



CONTRACT DOCUMENTS FOR

DESIGN-ASSIST AND CONSTRUCTION OF

WESTSIDE TANKS AND PUMP STATION PROJECT

VOLUME 2 of 4:

AGREEMENT

INCLUDING:

Agreement and Agreement Exhibits

May 6, 2020

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DESIGN-ASSIST CONSTRUCTION AGREEMENT

WESTSIDE TANKS AND PUMP STATION

This Design-Assist Construction Agreement (“Agreement”) is made and entered into on this ____ day of _____, 20____, by and between the CITY of Roseville, a municipal corporation (“CITY”), and Auburn Constructors, LLC (CSLB License #_1043407 A, B, C10), doing business as a Limited Liability Corporation hereinafter referred to as “CONTRACTOR”).

RECITALS

WHEREAS, the CITY has issued a Request for Proposals (“RFP”) pursuant to which CITY solicited proposals from design-assist contractors to construct the Westside Tanks and Pump Station Project (Project); and

WHEREAS, CONTRACTOR has submitted a Proposal, dated __January 30, 2020__ attached hereto and made a part hereof as Exhibit B – Scope of Work from Contractor’s Technical Proposal, 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 OF LANGUAGE USED, WORDS AND TERMS

Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine and feminine of the words and terms.

The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect to authorize an exercise of professional judgment by the CITY, Construction Manager or Engineer. The adjectives/terms “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” and “of like effect” are used to describe an action or determination of the CITY, Construction Manager or Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term is not intended to and shall not be effective to assign to CITY, Construction Manager or Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority contrary to the other provisions of the Contract Documents.

Specification Section Paragraphs entitled "Section Includes" summarize briefly what is generally included in the section. Requirements of Specifications are not limited by "Section Includes" paragraphs.

Specifications and Drawings have been partially streamlined by intentionally omitting words and phrases, such as "the Contractor shall," "in conformity therewith," "shall be" following "as indicated," "a," "an," "the" and "all." The phrases "by CITY’s Representative", “by Engineer”, and “by Construction Manager” modify words such as "accepted," "directed," "selected," "inspected," "permitted," “submit”,

“report”, and “satisfactory” when they are unmodified. Words "Contractor shall" are implied when direction is stated.

Colons (:) are used to introduce a list of particulars, an amplification, or an illustrative quotation. When used after designation of product, colons are used in place of words “shall be.”

Whether the term or phrase is capitalized or in all capitals (for example, Contractor or CONTRACTOR) in the Contract Documents shall be deemed to be the same for purposes of the Definitions of Language Used, Words and Terms.

- 1.1. **“Agreement” or “Contract”** means this Design-Assist Construction Agreement, its exhibits, and all amendments and/or modifications hereto executed by the parties. The defined terms “Contract” and “Agreement” may be used throughout interchangeably and should be considered as one in the same defined term.
- 1.2. **“Allowance” or “Construction Allowance”** is an amount of money set aside under the Contract for a special purpose identified and defined in the Contract Documents. Voluntary Allowance items are described by Contractor in Exhibit C – Guaranteed Maximum Price, Fee, and Cost of Work and are included in the total GMP.
- 1.3. **“Applicable Laws”** means all laws, codes, ordinances, rules and regulations of **governmental** authorities having jurisdiction over the Site and/or the Work.
- 1.4. **“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 Article 8 hereof.
- 1.5. **“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.
- 1.6. **“Asbestos”** is any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.7. **“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 Article 4.2.1.
- 1.8. **“Beneficial Occupancy” or “Beneficial Occupation”** is a term that can be used to describe a distinct portion of the Work, that in the CITY’s Representative’s opinion, is capable of being used for its intended purpose, even though it may have some minor deficiencies, including outstanding punch list items to complete.
- 1.9. **“Business Day”** means any day when the office of the CITY Clerk of the CITY of Roseville is open for business.
- 1.10. **“Certificate of Substantial Completion”** means a certificate prepared by CONTRACTOR in accordance with Article 8.13 and forwarded to CITY.
- 1.11. **“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 8.14 hereof.
- 1.12. **“Change Directive”, “Change Order”, or “Construction Change Directive (CCD)”** is a written order prepared by the Construction Manager and signed by the CITY, directing a change

in the Work and stating a proposed basis for adjustment, if any, in the Contract GMP amount or Contract Time.

- 1.13. **“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.
- 1.14. **“CITY”** refers to the CITY of Roseville, the governing body of which is termed the “CITY Council”.
- 1.15. **“CITY’s Representative”** is the person(s) designated by the Director of the CITY’s Environmental Utilities Department who has been duly authorized to exercise control and supervision of the Work. A CITY’s Representative generally will be either a professional engineer or architect, depending on the nature of the Work, but is not required to be a professional engineer or architect. The CITY may change the individual(s) acting as the CITY’s Representative(s), or delegate one or more specific functions to one or more specific CITY’s Representative at any time without notice and without liability to Contractor. Each CITY’s Representative is the beneficiary of all Contractor obligations to CITY, including without limitation, all releases and indemnities
- 1.16. **“Claim”**. A demand or assertion by the Contractor seeking an adjustment of the GMP or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- 1.17. **“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 Article 2.12.
- 1.18. **“Construction Consultant”**. The CITY may retain a Construction Consultant(s) as it deems necessary to assist/advise the CITY staff and/or other CITY consultants during the progress of the Work. Any Construction Consultant retained by CITY for this Project will not have any formal contract administration responsibilities. The Construction Consultant(s) is the beneficiary of all Contractor obligations to CITY, including without limitation, all releases and indemnities.
- 1.19. **“Construction Manager”** is the person designated, in writing, by the CITY to act as its representative at the Site and to perform administrative functions relating to this Agreement. The Construction Manager shall also furnish inspection services as provided by the contract between the Construction Manager and the CITY. All contact between the Contractor and the CITY shall be through the Construction Manager; unless otherwise specified or directed. Only the CITY may modify the Agreement. The CITY may assign all or part of the CITY’s Representative’s duties, rights and responsibilities to the Construction Manager. The Construction Manager is the beneficiary of all Contractor obligations to CITY, including without limitation, all releases and indemnities.
- 1.20. **“Construction Phase”** means the period beginning with the issuance of the Construction Notice to Proceed (NTP) and ending on the date of Final Completion of the Project.
- 1.21. **“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.
- 1.22. **“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 9.7-CHANGE ORDERS ON ACCOUNT OF CONTINGENCIES.

- 1.23. **“Contract”** means this Design-Assist Construction Agreement, its exhibits, and all amendments and/or modifications hereto executed by the parties. The defined terms “Contract” and “Agreement” may be used throughout interchangeably and should be considered as one in the same defined term.
- 1.24. **“Contract Documents”** means 1) the Request for Proposals (and Contractor’s Proposal), 2) this document (Agreement) and its Exhibits, 3) the Technical Specifications, and 4) Project Drawings, all of which 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.
- 1.25. **“Contract Time”** The number of days or the dates stated in the Agreement to: (i) achieve Milestones, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Construction Manager’s written recommendation of final payment. See Exhibit H - COMPLETION TIMES AND LIQUIDATED DAMAGES.
- 1.26. **“CONTRACTOR”** means the individual or entity identified in the preamble to this Agreement.
- 1.27. **“CONTRACTOR’S Plant and Equipment”** means the equipment, material, supplies and all other items, except labor, brought onto the Site by the Contractor to carry out the Work, but not to be incorporated in the Work.
- 1.28. **“CONTRACTOR Event of Default”** shall have the meaning set forth in Article 14.1 hereof.
- 1.29. **“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 C.
- 1.30. **“County”** refers to Placer County where the Site is located.
- 1.31. **“CPM”** means a critical path method schedule in the form of precedents, networks and time sequences.
- 1.32. **“Day” or “Days”** means calendar days, including legal holidays, Saturdays and Sundays, unless specifically noted otherwise. The day shall be 24 hours measured from midnight to the next midnight.
- 1.33. **“Defective Work”** refers to Work that does not meet the requirements of the Contract Documents and has been identified to the Contractor by the Construction Manager in writing because the Work:
 - a. Does not meet the requirements of or conform to the Contract Documents; or
 - b. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. Has been damaged prior to Construction Manager’s or Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY as of the Substantial Completion date in accordance with the Contract Documents).

Punch list or other minor corrective items of work that are not in compliance with the Contract Documents do not meet to the definition of “Defective Work” as used in these Contract Documents. For work to be deemed “Defective Work,” the Construction Manager must have notified the Contractor in writing of a defective item of the Work.

- 1.34. **“Design-Assist Team”** includes the following: Architect/Engineer; CONTRACTOR; and/or others as coordinated by CONTRACTOR and CITY.
- 1.35. **“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 Article 2.12.
- 1.36. **“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 Article 2.12.
- 1.37. **“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.
- 1.38. **“Direct”** is an action of the CITY or Construction Manager by which the Contractor is ordered to perform or refrain from performing work under the Agreement.
- 1.39. **“Drawings”**, also referred to as **“Plans”** are that part of the Contract Documents consisting of the graphical and technical requirements of the Agreement as included on the plan, profile, section and detail sheets, included in a response to Request for Information or any revisions issued by Engineer. Drawings, or reproductions thereof, show the location, character, dimensions and details of the Work to be done. Shop drawings and other Contractor submittals are not Drawings as so defined.
- 1.40. **“Engineer”**. The engineer, architect or specialty design consultant designated by the CITY to have design control over the Work or a specified portion of the Work, acting either directly or through duly authorized representatives. Such representatives shall act within the scope of the particular duties delegated to them. The Engineer may also furnish inspection services as provided by the Agreement. The Engineer may also be referred to as the “CITY's Representative” if the definition is used in an Engineer role and capacity. The CITY may assign all or part of the CITY's Representative's duties, rights and responsibilities to the Engineer. The Engineer is the beneficiary of all Contractor obligations to CITY, including without limitation, all releases and indemnities.
- 1.41. **“Equipment”** (Construction) is all machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated. Equipment (Installation) is all material or articles used in equipping a facility or apparatus required to fulfill a functional design.
- 1.42. **“Execution”** means field or site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the Site.

- 1.43. **“Excusable Delay”** shall have the meaning set forth in Article 7.3.3.
- 1.44. **“Extra Work”** is new or unforeseen work, or added work of a different character or function; or that involves revisions of the details of the Work on which Contractor based its GMP. If the extra work increases the Contractor’s Cost of the Work and/or time to perform the Work, and is approved by the CITY via a written Change Order, the GMP and/or Contract Times shall be adjusted as provided in the Contract Documents. Extra Work shall not include Work which is shown, detailed or specified in the Contract Documents or which constitutes “Incidental Work” as defined within the Contract Documents definition below.
- 1.45. **“Fee”**, if applicable, means the fee payable to CONTRACTOR pursuant to this Agreement and as part of the GMP, if shown on Exhibit C – GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE attached hereto.
- 1.46. **“Field Directive”** is a change in the scope of the Agreement that does not cause an increase in the Cost of the Work, nor an adjustment to the GMP or the Contract Time(s), unless the Construction Manager determines the Field Directive warrants a Change Order.
- 1.47. **“Field Order”** is a written instruction given to the Contractor by Construction Manager authorizing work that is a change to the scope of Work to be performed on a time and material basis or a lump sum cost agreed to between CITY and the Contractor and documented in a Change Order.
- 1.48. **“Final Acceptance”** is the formal approval by CITY in accepting a portion of the Contractor’s work as completed.
- 1.49. **“Final Completion”** means the date when the work is 100% complete in accordance with the terms and conditions of the Contract Documents, including completion of all Punch list items as certified by the Construction Manager.
- 1.50. **“Force Majeure”** includes industry wide or nationwide 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. It is expressly agreed that the following matters shall not constitute Force Majeure:
- a. Lack of or inability to use funds for any reason;
 - b. Any occurrence which results from the wrongful act, or wrongful omission, of the affected party, or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
 - c. Any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
 - d. An event or circumstance, where the event or circumstance, or its effects on the affected party, or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person;
 - e. Breakdown of Contractor’s Equipment;
 - f. Strike or industrial action of Contractor’s employees or those of subcontractors; or
 - g. Adverse weather conditions including, without limitation, wet weather, unless the

weather is unusually severe for the Site.

- 1.51. **“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.
- 1.52. **“Guaranteed Maximum Price”** or **“GMP”** means the amount set forth on Exhibit C- GUARANTEED MAXIMUM PRICE, FEE, AND COST OF WORK hereto, which may be increased or decreased in accordance with the provisions of the Contract Documents.
- 1.53. **“Hazardous Materials”** means those items identified on Exhibit E-HAZARDOUS MATERIALS hereto.
- 1.54. **“Holidays”** are the legal holidays as designated by the CITY including: New Year’s Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.
- 1.55. **Incidental Work.** Incidental work includes reasonably implied parts of the not shown on Drawings nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Drawings or described in the Specifications to provide a complete installation which is fully connected and tied into the existing facilities and processes and is fully functional and operational. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the GMP. Incidental work shall be performed by Contractor and included in the Cost of the Work without an increase in the GMP.
- 1.56. **“Indemnified Parties”** includes, but is not limited to, CITY, its agents, officers, employees, and volunteers.
- 1.57. **“Inspector”** shall mean the person(s), firm(s), or agency(ies) employed by the CITY to perform inspection during construction of the Work, under the direction of the Construction Manager. It shall also mean any representative of the CITY who will perform inspections of the Work for code compliance and quality assurance reporting in addition to those inspections performed by the CITY’s Representative and/or the Engineer. Said inspector may be the Construction Manager or may be another representative of the CITY.
- 1.58. **“Liquidated Damages”** means the damages payable by CONTRACTOR to CITY in the event CONTRACTOR does not achieve project Milestones Final Completion of the Project by the date required on the Schedule, as adjusted, as more fully described in Article 7.5 and Exhibit H- COMPLETION TIMES AND LIQUIDATED DAMAGES hereof.
- 1.59. **“Modification”** means an amendment to this Agreement executed by the parties after the date hereof.
- 1.60. **“Non-Excusable Delay”** shall have the meaning set forth in Article 7.3.2.
- 1.61. **“Notice of Completion”** is the formal action taken by the CITY in determining that the Contractor’s Work has been completed, or as delegated pursuant to a CITY Council resolution, accepting the Work as fully completed. The written notice is signed by the CITY and filed with the County Recorder.
- 1.62. **“Notice to Proceed”** (NTP) is the written notice given by the CITY to the Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
- 1.63. **“Or Equal”** means any product, equipment, material, thing, service, mean/method or service which is proposed by the Contractor for use in the Work, which is equal to or better than, and is

as suitable as the product, equipment, material, thing, service, mean/method or service specified in the Contract Documents as to function, performance, reliability, quality, schedule and general configuration. Any “or equal” substitutions must be approved by the CITY.

- 1.64. **“Owner”** refers to the CITY, or authorized representative as approved by the CITY.
- 1.65. **“Party”** shall mean CITY or CONTRACTOR individually, and **“Parties”** shall mean CITY and CONTRACTOR collectively.
- 1.66. **“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 G-BOND FORMS.
- 1.67. **“Plans”**. See “Drawings”.
- 1.68. **“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.
- 1.69. **“Project Manager”** means the person assigned by the Director of the CITY’s administering department to monitor the Project and Work.
- 1.70. **“Proposal”** is the offer of a Proposer to perform the Work pursuant to completed prescribed Bid Proposal requirements and forms, properly executed and guaranteed, and timely submitted.
- 1.71. **“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.
- 1.72. **“Reference Specifications”** are those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents.
- 1.73. **“Request for Information”** also referred to as “Request for Clarification”. A Request for Information (RFI) is issued by the Contractor to the Construction Manager requesting additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems which have arisen under field conditions. A RFI is not to be used for request for materials/equipment substitutions or value engineering/cost reduction incentive proposals.
- 1.74. **“Request for Quotation”** is a request for a proposed cost made to the Contractor by the CITY to add, delete or change the Work. A Request for Quote (RFQ) shall not be deemed to be a direction to proceed with any addition, deletion or change to the Work.
- 1.75. **“Retention”** means the amount withheld from progress payments from CITY to CONTRACTOR from time to time, as more fully described in Article 8.6-RETENTION, ESCROW AGREEMENT, FINAL PAYMENTS hereof.
- 1.76. **“Samples”** refers to physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.77. **“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.

- 1.78. **“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.
- 1.79. **“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 9-CHANGES IN THE WORK.
- 1.80. **“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.
- 1.81. **“Shop Drawings (Submittals)”** are drawings, diagrams, illustrations, schedules, performance charts, instructions, brochures, and other data which are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Work.
- 1.82. **“Site”** is the real property on which the Project will be located.
- 1.83. **“Specifications”** are that part of the Contract Documents consisting of written descriptions of the technical features of materials, equipment, construction systems, standards, and workmanship.
- 1.84. **“Specify”** refers to information described, shown, noted or presented in any manner in any part of the Agreement.
- 1.85. **“State”** is the State of California.
- 1.86. **“State of California Specifications”** are the State of California Department of Transportation Standard Specifications in effect as documented in the Specifications and/or Drawings. Also referred to as State Standard Specifications and Caltrans Standard Specifications.
- 1.87. **“Subcontract”** means an agreement between CONTRACTOR and another person or entity engaged to perform a portion of the Work.
- 1.88. **“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.
- 1.89. **“Subcontractor-KEY”**. Key subcontractors are defined as a subcontractor who will perform greater than or equal to twenty-five percent (5% of the GMP.
- 1.90. **“Subcontractor-MAJOR”**. Major subcontractors are defined as a subcontractor who will perform greater than five percent (20%) of the GMP.
- 1.91. **“Subcontractor-LISTED”**. Listed subcontractors are defined as a subcontractor who will perform greater than one half percent (>0.5%) of the GMP.
- 1.92. **“Submittals”** are the information which is specified for submission to the Construction Manager in accordance with the Contract Documents.
- 1.93. **“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. Determination of Substantial Completion is solely at the discretion of the CITY. Substantial Completion does not mean complete in accordance with the Agreement nor shall Substantial Completion of all or any part of the Project entitle the Contractor to Final Completion under the Agreement.

- 1.94. **“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.
- 1.95. **“Surveyor”** means a land surveyor licensed in the State of California.
- 1.96. **“Trade Names”**. Where a certain product is called by its Trade Name, it is intended as a guide for type and quality.
- 1.97. **“Typical Details”** are details of standard structures, devices or instructions referred to on the Plans and Specifications by title or number and developed by the Engineer.
- 1.98. **“Underground Facilities”** means all underground pipelines, including but not limited to, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electrical, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 1.99. **“Unit Price Work”** is work to be paid for on the basis of unit prices.
- 1.100. **“Utility”** is a public or private fixed works for, including but not limited to, the transportation of fluids, gasses, power, signals, or communications.
- 1.101. **“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.
- 1.102. **“Work Day”**. A working day is defined as any day, except Saturdays, Sundays and CITY’s Legal Holidays. Any work scheduled by the Contractor on non-working days (Saturdays, Sundays, and CITY Legal Holidays) shall be verified with the CITY at least 72 hours in advance. Depending on the circumstances, the CITY may request Contractor compensation for inspection work, at an hourly rate, for any work performed on non-working days and for overtime.

ARTICLE 2 - SCOPE OF WORK / PROJECT REQUIREMENTS

2.1 Scope of Work Summary

The CITY, in conjunction with its Engineer and other consultants, developed the Design-Assist and Construction Contract Documents for the Westside Tanks and Pump Station Project. The Work includes but is not limited to Construction of two (2) new six (6) million gallon water storage tanks, New CMU block Booster Pump Station building and equipment, Tank valve vault, Electrical site work and 1,500 kW standby diesel generator, Electrical switchgear, Instrumentation and Controls, Contractor Design Assist Responsibilities, and all other miscellaneous improvements in support of the Project, including asset management, start up and testing to provide a complete, integrated and operational system in all respects.

Based on the Final Design Submittal, and in accordance with the Contract Documents, the Contractor is a Design-Assist Team member with responsibility to complete the following design assist activities. Coordination with other members of the Design-Assist Team will be required; the City, Engineer, Construction Manager and possibly other personnel that have regulatory or funding authority.

- A. Conduct a constructability review of the Final Design Submittal Drawings and Specifications, and submit comments and identified mitigation solutions to the City.
- B. Identify cost savings and added value alternative design/construction solutions, and submit to the City for evaluation.
- C. Develop detailed cost estimates for identified alternatives when requested by City for the City's evaluation.
- D. Identify construction sequencing and the impacts of the identified alternatives on the sequencing.
- E. Develop a detailed schedule and the impacts of the identified alternatives on the schedule.
- F. Participate in a cooperative partnership relationship with City, Engineer, and Construction Manager to develop a comprehensive construction plan to address project risk and minimize existing facility disruptions.
- G. Participate in up to eight (8) Final Design Coordination Meetings lasting up to four (4) hours each to present and work collaboratively to allow for issuance of the Project Drawings and Specifications for construction.

Note that the 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, the 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 Engineer's 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's Representative and the Engineer.

2.2 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, Local Ordinances, 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 9- CHANGES IN THE WORK hereof.

2.3 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.

2.4 Execution, Correlation and Intent

2.4.1 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.

2.4.2 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. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract will be furnished and performed whether or not specifically called for. When words or phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning

2.4.3 Organization of Material.

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.

2.4.4 Resolving Conflicts

In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

- A. Permits from other agencies specifically required for the performance of the Work as may be required by law;
- B. Supplemental Agreements and Change Orders, the one dated later having the precedence over another dated earlier;
- C. Agreement;
- D. General Requirements (Division 1);
- E. Technical Specifications (Division 2 and all other Divisions following);
- F. Contract Drawings;
- G. CITY of Roseville's most current version of Construction Standards and Design Standards and Amendments to the Current Version
- H. Other Referenced Standard Specifications;
- I. Other Referenced Standard Plans.

With reference to the Drawings, the order of precedence is as follows:

- A. Addenda/Change Order drawings govern over any other drawings;
- B. Enumerated dimensions govern over scaled dimensions;
- C. Detail drawings govern over general drawings; and

D. Contract Drawings govern over standard drawings/plans.

The provisions of the Contract Documents shall take precedence over any Laws or Regulations applicable to the performance of the work unless such an interpretation of the provisions of the Contract Documents would result in a violation of such Law or Regulation.

2.4.5 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.

2.5 Contractor Services and Facilities

2.5.1 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.

2.5.2 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.

2.5.3 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.

2.5.4 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.

2.5.5 Construction Documents Coordination. [reserved]

2.5.6 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.

2.5.7 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.

2.5.8 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.

2.6 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.

2.7 Local Conditions; Environmental Site Conditions

2.7.1 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.

2.7.2 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 E-HAZARDOUS MATERIALS hereto, and the only duties and responsibilities of CONTRACTOR in connection therewith are as therein specified, notwithstanding any other provision of this Agreement.

2.8 Legal Requirements

CONTRACTOR shall comply with all Applicable Laws, and shall give applicable **notices** pertaining thereto.

2.8.1 Governmental Approvals

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 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.

2.8.2 Permits, Fees and Notices

Unless otherwise provided in the Contract Documents, and subject to the provisions of Article 2.8-Legal Requirements 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.

2.8.3 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.

2.9 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 Article 11.13-Payment, Performance, and Warranty Bonds and Exhibit G-BOND FORMS regarding Warranty Bond requirements.

2.10 Use of Site.

2.10.1 Beneficial Use

CITY shall be permitted beneficial use of the Work.

2.10.2 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.

2.10.3 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 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.

2.10.4 Noise and Night Work

CONTRACTOR shall comply with CITY's noise ordinance.

2.11 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

2.12 Ownership of Documents and Materials, and Confidentiality

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.

2.13 Value Engineering

CONTRACTOR shall suggest to CITY value engineering to reduce the cost of the Project, which CITY may accept at its sole discretion.

2.13.1 Acceptance of Value Suggestions

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.

2.13.2 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.

2.14 Design Development Documents and Construction Documents.

2.14.1 General

The Design-Assist Team understands that all construction documents, working drawings and specifications must be coordinated with, submitted to, 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 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.

2.14.2 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 9-CHANGES IN THE WORK hereof. No Change Order shall be issued to the extent such modification is due to the fault or neglect of CONTRACTOR.

2.14.3 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.

2.15 Shop Drawings, Product Data, Samples and Other Submittals.

2.15.1 Documents and Samples at the Site

From and after commencement of the Construction Work, CONTRACTOR shall maintain at the site one (1) 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.

2.15.2 Shop Drawings

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.

2.15.3 Product Data

Product Data includes 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.

2.15.4 Samples

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

2.15.5 Submittals are not Contract Documents.

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.

2.15.6 Submission of items listed in Article 2.15.5

Requirements and procedures for submittal of shop drawings, product and equipment data are covered in technical specification section 01322 and 01330.

2.15.7 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.

2.16 Tests and Inspections

2.16.1 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.

2.16.2 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 Article subsection 2.16.1 above, 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 Article 2.19-CORRECTION OF WORK 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.

2.16.3 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.

2.16.4 Timing of Testing

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.17 Cutting and Patching

2.17.1 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.

2.17.2 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.

2.18 Uncovering of Construction Work.

2.18.1 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 Article 2.19-CORRECTION OF WORK hereof.

2.18.2 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 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.

2.19 Correction of Work

2.19.1 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.

2.19.2 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 Article 2.19-CORRECTION OF WORK hereof.

2.19.3 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 Article 8.1-GUARANTEED MAXIMUM PRICE.

2.19.4 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 Article 8.1-GUARANTEED MAXIMUM PRICE.

2.19.5 No Limitation

Nothing contained in this Article 2.19-CORRECTION OF WORK shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents.

2.19.6 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.

2.20 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 - CONTRACT ADMINISTRATION

3.1 Administration of the Contract

The CITY's Representative and the Construction Manager will provide administration of the Agreement as hereinafter described. If the status of any of the above parties should change, the CITY will provide written notice to the Contractor of such change.

3.2 CITY's Representative

3.2.1 General

The CITY's Representative has the authority to act on behalf of the CITY on change orders, field orders, progress payments, Contract Decisions, acceptability of the Contractor's work, and early possession.

3.2.2 Change Orders

The CITY's Representative has the authority to accept or reject change orders and cost proposals submitted by the Contractor or as recommended by the Construction Manager.

3.2.3 Progress Payments

CITY's Representative has the authority to accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Construction Manager.

3.2.4 Contract Decisions

Should CONTRACTOR disagree with the Construction Manager's decision with respect to the Agreement, the CONTRACTOR may appeal to the CITY's Representative in accordance with the provisions of the Agreement.

3.2.5 Acceptability of Work

The CITY's Representative has the authority to make the final determination of the acceptability of the Work.

3.3 Construction Manager

3.3.1 General

The Construction Manager is a representative of the CITY employed to act as advisor and consultant to the CITY in construction matters related to the Agreement. The term Construction Manager may include more than one individual to perform contract administration and construction observation. Hereinafter, the term Construction Manager includes any and all representatives working under the direction of the Construction Manager.

All instructions to the Contractor and all communications from the Contractor to the CITY or the CITY's Representative shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the CITY only to the extent provided in the Contract Documents. The CITY has delegated its authority to the Construction Manager to make initial decisions regarding questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work. The Construction Manager shall make initial decisions with respect to the Contractor's fulfillment of the Agreement and the Contractor's entitlement to compensation. The Contractor shall look initially to the Construction Manager in matters relating to the Agreement.

The Construction Manager's authority to act under Article 3-CONTRACT ADMINISTRATION, herein, and any decision made by it in good faith either to exercise or not to exercise such authority, shall not be interpreted or construed as control of or responsibility for any of the Work performed under this Agreement.

3.3.2 On-Site Representative

The Construction Manager will observe the progress, quality, and quantity of the Work to determine, in general, if the Work is proceeding in accordance with the provisions of the Contract Documents. The Construction Manager shall not be responsible for the superintendence of the construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor's personnel; or for safety practices or unsafe practices, precautions, and programs in connection with the Work.

In accordance with the provisions of these Contract Documents, the Construction Manager will make decisions relative to all matters of interpretation or execution of the Contract Documents.

3.3.3 Observation and Inspections of Construction

The Construction Manager shall observe the construction and shall have the authority to reject work and materials which do not conform to the Contract Documents, and to require special inspection or testing. Observation and inspection by the Construction Manager or an inspector is not an authorization to revoke, alter, or waive any requirements of the Specifications. Observation and inspection is the authorization to call the attention of the Contractor to any failure of the Work, materials or workmanship to conform to the Contract Documents. The Construction Manager shall have this authority including the ability to reject materials or, in any emergency, suspend the Work. The Contractor may appeal any such issue which it disagrees with to the Construction Manager for decision. If the decision of the Construction Manager is not satisfactory to the Contractor, the Contractor may appeal such decision to the CITY's Representative.

3.3.4 Acceptability of the Work

The Construction Manager has the authority to make a recommendation as to the acceptability of the Work.

3.3.5 Change Orders

The Construction Manager has the authority to initiate change orders; to reject change orders proposed by the Contractor; to negotiate and recommend acceptance of change orders to the CITY; or to order minor changes in the Work that result in no cost to the CITY.

3.3.6 Construction Schedule

The Construction Manager has the authority to review and recommend acceptance of the progress schedule submitted by the Contractor at the start of the Work and subsequent significant revisions for conformance to the specified sequence of Work and logic.

3.3.7 Progress Payments

The Construction Manager has the authority to recommend acceptance or rejection of requests for progress payments which have been submitted by the Contractor.

3.3.8 Final Payment

The Construction Manager, with the assistance of the CITY's Representative and the Engineer, will conduct inspections to determine the date of Final Completion of the Work, and the Construction Manager will receive and forward to the CITY, for the CITY's review, written warranties and related documents required by the Agreement and assembled by the Contractor.

3.3.9 Contract Interpretation by the Construction Manager

Notwithstanding any omission from the Specifications or the Drawings it shall be the duty of the Contractor to call the Construction Manager's attention to apparent errors or omissions upon discovery by the Contractor and request instructions in writing before proceeding with the Work. The Contractor shall not unreasonably take advantage of any errors or omissions found by Contractor. If the Contractor discovers any errors or omissions that it believes affect the time or cost of performing the Work, it shall be entitled to request a Change Order. Contractor shall promptly notify the Construction Manager in writing of any design, materials, or specified method that the Contractor identifies as defective or insufficient, provided, however, that in doing so Contractor will be acting in its capacity as a contractor and not an architect or engineer, and that this section does not affect CITY's responsibility with regard to the Contract Documents. The Construction Manager may, by appropriate written instructions, correct errors and supply omitted information, which instructions shall be as binding upon the Contractor as though contained in the original Specifications or Drawings when incorporated into Change Orders. Such instructions shall be incorporated into the Agreement in accordance with the Change Order provisions of the Agreement.

Any discrepancies discovered by the Contractor between the Contract Documents and Site conditions or any inconsistencies or ambiguities in the Contract Documents shall be promptly reported, in writing, to the Construction Manager. Questions regarding the meaning and intent of the Contract Documents shall be referred in writing by the Contractor to the Construction Manager with a Request for Information (RFI).

Work done by the Contractor after its discovery of such errors, omissions, discrepancies, inconsistencies or ambiguities without such notice and prior to response from the Construction Manager shall be done at the Contractor's risk and shall not be reimbursed as a Cost of the Work, nor be a basis for an increase in the GMP.

3.4 Engineer

3.4.1 General

The Engineer will have the authority to act on behalf of the CITY only to the extent provided in the Contract Documents. The Engineer shall not be responsible or have authority for the superintendence of construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor's personnel; or for safety practices or unsafe practices; precautions and programs in connection with the Work; or for any failure of the Contractor to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the Contractor furnishing and performing the Work.

3.4.2 Interpretations

The Engineer has the authority to be the initial interpreter of the technical requirements of the Contract Documents. Either party to the Agreement may make written request to the Construction Manager for interpretations necessary for the proper execution or progress of the Work. The Construction Manager shall refer such written requests to the Engineer, who will render such interpretations. Where the Contractor has requested an interpretation from the Construction Manager, or been notified by the Construction Manager that such interpretation has been requested by the CITY, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Construction Manager without additional expense to CITY and shall not be reimbursed as a Cost of the Work, or be a basis for an increase in the GMP.

3.4.3 Acceptability of the Work

The Engineer has the authority to make a recommendation as to the acceptability of the Work. The Engineer has the authority to recommend acceptance regarding the remediation or retention of Defective Work.

3.4.4 Submittal

The Engineer shall receive, through the Construction Manager, shop drawings, product data and samples for review.

The Engineer has the authority to review and take other appropriate action upon the Contractor's submittal such as shop drawings, product data and samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents.

ARTICLE 4 - CITY'S RIGHTS AND RESPONSIBILITIES

4.1 General

CITY, acting through the CITY's Representative or the Construction Manager, shall have the authority to act as the sole judge of the Work and materials with respect to both quantity, quality function, performance and reliability as set forth in the Agreement except as delegated to the Construction Manager in these Contract Documents.

4.2 Information and Services Required of CITY

4.2.1 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.

4.2.2 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.

4.2.3 CITY'S instruction to CONTRACTOR

Wherever CITY is identified in the contract documents in reference to providing the CONTRACTOR with instruction, the "CITY" reference could mean, Construction Manager, Engineer, or Representative acting on behalf of the CITY as delegated in that instance.

4.3 Activities on Site by CITY or Separate Contractors

4.3.1 Observation and Inspection

In addition to the Construction Manager's designated representative, the CITY may provide one or more inspectors to the Construction Manager to observe the Work and with the same authority as provided for in Article 3.3.3, Observation and Inspections of Construction.

Separate and independent from the observations and inspections above, the Work may be inspected by Building Officials, Fire Officials, Roseville Electric and/or Pacific Gas and Electric for code compliance. Such inspectors shall have the authority provided to them by their jurisdiction. Any design deficiencies or additional work required by these code inspections not required by the Contract Documents may be incorporated into the Work in accordance with the Change Order provisions of the Agreement

4.3.2 CITY'S Right to Award Separate Contracts

CITY reserves the right to perform work or operations related to the Project with the CITY'S own forces, and to award separate contracts to Separate Contractors in connection with the Project or other work on the Site. If the Contractor claims that delay, damage, or additional cost is involved because of such action by the CITY, the Contractor shall make such claim as provided elsewhere in the Contract Documents. When separate agreements are awarded for different portions of the Project or other work on the Site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Agreement.

4.3.3 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.

4.3.4 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.

4.3.5 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.

4.3.6 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).

4.4 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.

4.5 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 Article 11-Insurance and Bonds; Indemnification 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 Article 9.6-Change Orders on Account of Scope Change.

4.6 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).

If CONTRACTOR fails to correct an unsafe condition as specified in Article 12-SAFETY: PROTECTION OF PERSONS AND PROPERTY, the CITY shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the Work in question can be stopped immediately. CITY's has a right to stop the work, until the condition is corrected to the satisfaction of the CITY.

4.7 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.

The CITY also reserves the right to perform and suspend any portion of the Work due to an emergency threatening the safety of the Work, public, CITY, and any property or equipment. No deductive Change Order shall be issued for an emergency not caused by Contractor.

4.8 Non-Responsibility of the CITY

CITY shall not be held responsible for the care or protection of any material or parts of the Work prior to the Final Acceptance, except as expressly provided in the Contract Documents.

ARTICLE 5 - CONTRACTOR RIGHTS AND RESPONSIBILITIES

5.1 Status of Contractor and Subcontractors

5.1.1 Contractor

It is stipulated and agreed that the Contractor shall be an independent contractor in the performance of this Agreement and shall have complete charge of persons engaged in performance of the Work. The Contractor shall perform the Work in accordance with its own means, methods, and appliances subject to compliance with the requirements of the Agreement.

5.1.2 Subcontractors

If any part of the Work to be done under this Agreement is subcontracted, the subcontract shall be in writing and shall provide that all Work to be performed thereunder shall be performed in accordance with the terms of the Contract Documents. The subcontracting of any or all of the Work to be done will in no way relieve the Contractor of any part of its responsibility under the Agreement. Subcontractors will not be recognized as having a direct relationship with the CITY. The persons engaged in the Work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the Agreement. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the CITY or the Construction Manager shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

The Contractor shall only employ subcontractors that are properly licensed in accordance with State law and are registered with the California Department of Industrial Relations (DIR).

Prior to commencement of any work by a subcontractor, the Contractor shall submit to the Construction Manager:

- A. Verification that the subcontractor is properly licensed for the work it will perform.
- B. Upon CITY'S request, copies of subcontract agreements.
- C. Copies of subcontractor's insurance certificates and endorsements.

5.2 Contractor's Representative

The Contractor shall provide in writing, a request to the CITY to delegate authority to an individual to serve in the capacity of authorized representative and shall wait to receive written confirmation from the CITY, before the authorized representative can start work. The authorized representative shall be qualified for the duties required and have complete authority to represent and to act for the Contractor. Said authorized representative has the authority to act in matters relating to the Agreement, and shall be personally present at the Site at all times while work is actually in progress on the Agreement. During periods when the Work is suspended, arrangements acceptable to the Construction Manager shall be made for any emergency work that may be required. The Contractor's authorized representative shall be fluent and proficient in the English language in order to understand, receive, and carry out oral and written communications or instructions relating to all job functions and responsibilities. All

communications to and from the Contractor's authorized representative shall be binding as if given to or by the Contractor.

Contractor shall provide its authorized representative's contact information which shall include the representative's name, office street address, office telephone number, mobile phone number, home phone number, email address and the office mailing address if different from the street address.

The Contractor's authorized representative shall give its personal attention to and shall supervise the Work to the end that it shall at all reasonable times be prosecuted faithfully; and when the authorized representative is not personally present on the Work, the representative shall at all reasonable times be represented by a competent designated alternate, superintendent or foreman (approved in writing by the CITY, to act in this capacity) who shall receive and obey all instructions or orders given under this Agreement, and who shall have full authority to supply materials, tools, and labor without delay, and who shall be the legally appointed representative of the Contractor. The Contractor shall be liable for the faithful observation of any instructions delivered to the Contractor or to its authorized representative.

5.3 Supervision and Superintendence

CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

At all times during the progress of the Work, Contractor shall assign a competent resident Superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

5.4 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.

5.5 Use and Protection of CITY'S Site and Adjacent Property

5.5.1 Designated Areas

With the approval of the Construction Manager, the Contractor may use designated portions of the CITY'S Site for storage of construction equipment, materials and field offices provided the Contractor does not interfere with CITY'S operations. The Contractor will not be allowed to unreasonably encumber the Site or adjacent areas with its materials and/or equipment. The CITY will not accept any responsibility for damage to or loss of the Contractor's equipment or materials stored on any Project related site caused by vandalism, nature, or otherwise, suffered by the Contractor. Protection of all construction equipment, stores, and supplies shall be the sole responsibility of the Contractor. Where additional work space is desired by the Contractor or where the CITY cannot provide the space to the Contractor, it shall be the Contractor's sole responsibility and expense to obtain such a space for its use.

5.5.2 Contractor's Site Access

All workers or representatives of the Contractor, subcontractors or suppliers are admitted to the Site only for the proper execution of the Work and have no tenancy without the express written permission of the CITY. Furthermore, no persons may occupy property owned by the CITY outside the limit of the Work, as indicated on the Drawings, without the express written permission of the CITY.

5.5.3 Provisions for Handling Emergencies

It is possible that emergencies may arise during the progress of the Work, which may require special treatment or make advisable extra shifts of labor forces to continue the Work for twenty-four (24) hours per day. These emergencies may be caused by damage or possible damage to nearby existing structures or property by reason of the work under construction, or by storm, accidents, or leakage. The Contractor shall be prepared in case of such emergencies to make all necessary repairs and shall promptly execute such work when required; such emergency work will be reimbursed as a Cost of the Work and the GMP increased accordingly.

Upon start of the Work, Contractor shall provide means for immediate emergency notification of Contractor's designated representative and designated emergency alternates.

5.5.1 Debris, Trash, and Construction Wastes

The Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform construction services efficiently, safely and without interfering with the use of adjacent land areas, and as further stipulated in the Contract Documents. When the Work is Substantially Complete, or a portion of the Work has been completed, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit CITY to occupy the Project or a portion of the Project for its intended use. Contractor shall provide a finished cleaning of all areas acceptable to the CITY before releasing any area to the CITY for occupancy.

5.6 Compliance with Laws

The CITY is a municipal corporation in the State of California and is subject to the applicable provisions of law relating to public contracts as a Charter CITY. It is agreed that all provisions of law applicable to public contracts are a part of these Contract Documents to the same extent as though set forth herein and will be complied with by Contractor.

The Contractor shall at all times observe and comply with all existing laws, ordinances, regulations, orders and decrees; and shall protect, indemnify, and defend the CITY, the Construction Manager, the Engineer, the Funding Agencies and all of their officers, officials, employees, agents, volunteers, and servants against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor itself, employees, or its subcontractors.

The Contractor, shall at its own cost and expense, observe and keep itself and its subcontractors fully informed of all existing and future legislated State and Federal Laws and CITY and County ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials and equipment used in the Work, or which in any way affect the conduct of the Work, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or in any other part of this Agreement, in relation to any law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Construction Manager in writing.

Attention is directed to the following specific regulations and requirements that are hereby included in the Contract Documents. This list of regulations is not warranted to be complete and the burden of ascertaining legal requirements that must be satisfied shall rest solely with the Contractor.

5.6.1 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.

5.6.2 DIR Registration

California Labor Code section 1725.5 requires the Contractor and all lower-tier subcontractors performing public works services to be currently registered with the California DIR, as specified in California Labor Code section 1725.5. California Labor Code section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. The Contractor shall list the Contractor's current DIR registration number, and the current DIR registration number of all subcontractors, as part of its Bid Proposal.

Further information can be found on DIR's website at <http://www.dir.ca.gov/Public-Works/Contractors.html>. The above summary is provided solely for informational purposes, and does not in any way affect the Contractor's and subcontractors' obligation to comply in all respects with all other applicable laws and regulations. The Contractor shall disseminate these provisions to every lower-tier subcontractor.

5.6.3 Apprentices on Public Work Projects

The Contractor and any subcontractor or subconsultant shall comply with California Labor Code section 1777.5 et seq., and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7. Please refer to the link below for guidance in meeting your obligation to satisfy the apprentice requirements for this Project:

<https://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>.

5.6.1 Receipt of Workers' Wages, Fee for Registering or Placing Persons in Public Works

The Contractor and any subcontractor or subconsultant shall comply with California Labor Code sections 1778 and 1779 of the California Labor Code, which read as follows:

Section 1778. "Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony."

Section 1779. "Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor."

5.6.2 Travel and Subsistence Payments

Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Section 1773.1 of the California Labor Code.

5.6.3 Workday

In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code, State of California, and in particular Sections 1810 to 1815 inclusive, thereof, eight (8) hours labor shall constitute a day's work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the Work contemplated by this Agreement, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week unless compensated at not less than time and a half as set forth in California Labor Code Section 1815. However, if the prevailing wage determination requires a higher rate of pay for overtime than is required under said Section 1815, then the overtime rate must be paid, as specified in California Code of Regulation Title 8, Group 3, Section 16200(a)(3)(F). The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours for the inspection of the CITY or its officers or agents and by the Division of Labor Standards Enforcement of the Department of Industrial Relations, their deputies or agents; and it is hereby further agreed that said Contractor shall forfeit as a penalty to the CITY, the sum of the greater of (i) Twenty-Five and No/100 Dollars (\$25.00) or (ii) the maximum penalty allowable by statute for each laborer, worker or mechanic employed in the execution of this Agreement by the Contractor or by any

subcontractor for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in one calendar week in violation of these provisions.

5.6.4 Labor Discrimination

The Contractor and any subcontractor or subconsultant shall comply with California Labor Code Section 1735, which reads as follows:

Section 1735. “No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this Section is subject to all the penalties imposed for violation of this chapter.”

Contractor agrees that it shall not discriminate against any person on account of their sex, race, color, religious creed, ancestry, national origin, disability, medical condition, marital status, age, gender, military or veteran status, genetic information, or sexual orientation in violation of the Fair Employment and Housing Act or the Unruh Civil Rights Act. Upon a final determination by a court of competent jurisdiction that the Grantee has violated either of these Acts, the CITY may, at its option, (1) withhold payments to Contractor under this Agreement until Contractor complies; or (2) suspend or terminate this Agreement. Contractor shall include the provisions of this paragraph in every subcontract, including procurement of materials and lease of equipment, unless specifically exempted by the CITY.

5.6.5 Asbestos Related Work

All work involving asbestos containing material must be performed in accordance with California Labor Code, Sections 6501.5 through 6510, inclusive, and California Administrative Code, Title 8, Section 5208 and all other pertinent laws, rules, regulations, codes, ordinances, decrees and orders.

5.6.6 Compliance with Environmental Laws

During construction, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to, the Federal Clean Air Act, State and local air pollution and noise ordinances, construction site erosion control regulations.

5.6.7 Public Records Act

5.6.7.1 Ownership and Disclosure

Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of CITY’S business, including information submitted by the Contractor (“Records”), shall become the exclusive property of CITY and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code § 6250 et seq.). The CITY’S use and disclosure of its records are governed by this Act. The CITY will use its best efforts to inform the Contractor of any request for any financial records or documents marked “Trade Secret,” “Confidential” or “Proprietary” provided by the Contractor to CITY. The CITY will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

5.6.7.2 Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, CITY’S sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole

expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold CITY harmless from all costs and expenses including attorney's fees in connection with any such action.

5.7 Certified Electricians

Workers performing work for an electrical contractor installing, constructing, or maintaining any electrical system covered by the National Electrical Code shall be certified as a General Electrician per California Labor Code Section 3099.

5.8 Contractor's Safety Responsibility

The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the California Occupational Safety and Health Act (Cal OSHA), and all other applicable Federal, State, County, and local laws, ordinances, codes, including but not limited to the requirements set forth in Article 12 – SAFETY: PROTECTION OF PERSONS AND PROPERTY, and any regulations that may be detailed in other parts of these Contract Documents. In the event of conflicting requirements, the most stringent requirement as it pertains to the Contractor's safety responsibility, shall be followed by the Contractor. Refer to Article 12 - SAFETY: PROTECTION OF PERSONS AND PROPERTY

5.9 Nonstandard Working Hours

The Contractor may be required to prosecute the Work at night or outside of the normal working hours defined in Section 01130-1.3.c Hours of Work and Overtime. Such work may be required due to project or operational constraints as defined in Section 01130 or if emergencies arise as provided for in Article 5.5.3-Provisions for Handling Emergencies. When required, ordered, or permitted to work at night, the Contractor shall provide sufficient and satisfactory lighting and other facilities therefore. Except as provided in 5.5.3-Provisions for Handling Emergencies, for work outside of the normal working hours, the Contractor shall receive no extra payment, but compensation shall be considered as having been included in the GMP stipulated for the Work, except for authorized work performed outside of the Agreement.

5.10 Cooperation with Other Contractors

This paragraph shall serve as notice to the Contractor that the CITY may allow other contracts for other work at or near the Site of this Work. The Contractor shall afford other Contractors reasonable opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

Should construction be under way by other forces or by other Contractors within or adjacent to the limits of the work or in the vicinity of the work to be done under this Agreement, the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such other forces or Contractors.

Any difference or conflicts which may arise between the Contractor and any other forces or Contractors, creating delays or hindrance to each other, shall be adjusted as determined by the Construction Manager.

ARTICLE 6 - SUBCONTRACTORS

6.1 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.

6.2 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 7 - TIME AND PROGRESS OF THE WORK

7.1 Commencement of Work

Within forty-five (45) calendar days after executed of the Agreement, written Notice to Proceed will be issued by the City to Contractor. Notwithstanding other provisions of the Agreement, the Contractor shall not be obligated to perform the Work, and the City shall not be obligated to accept or pay for such Work performed by the Contractor, prior to City's issuance of the Notice to Proceed. The Contractor shall provide the required Agreement bonds and evidences of insurance prior to the City's execution of this Agreement and prior to commencement of any Work.

The Contractor shall commence execution of the Work within ten (10) days after the date established in the Notice to Proceed for the commencement of Contract Time.

The Contractor shall give the Construction Manager written notice not less than five (5) working days in advance of the actual date on which the Work is to begin on the Site (excluding Preconstruction Services performed under the Agreement) will be started. The Contractor shall be entirely responsible for any delay in the Work which may be caused by its failure to give such notice.

7.2 Contract Time

All time limits for Substantial Completion, and Final Completion as stated in the Contract Documents are of the essence of the Agreement. The counting of Working or Calendar Days shall begin ten (10) Calendar Days from the date of the Notice to Proceed. The Contractor shall prosecute the Work so that the various portions of the Work shall be complete and ready for use within the times specified in Exhibit H-COMPLETION TIMES AND LIQUIDATED DAMAGES. It is expressly understood and agreed by and between the Contractor and the City that the Contract Time(s) for Contract Milestones, Substantial Completion of the Work and for Final Completion are reasonable times taking into consideration the average climatic and economic conditions and other factors prevailing in the locality and the nature of the Work known as of the date this Agreement is entered into.

7.3 Delays

7.3.1 Notice of Delays

When the Contractor foresees a delay in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay to its Work, the Contractor shall notify the Construction Manager in writing of the occurrence of delay, providing the estimated extent of the delay and its cause. The Contractor shall take immediate steps to prevent or mitigate, if possible, the occurrence or continuance of the delay.

The Contractor agrees that no claim shall be made for any occurrence of delay that is not the subject of a written notice and that is not submitted to the attention of the Construction Manager within ten (10) calendar days of its occurrence. The City may accept a delay with more than ten (10) calendar days of notice if the City finds that the Contractor was acting in good faith and the City was not prejudiced by the Contractor's failure to timely provide the required notice.

7.3.2 Non-Excusable Delays

Non-excusable delays in the prosecution of the Work are delays which were caused by the Contractor, or by its subcontractors and suppliers, at any tier level, or delays which could have been avoided by the exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. The Contractor shall receive no compensation or time extension for such delay. The determination of Non-Excusable Delays shall be made solely by the Construction Manager. In the event that the Contractor is not in agreement with the Construction Manager's decision, the Contractor may appeal the decision by submitting to the City (for consideration), evidence that supports the Contractor's claim for an Excusable Delay consideration.

7.3.3 Excusable Delays

Excusable Delays in the prosecution or completion of the Work are delays which are not caused by or within the control of Contractor and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. In addition, before a delay will be deemed an "Excusable Delay," the delay must prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule submitted by Contractor in accordance with the Contract Documents. The Contractor shall receive no compensation for such delay unless such delay also qualifies as a Compensable Delay, as described below. The following are examples of Excusable Delays:

- A. Site Availability; Failure or inability of CITY to make available any or all of the Site in accordance with the requirements of the Schedule.
- B. Regulatory and Governmental Authority; 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.
- C. Separate Contractor's Acts or Omissions; 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.
- D. Force Majeure; Delays resulting from Force Majeure.
- E. Differing Site Conditions; Differing, unusual or concealed site conditions that could not reasonably have been anticipated by CONTRACTOR in preparing the Schedule.
- F. Hazardous Materials; Delays resulting from the existence or discovery of Hazardous

Materials on the Site not brought to the site by CONTRACTOR or any Subcontractor.

- G. Applicable Laws; Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.
- H. CITY Acts or Omissions; 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.
- I. Abnormal Delays; Delays caused by fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials shall be considered as Excusable Delays insofar as they prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule.
- J. Weather Delays; Delays caused by inclement weather conditions or the conditions resulting from inclement weather shall be considered as “Excusable Delays” if they prevent the Contractor from proceeding with seventy-five (75%) percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof.
- K. Material Shortages; Upon the Contractor's submission of satisfactory proof to the Construction Manager, shortages of material may be considered an “Excusable Delay” upon the satisfaction of the conditions set forth herein. The Contractor must demonstrate that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the proposed Work. Only the physical shortage of material, caused by unusual and unforeseeable circumstances, will be considered as eligible for an “Excusable Delay,” and no consideration will be given to any claim that the material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Construction Manager that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the Contractor’s or its subcontractor’s or supplier’s mishandling of the procurement for such material. The above provisions apply equally to equipment to be installed in the Work. Nothing herein is intended to affect the Contractor also needing to demonstrate that the delay must prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule.

7.3.4 Compensable Delays

Compensable Delays in the prosecution or completion of the Work are delays which meet each of the following three elements: (1) delays which result from causes beyond the control of the Contractor and which could not have been avoided by the reasonable exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level; (2) delays that prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule; and (3) delays that are caused by one of the following three causes:

- A. CITY Acts or Omissions; Delays due to the actions and/or inactions of the City, Construction Manager, Engineer or any of their agents or employees.

- B. Differing Site Conditions; Delays due to differing site conditions as defined in Article 7.3.3.E-DIFFERING SITE CONDITIONS.
- C. Separate Contractor's Acts or Omissions; Delays due to other contractors employed by the City who interfere with the Contractor's prosecution of the Work as defined above.

7.3.5 Concurrent Delays

Concurrent delays are those delay periods when the prosecution of the Work is delayed during the same period of time due to causes from a combination of the delays defined in Article 7.3.2-NON-EXCUSABLE DELAYS, Article 7.3.3-EXCUSABLE DELAYS, or Article 7.3.4-COMPENSABLE DELAYS. During such concurrent delay periods, time extensions will be granted in accordance with Article 7.4-TIME EXTENSIONS; however, the Contractor will be granted a non-compensable time extension, and the City shall not assess its actual costs as defined in Article 7.4.1-NON-EXCUSABLE DELAYS, nor will the City assess Liquidated Damages.

7.4 Time Extensions

7.4.1 Non-Excusable Delays

The Contractor shall receive no compensation or time extension for Non-Excusable Delays.

7.4.2 Excusable or Compensable Delays

If the Contractor is delayed in the performance of its Work as defined in Article 7.3.3-EXCUSABLE DELAYS, or Article 7.3.4-COMPENSABLE DELAYS, then the Contract Time(s) will be extended by the City for such time that, the Contractor shows, and the City agrees (which agreement will not be unreasonably withheld), the Project's critical path completion dates will be delayed, provided that the Contractor strictly fulfills the following:

- A. The Contractor shall have provided written notification, in accordance with Article 7.3.1-NOTICE OF DELAYS;
- B. The Contractor shall have submitted in writing a request for an extension of time to the Construction Manager stating at a minimum the cause of the delay and the estimated number of days being requested. The Contractor's request for a time extension shall be submitted within fifteen (15) days of the Contractor furnishing its written notice pursuant to Article 7.3.1-NOTICE OF DELAYS. In the case of an Excusable Delay or Compensable Delay that allegedly is impacting the Contractor's operations for a period longer than fifteen (15) days, the Contractor shall update its request for a time extension, including updating its time impact analysis, every thirty (30) days until the delay is no longer allegedly impacting the Contractor's operations.
- C. If the Contractor maintains that the delay at issue is a Compensable Delay, the Contractor shall submit an estimate of the additional compensation for Field Overhead and Indirect Home Office Overhead (per Article 7.4.4-FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS that it is seeking in regard to the alleged delay. This estimate shall be included with the Contractor's request for time extension that is described in paragraph B, above. In the case of a Compensable Delay that allegedly is impacting the Contractor's operations for a period longer than fifteen (15) days, the Contractor shall update its estimate of additional compensation every thirty (30) days until the delay is no longer allegedly impacting the Contractor's operations.
- D. If requested by the Construction Manager, the Contractor shall provide sufficient

information to the Construction Manager to assess the cause or effect of the alleged delay (as well as additional compensation in the case of Compensable Delay), or to determine if other concurrent delays affected the Work. Such additional information shall be furnished within fifteen (15) days of the Construction Manager's request for additional information.

- E. Time extensions due to Excusable or Compensable Delays will be granted only if such delays involve controlling critical path operations which would prevent completion of the whole Work within the specified Contract Time(s), as described in the above conditions for determination of "Excusable Delay" or "Compensable Delay."

Construction Manager will, in writing, approve or reject the Contractor's request for a time extension within fifteen (15) days of the latter of (i) the Construction Manager's receipt of the Contractor's complete request for a time extension; or (ii) the Construction Manager's receipt of the additional information referenced in paragraph C, above. If Construction Manager does not provide a written response within such fifteen (15) day time period, the Contractor's request shall be deemed denied by the City.

If the Construction Manager determines that the Contractor is entitled to a time extension, during such approved extension of time, neither extra compensation for engineering, inspection and administration nor damages for delay will be charged to the Contractor.

7.4.3 Weather Delays

For Weather Delays, the Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to Article 7.3.3.J-WEATHER DELAYS, over and above an allowance as provided for in Exhibit H-Completion Times and Liquidated Damages. No time extensions for weather delays will be granted until the total number of weather days exceeds this allowance.

Should the Contractor fail to complete the Work within the time specified in the Agreement, as extended in accordance with this clause if appropriate, the Contractor shall pay to the City liquidated damages in accordance with Article 7.5-Liquidated Damages.

7.4.4 Field Overhead and Indirect Home Office Overhead for Compensable Delays

The Contractor shall be compensated for field overhead and indirect home office overhead expenses due to Compensable Delays for periods of time when the Work is delayed as defined in Article 7.3.4-COMPENSABLE DELAYS. However, no payment shall be made for compensable delays which occur during a concurrent delay as defined in Article 7.3.5-CONCURRENT DELAYS. As a condition precedent to payment for field overhead and indirect home office overhead, the Contractor must fulfill all conditions as provided in Article 7.4.2-EXCUSABLE OR COMPENSABLE DELAYS. Compensation will be calculated in accordance with 7.4.4.1 and 7.4.4.2 below. No additional markup for overhead or profit shall be provided for such field overhead and indirect home office overhead expenses.

Payment to the Contractor for indirect overhead expenses will be made only if the extended Contract Time period granted for the compensable delay(s) is required to complete the Work following the depletion of the original Contract Time period and any time extensions granted other than compensable time extensions. Payment for field overhead and indirect home office overhead shall be calculated as follows:

7.4.4.1 Field Overhead

For those allowable delay periods as described in Article 7.4.4-FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS, the Contractor shall be reimbursed for its field overhead based on:

- A. Actual invoice costs for on-site field offices and temporary utilities as described in Section 015000, TEMPORARY FACILITIES AND UTILITIES.
- B. Actual labor costs as shown in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, for field office staff.
- C. Fair rental values acceptable to the Construction Manager as described in Article 9.6-Cost Determination, for construction equipment idled due to the delay.
- D. Actual Errors and Omissions insurance costs attributable to delay periods.

7.4.4.2 Indirect Home Office Overhead

For those delay periods as described in the introduction of Article 7.4.4-FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS, the Contractor shall be reimbursed for its indirect home office overhead based on the following formula:

$$[\text{Guaranteed Maximum Price (\$) divided by the Contract Time Period (Calendar Days)}] \times 0.03 = \text{Daily Indirect Home Office Overhead (\$/Calendar Day)}$$

As it is impractical to determine the actual home office overhead, such reimbursement shall encompass full payment for any and all indirect home office overhead expenses for such periods of time for the Contractor and all subcontractors. Distribution of the markup amount among the Contractor and all subcontractors and suppliers is the responsibility of the Contractor.

7.5 Liquidated Damages

City and the Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in Exhibit H-COMPLETION TIMES AND LIQUIDATED DAMAGES, plus any extensions thereof allowed in accordance with Article 7.4-TIME EXTENSIONS. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the Contractor's failure to fully perform the Work or to fully perform all of its Agreement obligations that have accrued by the times for completion as specified in Exhibit H-COMPLETION TIMES AND LIQUIDATED DAMAGES.

It is, therefore, agreed in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the amount set forth in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, per day for each and every calendar day that expires after the times for completion specified for each construction milestone except as otherwise provided by extension of time pursuant to Article 7.4-TIME EXTENSIONS. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this Agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.

Liquidated damages will continue to accrue at the stated rate until the completion of any defined completion milestone(s) and Final Completion of Work, all as set forth in Exhibit H, COMPLETION TIMES AND LIQUIDATED DAMAGES. Accrued liquidated damages may be deducted by the City from amounts due or that become due to the Contractor for performance of the Work. Liquidated damages may not be waived or reduced by the City unless expressly waived or reduced in writing by the City.

ARTICLE 8 - PAYMENT AND COMPLETION

8.1 Guaranteed Maximum Price (“GMP”) and GMP Shared Savings

CITY shall pay for CONTRACTOR's performance under this Agreement the Cost of the Work and Fee (as described in Exhibit C-GUARANTEED MAXIMUM PRICE, FEE, AND COST OF WORK 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. CONTRACTOR bears the risk of its increased costs due to market price increases (including escalating costs for materials).

8.2 Shared Savings

CONTRACTOR shall be compensated for actual work completed based on the Cost of Work and Fee up to the amount of the GMP. If CONTRACTOR's actual total Cost of the Work and Fee is less than the GMP, upon Final Completion, the CONTRACTOR shall be entitled to receive a negotiated percentage of the GMP Savings as described in Exhibit C-GUARANTEED MAXIMUM PRICE, FEE, AND COST OF WORK hereto. “GMP” Savings shall mean the positive difference, if any, when the actual Total Cost of the Work and Fee is subtracted from the GMP; provided, however, that unused Allowance monies, if any, shall not be subject to shared savings.

8.3 Schedule of Values

Contractor will be required to submit a complete schedule of values upon selection of proposal to facilitate contract negotiation within ten (10) days of notice. Schedule of values should set forth the various portions of the Work, and the portions of the GMP allocated to each portion.

8.4 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.

8.5 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 Article 8.6 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.

8.6 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 F–IN LIEU OF SECURITIES ESCROW AGREEMENT. Release of Retention monies shall constitute the Final Payment.

8.7 Early Release of Subcontractor Retention. [reserved]

8.8 Payment for On-Site and Off-Site Stored Materials.

8.8.1 Payment for Materials:

- 8.8.1.1 Payment may be made for those materials delivered to the site but not incorporated in the work to the extent that the materials are included in the Construction Schedule as cost-loaded material delivery activities.
- 8.8.1.2 Payment for materials delivered will not be made before the respective shop drawings, installation instructions and O&M manuals have been submitted, reviewed, and accepted in accordance with Section 01330, Submittal Procedures.
- 8.8.1.3 To receive payment for materials delivered to the site, but not incorporated in the work, it shall be necessary for the CONTRACTOR to submit to the ENGINEER, at least 7 days prior to the end of said month, a list of such materials.
- 8.8.1.4 At their sole discretion, the ENGINEER will approve items for which payment as for On-Site and Off-Site Stored Materials is to be made.
- 8.8.1.5 The list of materials and invoices shall be clearly identified by referencing the associated activity on the cost loaded schedule.
- 8.8.1.6 Payment for materials delivered to the site or a bonded warehouse will be made in an amount equal to the respective suppliers' invoices(s) for the actual net cost for the item(s) delivered plus delivery charges in accordance with payment terms of the Agreement.
- 8.8.1.7 The CONTRACTOR's actual net cost for the materials must be supported by invoices of suppliers.

- 8.8.2 Proper storage and protection of materials shall be provided by the CONTRACTOR. Final payment shall be made only for materials actually incorporated in the work and, upon acceptance of the work, all materials remaining for which advance payments had been made shall revert to the CONTRACTOR, unless otherwise agreed, and payments made for these items shall be deducted from the final payment for the work.

8.9 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.

8.10 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:

- A. defective Work not remedied;
- B. third party claims filed or reasonable evidence indicating probable filing of such claims;
- C. failure of CONTRACTOR to make payments of undisputed amounts to Subcontractors for labor, materials or equipment;
- D. damage to CITY or to a Separate Contractor caused by the fault or neglect of CONTRACTOR to the extent not reimbursed by insurance; or
- E. 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.

8.11 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.

8.12 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.

8.13 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.

8.14 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.

8.15 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.

8.16 Construction Allowance Items [reserved]

CITY shall pay for CONTRACTOR's performance under this Agreement the Cost of the Work and Fee (as described in CONSTRUCTION ALLOWANCE ITEMS AND AMOUNTS hereto); provided, however, that the sum of the actual total cost of each allowance item shall not exceed the approved Allowance Amount of each, as adjusted by Change Order/Directive in accordance with the Contract Documents. CONTRACTOR bears the risk of its increased costs due to market price increases (including escalating costs for materials).

8.17 Contingency [reserved]

8.18 Audits and Access to Records.

The Contractor must maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work in accordance with generally accepted accounting principles and practices. The Contractor must also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's estimate, any Change Order, Dispute, Claim, Pay Application, or other request for equitable adjustment. City and its representatives will have access upon five (5) business days advanced written notice, during normal business hours, to all Contractor's books, summary reports, records, accounts, estimates, documents, detailed financial information, certified payroll records, AIS records and all other information and documentation relevant to the Work for the purposes of inspection, audit, and copying. The Contractor will, at no cost to City, provide reasonable facilities for such access, and inspection purposes. The City will arrange for and pay all costs of copying.

The Contractor agrees to include and make the requirements of this article, applicable to all subcontractors listed in their DESIGNATION OF SUBCONTRACTORS list.

Audits conducted pursuant to this article, will be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

The Contractor agrees to provide requested information and reports resulting from access to records to City, subject to execution of an appropriate confidentiality order if requested.

Records must be maintained and made available during the performance of the Work and for four (4) years after Final Payment, and until final settlement of all Disputes or Claims, whichever occurs later.

The right of access provisions of this article, applies to all financial records pertaining to the Agreement:

- A. To the extent the records pertain directly to Agreement performance;
- B. To the extent required for verification of the costs incurred where such costs are the basis for billings pursuant to the Agreement including Change Orders;
- C. To the extent there is credible evidence that Contractor has violated the federal False Claims Act and the California False Claims Act or that fraud, gross abuse, or corrupt practices may be

involved; and

D. If the Agreement is terminated for default or convenience.

Access to records is not limited to the required retention periods. City's Authorized Representative or designee must be granted access to records at any reasonable time for as long as the records are required to be maintained.

In the event that City's audit determines that Contractor has billed for any costs that are ineligible for reimbursement or for any reason should not have been paid, or the Contractor's fee has been improperly applied or calculated, Contractor shall promptly refund all improper payments following receipt of City's written notice and explanation of the alleged overpayments or improper fee and shall be responsible to pay City for the City's reasonable costs to perform the audit unless the Contractor establishes that the overpayment or improper fee was the result of an unintentional, inadvertent clerical error.

ARTICLE 9 - CHANGES IN THE WORK

9.1 Contract Held Valid.

Any change in the Scope of Work or deviation from the Contract Documents including, without limitation, Extra Work or Omitted Work, shall not invalidate the original Contract, and shall be performed under the terms of the Contract Documents. The difference in cost of the work affected by such change will be added to or deducted from the Guaranteed Maximum Price (GMP), as the case may be.

9.2 Execution of Changes

- A. Only the Contractor or the City may initiate changes in scope of Work or deviation from Contract Documents.
- B. Changes in the Work may be accomplished after execution of the Contract where they are documented by an executed Field Directive, Field Order, or Change Order in accordance with applicable provisions of the Contract Documents.
- C. 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.
- D. The prices agreed upon and any agreed upon adjustment in Contract Time shall be incorporated in the written order issued by the City, which shall be written so as to show acceptance on the part of the Contractor as evidenced by its signature. By signature of the Change Order, the Contractor acknowledges that the adjustments to the GMP and Contract Time contained in the Change Order are in full satisfaction and accord and so waives any right to claim any further cost and time impacts at any time during and after completion of the Contract for the changes encompassed by the Change Order.

9.3 Definitions

9.3.1 Incidental Work

Incidental work includes reasonably implied parts of the work not shown on Drawings nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Drawings or described in the Specifications to provide a complete installation which is fully connected and tied into the existing facilities and processes and is fully functional and operational. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the Guaranteed Maximum Price (GMP). Incidental work shall be performed by Contractor and included in the Cost of the Work without an increase in the GMP.

9.3.2 Extra Work

New or unforeseen work, or added work of a different character or function; or that involves revisions of the details of the Work on which Contractor based its GMP. If the extra work increases the Contractor's Cost of the Work and/or time to perform the Work, and is approved by the City via a written Change Order, the GMP and/or Contract Times shall be adjusted as provided in the Contract Documents. Extra Work shall not include Work which is shown, detailed or specified in the Contract Documents or which constitutes "Incidental Work" as defined within the Contract Documents definition above.

9.4 Change Directives

Changes in the Work may be directed by a Construction Change Directive prepared and signed by the OWNER'S REPRESENTATIVE. A Construction Change Directive signed by the CONTRACTOR indicates agreement of the CONTRACTOR with the actions specified in the Directive, including the inclusion or absence of an adjustment in Contract Amount or Contract Time or the method for determining them. The following procedures shall apply with respect to Change Directives.

- A. 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.
- B. 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.
- C. 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 these contract documents. In such case, CONTRACTOR shall keep and present, in such form as CITY may request, an itemized accounting, together with appropriate supporting data.
- D. 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.
- E. 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.

9.5 Contract Modification Procedures

9.5.1 Request for Proposal (RFP)

- A. The City may issue a Request for Proposal (RFP) to the Contractor in connection with the City considering an addition to, or deletion from, or other change in the Work. RFPs shall not be deemed to be directions to proceed with any addition, deletion or change to the Work.
- B. Whenever the Contractor is required to prepare a cost proposal in response to an RFP, and whenever Contractor is entitled to submit a cost proposal and elects to do so, Contractor shall prepare and submit to City for consideration a cost proposal using a form provided by the CM or the Contractor may submit another form if deemed acceptable to the Construction Manager. All cost proposals must contain a complete breakdown of costs of credits, deducts, and extras; and itemize materials, labor, equipment, special services, taxes, and markups. All Subcontractor Work shall be so indicated. Individual entries on the Cost Proposal form shall follow the cost items defined in Cost Determination in this Section. The Contractor shall provide all required cost information requested by an RFP within fourteen (14) days after receiving the RFP.
- C. Upon receipt of the Contractor's cost proposal, which shall include a detailed itemized breakdown as prescribed in this Section, the Construction Manager will act promptly thereon. If Construction Manager takes no exception to the cost proposal, Construction Manager will prepare Change Order for City and Contractor signatures, provided that City has elected to proceed with the changed Work. If a cost proposal is not acceptable to the Construction Manager, the Construction Manager will indicate to Contractor the unacceptable items in the proposal. Except as otherwise provided in this Section, Contractor shall have seven (7) days in which to respond to Construction Manager with a revised cost proposal.
- D. If the parties do not agree on the price or time adjustment in response to an RFP, City may issue a unilateral change order pursuant to the Agreement, Article 9.5.3-FIELD ORDER-FORCE ACCOUNT WORK. Contractor shall perform the changed Work, notwithstanding any claims or disagreements of any nature, with the understanding that it preserves all rights to pursue adjustments to the GMP and/or Contract Time in connection with the change.
- E. When the necessity to proceed with a change does not allow the Construction Manager sufficient time to conduct a proper check of the Contractor's cost proposal (or revised cost proposal), Construction Manager may order Contractor to proceed with the change, with the understanding that parties will negotiate in good faith to determine the value of the change at the earliest practical date. In this event, the value of change, with corresponding equitable adjustment to the GMP, shall not be more than any increase or less than any decrease proposed by the Contractor's cost proposal.

9.5.2 Field Directive/Supplemental Instruction Resulting from RFI's, Submittals or other instructions from the Engineer and/or City

- A. The Contractor may be issued a Field Directive or Supplemental Instructions resulting from an RFI, Submittal or other instructions from the Engineer and/or City.
- B. If the Contractor is satisfied with Field Directive or Supplemental Instruction and does not request change in the GMP or Contract Time, then the Field Directive or Supplemental Instruction shall be executed by the Contractor without a Change Order.

- C. If the Contractor believes the Field Directive/Supplemental Instruction results in additional Cost of the Work or a change in the GMP or Contract Time, then Contractor must notify the Construction Manager within ten (10) days following receipt of Field Directive/Supplemental Instruction and before proceeding with this work. If the Construction Manager considers Contractor's notice to be justified, the instructions of the Field Directive/Supplemental Instructions will be revised or a proposed Change Order will be issued for the City's consideration. The Contractor shall have no claim for additional compensation or extension of the schedule because of any such additional instructions unless the Contractor provides the Construction Manager written notice thereof within the time frame specified above, unless the City is not Prejudiced by Contractor's untimely notice. In addition, the Contractor shall within fifteen (15) days from the date of the Contractor furnishing written notice provide a detailed justification and analysis as well as estimated pricing and Time Impact Analysis to support any request for time extension. Should the work at issue impact Contractor's operations for a period longer than fifteen (15) days, Contractor shall update its request for additional compensation and/or additional time, every thirty (30) days until the disputed work is no longer allegedly impacting Contractor's operations. In addition, Contractor shall comply with the requirements of the Agreement concerning Records of Disputed Work and Submission of Disputed Work Costs, respectively.
- D. Should the Contractor proceed with the work affected before receipt of a response from the Construction Manager, any portion of the work which is not done in accordance with the City's interpretation, clarifications, instructions, or decisions is at Contractor's risk.
- E. If the Contractor and Construction Manager still do not agree on the Field Directive's impact to the GMP or Contract Time, then Contractor may appeal to the Engineer for decision. If the Engineer concurs with the Construction Manager's position, the Contractor will be directed again in writing to make the changes covered in the Field Directive/Supplemental Instructions and Contractor shall do so notwithstanding any claims or disagreements of any nature. Contractor may file a Notice of Potential Claim and Claim in accordance with the Agreement.

9.5.3 Field Order- Force Account Work

- A. If either the amount of work or payment for a Change Order cannot be determined or agreed upon beforehand, the City may direct by issuing a unilateral Change Order or Field Order that the work be done on a force account basis. The term "force account" shall be understood to mean that payment for the work will be made based on an accounting of the Contractor's Cost of the Work as described in the Agreement, Exhibit C-Guaranteed Maximum Price, Cost of Work and Fee, and Article 9.6-Cost Determination.
- B. Prior to the commencement of force account work, the Contractor shall notify the Construction Manager of its intent to begin work. The Contractor shall maintain accurate cost records, separate from the cost categories for the balance of the Work, which depict all costs incurred for the authorized force account work. Upon request by the Construction Manager or City, these cost records must be made available for review as provided in the Agreement.
- C. All subcontractors that expend labor, equipment and materials on force account work shall record those costs daily by using a form provided by or approved by the Construction Manager. The subcontractor reports, if found to be correct, shall be signed by the subcontractor, Contractor and Construction Manager, or inspector, and a copy of which shall be furnished to the Construction Manager no later than the working day following the

- subcontractor's performance of said work. The Daily Extra Work Report sheet shall thereafter be considered the true record of force account work provided by the subcontractor. If the Construction Manager, or inspector, does not agree with the labor, equipment and/or materials listed on the subcontractor's daily force account report, the Construction Manager, or inspector, shall sign-off on the items on which they are in agreement. The Construction Manager shall then review the items of disagreement and will advise the Contractor, in writing, of its determination. If the Contractor disagrees with this determination, it shall have the right to file a claim notice per the Agreement.
- D. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of subcontractor work paid for on a force account basis and the costs of other operations.
 - E. To receive partial payments and final payment for force account work, the Contractor shall submit, in a manner approved by the Construction Manager, detailed and complete documented verification of the Contractor's and any of its subcontractor's Costs of the Work involved in the force account pursuant to the pertinent unilateral Change Order or Field Order. Such costs shall be submitted within thirty (30) days after said work has been performed. No payments will be made for work billed and submitted to the Construction Manager after the thirty (30) day period has expired, unless City is not prejudiced by Contractor's untimely billing and submittal of costs.

9.5.4 Construction Change Directive (CCD)

- A. CCD is a written order prepared by the Construction Manager and signed by the City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Time.
- B. If at any time the City believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, the City may issue a CCD with its recommended cost and/or time adjustment. Upon receipt of CCD, Contractor shall promptly proceed with the change of Work involved and concurrently respond to City's CCD within ten (10) calendar days.
- C. Contractor's response must be any one of following:
 - 1. Return CCD signed, thereby accepting City's response, time, and cost.
 - 2. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if City so requests.
 - 3. Give notice of intent to submit a Claim as described in the Agreement.
- D. If the CCD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - 1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - 2. Unit prices stated in the Contract Documents or subsequently agreed upon.
 - 3. Cost to be determined in a manner agreed by the City and Contractor.
 - 4. Cost to be determined pursuant to Article 9.6-Cost Determination.
- E. A CCD signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such

agreement shall be effective immediately and shall be recorded as a Change Order.

- F. If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by Construction Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change including, in case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with Articles 9.6.3 and 9.6.4-Allowable Markups. If the parties still do not agree on the price for a CCD, Contractor may file a Claim in accordance with the Agreement. Contractor shall keep and present, in such form as Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided in Article 9.6-Cost Determination.
- G. Pending final determination of cost to the City, amounts not in dispute may be included in Applications for Payment.

9.5.5 Documentation for All Changes

- A. Upon request of the Construction Manager, the Contractor shall provide the following information to support the request for change in cost or time:
 - 1. Copy of original quotations, purchase order or invoices to verify costs included in original pricing.
 - 2. Copy of all quotations, purchase order or actual invoices to support new costs submitted.
 - 3. Copy of all insurance and bond costs resulting from change.
 - 4. Copy of all quantity takeoff sheets for materials, labor and equipment.
 - 5. Certified payroll records.
 - 6. A list of equipment with manufacturer's name and model number and the alphanumeric designation used in the Equipment Rental Rates prepared by the California Department of Transportation, unless the equipment is included in the Agreement, Exhibit C-Guaranteed Maximum Price, Cost of Work and Fee.
 - 7. Invoices for all non-owned rental equipment.
 - 8. Other information, as reasonably required, to document the labor, equipment and materials used.
- B. Correlation of Other Items:
 - 1. Contractor shall revise Application for Payment forms to record each authorized Change Order or CCD as a separate line item and adjust the GMP on the next monthly progress billing.
 - 2. Contractor shall revise the Progress Schedules prior to the next monthly pay period to reflect the effects of all authorized Change Orders or CCDs.
 - 3. Contractor shall enter changes in Project Record Documents prior to the next monthly pay period and provide a copy to the Engineer with progress billing.

9.6 Cost Determination

With respect to Change Orders which increase or decrease the Scope of Work described in Exhibit B- Contractor's Technical Proposal, are not due to the errors or omissions of CONTRACTOR and are not attributable to Excusable Delays or the contingencies set forth in Article 9.7 below, the GMP shall be increased (or decreased) by the following "Scope Change Costs":

9.6.1 Contractor's Direct Cost Categories

The Contractor's allowed direct costs are found in the Agreement, Exhibit C-Guaranteed Maximum Price, Cost of Work and Fees.

9.6.2 Subcontractor's Direct Cost Categories

The categories described below are defined to be direct costs for subcontractors at all tier levels.

No other type of costs will be allowable as a direct cost. Direct costs shall not include any labor costs or indirect costs pertaining to the subcontractor's managers or superintendents, their office and engineering staffs, the cost of their offices, facilities, vehicles, or anyone not directly employed on such work, nor small tools (as defined in item C-Subcontractor's Construction Equipment Rental Cost of this Article 9.6.2) nor supplies. All such items are considered indirect costs which form a part of the Contractor's and subcontractors' overhead expenses.

A. Subcontractor's Direct Field Labor

1. The cost of labor for workers (including forepersons when authorized by the Construction Manager) used in actual and direct performance of the work by the subcontractor will be the sum of the following:
 - a. The actual wages paid plus any employer payments to, or on behalf of workers for fringe benefits including health and welfare, pension, vacation and similar purposes.
 - b. All payments imposed by State and Federal Laws including, but not limited to, workers' compensation insurance, and social security payments. The rates used for workers' compensation insurance shall be actual rates paid by the subcontractor for each specific craft and broken down by wage rate if applicable to that craft.
 - c. General Liability insurance burden, if applied to subcontractor's payroll. By formal submittal, the subcontractor shall provide adequate backup information to Construction Manager to verify this burden rate is indicative of the actual rates paid by the Contractor as a percent of labor.
2. Except as otherwise may be agreed to in writing by the Construction Manager, the actual wages and benefits paid for manual classifications of subcontractor's on- site workers will not, in the aggregate, be less than the current applicable wage for each classification as established by the State of California Department of Industrial Relations.
3. Specifically prohibited from the subcontractor's labor costs are other payroll burden factors such as small tools (as defined in item C below), bonuses of any kind and safety incentives.
4. Subcontractor shall include the actual travel and/or subsistence costs, if any, as a separate line item under the labor cost category. Except as otherwise may be agreed to in writing by the Construction Manager, the actual travel and/or subsistence costs will not be less than established in the State of California Department of Industrial Relations.

B. Subcontractor's Materials

1. The cost of all materials, including all factory testing, freight and delivery costs of materials, accepted by the City and used in performing the work will be the cost to the subcontractor from the supplier thereof. All discounts for early payment shall accrue to the subcontractor unless the City's payment to subcontractor is paid to subcontractor before discount payment is due in which case discount savings will be fully credited to City on next progress billing. All rebates and all returns from the sale of surplus materials shall be credited to the Cost of the Work.
2. At the request of the Construction Manager, the subcontractor will obtain more than one quote for materials to be used to complete change order or force account work. Copies of all quotes shall be shown to the Construction Manager.
3. For materials used in construction of the Project which may have additional uses on other projects for the subcontractor's benefit, such as dimensional lumber, beams and plywood to form concrete or temporary diversion pipes, the subcontractor shall submit a material unit cost to cover use of these types of materials for the approval of the City prior to delivery to the Work Site. This unit cost shall take into account the use of such materials on other past and future projects.

C. Subcontractor's Construction Equipment Rental Cost

1. The cost of construction machinery and equipment for changes shall be based on fair rental cost or equivalent rental cost of owned equipment. Such costs will be allowed for only those days or hours during which the equipment is in actual use. Payment shall be based on actual rental and transportation invoices but shall not exceed the rental rates listed for such equipment in the State of California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates" which is in effect on the date upon which the work is performed. City-operated equipment rates shall not exceed the rates in the aforesaid Rental Rate publication plus the labor costs as provided in this section.
2. The aforesaid rental rates shall be deemed to include the cost of fuel, power, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the subcontractor incidental to the use of such construction equipment. All equipment must be in good working condition and suitable for the purpose for which it is to be used, as judged solely by the Construction Manager. Rental time will not be allowed while equipment is inoperative due to breakdowns.
3. Compensation for idle time of equipment through delays caused by the City will be made consistent with Section 8-1.09, Right of Way Delays, of the Caltrans Standard Specifications.
4. Small Tools. Individual pieces of equipment or tools having a replacement value of \$500 or less, whether or not consumed by use, are considered to be small tools and no rental payment will be made unless it can be demonstrated that the particular item is needed and purchased by the subcontractor solely for the completion of the Change Order work.
5. The rental time to be paid for equipment used to complete change order and force account work will be the time the equipment is in operation on the change order or force account work being performed or an approved outside rental rate from an equipment rental company provided such rental rate was approved by the Construction Manager

prior to the equipment's transportation to the project for use in the change order or force account work.

6. For equipment not already on the project site to complete other portions of the Work, loading and transporting costs will be allowed for equipment approved by the Construction Manager to complete change order or force account work. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers in the area. The cost of transporting equipment shall not exceed the applicable minimum established rates of the California Department of Transportation.

D. Special Services used by Subcontractor

When the Construction Manager and the Contractor, by agreement, determine that special service or item of extra Work cannot be performed by forces of a subcontractor, service or extra Work item may be performed by a specialist. These types of services will be paid based on current market rates, subject to Construction Manager approval, which approval will not unreasonably be withheld.

9.6.3 Allowable Mark-Ups - Contractor

The Contractor's allowed mark-ups are found in Exhibit C Guaranteed Maximum Price, Cost of Work and Fees.

9.6.4 Allowable Mark-Ups – Contractor's Subcontractor(s)

The subcontractors shall be entitled to compensation for indirect field and home office overhead costs, and profit for Change Order work. This compensation shall be in the form of markup percentages applied to the direct cost of the Change Order increase or decrease of work, as further described below. The maximum markup which will be allowed for the subcontractor's combined overhead and profit will be:

- A. For work by its own organization, the subcontractor may add up to the following percentages:
 - Direct Field Labor: 15 percent
 - Materials: 10 percent
 - Equipment (owned or rented): 10 percent
 - Special Services: 5 percent
- B. For all such work done by sub-tier-subcontractors, such sub-subcontractors may add the same percentages as the subcontractor as listed in (9.6.4.A) above to its actual net increase in costs for combined overhead and profit. The subcontractor may then add up to five percent (5%) of the sub-subcontractor's total for its combined overhead and profit. No additional mark-ups will be allowed for further tier-ed subcontracts below a sub-subcontractor.
- C. When both additional and deleted work are involved in any one change order, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. For Change Order work which results in a net decrease in cost a minimum of five percent (5%) markup shall be added by the subcontractor to the sum of the direct labor, materials and equipment as a deduction for overhead, profit, and reduction in bond and insurance. The subcontractor shall not be entitled to nor claim for anticipated profits on work that has been omitted.
- D. To the total of the subcontractor's actual costs and fees allowed herein under, not more than two percent (2%) shall be added for additional bonds, if bonds were required by the Contractor. The compensable percentage for the subcontractor's bonds shall be based on the

subcontractor's actual bond costs, as substantiated through documentation formally submitted to the Construction Manager.

- E. The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, small tools, incidentals and any other general expenses. The above fixed fees represent the maximum limits which will be allowed, and they include, but are not limited, to the subcontractors' indirect field and home office expenses and all other costs for cost proposal preparation, schedule analysis and preparation, operation and maintenance manual documentation, and record documents and change order administration.

9.6.5 Materials On Order at Time of Change Order

If acceptable material is ordered by the subcontractor for the deleted work prior to the date of notification of such deletion by the Construction Manager, and if orders for such material cannot be canceled, the subcontractor will be paid at the actual cost. In such case, the material paid for shall become the property of the City and City will pay for the actual cost of any further handling. If the material is returnable to the vendor, and if the Construction Manager so directs, the material shall be returned and the subcontractor will be paid for the actual costs of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for by the City.

9.6.6 Disallowed Costs in Change Order and Force Account Work

Disallowed subcontractor costs in Change Orders include, but are not limited to:

- A. Interest cost of any type other than those mandated by statute;
- B. Change Order preparation and review costs;
- C. Meetings related to Change Orders;
- D. Schedule preparation costs;
- E. Submittal preparation costs;
- F. Accounting and Invoicing costs related to Change Orders;
- G. Developing and/or updating as-built drawings.

9.7 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:

9.7.1 Taxes

With respect to new, increases, or decreases 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 new, increased or decreased taxes only.

9.7.2 Permit Fees

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

9.8 Change Orders on Account of Excusable Delays

9.8.1 Construction Delay Costs

With respect to Change Orders, which are attributable to Excusable Delays, and subject to the exceptions set forth in Article 9.8.2 below, the GMP shall be increased by the following “Delay Costs”:

- A. Increased allowable labor costs resulting from wage increases paid due to the delay;
- B. Premiums for overtime and extra shifts incurred in accelerating the Work, but only if acceleration is required in advance by CITY;
- C. Additional general conditions costs which would not have been incurred but for the delay (itemized, and not based on a formula allocation);
- D. Demobilization and remobilization costs; and
- E. Additional items of Cost of the Work attributable to the Excusable Delay and which would not have been incurred but for the Excusable Delay.

9.8.2 Exceptions

With respect to the Excusable Delays described in Article 7.4.2, the following exceptions to the cost provisions of Article 9.8.1 above shall apply:

- A. Failure or inability of CITY to make available any or all of the Site in accordance with the requirements of the Schedule is not a compensable delay if such Excusable Delay occurs prior to the commencement of the Construction Work.
- B. Failure or inability of CITY or CONTRACTOR to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority; is not a compensable delay if such Excusable Delay occurs prior to the commencement of the Construction Work.
- C. Changes in Applicable Laws. 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.

9.9 Change Orders on Account of Differing Site Conditions

If CONTRACTOR encounters conditions described in Article 7.3.3-Excusable Delays, in addition to the increase in the GMP on account of delay costs incurred by CONTRACTOR (as described in Section 9.8.1), 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.

9.10 Cost Pricing Data and Access To Records

- A. All cost and pricing data submitted by the Contractor with respect to any change, prospective or executed, or any claim for extra compensation shall be a true, complete, accurate and current representation of actual cost and pricing of the work. The Construction Manager may require a formal certification as to cost and pricing data submitted by the

Contractor.

- B. The Construction Manager shall have access to the records of Contractor and Subcontractors as provided in Article 8.18-Audits and Access to Records.

9.11 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.

9.12 Force Majeure

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

ARTICLE 10 - CORRECTION OF WORK

10.1 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.

10.2 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.

10.3 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.

10.4 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 11 - INSURANCE AND BONDS; INDEMNIFICATION

11.1 Insurance to be provided by CONTRACTOR

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.

11.2 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.

11.3 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.

11.4 Summary of Insurance Requirements

Commercial General Liability, automobile liability, and worker's compensation insurance shall be maintained as shown in the table below.

Table 1: Summary of Insurance Required

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

Coverage	Limits
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
Statutory Workers' Compensation and Employer's Liability Insurance	Limits of not less than One Million Dollars (\$1,000,000) per occurrence.
Builder's Risk/Course of Construction Insurance	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
Contractor's Pollution Liability Insurance	Combined Single Limit for each occurrence: \$2,000,000 General Aggregate: \$2,000,000
Professional Liability Submittals prepared by licensed California Engineer	Limit per claim of at least \$2,000,000, and a \$4,000,000 in the aggregate for errors and omissions.

11.4.1 Subcontractors

Minimum Amount of Coverage for Subcontractors who are NOT Listed Contractors included in Attachment 7 to the RFP "Statement of Subcontractors": The bodily injury, personal injury and property damage liability of the Commercial General Liability insurance shall provide coverage in the following limits of liability: \$2,000,000 on account of any one occurrence for bodily injury and property damage, \$2,000,000 personal and advertising injury limit with an annual general aggregate limit of not less than \$4,000,000, and \$2,000,000 products and completed operations aggregate, combined single limit. The Automobile Liability insurance policy shall provide minimum limits of \$1,000,000 per accident as a combined single limit arising out of the ownership, maintenance, or use of any owned or non-owned vehicles. These minimum amounts of insurance coverage do not preclude the Contractor from requiring higher limits or additional insurance coverage as it deems necessary.

11.5 Commercial General Liability.

11.5.1 Coverage or Endorsements

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.

11.5.2 Copies to be Provided

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 volunteers, 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.

11.5.3 Claims Made Coverage – Special Notice

SPECIAL NOTICE - CLAIMS MADE COVERAGE:

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

11.6 Comprehensive Automobile Liability

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.

11.7 Statutory Workers' Compensation and Employer's Liability Insurance

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.

11.8 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.

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.

11.9 Contractor's Pollution Liability Insurance

Contractor's Pollution Liability Insurance. The Contractor shall obtain Pollution Liability Insurance. This insurance shall be written in comprehensive form either as a separate policy or as an endorsement to Contractor's general liability coverage and shall cover liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of any Work to be performed under the Agreement, including liability for and defense of lawsuits and regulatory actions. Coverage shall be provided for both Work performed on Site, as well as during the transport of hazardous materials. Coverage shall apply to sudden as well as gradual pollution conditions, including without limitation conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. The liability limits shall be not less than:

- Combined Single Limit for each occurrence: \$2,000,000.
- General Aggregate: \$2,000,000.

If the coverage required is written on a claims-made coverage form:

- The retroactive date must be shown, and this date must be before the award date of the Agreement.
- Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after final payment.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement award date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after Final Payment.
- A copy of the claims reporting requirements must be submitted to the City for review.

11.10 Professional Liability Insurance

All submittals required of the Contractor which are to be prepared by a licensed California engineer shall be prepared only by a licensed engineer who is covered by a professional liability insurance policy issued by a California-admitted carrier or a carrier authorized to do business in California with a Best's rating of

A-: VII or better, with an limit per claim of at least \$2,000,000, and a \$4,000,000 in the aggregate for errors and omissions. Such insurance shall be maintained in effect by said engineer at all times while performing Work on the Project and for at least three (3) years after Final Completion of the Project. Contractor shall submit an insurance certificate for such engineer prior to beginning Work for approval by the City.

11.11 Other Insurance Provisions.

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.

- F. 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.
- G. CITY RESERVES THE RIGHT TO WITHHOLD ANY PROGRESS PAYMENTS TO CONTRACTOR IN THE EVENT OF NONCOMPLIANCE WITH ANY INSURANCE REQUIREMENTS.

11.12 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 Labor & Materials 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 G 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.

Table 2: Summary of Bonding Requirements

Bond Type	Requirement
Performance	100% of the Total Contract Price
Labor and Materials	100% of the Total Contract Price
Warranty	One year following the date of Final Completion Penal sum equal to ten percent (10%) of the GMP

11.13 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 negligence, active negligence, or willful misconduct 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 12 - SAFETY: PROTECTION OF PERSONS AND PROPERTY

12.1 Contractor's Responsibility for Site Safety

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.

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. The Contractor shall indemnify, defend and hold CITY and Construction Manager, Engineer, Funding Agencies and their respective officers, officials, employees, agents and volunteers or other authorized representatives harmless to the full extent permitted by law concerning liability related to the Contractor's safety obligations in accordance with Article 11.14-Indemnification.
- F. If death or serious injuries or serious damages occur, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the CITY. In addition, the Contractor shall furnish the Construction Manager with a copy of the Employer's Report of Injury immediately following any incident requiring the filing of said report during the prosecution of the Work under this Agreement. The Contractor shall also furnish the Construction Manager with a copy of the Employer's Report of Injury involving any subcontractors on this Project. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the Work being performed under this Agreement.
- G. If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Construction Manager,

giving full details of the claim.

12.2 Safety Program

The Contractor shall establish, implement, and maintain a written injury prevention program as required by Labor Code Section 6401.7. Before beginning the Work, the Contractor shall file with the Construction Manager a written Contractor Safety Program that provides for the implementation of all of the Contractor's safety responsibilities in connection with the Work at the Site and the coordination of that program and its associated procedures and precautions with safety programs, precautions and procedures of each of its subcontractors and other Contractors performing work at the Site. The Contractor shall be solely responsible for initiating, maintaining, monitoring, coordinating, and supervising all safety programs, precautions, and procedures in connection with the Work and for coordinating its programs, precautions, and procedures of the other contractors and subcontractors performing the Work at the Site. The Safety Program should contain all the necessary elements for the Contractor to administer its program on the Site

The Contractor's compliance with requirements for safety and/or the Construction Manager's acceptance for filing of the Contractor's Safety Program shall not relieve or decrease the liability of the Contractor for safety. The Construction Manager's review of the Contractor's Safety Program is only to determine if the above listed elements are included in the program. The Contractor's completion of review of the Safety Program does not confirm adequacy of the Program to protect workers. The Contractor is solely responsible to determine adequacy of the program to protect workers per the applicable Labor Code Section.

12.3 Safety Supervisor

The Contractor shall appoint an employee as safety supervisor who is qualified and authorized to supervise and enforce compliance with the Safety Program. The Contractor shall notify the Construction Manager in writing prior to the commencement of work of the name of the person who will act as the Contractor's safety supervisor and furnish the safety supervisor's resume to the Construction Manager.

The Contractor will, through and with its Safety Supervisor, ensure that all of its employees and its subcontractors of any tier, fully comply with the Project Safety Policies. The Safety Supervisor shall be a full-time employee of the Contractor whose responsibility shall be for supervising compliance with applicable safety requirements on the Site and for developing and implementing safety training classes for all job personnel. The CITY shall have the authority to require removal of the Contractor's Safety Supervisor if the representative is judged to be improperly or inadequately performing the duties; however, this authority shall not in any way affect the Contractor's sole responsibility for performing this work safely, nor shall it impose any obligation upon the CITY to ensure the Contractor performs its work safely.

12.4 Applicable Laws

The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.

12.5 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. The Contractor shall notify owners of adjacent property and of underground facilities and utility districts when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

12.6 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:

- A. Employees on the Work and other persons who may be affected thereby;
- B. 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
- C. 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.

12.7 Specific Precautions

12.7.1 Confined Spaces

The Project requires work in confined spaces and requires compliance with CAL/OSHA and Federal OSHA requirements. Confined spaces for the purposes of this article shall be as defined by the Division of Industrial Safety. Work within confined spaces of this Project is subject to the definitions and applicable provisions of Section 5156 et seq., Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 108 of California Code of Regulations, and Title 29 Part 1926 of the Code of Federal Regulations.

In addition, the CITY classifies the following existing facilities as confined space: the interior of pipelines, vaults, manholes, reservoirs and any other such structure or space which is similarly surrounded by confining surfaces as to permit the accumulation of dangerous gases or vapors. The confined spaces are “permit” confined spaces as defined by OSHA and CAL/OSHA and therefore entry is allowed only through compliance with a confined space entry permit program by the Contractor that meets the requirements of 8 C.C.R. Section 5157. While the above-mentioned locations have been identified as permit confined spaces, other permit confined spaces may exist. It shall be the responsibility of the Contractor to identify and classify these confined spaces.

It is anticipated that the Contractor may encounter hazardous conditions within these permit confined spaces which include, but are not limited to the following:

- A. Exposure to hydrogen sulfide, methane, carbon dioxide and other gases and vapors commonly found in municipal sewers which could have or has the potential of having Immediate Danger to Life or Health Conditions (IDLH).
- B. Exposure to atmosphere containing insufficient oxygen to support human life.
- C. Exposure to combustible, flammable and/or explosive atmosphere.
- D. Exposure to sewage which may contain bacteriological, chemical and other constituents harmful to humans.
- E. Work in conditions where engulfment or entrapment may occur.

- F. Work in environments which may be slippery and/or have uneven work surfaces.
- G. Work in structures where workers may trip, slip and/or fall several feet.
- H. Exposure to an oxygen enriched environment.

12.7.2 Excavation Safety

- A. Section 6705. In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation of any trench or trenches five feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plans vary from the shoring system standards set forth in the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the Work as set forth in the Contract Documents. Nothing in this article shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this article shall be construed to impose a tort liability on the CITY, the Engineer, the Construction Manager, nor any of their officers, officials, employees, agents, consultants or volunteers. The CITY'S review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders.

Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

- B. Section 6707. Pursuant to the provisions of California Labor Code Section 6707, each Proposal submitted in response to this RFBP shall contain, as a separate cost item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb in trenches and open excavation, exceeding five (5) feet, which shall conform to applicable safety orders. By entering an amount for this cost item below, the Proposer warrants that its action does not convey tort liability to the City, the Engineer, the Construction Manager, the Funding Agencies and their respective officers, employees, agents, and subconsultants.

12.7.1 Equipment Safety Provisions

The completed Work shall include the specified permanent safety devices, such as machinery guards and similar safety items, required by the State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work, including CITY-selected equipment, subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. All equipment furnished shall be grounded and provided guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by safety codes, this shall be provided. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. The Contractor shall notify all equipment suppliers and subcontractors of the provisions of this paragraph.

12.7.1 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.

12.7.1 Loading Capacity

The Contractor shall determine safe loading capacities and shall not overload any structure, building, pipe or other existing facility beyond its safe capacity during construction. In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin and protect as may be necessary all foundations and other parts of all existing structures, facilities and improvements on the Site or adjacent to the Site which are in any way affected by the Contractor's excavations or other operations connected with the Work. Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Contractor shall notify the Construction Manager to discuss responsibilities for properly notifying the owners/occupants of adjacent land and the protective measures taken by the Contractor. Upon request of the Construction Manager, the Contractor shall meet with the recipient of any notice or attend local public meetings as proper public outreach on local impacts caused by completion of the Work should be communicated to any parties that may be affected prior to commencing any work.

12.8 Safety Violations

Should the Contractor fail to correct an unsafe condition, the CITY shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the Work in question can be stopped in accordance with Article 4.6, CITY's Right to Stop the Work, until the condition is corrected to the satisfaction of the CITY. No extension of time or additional compensation will be granted as a result of any stop order so issued. The notification and suspension of such Work or the failure to provide such notification and suspension by the CITY shall not relieve the Contractor of its sole responsibility and liability for safety and the correction of any unsafe conditions.

The CITY shall have the authority to require the removal from the Project of any worker and the foreman and/or superintendent in responsible charge of the work where safety violations occur. The CITY also delegates such authority to the Construction Manager as well.

12.9 Public Safety and Convenience

The Contractor shall conduct its work so as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Construction Manager and the written approval by the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

12.10 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 Article 9.8-Change Orders on Account of Excusable Delay.

12.11 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.

12.12 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.

12.13 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 Article 2.19.4 hereof.

12.14 Damage to Property of Others

- A. 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.
- B. 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.

12.15 Remedy of Damage

CONTRACTOR shall promptly remedy damage and loss to property referred to in Article 12.14-Damage to Property of Others (items B and C) 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.

ARTICLE 13 - DISPUTES

13.1 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.

13.2 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 14 - EVENTS OF DEFAULT AND REMEDIES; TERMINATION

14.1 CONTRACTOR Events of Default

The following shall be considered "CONTRACTOR Events of Default":

- A. 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;
- B. 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);
- C. 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.

14.2 Remedies of CITY upon a CONTRACTOR Event of Default.

14.2.1 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.

14.2.2 Without prejudice to any other rights or remedies of CITY, CITY may:

- A. Take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by CONTRACTOR;
- B. Accept assignment of Subcontracts; and
- C. Finish the work by whatever reasonable method CITY may deem expedient.
- D. 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.

14.3 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.

14.4 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.

14.5 Termination or Suspension for Convenience.

14.5.1 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.

14.5.2 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.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 Governing Law

This Contract shall be construed with and governed by the laws of the State of California.

15.2 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.

15.3 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:	If to CONTRACTOR:
Janice Gainey City of Roseville 2005 Hilltop Circle Roseville, CA 95747	Dean Bailey Auburn Constructors, LLC 730 W. Stadium Lane Sacramento, CA 95834

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

15.4 Modifications

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

15.5 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.

15.6 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.

15.7 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

15.8 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.

15.9 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.

15.10 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.

15.11 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.

15.12 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*.

15.13 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:
BY: _____
DOMINICK CASEY
CITY Manager
ATTEST:

BY: _____
SONIA OROZCO
CITY Clerk

APPROVED AS TO FORM:

BY: _____

ROBERT R. SCHMITT

CITY Attorney

APPROVED AS TO SUBSTANCE

By: Richard D. Plecker
Richard D. Plecker
Director Of Environmental Utilities

Auburn Constructors, LLC
a CA Limited Liability Company :
BY: J. Dean Bailey
its: President
and
BY: John West
its: Vice President

ARTICLE 16 - LIST OF EXHIBITS

Exhibit A	Contractor's Statement of Pre-Qualification [Not Used]
Exhibit B	Scope of Work from Contractor's Technical Proposal dated January 30, 2020
Exhibit C	Guaranteed Maximum Price, Cost of Work, and Fee
Exhibit D	Construction Allowance Items and Amounts
Exhibit E	Hazardous Materials
Exhibit F	In Lieu of Securities Escrow Agreement
Exhibit G	Bond Forms; Performance, Labor & Materials, and Warranty Bonds Note: Warranty Bond requirement may be waived at the option of CITY.
Exhibit H	Completion Times and Liquidated Damages

EXHIBIT A - CONTRACTOR'S STATEMENTS OF PRE-QUALIFICATION (SOPQ)

(NOT USED)

END OF EXHIBIT A