default”:

**12.1.1** If CONTRACTOR fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after seven (7) Days’ notice from CITY, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

**12.1.2** If CONTRACTOR materially breaches this Agreement and fails, after seven (7) Days’ notice from CITY, to commence a cure to correct such breach and thereafter diligently pursue such cure to completion (such breach to include, but not be limited to, failure to make payment to Subcontractors for materials or labor in accordance with the respective agreements between CONTRACTOR and the Subcontractors or violation of Applicable Laws);

**12.1.3** If a custodian, trustee or receiver is appointed for CONTRACTOR, or if CONTRACTOR becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or CONTRACTOR causes or suffers an order for relief to be entered with respect to it under applicable bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for CONTRACTOR, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against CONTRACTOR, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

**12.2 Remedies of CITY upon a CONTRACTOR Event of Default.**

**12.2.1 Termination of Contract.** Upon the occurrence of a CONTRACTOR Event of Default, CITY shall have the right to terminate this Contract upon an additional seven (7) Days written notice to CONTRACTOR, provided that CONTRACTOR has not commenced a cure within such seven (7) Day period. Without prejudice to any other rights or remedies of CITY, CITY may:

**12.2.1.1** Take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by CONTRACTOR;

**12.2.1.2** Accept assignment of Subcontracts; and

**12.2.1.3** Finish the Work by whatever reasonable method CITY may deem expedient.

**12.2.1.4** When CITY terminates the Contract as aforesaid, CONTRACTOR shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the GMP exceeds costs incurred in finishing the Work, such excess shall be paid to CONTRACTOR, up to the amount due CONTRACTOR for work performed prior to termination. If such costs exceed the unpaid balance of the GMP, CONTRACTOR shall pay the difference to CITY.

**12.2.2 Recourse to Payment and Performance Bonds.** Upon the occurrence of a CONTRACTOR Event of Default and termination of this Contract by CITY, CITY may call upon the Surety to perform its/their obligations under the Payment and Performance Bonds, if applicable.

**12.3 Remedies not Exclusive.** Except as otherwise provided in this Agreement, no remedy hereunder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other available legal or equitable remedy, existing now or hereafter. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

#### **12.4 Termination or Suspension for Convenience.**

**12.4.1 Termination for Convenience.** CITY may, without cause, terminate this Contract, or any portion of Work to be performed hereunder at any time by a notice in writing from CITY to CONTRACTOR for CITY's convenience. In such case, CITY shall pay to CONTRACTOR all funds due CONTRACTOR for work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retention, shall be released within thirty (30) Days of termination of the Contract for convenience, subject to any withholding required or authorized by any Applicable Law. In no event shall such amounts owed to CONTRACTOR exceed the GMP.

**12.4.2 Suspension for Convenience.** CITY may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as CITY may determine. An adjustment shall be made for increases in the cost of performance of the Work, including Fee on the increased cost of performance, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Contract. No adjustment shall be made to the extent (1) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which CONTRACTOR is responsible or (2) that an equitable adjustment to the GMP and/or Schedule is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee.

**12.5 Termination by CONTRACTOR.** In the event that CITY and CONTRACTOR cannot agree to a revised GMP as provided in Section A of Exhibit A to this Agreement, CONTRACTOR may terminate this Agreement with 10 days written notice to CITY. In such case, CITY shall pay to CONTRACTOR all funds due CONTRACTOR for work performed up to the date of termination. In no event shall such amounts owed to CONTRACTOR exceed the GMP.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

**13.1 Governing Law.** This Contract shall be construed with and governed by the laws of the State of California.

**13.2 Successors and Assigns.** CITY and CONTRACTOR respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign the Contract without the prior written consent of the other.

**13.3 Notice.** Any notices to Parties required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

**If to CITY:**

Joel De Jong  
Park Development Project Manager  
316 Vernon Street, Ste. 400  
Roseville, CA 95678

**If to CONTRACTOR:**

Greg Witherow  
Senior Project Manager  
P.O. Box 1477  
Placerville, CA 95667

Address for Notice may be changed by Notice to the other Party.

**13.4 Prevailing Wages.** For purposes of this Agreement, CONTRACTOR and its Subcontractors shall comply with all applicable prevailing wage laws, e.g., but not limited to, California Labor Code Sections 1770 et seq. In accordance with said Section 1775, CONTRACTOR shall forfeit as a penalty to the City Two Hundred Dollars (\$200) for each calendar Day or portion thereof for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any work done on-Site under the Agreement by CONTRACTOR or by any Subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar Day or portion thereof for which each worker was paid less than the stipulated prevailing wage shall be paid to each worker by CONTRACTOR or the applicable Subcontractor.



Pursuant to the provisions of California Labor Code Sections 1773, the Department has identified the source, stated below, of the General Prevailing Rate of Wages applicable to the work to be done, for straight time, overtime, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. These wage rates may be obtained from the State Department of Industrial Relations and/or the following website address: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>, which is a part of this Agreement.

Pursuant to Labor Code Section 1773.2, General Prevailing Wage Rates set forth above, which forms a part of this Agreement, shall be posted by CONTRACTOR at a prominent place at the Site. Prevailing wage rates to be posted at the Site will be furnished by the Department. The possibility of wage increases is one of the elements to be considered by CONTRACTOR in determining its Proposal, and will not under any circumstances be considered as the basis of a claim against CITY or the Agreement.

**13.5 Modifications.** No Modifications or Change Orders shall be valid unless in writing and signed by CITY and CONTRACTOR.

**13.6 Interpretation.** Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents. In the event of any conflict between or among the Contract Documents, the provisions of this Agreement shall govern.

**13.7 Severability.** If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

**13.8 Whole Agreement.** This Agreement, the Exhibits hereto and the Contract Documents, specifications and Drawings shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein

**13.9 Accounting Records.** CONTRACTOR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to CITY. CITY and CITY's accountants shall be afforded access to CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, and CONTRACTOR shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

**13.10 Intentionally left blank.**

**13.11 No Waiver.** Neither the inspection by CITY or its agents, nor any order or certificate for payment of money, nor payment for, nor acceptance of the whole or any part of the work by CITY, nor any extensions of time, nor any position taken by CITY or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to CITY or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach.

**13.12 CONTRACTOR Shall Assume Risks.** Until the Final Completion or acceptance by CITY of all Work under this Contract, the Work shall be under CONTRACTOR's responsible care and charge. CONTRACTOR shall rebuild, repair, restore and make good all injuries, damages, corrections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work, except as otherwise stipulated.

**13.13 General Liability of CONTRACTOR.** Except as otherwise herein expressly stipulated, CONTRACTOR shall perform all the work and furnish all the labor, materials, tools power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner within the time herein specified. The mention of any specific duty or liability of CONTRACTOR shall not be construed as a limitation or restriction of any general liability or duty of CONTRACTOR and, any reference to any specific duty or liability shall be construed to be the purpose of explanation.

**13.14 Attorney's Fees and Venue.** If either Party commences any legal action against the other Party arising out of this Agreement or the performance thereof, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's fees. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. To the extent permitted by applicable law, each Party waives any defense that it may have based on lack of *in personam* jurisdiction or *forum nonconveniens*.


**13.15 Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. \_\_\_\_\_, adopted by the Council of the City of Roseville on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and CONTRACTOR has caused this Agreement to be executed.

CITY OF ROSEVILLE, a  
municipal corporation:

CARTER/KELLY, INC., a  
California corporation


BY: \_\_\_\_\_  
DOMINICK CASEY  
City Manager

BY:   
its: JAMES E. CARTER / PRESIDENT

ATTEST:

and

BY: \_\_\_\_\_  
CARMEN AVALOS  
City Clerk

BY:   
its: MAUREEN CARTER / CORP. SECRETARY

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
MICHELLE SHEIDENBERGER  
City Attorney

APPROVED AS TO SUBSTANCE

By:   
JILL GELLER  
Parks, Recreation & Libraries Director

**LIST OF EXHIBITS:**

- Exhibit A     Guaranteed Maximum Price**
- Exhibit B     Construction Allowance Items [reserved]**
- Exhibit C     Hazardous Materials**
- Exhibit D     In Lieu of Securities Escrow Agreement**
- Exhibit E     Performance, Labor & Materials, and Warranty Bonds**
- Exhibit F     CONTRACTOR's Proposal**

## EXHIBIT A

### GUARANTEED MAXIMUM PRICE, FEE, AND COST OF WORK

**A. GUARANTEED MAXIMUM PRICE:** The **Guaranteed Maximum Price** as of the date of execution of this Agreement is one million, six hundred twenty thousand, four hundred thirty eight dollars (\$1,620,438), U.S. Currency.

**B. CITY understands and agrees that the GMP provided as of the date of execution of this Agreement is an estimate by CONTRACTOR based on the CITY-directed 30% drawings and a CITY-directed hard cost construction estimate of \$1,125,000, plus CONTRACTOR's Cost Proposal as provided in Tab F of Exhibit F to this Agreement (CONTRACTOR's Cost Proposal). Following preconstruction services and further development of the Scope of Work, and when Construction Documents are 90% complete, CONTRACTOR will propose to CITY a revised GMP to be incorporated by Change Order pursuant to Article 6 of this Agreement. In the event that CITY and CONTRACTOR cannot agree to a revised GMP, CONTRACTOR shall have the right to terminate this Agreement pursuant to Section 12.5.****FEE AND CONTINGENCY:** The Fee and Contingency amounts, if any, are as stated in the Proposal.

**C. COST OF THE WORK:**

**1. "Cost of the Work."** The term "Cost of the Work" shall mean costs incurred by CONTRACTOR in the performance of the Work, that do not exceed the GMP. The following are categories of cost and expense to be paid by CITY to CONTRACTOR as Cost of the Work:

**2. Construction Costs.**

**2.1 Labor Costs.**

**2.1.1** Wages of construction workers directly employed by CONTRACTOR to perform the construction of the Work at the Site or, with CITY's agreement, at off-site workshops.

**2.1.2** Wages or salaries of CONTRACTOR's supervisory and administrative personnel when stationed at the Site and wages, salaries and other costs of project management, pre-construction services, form design, foundation engineering, manpower planning, purchasing, estimating and data processing, whether performed at the Site or in CONTRACTOR's offices, including, but not limited to services rendered during the Design Phase of the Project.

**2.1.3** Wages and salaries of CONTRACTOR's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**2.1.4** Costs paid or incurred by CONTRACTOR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in subsections 2.1.1 through 2.1.3 above.

**2.2 Subcontract Costs.** Amounts due Subcontractors in accordance with the requirements of the Subcontracts.

**2.3 Costs of Materials and Equipment Incorporated in the Completed Construction.** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

**2.4 Costs of other Materials and Equipment, Temporary Facilities, and Related Items.**

**2.4.1** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by CONTRACTOR at the Site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by CONTRACTOR. Costs for items previously used by CONTRACTOR shall mean fair market value.

**2.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by CONTRACTOR at the Site, whether rented from CONTRACTOR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rental charges for equipment owned by CONTRACTOR shall be at then prevailing rates.

**2.4.3** Costs of removal of debris from the Site.

**2.4.4** Costs of facsimiles, telegrams and long distance telephone calls, postage and delivery charges (whether originating at the Site or at the offices of CONTRACTOR or CONTRACTOR), telephone service at the Site and reasonable petty cash expenses of the Site office.

**2.5 Premiums; Taxes; Fees; Royalties.**

**2.5.1** That portion directly attributable to this Agreement of premiums for insurance and the Payment and Performance Bonds.

**2.5.2** Sales, use, gross receipts or similar taxes imposed by a governmental authority, which are related to the Work and for which CONTRACTOR is liable.

**2.5.3** Fees and assessments for any permits, licenses and inspections required by the Contract Documents.

**2.5.4** Fees of testing laboratories for tests required by the Contract Documents or government authorities.

**2.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. The costs of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against CONTRACTOR or CONTRACTOR resulting from such suits or claims and payments of settlements in connection therewith.

**2.5.6** Deposits lost for cause other than CONTRACTOR's negligence.

**2.6 Emergencies.** Costs incurred in taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property, as provided in Section 10.7 of this Agreement.

**2.7 Other Costs.** Other costs incurred in the performance of the Work, if and to the extent approved in writing by CITY, which approval shall not be unreasonably withheld.

**3. Items not Included in Cost of the Work.**

**3.1** Salaries and other compensation of CONTRACTOR's personnel stationed at CONTRACTOR's principal office or offices other than the Site, except as specifically provided in subsections 2.1.2 and 2.1.3 above.

**3.2** Expenses of CONTRACTOR's principal office and offices, other than the Site office.

**3.3** Overhead and general expenses, except as may be included in Sections 1 and 2 above.

**3.4** The capital expenses of CONTRACTOR, including interest on capital employed for the Work.

**3.5** Costs that would cause the GMP to be exceeded.

**EXHIBIT B**  
**CONSTRUCTION ALLOWANCE ITEMS**

**(reserved)**



## EXHIBIT C

### HAZARDOUS MATERIALS

#### 1. Certain Definitions.

##### 1.1 “Hazardous Materials” means any substance:

1.1.1 the presence of which requires investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

1.1.2 which is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§9601 *et seq.* (“CERCLA”), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 USC §§6901 *et seq.* (“RCRA”);

1.1.3 which is petroleum, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

1.1.4 which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality;

1.1.5 the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; or

1.1.6 the presence of which on adjacent properties could constitute a trespass by CONTRACTOR or CITY.

1.2 “Underground Storage Tank” shall have the definition assigned to that term by RCRA §9001, 42 USC §6991, and also shall include:

1.2.1 any tank of 1,100 gallons or less capacity used for storing motor fuel;

1.2.2 any tank used for storing heating oil for consumption on the premises where stored;

1.2.3 any septic tank; and

1.2.4 any pipes connected to items 1.2.1-1.2.3.

**1.3 “Environmental Requirements”** means all Applicable Laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all federal, state or local governmental agencies or other instrumentalities and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

**1.3.1** all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

**1.3.2** all requirements pertaining to the protection of the health and safety of employees or the public.

**1.4 “Environmental Damages”** means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney's fees, which are incurred at any time as a result of the existence of Hazardous Materials upon, about or beneath the Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

**1.4.1** damages for personal injury, or injury to property or to natural resources occurring upon or off the Site;

**1.4.2** fees incurred for the services of attorneys, consultants, CONTRACTOR, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements; and

**1.4.3** liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in subparagraph 1.4.2.

**1.5 “Environmental Conditions”** means collectively, Hazardous Materials and Underground Storage Tanks existing on the Site and not brought there by CONTRACTOR or any Subcontractor.

## **2. Investigation of Site.**

**2.1** Upon written notice from CITY, CONTRACTOR shall prepare for approval and execution by CITY, one or more contracts (“Environmental Contracts”) with suitably qualified consultants and/or engineers (“Environmental Engineers”), for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation approved by CITY, and may provide for conducting the investigation and testing in phases acceptable to CITY. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their

tests and inspections at the Site as soon as CITY is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that CONTRACTOR, acting as agent of CITY, shall coordinate the activities of the Environmental Engineers.

**2.2** The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans (“Environmental Assessments”) as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions (“Remedial Actions”) required for the response, removal, cleanup or remediation of such Environmental Conditions (i) which are required by Environmental Requirements, or (ii) which are reasonably necessary to mitigate Environmental Damages.

**2.3** The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide CITY and CONTRACTOR with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. CONTRACTOR shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to CITY a written report setting forth CONTRACTOR's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Schedule and the progress of the Work.

**2.4** The Environmental Contracts shall provide that it shall be the responsibility of the Environmental Engineers to give any necessary notice to the appropriate regulatory agency or agencies of the presence of any Environmental Conditions; to pursue all necessary negotiations with such agencies concerning preparation and approval of a plan for clean-up to the extent required; and to obtain all necessary permits to perform any Remedial Actions.

### **3. Remedial Actions.**

**3.1** If so instructed by CITY, based upon the results of the Environmental Assessments, CONTRACTOR shall, as agent for CITY, obtain bids from remediation contractors (“Remediation Contractors”) suitably qualified and approved by CITY, to perform the Remedial Actions selected by CITY and shall submit such bids to CITY, together with CONTRACTOR's recommendation of the Remediation Contractor(s) to be retained. If CITY elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, CITY will so advise CONTRACTOR in a written notice on or before the date which is sixty (60) Days after receipt of the foregoing matters from CONTRACTOR. Promptly after receipt of such notice, CONTRACTOR shall prepare for CITY's execution remediation contracts (“Remediation Contracts”) with the Remediation Contractors identified in such notice.

**3.2** CONTRACTOR, as agent for CITY, shall be responsible for coordinating the work and services performed by the Remediation Contractors, and coordinating such remediation work with the Work.

**3.3** If in the course of performance of the Work, CONTRACTOR encounters on the Site any Hazardous Materials not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, CONTRACTOR shall immediately suspend the Work in the area affected and promptly thereafter report the condition to CITY.

#### **4. Payments: Liability of CONTRACTOR.**

**4.1** All payments due under the Environmental Contracts and the Remediation Contracts shall be made by CITY directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by CONTRACTOR prior to submission to CITY.

**4.2** All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the GMP, and shall be the sole responsibility of CITY, except as expressly provided otherwise in Section 5 hereof.

**4.3** It is understood and agreed that with respect to any Environmental Conditions existing on the Site, CONTRACTOR is not, and shall not be deemed to be, a generator, arranger, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that CONTRACTOR shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

**4.4** CITY shall indemnify, defend and hold harmless CONTRACTOR, from and against any Environmental Damages asserted against or sustained by CONTRACTOR as a result of CONTRACTOR being deemed or determined to be a generator, arranger, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

#### **5. Environmental Responsibilities of CONTRACTOR.**

**5.1** CITY acknowledges and agrees that CONTRACTOR shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation CONTRACTOR and any required approval of any applicable government agency. CONTRACTOR agrees to use good faith diligent efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

**5.2** CONTRACTOR shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. CONTRACTOR shall comply, and shall cause all Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

**5.3** CONTRACTOR shall indemnify, defend and hold harmless the Indemnified Parties from and against any Environmental Damages asserted against or sustained by such parties as a result of any Environmental Conditions caused or created by CONTRACTOR or any Subcontractor, or of any violation by CONTRACTOR or the Subcontractors, of any Environmental Requirement arising out of the performance of the Work.

**EXHIBIT D**

**IN LIEU OF SECURITIES ESCROW AGREEMENT**

**(form of agreement follows this page)  
(use is optional by Contractor)**

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

**(Project: \_\_\_\_\_)**

THIS ESCROW AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the:

City of Roseville, whose address is:

311 Vernon Street  
Roseville, CA 95678

(hereinafter called "CITY"); and

\_\_\_\_\_, whose address is:

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

(hereinafter called "CONTRACTOR"); and

\_\_\_\_\_, whose address is:

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

(hereinafter called "ESCROW AGENT").

For the consideration hereinafter set forth, CITY, CONTRACTOR, and ESCROW AGENT agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities, subject to prior approval of CITY, with ESCROW AGENT, as a substitute for retention earnings required to be withheld by CITY pursuant to the contract for public works entered into between the CITY and CONTRACTOR for the Project in the amount of \_\_\_\_\_

\_\_\_\_\_ dollars (\$ \_\_\_\_\_) dated \_\_\_\_\_, (hereinafter referred to as the “Contract”). Alternatively, on written request of CONTRACTOR, CITY shall make payments of the retention earnings directly to the ESCROW AGENT.

When CONTRACTOR deposits the securities as a substitute for Contract earnings, the ESCROW AGENT shall notify CITY within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between CITY and CONTRACTOR. Securities shall be held in the name of ESCROW AGENT, and shall designate CONTRACTOR as the beneficial owner, and shall be limited to those types of acceptable securities as described in Public Contract Code Section 22300.

2. CITY shall make progress payments to CONTRACTOR for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that ESCROW AGENT holds securities in the form and amount specified above.

3. When CITY makes payment of retentions earned directly to ESCROW AGENT, ESCROW AGENT shall hold them for the benefit of CONTRACTOR until the time that the escrow created under this Agreement is terminated. CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when CITY pays ESCROW AGENT directly.

4. CONTRACTOR shall be responsible for paying all fees for the expenses incurred by ESCROW AGENT in administering the Escrow Account and all expenses of CITY. These expenses and payment terms shall be determined by CITY, CONTRACTOR, and ESCROW AGENT.



5. The interest earned on the securities or the money market accounts held in escrow and all interest earning on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to CITY.

6. CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to ESCROW AGENT accompanied by written authorization from CITY to ESCROW AGENT that CITY consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

7. CITY shall have a right to draw upon the securities in the event of default by CONTRACTOR. Upon seven (7) days' written notice to ESCROW AGENT from CITY of the default, ESCROW AGENT shall immediately convert the securities to cash and shall distribute the cash as instructed by CITY.

8. Only upon receipt of written notification from CITY certifying that the Contract is final and complete, and that CONTRACTOR has complied with all requirements and procedures applicable to the Contract, ESCROW AGENT shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

9. ESCROW AGENT shall rely on the written notifications from CITY and CONTRACTOR pursuant to Sections (5) to (8), inclusive, of this Agreement and CONTRACTOR shall hold ESCROW AGENT harmless from ESCROW AGENT's release and disbursement of the securities and interest as set forth above.

10. The parties hereto mutually agree that this Agreement is substantially similar to the form under Public Contracts Code Section 22300.

11. The names of the persons who are authorized to give written notice or to receive written notice on behalf of CITY and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

**On behalf of CITY:**

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Address

**On behalf of CONTRACTOR:**

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Address

**On behalf of ESCROW AGENT:**

\_\_\_\_\_  
Title  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Address

12. At the time the Escrow Account is opened, CITY and CONTRACTOR shall deliver to ESCROW AGENT a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk under the authority of Resolution No. 87-141, adopted by the Council of the City of Roseville on the 5th day of August, 1987, and CONTRACTOR and ESCROW AGENT have authorized the execution of this Agreement.

CITY OF ROSEVILLE, a  
municipal corporation:

CONTRACTOR:  
CARTER/KELLY, INC., a California  
corporation

BY: \_\_\_\_\_  
DOMINICK CASEY  
City Manager

BY: \_\_\_\_\_  
its: \_\_\_\_\_

ATTEST:

and

BY: \_\_\_\_\_  
CARMEN AVALOS  
City Clerk

BY: \_\_\_\_\_  
its: \_\_\_\_\_

APPROVED AS TO FORM:

ESCROW AGENT:

BY: \_\_\_\_\_  
MICHELLE SHEIDENBERGER  
City Attorney

BY: \_\_\_\_\_  
its: \_\_\_\_\_

APPROVED AS TO SUBSTANCE:

and

BY: \_\_\_\_\_  
DENNIS KAUFFMAN  
Assistant City Manager/Chief Financial Officer

BY: \_\_\_\_\_  
its: \_\_\_\_\_

ACKNOWLEDGED BY ADMINISTERING DEPARTMENT:

BY: \_\_\_\_\_

JILL GELLER  
Parks, Recreation & Libraries Director

**EXHIBIT F**  
**CONTRACTOR'S PROPOSAL**



(530) 621-0950  
 P.O. Box 1477 • Placerville, CA 95667  
 Contractors License #407415

**Tab F: Cost Proposal**

**FEE STRUCTURE**

Proposal Item	Description	Unit
1	Preconstruction Services: Value Engineering, Constructability, etc.. ONE TIME FLAT FEE	\$5,000
2	Estimated Construction Cost - Per the RFP	\$1,125,000
3	General Conditions (To include: Onsite Supervision, Temporary Facilities, Temporary Fencing, Portable Bathroom, Dumpsters, final cleaning, winterization, SWPPP)	20.00% \$225,000
	<b>Subtotal</b>	
4	GC Payment and Performance Bonds	1.00%
	<b>Subtotal</b>	<b>\$11,250</b>
5	Insurance (Including Flood and Earthquake)	1.00%
	<b>Subtotal</b>	<b>\$11,250</b>
6	Builder's Risk Insurance (Owners Option)	0.50%
	<b>Subtotal</b>	<b>\$5,625</b>
7	Overhead and Profit	8.00%
	<b>Subtotal</b>	<b>\$90,000</b>
8	<b>Estimated Final Cost of Construction (Sum of Proposal Items 1-7)</b>	<b>\$1,473,125</b>
9	Design Contingency (E&O) Percentage Unused contingency returned to the owner	5.00% \$73,656
10	Construction Contingency Percentage Unused contingency returned to the owner	5.00% \$73,656
11	Total Estimated GMP - Including Contingency	<b>\$1,620,438</b> <b>Under Budget</b>

*Used \$1,125,000 as Hard Cost*