



CITY OF  
**PALO  
ALTO**

**DESIGN-BUILD CONTRACT**

**Contract No. C20176772**

**City of Palo Alto  
60KV Breaker Design-Build Project**

**DESIGN-BUILD CONTRACT  
TABLE OF CONTENTS**

SECTION 1	INCORPORATION OF RECITALS AND DEFINITIONS .....	4
1.1	Recitals .....	4
1.2	Definitions .....	4
SECTION 2	THE PROJECT.....	4
SECTION 3	THE CONTRACT DOCUMENTS.....	5
3.1	List of Documents.....	5
3.2	Order of Precedence .....	5
SECTION 4	DBE’S DUTY.....	6
4.1	Relationship of Trust and Confidence .....	6
4.2	Scope of Services .....	6
4.3	Design Services .....	6
4.4	Construction Services .....	7
4.5	DBE’s Subcontractors .....	8
4.6	Coordination of Work.....	8
4.7	DBE’s Representative .....	9
SECTION 5	PROJECT TEAM .....	9
SECTION 6	TIME OF COMPLETION.....	9
6.1	Time is of Essence.....	9
6.2	Commencement of Work .....	9
6.3	Contract Time .....	9
6.4	Liquidated Damages .....	9
6.5	Adjustments to Contract Time .....	9
SECTION 7	COMPENSATION TO DBE .....	10
7.1	Contract Sum.....	10
7.2	Full Compensation.....	10
SECTION 8	STANDARD OF CARE .....	10
SECTION 9	INDEMNIFICATION.....	10
9.1	Hold Harmless .....	10
9.2	Professional Indemnity.....	10
9.3	Limitations of Liability .....	10
9.4	Survival .....	11
SECTION 10	NONDISCRIMINATION .....	11
SECTION 11	INSURANCE AND BONDS .....	11
SECTION 12	PROHIBITION AGAINST TRANSFERS.....	11
SECTION 13	NOTICES .....	11
13.1	Method of Notice .....	11
13.2	Notice Recipients.....	11
13.3	Change of Address.....	12
SECTION 14	DEFAULT .....	12
14.1	Notice of Default .....	12
14.2	Opportunity to Cure Default.....	13
SECTION 15	CITY’S RIGHTS AND REMEDIES.....	13
15.1	Remedies Upon Default.....	13
15.2	Delays by Sureties.....	14

15.3	Damages to City .....	14
15.4	Suspension by City .....	14
15.5	Termination Without Cause .....	15
15.6	DBE's Duties Upon Termination .....	16
SECTION 16 DBE'S RIGHTS AND REMEDIES .....		16
16.1	DBE'S Remedies .....	16
16.2	Damages to DBE .....	17
SECTION 17 ACCOUNTING RECORDS .....		17
17.1	Financial Management and City Access .....	17
17.2	Compliance with City Requests .....	17
17.3	Confidential or Proprietary Information .....	17
SECTION 18 INDEPENDENT PARTIES .....		17
SECTION 19 NUISANCE .....		17
SECTION 20 PERMITS AND LICENSES .....		18
SECTION 21 WAIVER .....		18
SECTION 22 GOVERNING LAW AND VENUE .....		18
SECTION 23 COMPLETE AGREEMENT .....		18
SECTION 24 SURVIVAL OF CONTRACT .....		18
SECTION 25 PREVAILING WAGES .....		18
SECTION 26 NONAPPROPRIATION .....		19
SECTION 27 AUTHORITY .....		19
SECTION 28 COUNTERPARTS .....		19
SECTION 29 SEVERABILITY .....		19
SECTION 30 STATUTORY AND REGULATORY REFERENCES .....		19
SECTION 31 WORKERS' COMPENSATION CERTIFICATION .....		19
SECTION 32 SPECIAL TERMS .....		19
32.1	Costs .....	19
32.2	Delays .....	19
32.3	Beneficial Occupancy .....	19
32.4	Proposal .....	19
32.5	Notices .....	19
32.6	Warranties .....	20
32.7	Environmental Controls and Project Site .....	20
32.8	Drawing Submittals/Reviews .....	20
32.9	Payments and Completion .....	20
32.10	Subcontractors .....	20
32.11	Royalties and Patents .....	20

## DESIGN-BUILD CONTRACT

THIS DESIGN-BUILD CONTRACT ("Contract" or "Agreement") entered into on August 3, 2020 ("Execution Date") by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("City"), and Burns & McDonnell Engineering Company, Inc. dba Burns & McDonnell, a Missouri corporation and known herein as the Design-Build Entity ("DBE"), is made with reference to the following:

### **RECITALS:**

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. DBE is a corporation duly organized and in good standing in the State of Missouri, DBE's California Contractor License Number 755238. DBE represents that it is duly licensed by the State of California and has the background, knowledge, and experience to perform the obligations set forth in this Design-Build Contract.

C. On March 10, 2020, City issued a Request for Proposals ("RFP") to DBEs for the 60KV Breaker Design-Build ("Project"). In response to the RFP, DBE submitted a Proposal.

D. City and DBE desire to enter into this Design-Build Contract to provide the Design-Build Services for the Project, and other such services as identified in the Contract Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

### **SECTION 1**      **INCORPORATION OF RECITALS AND DEFINITIONS.**

#### **1.1**      **Recitals.**

All of the recitals are incorporated herein by reference.

#### **1.2**      **Definitions.**

Capitalized terms shall have the meanings set forth in the RFP, this Design-Build Contract and/or in the General Conditions. If there is a conflict between the definitions in the RFP, this Design-Build Contract or in the General Conditions, the definitions in this Design-Build Contract shall prevail.

### **SECTION 2**      **THE PROJECT.**

The project is for the replacement of the 60KV Breakers at each of the Colorado Power Station at 1082 Colorado Avenue, Palo Alto, and the Park Boulevard Substation at 3291 Park Boulevard, Palo Alto.

### **SECTION 3**      **THE CONTRACT DOCUMENTS.**

#### **3.1**      **List of Documents.**

The Contract Documents (sometimes collectively referred to as "Agreement" or "Contract") consist of the following documents which are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Design-Build Contract

- 4) Scope of Work/DBE's Final Proposal/Non-Collusion Affidavit
- 5) RFP Addenda
- 6) Special Provisions [Not Applicable]
- 7) General Conditions
- 8) Approved Design Documents (to be developed by DBE)
- 9) Bridging Documents
- 10) Performance and Payment Bonds
- 11) Instructions to Proposers
- 12) Request for Proposals (except form Agreement included therein)
- 13) Reports listed in the Contract Documents
- 14) Public Works Department's Standard Drawings and Specifications (most current version at time of Proposal)
- 15) Utilities Department's Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Proposal)
- 16) City of Palo Alto Traffic Control Requirements
- 17) City of Palo Alto Truck Route Map and Regulations
- 18) Pre-Qualification Questionnaire [Not applicable]

### **3.2 Order of Precedence.**

For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

## **SECTION 4 DBE'S DUTY.**

**4.1 Relationship of Trust and Confidence.** DBE accepts the relationship of trust and confidence established between it and City by this Contract. DBE agrees to furnish the Design-Build Services necessary for the design and completion of the Project and agrees to furnish efficient business administration and superintendence, and to use its reasonable efforts to complete the Project in a sound way and in the most efficient and economical manner consistent with the best interest of City, all in accordance with prudent industry practices.

4.1.1 DBE represents that it is an independent contractor and that it is familiar with the type of Design-Build Services it is undertaking.

4.1.2 Neither DBE nor any of its agents or employees shall act on behalf of or in the name of City unless authorized in writing by City's Representative.

4.1.3 DBE shall perform its obligations with integrity, ensuring at a minimum that conflicts of interest, including but not limited to conflicts of interests on the part of any Design Professionals employed by DBE, shall be avoided to

the best of its knowledge.

**4.2 Scope of Services.** DBE shall be responsible for procuring or providing the Design-Build Services for the Project consistent with the Contract Documents. DBE shall exercise reasonable skill and judgment in the procurement and provision of the Design-Build Services, consistent with the applicable industry practices and the terms and conditions of the Contract Documents.

**4.3 Design Services.**

**4.3.1 Architectural and Engineering Services.** Architectural and engineering services must be provided by licensed, independent Design Professionals retained by DBE or by licensed employees of DBE, or as permitted by the law of the State of California. DBE may not engage the services of any Design Professional for this Project without obtaining the City's prior written approval, which approval will not be unreasonably withheld. City's approval will not be deemed to create any contractual relationship between City and any such Design Professional. DBE must bind its Design Professionals in the same manner as DBE is bound to the City under this Contract, including, but not limited to, the insurance and indemnity requirements set forth herein. All Design Services must be guided by the Bridging Documents and Design Documents which are approved by City. Because the Bridging Documents, Plans, and Drawings were prepared by the City or its Design Consultant, the DBE has a right to rely upon the Bridging Documents, Plans, and Drawings without independent verification. DBE shall notify the City if it discovers any defects in the Bridging Documents, Plans, or Drawings, but the DBE shall not be liable for such documents or any warranties related thereto.

**4.3.2 Project Schedule.** Within 15 days following the Notice to Proceed, DBE must prepare and submit for City's review and approval a preliminary Project Schedule showing the timing and sequencing of the Design-Build Services required to complete the Project. Unless otherwise specified by City, the preliminary Project Schedule should include the major phases for the Design Services and for the Construction Services, including, but not limited to, completion of Design Development Documents; Construction Documents; procurement of Subcontractors; construction; final close out; as well as any other milestones applicable to this Project. The Project Schedule shall be updated for City's review and approval upon completion of each milestone included in the Project Schedule.

**4.3.3 Design Development Documents.** DBE shall prepare and submit for City's review and approval the Design Development Documents consistent with the timeframes in the Project Schedule set forth in the Scope of Work. The Design Development Documents must be based on the Bridging Documents, as may be modified by the use permit from or design approvals by City, but must further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing, as applicable, the structural, architectural, mechanical and electrical systems. The Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When submitting the Design Development Documents, the DBE shall identify in writing, for City's approval, all material changes and deviations that have taken place since approval of the Bridging Documents and the Project Schedule. Two printed sets and one electronic/reproducible set of Design Development Documents must be provided to the City.

**4.3.4 Construction Documents.** DBE shall prepare and submit for City's review and approval the Construction Documents consistent with the timeframes in the Project Schedule set forth in the Scope of Work. DBE's submitted Construction Documents shall set forth in detail the quality levels of and the requirements for construction of the Project, and consist of drawings and specifications that comply with applicable codes, laws, and regulations in effect at the time of their preparation at the location of the Project. When submitting the Construction Documents, the DBE shall identify in writing all for City's approval, all material changes and deviations that have taken place since approval of the Design Development Documents and Project Schedule. Two printed sets and one electronic/reproducible set of Construction Documents must be provided to the City.

**4.3.5 Ownership of Documents.**

**4.3.5.1 Ownership of Tangible Documents.** City shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by DBE, as part of the Design Services which are identified as final deliverables.

**4.3.5.2 Use of Documents in Event of Termination.** In the event of a termination of this Contract, City shall have the right to use and to reproduce the Design Documents to complete the Project, regardless of whether

there has been a transfer of copyright to City. In the event of termination by the City for any reason prior to completion of all Design Documents and Construction Documents contemplated by the Contract Documents, except when documents are marked "FOR CONSTRUCTION" or other marking with similar meaning, the City releases DBE from any liability for such incomplete documents and waives all claims, causes of action, or suits against the City that are related to the use of such incomplete documents (including as may be modified or completed by third-party consultants).

**4.3.5.3 City's Use of Documents After Completion of Project.** After completion of the Project, City may reuse or reproduce the Design Documents solely for the purposes of maintaining, operating, or repairing the Project. Should the City or any third party obtaining such Design or Construction Documents through the City either use the Documents for any reason other than for the construction, operation, maintenance, or repair of the project for which they were prepared and intended, or modify such Documents, it shall be at the City's sole risk and DBE shall have no obligation, responsibilities or liabilities relating to such use or modification.

**4.3.5.4** All intellectual property in the deliverables (including the Design Documents) arising from the performance of the Work under this Contract shall be and remain the property of DBE, and may not be used by the City for any purpose other than as contemplated by this Contract for the Project without the express prior written permission of DBE. Nothing contained in this Contract shall be construed as limiting or depriving DBE of its right to use its basic knowledge and skill to design or carry out other projects or work for itself or others, whether or not such projects are similar to the Work to be performed under this Contract. DBE hereby grants to the City an irrevocable (except in the event of a breach of this license), non-exclusive, royalty-free license to utilize DBE's intellectual property prepared for or provided to the City as part of the Work and deliverables to the extent necessary for the construction, operation, maintenance, or repair of the Project for which they were prepared and intended. City shall not acquire any rights to any of DBE's or its Subcontractors' proprietary computer software that may be used in connection with the Work except as separately agreed. DBE shall obtain from its Subcontractors and Design Professionals rights and rights of use that correspond to the rights given by DBE to City in this Contract and DBE shall provide evidence that such rights have been secured.

#### **4.4 Construction Services.**

**4.4.1** DBE shall provide all labor, materials, equipment and services necessary to perform and timely complete the Construction Services in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City in accordance with prudent industry standards.

**4.4.2** DBE is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. DBE is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work, except to the extent that the Contract Documents provide other specific instructions.

**4.4.3** DBE shall provide sufficient and competent Subcontractors, administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents.

**4.4.4** DBE shall, at all times during performance of the Work, provide a qualified full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed.

**4.4.5** DBE must, at all times, perform the Work in a good workmanlike manner and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

**4.4.6** DBE is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of DBE or its Subcontractors.

**4.4.7** DBE shall promptly correct, at DBE's sole expense, any Work that is deficient or defective in workmanship, materials, and equipment.

**4.4.8** DBE shall keep such full and detailed accounts as may be necessary for proper financial management under this

Contract. City shall be afforded access to all DBE's financial records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on a reimbursable basis. DBE shall preserve all such records for a period of three years after the Final Payment or longer where required by law. Notwithstanding anything to the contrary herein, in no event shall the City be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers set forth in this Contract, nor shall it be entitled to audit any rates, charges, costs, hours worked, or expenses related to Services performed on a lump sum or fixed price basis.

4.4.9 DBE shall provide periodic written reports to City on the progress of the Work in such detail as is required by City and as agreed to by City and DBE.

#### **4.5 DBE's Subcontractors.**

4.5.1 All Work which is not performed by DBE with its own duly licensed forces shall be performed by Subcontractors. DBE must provide each Subcontractor with a complete set of the Construction Documents and any approved modifications thereto.

4.5.2 DBE shall require every Subcontractor and material supplier to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's or material supplier's portion(s) of the Work, and to likewise bind their Subcontractors or material suppliers. City reserves the right to reject any Subcontractor or material supplier based upon City's reasonable belief that the Subcontractor or material supplier is not adequately qualified, or whose performance is unacceptable to the City, or who has a history of unacceptable performance on other public works projects. If a Subcontractor or material supplier is rejected after they begin performance of Work due to previous approval by the City, DBE shall be entitled to a change order to replace such Subcontractor or material supplier. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor or material supplier and City.

4.5.3 If the Contract is terminated, each subcontract agreement shall be assigned by DBE to City, subject to the prior rights of any surety, provided that the City accepts such assignment by written notification, and assumes all rights and obligations of DBE pursuant to each such subcontract agreement.

4.5.4 All Subcontractors bidding on contracts for the Work shall be afforded the applicable protections contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).

**4.6 Coordination of Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. DBE is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and shall avoid hindering, delaying, or interfering with the work of other contractors. The City shall require similar coordination and avoidance of delay by its personnel or separate contractors with DBE and its Work. To the full extent permitted by law, DBE shall hold harmless and indemnify City against any and all claims arising from or related to DBE's negligent or willful hindrance of, delay to, or interference with the work of another contractor or City's own forces at the Project site. The roles, obligations, and liabilities of the City's Design Consultant, separate contractors, and the City's employees or agents who perform work or services related to DBE's Work or the Project site remain solely with those parties with respect to such work or services. DBE does not guarantee the performance of or warrant the work, work product, deliverables, materials, or equipment of the City, its Design Consultant or separate contractors, or any employees or agents of any of them.

**4.7 DBE's Representative.** DBE shall designate a person who shall be DBE's authorized representative, subject to City's approval, which shall not unreasonably be withheld.

#### **SECTION 5 PROJECT TEAM.**

In addition to DBE, City has retained, or may retain, a Design Consultant or other consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that DBE operate efficiently, effectively and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.

#### **SECTION 6 TIME OF COMPLETION.**



**6.1 Time Is of Essence.**

Time is of the essence with respect to all time limits for performance of the Work set forth in the Contract Documents.

**6.2 Commencement of Work.**

DBE shall commence the Design-Build Services on the date(s) specified in City's Notice to Proceed.

**6.3 Contract Time.**

The Design-Build Services must begin on the date specified on the City's Notice to Proceed and shall be completed in accordance with the Project Schedule set forth in the Scope of Work.

By executing this Design-Build Contract, DBE expressly waives any claim for delayed early completion.

The parties understand and agree that the Work is taking place at two different City sites/facilities; therefore, there will be separate Substantial Completion milestones for the applicable portion of Work at each site. All references to "Substantial Completion" in the Contract Documents, including with respect to commencement of the Guarantee to Repair Period and transfer of care, custody, control and risk of loss, shall mean the Substantial Completion date for the applicable portion of Work at each site.

**6.4 Liquidated Damages.**

Pursuant to Government Code Section 53069.85, if DBE fails to achieve Substantial Completion of the entire Work within the Contract Time, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Substantial Completion, based on the amount of Five Hundred Dollars (\$500.00) per day, subject to a maximum aggregate liability of an amount equal to 10% of the Contract Sum. Such liquidated damages shall serve as the City's sole and exclusive remedy for DBE's failure to achieve Substantial Completion due to an Unexcused Delay. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on the time for achieving Substantial Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to DBE, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from DBE or its sureties.

**6.4.1 Other Remedies.**

City is entitled to any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than DBE's failure to achieve Substantial Completion of the entire Work within the Contract Time, except to the extent expressly limited by the terms of this Contract.

**6.5 Adjustments to Contract Time.**

The Contract Time may only be adjusted for time extensions approved by City and memorialized in a Change Order approved in accordance with the requirements of the Contract Documents.

**SECTION 7 COMPENSATION TO DBE.**

**7.1 Contract Sum.**

DBE shall be compensated for satisfactory completion of the Design-Build Services in compliance with the Contract Documents the Contract Sum of Six Hundred Ninety Thousand and no/100 Dollars (\$690,000.00).

**7.2 Full Compensation.**

The Contract Sum shall be full compensation to DBE for all Design-Build Services provided by DBE and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Design-Build Services or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Design-Build Services until its Acceptance by City, all known or discoverable risks connected with the Design-Build Services, and any and all expenses incurred due to suspension or discontinuance of the Design-Build Services caused by DBE's fault, except as expressly provided herein. The Contract Sum may only be adjusted for Change Orders approved in accordance with the requirements of the Contract Documents.

## **SECTION 8**      **STANDARD OF CARE.**

DBE agrees that the Design-Build Services shall be performed by qualified, experienced and well-supervised personnel. All Design-Build Services performed in connection with this Design-Build Contract shall be performed in a manner consistent with the professional standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

## **SECTION 9**      **INDEMNIFICATION; LIMITATION OF LIABILITY.**

### **9.1      Hold Harmless.**

To the fullest extent permitted by law, and except as set forth below in Section 9.2, DBE shall protect, indemnify, defend and hold harmless City, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys' fees, experts fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the DBE, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

Notwithstanding the above, nothing in this section shall be construed to require DBE to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party.

DBE shall pay City for any costs City incurs to enforce this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of DBE against City or any other Indemnitee.

Pursuant to Public Contract Code Section 9201, City shall timely notify DBE upon receipt of any third-party claim relating to the Contract.

### **9.2      Professional Indemnity.**

DBE agrees, to the fullest extent permitted by law, to indemnify each Indemnified Party against costs, damages, or losses, including, without limitation, reasonable attorneys' fees and expert fees resulting from claims by third parties for personal injury (including death) or property damage to the extent caused by the negligence, recklessness, or willful misconduct of the DBE, its officers, employees, agents or subcontractors in the performance of professional design and engineering services as part of the Work under the Contract Documents. The indemnity obligation under this Section 9.2 shall not include a duty to defend, and DBE shall not be obligated to indemnify any Indemnified Party for its respective negligence or willful misconduct.

### **9.3      Limitations of Liability.**

To the fullest extent permitted by law, and notwithstanding any other provision of this Contract, the total aggregate liability of DBE, its officers, directors, employees, agents, and Subcontractors, or any of them, to the City and anyone claiming by, through or under the City, for any first-party claims, losses, costs or damages whatsoever resulting from or in any way related to the Project or this Contract, from any cause including, but not limited to, negligence, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied), shall not exceed the sum of One Million Dollars (\$1,000,000).

### **9.4      Survival.**

The acceptance of DBE's services and duties by City shall not operate as a waiver of the right of indemnification. The provisions of this Section 9 shall survive the expiration or early termination of this Agreement.

## **SECTION 10**      **NONDISCRIMINATION.**

As set forth in Palo Alto Municipal Code section 2.30.510, DBE certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. DBE acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and will comply with all requirements of Section 2.30.510 pertaining to

nondiscrimination in employment.

**SECTION 11      INSURANCE AND BONDS.**

Within ten (10) business days following issuance of the Notice of Award, DBE shall provide City with evidence satisfactory to the City that DBE has obtained insurance by providing a valid certificate of insurance; and has sufficient bonding capacity to provide Performance and Payment Bonds, by providing copies of the required bonds, satisfying all requirements in Article 11 of the General Conditions, or as otherwise approved by the City's Risk Manager.

**SECTION 12      PROHIBITION AGAINST TRANSFERS.**

City is entering into this Design-Build Contract in reliance upon the stated experience and qualifications of the DBE and its Subcontractors as set forth in DBE's Proposal. Accordingly, DBE shall not assign, hypothecate or transfer this Design-Build Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void, and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of DBE or of any general partner or joint venturer or syndicate member of DBE, if the DBE is a partnership or joint venture or syndicate or co-tenancy, shall result in changing the control of DBE, shall be construed as an assignment of this Design-Build Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

**SECTION 13      NOTICES.**

**13.1      Method of Notice.**

All notices, demands, requests or approvals to be given under this Design-Build Contract shall be given in writing and shall be deemed served on the earlier of the following:

- (i)      On the date delivered if delivered personally;
- (ii)      On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii)      On the date sent if sent by facsimile transmission;
- (iv)      On the date sent if delivered by electronic mail; or
- (v)      On the date it is accepted or rejected if sent by certified mail.

**13.2      Notice Recipients.**

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from DBE to City shall include the Project name and the number of this Design-Build Contract and shall be addressed to City at:

To City:                      City of Palo Alto  
                                    City Clerk  
                                    250 Hamilton Avenue  
                                    P.O. Box 10250  
                                    Palo Alto, CA 94303

AND

- ☐      City of Palo Alto Utilities Engineering  
                                    250 Hamilton Avenue  
                                    Palo Alto, CA 94301  
                                    Attn: Jim Bujtor

In addition, copies of all Claims by DBE under this Design-Build Contract shall be provided to the following:

Palo Alto City Attorney's Office  
250 Hamilton Avenue  
P.O. Box 10250  
Palo Alto, California 94303

All Claims shall be delivered personally or sent by certified mail.

All notices, demands, requests or approvals from City to DBE shall be addressed to: Name:

Marianne Goldsborough  
Title: T & D Project Manager  
Address: 4225 Executive Square, Suite 500  
La Jolla, CA 92037  
Phone: (562) 237-9396  
Email: mlgoldsborough@burnsmcd.com

**13.3 Change of Address.**

In advance of any change of address, DBE shall notify City of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

**SECTION 14      DEFAULT.**

**14.1 Notice of Default.**

In the event that City determines, in its sole discretion, that DBE has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, City may give written notice of default to DBE in the manner specified for the giving of notices in the Design-Build Contract, with a copy to DBE's performance bond surety.

**14.2 Opportunity to Cure Default.**

Except for emergencies, DBE shall cure any default in performance of its obligations under the Contract Documents within two (2) Days (or such shorter time as City may reasonably require) after receipt of written notice. However, if the breach cannot be reasonably cured within such time, DBE will commence to cure the breach within two (2) Days (or such longer time as City and DBE may reasonably agree) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than twenty (20) Days after the agreed upon time, unless expressly authorized by City.

**SECTION 15      CITY'S RIGHTS AND REMEDIES.**

**15.1 Remedies Upon Default.**

If DBE fails to cure any default of this Design-Build Contract within the time period set forth above in Section 14, then City may pursue any remedies available under law or equity, including, without limitation, the following:

**15.1.1 Delete Certain Services.**

City may, without terminating the Design-Build Contract, delete certain portions of the Design-Build Services, reserving to itself all rights to Losses related thereto.

**15.1.2 Perform and Withhold.**

City may, without terminating the Design-Build Contract, engage others to perform the Design-Build Services or portion thereof that has not been adequately performed by DBE and withhold the cost thereof to City from future payments to DBE related to such portion of Services, reserving to itself all rights to Losses related thereto.

**15.1.3 Suspend the Design-Build Contract.**

City may, without terminating the Design-Build Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Design-Build Contract for as long a period of time as City determines, in its sole discretion, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to DBE for damages if City directs DBE to resume Design-Build Services.

**15.1.4 Terminate the Design-Build Contract for Default.**

City shall have the right to terminate this Design-Build Contract, in whole or in part, upon the failure of DBE to promptly cure any default as required by Section 14. City's election to terminate the Design-Build Contract for default shall be communicated by giving DBE a written notice of termination in the manner specified for the giving of notices in the Design-Build Contract. Any notice of termination given to DBE by City shall be effective immediately, unless otherwise provided therein.

**15.1.5 Invoke the Performance Bond.**

City may, with or without terminating the Design-Build Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

**15.1.6 Additional Provisions.**

All of City's rights and remedies under this Design-Build Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity, except as expressly set forth herein. Designation in the Contract Documents of certain breaches as material shall not waive the City's authority to designate other breaches as material nor limit City's right to terminate the Design-Build Contract, or prevent the City from terminating the Agreement for its convenience for breaches that are not material. City's determination of whether there has been noncompliance with the Design-Build Contract so as to warrant exercise by City of its rights and remedies for default under the Design-Build Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against DBE to recover all liquidated damages and Losses suffered by City.

**15.2 Delays by Sureties.** [Intentionally omitted.]

**15.3 Damages to City.**

**15.3.1 For DBE's Default.**

City will be entitled to seek recovery of all Losses under law or equity in the event of DBE's default under the Contract Documents.

**15.3.2 Compensation for Losses.**

In the event that City's undisputed Losses arise from DBE's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to DBE. If the undisputed Losses incurred by City exceed the amount payable, DBE shall be liable to City for the difference and shall promptly remit same to City. City may withhold payment for any disputed Losses consistent with the process set forth in the General Conditions.

**15.4 Suspension by City**

**15.4.1 Suspension for Convenience.**

City may, at any time and from time to time, without cause, order DBE, in writing, to suspend, delay, or interrupt the Design-Build Services in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, DBE shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Design-Build Services covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Design-Build Services covered by the Suspension Order. If a Suspension Order is canceled or expires, DBE shall resume and continue with the Design-Build Services. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive

method for City to stop the Design-Build Services.

**15.4.2 Suspension for Cause.**

In addition to all other remedies available to City, if DBE fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Design-Build Services, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. DBE shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by DBE's fault. City's right to suspend the Design-Build Services shall not give rise to a duty to suspend the Design-Build Services, and City's failure to suspend the Design-Build Services shall not constitute a defense to DBE's failure to comply with the requirements of the Contract Documents.

**15.5 Termination Without Cause.**

City may, at its sole discretion and without cause, terminate this Design-Build Contract in part or in whole upon written notice to DBE. Upon receipt of such notice, DBE shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 shall be the DBE's sole and exclusive compensation for such termination and DBE waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause. Termination pursuant to this provision does not relieve DBE or its sureties from any of their obligations for Losses arising from or related to the Design-Build Services performed by DBE.

**15.5.1 Compensation.**

Following such termination and within forty-five (45) Days after receipt of a billing from DBE seeking payment of sums authorized by this Paragraph 15.5.1, City shall pay the following to DBE as DBE's sole compensation for performance of the Design-Build Services:

**.1 For Services Performed.** The amount of the Contract Sum allocable to the portion of the Design- Build Services properly performed by DBE as of the date of termination, less sums previously paid to DBE.

**.2 For Close-out Costs.** If termination is effective after the Construction Services have commenced on the site, reasonable costs of DBE and its Subcontractors:

- (i) Demobilizing and
- (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.

**.3 For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work, or such items not yet delivered but which cannot be cancelled or returned by DBE.

**.4 Profit Allowance.** An allowance for overhead and profit calculated as ten percent (10%) of the sum of the above items listed in 15.5.1.2 and 15.5.1.3.

**.5 Emergency Termination.** The compensation provided in this provision does not apply to termination for emergency pursuant to Section 2.6 of the General Conditions.

**15.5.2 Subcontractors.**

DBE shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by DBE on terms that are consistent with this Design-Build Contract and that afford no greater rights of recovery against DBE than are afforded to DBE against City under this Section.

**15.6 DBE's Duties Upon Termination.**

Upon receipt of a notice of termination for default or for convenience, DBE shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Design-Build Services to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary

- for completion of such portion of the Work that is not discontinued;
- (iii) Provide to City a description in writing, no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Design-Build Services covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request DBE to terminate the subcontract, purchase order or contract;
- (iv) Promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and
- (v) Thereafter do only such Design-Build Services as may be necessary to preserve and protect Design- Build Services already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of As-Built Documents, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

## **SECTION 16 DBE'S RIGHTS AND REMEDIES.**

### **16.1 DBE's Remedies.**

DBE may terminate this Design-Build Contract only upon the occurrence of one of the following:

#### **16.1.1 For Work Stoppage.**

The Work is stopped for thirty (30) consecutive Days, through no act or fault of DBE, any Subcontractor, or any employee or agent of DBE or any Subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency requiring the work to stop. This provision shall not apply to any work stoppage resulting from the City's issuance of a suspension notice issued either for cause or for convenience.

#### **16.1.2 For City's Non-Payment.**

If City does not pay DBE undisputed sums within sixty (60) Days after receipt of notice from DBE, DBE may terminate the Design-Build Contract thirty (30) days following a second notice to City of DBE's intention to terminate the Design-Build Contract.

### **16.2 Damages to DBE.**

In the event of termination for cause by DBE, City shall pay DBE the sums provided for in Paragraph 15.5.1 above. DBE agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

## **SECTION 17 ACCOUNTING RECORDS.**

### **17.1 Financial Management and City Access.**

DBE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design-Build Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy DBE's financial records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. DBE shall retain these documents for a period of three (3) years after the later of (i) Final Payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law. Notwithstanding anything to the contrary herein, in no event shall the City be entitled to audit the composition of any agreed upon fixed rates or percentage multipliers set forth in this Contract, nor shall it be entitled to audit any rates, charges, costs, hours worked or expenses related to Services performed on a lump sum or fixed price basis.

### **17.2 Compliance with City Requests.**

DBE's compliance with any request by City pursuant to this Section 17 shall be a condition precedent to filing or maintenance of any legal action or proceeding by DBE against City and to DBE's right to receive further payments under the Contract Documents. City may enforce DBE's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection by issuance of a writ or a provisional or permanent mandatory injunction by a court of

competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony. Provided, however, that this Section 17 shall not be used by the City in contravention of the applicable rules of civil procedure and discovery in any litigation between the parties.

**17.3 Confidential or Proprietary Information.**

To the extent City desires a copy of any of the above information which DBE deems proprietary or confidential information, City and DBE shall execute a non-disclosure agreement to prevent disclosure of the information to third parties, to the extent allowed by law.

**SECTION 18 INDEPENDENT PARTIES.**

Each party is acting in its independent capacity and not as agents, employees, partners, or joint ventures' of the other party. City, its officers or employees shall have no control over the conduct of DBE or its respective agents, employees, subconsultants, or Subcontractors, except as herein set forth.

**SECTION 19 NUISANCE.**

DBE shall not maintain, commit, nor permit the maintenance or commission of any nuisance (as defined by applicable law) in connection in the performance of services under this Design-Build Contract.

**SECTION 20 PERMITS AND LICENSES.**

DBE shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Design-Build Services; provided, however, that the Parties understand as of the Execution Date that no permits are required to be provided by Contractor or included in the Contract Sum. Payment of all costs and expenses for any Contractor licenses required by applicable law for this Work shall be included in the Contract Sum.

**SECTION 21 WAIVER.**

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**SECTION 22 GOVERNING LAW AND VENUE.**

This Design-Build Contract shall be construed in accordance with and governed by the laws of the State of California, and venue shall be in a court of competent jurisdiction in the County of Santa Clara, and no other place.

**SECTION 23 COMPLETE AGREEMENT.**

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This Agreement may be amended only by a written instrument, which is signed by the parties.

**SECTION 24 SURVIVAL OF CONTRACT.**

The provisions of the Design-Build Contract which by their nature survive termination of the Design-Build Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit DBE's books and records, shall remain in full force and effect after Final Completion or any termination or suspension of the Design-Build Contract.

**SECTION 25 PREVAILING WAGES.**

The DBE is required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 *et seq.* and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations. Copies of these rates may be obtained at the Purchasing Office of the City of Palo Alto. DBE shall provide a copy of prevailing wage rates to any staff or Subcontractor hired, and shall pay the adopted prevailing



wage rates as a minimum. DBE shall comply with the provisions of Sections 1775, 1776, 1777.5, 1810, and 1813 of the Labor Code.

Pursuant to Labor Code section 1771.1, for any public works contract subject to Chapter 1 of Part 7 of Division 2 of the California Labor Code, for any Proposal submitted on or after March 1, 2015 and for any contract entered into on or after April 1, 2015, a contractor or subcontractor shall not be qualified to bid on or to be listed in a bid proposal subject to the requirements of section 4104 of the California Public Contract Code, unless that contractor or subcontractor is currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code.

**Notice: Pursuant to California Labor Code section 1771.4, this Project, if awarded on or after January 15, 2015, is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.**

**SECTION 26          NON APPROPRIATION.**

This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that the City does not appropriate funds for the following fiscal year for this event, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Design-Build Contract are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement. Any termination of this Contract due to non-appropriation shall be considered a termination for the City's convenience.

**SECTION 27          AUTHORITY.**

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

**SECTION 28          COUNTERPARTS.**

This Agreement may be signed in multiple counterparts, which shall, when executed by all the parties, constitute a single binding agreement.

**SECTION 29          SEVERABILITY.**

In case a provision of this Design-Build Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

**SECTION 30          STATUTORY AND REGULATORY REFERENCES.**

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by City, unless otherwise required by law.

**SECTION 31          WORKERS' COMPENSATION CERTIFICATION.**

Pursuant to Labor Code Section 1861, by signing this Contract, DBE certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

**SECTION 32          SPECIAL TERMS.**

Notwithstanding anything to the contrary in the Contract Documents, the following terms shall apply and govern:

- 32.1      Costs.** All references to costs (including "Allowable Costs") for DBE's performance of Work shall include the agreed all-inclusive hourly rates for DBE's direct employees and agents. Any references to direct costs, prevailing wages, certified payrolls, labor classifications, and similar terms shall only apply to trade laborers of construction Subcontractors. The DBE Markup shall be 10% on reimbursable expenses, and the Subcontractor Markup shall be 10% of Subcontractors' Allowable Costs. Section 7.2.5 of the General Conditions shall not apply, but DBE agrees that all such items listed therein shall not be double-charged to City within the total of Allowable Costs, DBE Markup, and Subcontractor Markup.

- 32.2 Delays.** All Excusable Delays shall allow DBE to seek and provide evidence for a reasonable Change Order for a Compensable Delay. Excusable Delays shall include delays caused by City or its Separate Contractors for their work related to DBE's Work at the Site.
- 32.3 Beneficial Occupancy.** The parties agree that Beneficial Occupancy is not an applicable concept to this Contract.
- 32.4 Proposal.** All references in the Contract Documents to DBE's Proposal shall be considered to mean the final Scope of Work agreed in this Contract, conditions existing as of the date of execution of the Contract, or the final Contract Sum agreed in this Contract, as the context allows.
- 32.5 Notices.** All references to the timeframe to provide notice of a claim, dispute, incident, or change for either Party, particularly related to Change Order Requests and incident reports, shall commence upon the date when such party first discovered or obtained knowledge of the occurrence resulting in a potential claim, dispute, incident, or change.
- 32.6 Warranties.**
- .1 "Defective Work" (or any references to defect or defective, whether or not capitalized) shall mean Work by DBE that is faulty, omitted, incomplete, or deficient because it does not conform to the Applicable Code Requirements, the Contract Documents, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.
- .2 The Standard of Care set forth in Section 8 of the Design-Build Contract shall be the only standard and warranty applied to Design Services provided by DBE as part of the Work. The Warranty set forth in Section 3.5 of the General Conditions shall not be in addition to the terms of Article 12 of the General Conditions, but shall be consistent with the following: The Construction Services and equipment procured by DBE for permanent installation into the Work shall be performed in a good and workmanlike manner, free from defects, and in accordance with the technical specifications. Article 12 sets forth the remedies for DBE's breach of any warranty expressly stated in the Design-Build Contract or Section 3.5 of the General Conditions. The one-year Guarantee to Repair Period shall commence upon Substantial Completion of the Work (or specified portion thereof), and shall not be extended. Ordinary wear and tear, abuse or neglect by City's operations and maintenance, and damage or defect caused by City's separate work related to the Project are excepted from this guarantee.
- .3 City-Provided Equipment: The parties understand and agree that the City is providing certain equipment from a separate vendor for DBE to install in the Work. The parties will agree upon delivery time(s) of such equipment at the Project Site by City or its separate vendor, and DBE will inspect such equipment for visible defect, damage, or shortage. DBE has a right to reject any equipment that is defective, damaged, or not of specified quantity. Any delays to DBE's Work and schedule caused by late or defective equipment provided by or through the City shall be considered an Excusable Delay. Upon acceptance of such equipment, DBE will store it at the Site, accept risk of loss therefor, and install it in the applicable Work.
- For DBE's Work that involves installation of City-provided equipment, DBE only warrants its installation and construction services for such Work as set forth in this Contract, and disclaims any warranty for the equipment itself, which responsibility shall remain with the City or its separate vendor. The roles, obligations, and liabilities of the City's separate vendors, and those of the City's employees, agents, or any other separate contractors who perform work or services related to DBE's Work, remain solely with those parties with respect to such work or services. DBE does not guarantee the performance of or warrant the work, work product, deliverables, materials, or equipment of the City or its employees, agents, or separate vendors and contractors.
- .4 DBE shall and hereby does assign to the City any warranty on equipment or materials provided by its Subcontractors that extends beyond the Guarantee to Repair Period. After the Guarantee to Repair Period, DBE shall no longer have liability for such equipment or materials and the City shall look directly to the applicable Subcontractor to enforce any such extended warranties and repair obligations.
- .5 THE EXPRESS REPRESENTATIONS AND WARRANTIES PROVIDED IN THIS CONTRACT ARE EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ARISING FROM COURSE OF DEALING OR TRADE USAGE) SHALL APPLY. THE REMEDIES SET FORTH IN ARTICLE 12 OF THE GENERAL CONDITIONS ARE THE SOLE AND EXCLUSIVE REMEDIES OF CITY FOR ANY FAILURE BY DBE TO COMPLY WITH ITS CORRECTION OBLIGATIONS FOR DEFECTIVE WORK SET FORTH IN SUCH ARTICLE 12.

.6 All references to “intended purpose” or similar phrases in the Contract Documents shall mean for the purpose as specified in the Contract Documents or in accordance with the technical specifications in the Contract Documents, as the context allows.

.7 All references to a “best” or “highest” standard in the Contract Documents shall mean the standard of care described in Section 8 of Design-Build Contract.

### **32.7 Environmental Controls and Project Site.**

.1 During the initial phase of engineering for the Work, if DBE determines that additional geological investigation is required, DBE shall promptly request additional information from the City and the City shall provide the additional information at City’s expense. Any material changes to the scope, schedule, or cost of the Work resulting from additional subsurface information or differing conditions shall be incorporated via mutually agreed Change Order.

.2 The City is responsible for notifying “Underground Services Alert”, and shall provide DBE with reasonable access to the Site for performance of the Work.

.3 DBE is only responsible for hazardous materials it or its Subcontractors bring onto the Site; and has no responsibility for pre-existing hazardous materials discovered on the Site, or for hazardous materials brought by Separate Contractors or other third parties. DBE shall at no time be considered a generator, storer, arranger, or transporter under applicable law, nor provide remediation of any pre-existing hazardous materials even by Change Order.

.4 No SWPPP or dust control measures are applicable to this Scope of Work.

**32.8 Drawing Submittals/Reviews.** The City shall provide feedback within ten (10) days following the Contractor’s submittal of draft drawings for review. There will only be one review period with the City.

### **32.9 Payments and Completion.**

.1 Progress Payments. If the City identifies any issues for which it may withhold funds from any of Contractor’s progress payments per the Contract, City shall notify Contractor promptly after receiving an Application for Payment to allow Contractor a reasonable chance to cure such issues prior to withholding.

.2 Final Payment and Final Completion. After Contractor achieves Substantial Completion of the Work (or specified portion thereof) per the Contract, the City shall have two (2) Business Days to complete its separate testing related to the Project. If Contractor has met all other conditions for Final Completion of the Work per the Contract and the only delay is related to the City’s failure to complete its separate testing through no fault of Contractor, the Contractor shall have a right to submit its application for Final Payment no later than thirty (30) days after Substantial Completion.

**32.10 Subcontractors:** DBE will be responsible for the performance of the Work, whether by its own forces or through its Subcontractors. DBE will include portions of the Contract Documents in its subcontracts which are applicable to each Subcontractor’s portion of Work. The City shall be a beneficiary of the indemnities, additional insured coverage, and warranties of Subcontractors, but shall not be a full third-party beneficiary of subcontracts. Subcontracts shall be assignable to City upon a termination of DBE’s Work or Contract for cause.

**32.11 Royalties and Patents:** Any indemnity by DBE for its or its Subcontractors’ infringement of patent or other intellectual property rights shall be for damages suffered by the City resulting from claims by third parties, and not for any claims related to specified designs (including the Bridging Documents) or modifications by the City or others to DBE’s Design Documents or Construction Documents.

IN WITNESS WHEREOF, the parties have caused this Design-Build Contract to be executed the date and year first above written.

<b>CITY OF PALO ALTO</b>	<b>BURNS &amp; MCDONNELL ENGINEERING COMPANY, INC. DBA BURNS &amp; MCDONNELL Officer 1</b> By:
<b>City Manager</b> (Required on contracts over \$85,000)	Name:
	Title:
APPROVED AS TO FORM:	<b>Officer 2</b> By:
<b>City Attorney or designee</b> (Required on Contracts over \$25,000)	Name:
	Title:
<b>Utilities Director</b>	

## PERFORMANCE BOND

WHEREAS, the City Council of the City of Palo Alto, State of California ("City") and Burns & McDonnell Engineering Company, Inc. dba Burns & McDonnell, a Missouri corporation with headquarters at 9400 Ward Parkway, Kansas City, MO 64114 ("Principal") have entered into a Design-Build Contract dated August 3, 2020, and identified as Contract No. \_\_\_\_\_ -- 60KV Breaker Design-Build Project ("Agreement"), which is hereby referred to and made a part hereof whereby Principal agrees to design and build certain designated public improvements; and

WHEREAS, Principal is required under the terms of said Agreement to furnish a surety bond for the faithful performance of said agreement.

NOW, THEREFORE, Principal and \_\_\_\_\_, as Surety, incorporated under the Laws of the State of \_\_\_\_\_, and duly authorized to transact business as an admitted surety under the Laws of the State of California, are held and firmly bound unto City in the penal sum of Six Hundred Ninety Thousand and no/100 Dollars (\$690,000.00) for the Design-Build Services, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall promptly and faithfully keep and perform the covenants, conditions, and provisions of the above- mentioned Agreement and any alteration thereof, with or without notice to the Surety, and if Principal shall satisfy all claims and demands incurred under such Agreement and shall fully protect, indemnify, defend, and hold harmless City, its officers, agents, and employees from all claims, demands, or liabilities which may arise by reason of Principal's failure to do so, and shall reimburse and repay City all outlay and expenses which City may incur in making good any default, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

As part of the obligations secured hereto, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered. Surety shall be liable for any liquidated damages for which the Principal may be liable under its Agreement with the City, and such liquidated damages shall be part of the obligations secured hereto, and in addition to the face amount specified therefor.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligations on this security, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the Contract Documents. Surety hereby waives the provisions of California Civil Code Section 2845 and 2849. The City is the principal beneficiary of this bond and has all rights of a party hereto.

//

//

//

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal Surety above named on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of Surety Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of Surety

By: \_\_\_\_\_ Its: \_\_\_\_\_  
Typed or Printed Name Title

\_\_\_\_\_  
Name of DBE/Principal

\_\_\_\_\_  
Signature of DBE/Principal

By: \_\_\_\_\_ Its: \_\_\_\_\_  
Typed or Printed Name Title

### CERTIFICATE OF ACKNOWLEDGMENT

(Civil Code § 1189)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said County, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Seal)

## PAYMENT BOND

WHEREAS, the City Council of the City of Palo Alto, State of California ("City") and Burns & McDonnell Engineering Company, Inc. dba Burns & McDonnell, a Missouri corporation with headquarters at 9400 Ward Parkway, Kansas City, MO 64114 ("Principal"), have entered into a Design-Build Contract dated August 3, 2020, and identified as Contract No. \_\_\_\_\_ -- 60KV Breaker Design-Build Project ("Agreement"), which is hereby referred to and made a part here of, whereby Principal agrees to design and build certain designated public improvements; and

WHEREAS, under the terms of said Agreement, Principal is required before entering upon the performance of the work to file a good and sufficient payment surety bond with City to secure the claims to which reference is made in Titles 1 and 3 (commencing with Section 8000) of Part 6 of Division 4 of the Civil Code of the State of California.

NOW, THEREFORE, Principal and \_\_\_\_\_, as Surety, incorporated under the laws of the State of \_\_\_\_\_, and duly authorized to transact business as an admitted surety, under the Laws of the State of California, are held and firmly bound unto City in the penal sum of Six Hundred Ninety Thousand and no/100 Dollars (\$690,000.00), this amount being not less than one hundred percent of the total amount payable for the Design-Build Services by the terms of the Agreement per Civil Code section 9554, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal, Principal's Subcontractors, heirs, executors, administrators, successors, or assigns shall fail to pay any of the persons, companies, or corporations, referred to in Section 9100 of the California Civil Code, as amended, with respect to any work of labor performed or materials supplied by any such persons, companies, or corporations, which work, labor, or materials are covered by the above-mentioned Agreement and any amendments, changes, change order, additions, alterations, or modifications thereof, or any amounts due under the California Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and its Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, as amended, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, the Surety will pay reasonable attorney's fees in an amount to be fixed by the court.

It is hereby expressly stipulated and agreed that this surety bond shall inure to the benefit of any and all persons, companies, and corporations entitled named in Section 9100 of the California Civil Code, as amended, so as to give a right of action to them or their assigns in any suit brought upon this surety bond.

The Surety hereby stipulates and agrees that no amendment, change, change order, addition, alteration, or modification to the terms of the Agreement of the work to be performed thereunder or the Contract Documents accompanying the same, shall in any way affect its obligations on this surety bond, and it does hereby waive notice of any such amendment, change, change order, addition, alteration, or modification to the terms of the Agreement or to the work performed thereunder or to the Contract Documents accompanying the same. Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849.

IN WITNESS WHEREOF, this instrument has been duly executed by the Surety and Principal above named on \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Name of Surety Phone Number: \_\_\_\_\_

\_\_\_\_\_  
Signature of Surety

By: \_\_\_\_\_ Its: \_\_\_\_\_  
Typed or Printed Name Title

\_\_\_\_\_  
Name of DBE/Principal

\_\_\_\_\_  
Signature of DBE/Principal

By: \_\_\_\_\_ Its: \_\_\_\_\_  
Typed or Printed Name Title

### **CERTIFICATE OF ACKNOWLEDGMENT**

(Civil Code § 1189)

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said County,  
personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the  
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_



# **CITY OF PALO ALTO DESIGN-BUILD GENERAL CONDITIONS**

**GENERAL  
CONDITIONS  
TABLE OF  
CONTENTS**

<b>ARTICLE 1 – PRELIMINARY PROVISIONS .....</b>	<b>29</b>
1.1    DEFINITIONS .....	29
1.2    OWNERSHIP AND USE OF DOCUMENTS .....	35
1.3    INTERPRETATION OF CONTRACT DOCUMENTS .....	36
<b>ARTICLE 2 – CITY’S RIGHTS AND OBLIGATIONS .....</b>	<b>37</b>
2.1    INFORMATION AND SERVICES PROVIDED BY CITY .....	37
2.2    ACCESS TO PROJECT SITE .....	38
2.3    CITY'S RIGHT TO STOP THE WORK.....	38
2.4    CITY’S RIGHT TO CARRY OUT THE WORK .....	38
2.5    ACCESS TO MUNICIPAL SERVICES CENTER .....	38
2.6    EMERGENCY TERMINATION OF CONTRACT .....	38
<b>ARTICLE 3 – DBE’S RIGHTS AND OBLIGATIONS .....</b>	<b>39</b>
3.1    REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS .....	39
3.2    SUPERVISION AND CONSTRUCTION PROCEDURES .....	40
3.3    RESPONSIBILITY FOR THE WORK .....	40
3.4    LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS .....	41
3.5    DBE'S WARRANTY.....	41
3.6    CONSTRUCTION METHODS AND PROCEDURES .....	41
3.7    TAXES .....	42
3.8    LEGAL REQUIREMENTS.....	42
3.9    PROJECT STAFF .....	42
3.10   SCHEDULES REQUIRED OF DBE .....	42
3.11   DOCUMENTS AND SAMPLES AT PROJECT SITE .....	44
3.12   SUBMITTALS .....	45
3.13   TRADE NAMES, SUBSTITUTIONS .....	47
3.14   DAILY REPORTS BY DBE .....	47
3.15   CUTTING AND PATCHING .....	48
3.16   ACCESS TO THE WORK.....	48
3.17   ROYALTIES AND PATENTS.....	48
3.18   PERMITS AND LICENSES .....	48
3.19   DIFFERING SITE CONDITIONS .....	48

3.20	INSPECTIONS .....	49
3.21	STOP NOTICES .....	50
3.22	PARKING .....	50
3.23	USE OF THE PROJECT SITE AND CLEAN UP .....	50
3.24	ENVIRONMENTAL CONTROLS .....	51
3.25	TEMPORARY WATER, LIGHT AND POWER.....	57
3.26	CITY TRUCK ROUTE ORDINANCE .....	57
3.27	UNFAIR BUSINESS PRACTICE CLAIMS .....	57
3.28	EXISTING UTILITIES .....	57
<b>ARTICLE 4 – ADMINISTRATION OF THE CONTRACT .....</b>		<b>58</b>
4.1	CONTRACT ADMINISTRATION BY CITY, DESIGN CONSULTANT AND CONSTRUCTION MANAGER.....	58
4.2	CLAIMS .....	59
4.3	RESOLUTION OF CONTRACT DISPUTES.....	62
<b>ARTICLE 5 – SUBCONTRACTORS .....</b>		<b>66</b>
5.1	DBE’S AWARD OF SUBCONTRACTS .....	66
5.2	SUBCONTRACTOR RELATIONS.....	66
5.3	CONTINGENT ASSIGNMENT OF SUBCONTRACTS .....	68
5.4	DBE AND SUBCONTRACTOR RESPONSIBILITY.....	68
<b>ARTICLE 6 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS.....</b>		<b>68</b>
6.1	CITY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.....	68
6.2	MUTUAL RESPONSIBILITY .....	68
6.3	CITY’S RIGHT TO CLEAN UP .....	69
<b>ARTICLE 7 – CHANGES .....</b>		<b>69</b>
7.1	CHANGES.....	69
7.2	CHANGE ORDERS AND CHANGE ORDER REQUESTS.....	71
7.3	FIELD ORDERS .....	75
7.4	DISPUTES REGARDING CHANGES .....	76
<b>ARTICLE 8 – CONTRACT TIME .....</b>		<b>76</b>
8.1	COMMENCEMENT OF THE WORK.....	76
8.2	PROGRESS AND COMPLETION.....	76
8.3	CONSTRUCTION HOURS .....	77
8.4	HOLIDAYS .....	77
8.5	DELAY .....	77

<b>ARTICLE 9 – PAYMENTS AND COMPLETION .....</b>	<b>80</b>
9.1    SCHEDULE OF VALUES .....	80
9.2    PROGRESS PAYMENT.....	80
9.3    APPLICATION FOR PAYMENT.....	81
9.4    CERTIFICATE FOR PAYMENT .....	82
9.5    DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RENTENTION INTO ESCROW 83	
9.6    BENEFICIAL OCCUPANCY .....	84
9.7    SUBSTANTIAL COMPLETION .....	85
9.8    FINAL COMPLETION AND FINAL PAYMENT .....	85
<b>ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY .....</b>	<b>86</b>
10.1    SAFETY PRECAUTIONS AND PROGRAMS.....	86
10.2    SAFETY OF PERSONS AND PROPERTY .....	87
10.3    EMERGENCIES.....	88
10.4    TRENCH SAFETY .....	88
<b>ARTICLE 11 – INSURANCE AND BONDS .....</b>	<b>89</b>
11.1    DBE'S INSURANCE .....	89
11.2    BOND REQUIREMENTS.....	91
<b>ARTICLE 12 – DEFECTIVE WORK .....</b>	<b>92</b>
12.1    UNCOVERING OF WORK.....	92
12.2    CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD.....	92
12.3    ACCEPTANCE OF DEFECTIVE WORK.....	94
<b>ARTICLE 13 – STATUTORY REQUIREMENT .....</b>	<b>94</b>
13.1    STATE LABOR LAW .....	94
13.2    WORKDAY .....	94

ATTACHMENTS:

A: FIELD ORDER

B: CHANGE ORDER

REQUEST C: CONTRACT

CHANGE ORDER

**ARTICLE 1 – PRELIMINARY PROVISIONS**

**1.1 DEFINITIONS**

Terms appearing in the Contract Documents with initial capitalization shall have the meanings set forth below:

ACCEPTANCE: The point after Final Completion when DBE has fully performed all of the requirements of the Contract Documents and the Work is accepted by City in writing.

ADDENDA, ADDENDUM: Written or graphic information (including, without limitation, Drawings or Special Provisions and technical specifications) prepared and issued by City Engineer prior to the deadline for submission of

Proposals, which modify or interpret the Request for Proposals by additions, deletions, clarifications or corrections

**AGREEMENT:** The Design-Build Contract and all Contract Documents incorporated therein; also referenced as the "Contract."

**ALLOWABLE COSTS:** Actual and direct costs for performing Extra Work, including labor, materials, supplies, and equipment, as further specified herein, in Article 7 – Changes.

**ALLOWANCE:** An amount included in the Request for Proposals that may or may not be included in the Project, or for portions of the Design-Build Services where the amount or scope of the Design-Build Services cannot be ascertained at the time of Proposal submissions.

**ALTERNATE(S):** Those portions of the Proposal setting forth the price(s) for optional or alternative items not covered by the Base Proposal.

**APPLICABLE CODE REQUIREMENTS:** All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, DBE or City.

**APPLICATION FOR PAYMENT:** An itemized application for payment prepared and submitted by DBE for review and approval by City, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of the Contract Documents.

**APPROVE, APPROVED or APPROVAL:** Whether capitalized or not capitalized, shall mean, unless otherwise stated, either an express approval contained in a written statement signed by the approving authorized individual or deemed approved in accordance with the terms, conditions and procedures set forth in the Contract Documents. All such approvals by or on behalf of City (including, without limitation, approvals by Construction Manager) may be granted or withheld in the sole discretion of City.

**AS-BUILT DOCUMENTS:** The Project Drawings showing the condition of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents approved by City. These documents must be maintained by DBE on the Site and delivered, along with an electronic version of the set, to City upon Final Completion.

**BASE PROPOSAL PRICE:** The sum stated in the Proposal to provide the Design-Build Services, exclusive of any Alternate(s).

**BENEFICIAL OCCUPANCY:** City's right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work prior to either Substantial Completion, Final Completion, or Acceptance.

**BRIDGING DOCUMENTS:** The preliminary design or performance specifications and drawings plans provided by the City's Design Consultant and made part of the Contract Documents.

**CERTIFICATE FOR PAYMENT:** The form for approval by the Construction Manager of DBE's Application for Payment.

**CHANGE:** Additions, deletions, or other modifications to the Work, which may or may not involve Extra Work and which may or may not involve an adjustment (increase or decrease) to the Contract Sum or the Contract Time under the terms of the Contract Documents.

**CHANGE ORDER:** A duly authorized written instrument signed by City, or by City and DBE, which operates to amend the scope of Work, and which may also amend the Contract Sum or the Contract Time.

**CHANGE ORDER REQUEST:** DBE's written request for a Change Order.

**CITY:** City of Palo Alto, a California chartered municipal corporation.

**CITY ENGINEER:** City Engineer of City of Palo Alto or its designee.

**CLAIM:** A separate written demand by DBE for an extension of the Contract Time, and/or for payment of money or damages arising from Work done by, or on behalf of DBE which has been prepared and submitted in compliance with the Contract Documents.

CLIENT DEPARTMENT: Department or Division of City of Palo Alto identified as the end user of the facilities.

COMPENSABLE DELAY: A Delay for which DBE may be entitled under the Contract Documents to both an extension of the Contract Time and an adjustment of the Contract Sum for additional compensation.

CONSTRUCTION DOCUMENTS: The final Design Documents prepared by DBE and approved by City for construction of the Project.

CONSTRUCTION MANAGER: The City designated employee, project manager or an individual, partnership, corporation, joint venture or other legal entity under contract with City to perform construction management services for the Project. The term "Construction Manager" means Construction Manager or Construction Manager's authorized representative.

CONSTRUCTION SCHEDULE: The Approved graphical representation of DBE's as-planned schedule for performance of the Work, and all Approved updates thereto, prepared in accordance with the requirements of the Contract Documents and that provides for Substantial Completion of the Work within the Contract Time.

CONSTRUCTION SERVICES: All of the Work required to construct the Project in accordance with the Approved Construction Documents, including, but not limited to all services required to be performed or customarily provided by a licensed general contractor, and excluding Design Services.

CONTRACT: The Design-Build Contract and all Contract Documents incorporated therein.

CONTRACT DISPUTE: A dispute arising out of or related to the Design-Build Contract or the interpretation, enforcement or breach thereof, except as specified in Article 4 herein.

CONTRACT DISPUTE RESOLUTION PROCESS: The process of resolution of Contract Disputes, and, upon election of City, disputes as set forth in Article 4 of these General Conditions.

CONTRACT DOCUMENTS: This term shall be as defined in Section 3 of the Design-Build Contract.

CONTRACT SUM: The total amount of compensation stated in the Design-Build Contract that is payable to DBE for the performance of the Work in accordance with the Contract Documents, including adjustments made by Change Order.

CONTRACT TIME: The total number of days set forth in the Design-Build Contract within which Substantial Completion of the Work must be achieved by DBE, including any adjustments of time (increases or decreases) made by Change Order.

DBE MARKUP: A fixed sum calculated as ten percent (10%) of applicable Allowable Costs incurred by DBE or Subcontractor for performing Extra Work with its own forces, which is deemed to be full compensation for DBE's or Subcontractor's indirect costs associated with Extra Work, including, overhead, profit, and other indirect costs not included in the Allowable Costs. DBE Markup is separate from and does not include Subcontractor Markup as defined herein.

DAY: Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

DEFECTIVE WORK: Work by DBE that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to the Applicable Code Requirements, the Contract Documents, the directives of City or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

DELAY: Whether capitalized or not, includes any circumstances involving disruption, hindrance, or interference in the performance of the Work within the Contract Time.

DELETED WORK: Work that is eliminated due to a Change in the Work requested by City or DBE for which City is entitled to a deductive adjustment in the Contract Sum.

DESIGN-BUILD ENTITY or DBE: The partnership, corporation or other legal entity under contract to provide both

the Design Services and the Construction Services for the Project.

**DESIGN-BUILD SERVICES:** All of the Construction Services and the Design Services which must be performed to completely design and construct the Project in accordance with the Contract Documents.

**DESIGN CONSULTANT:** The individual(s) or firm(s) under contract with City to provide preliminary design or engineering services for the Project and responsible for preparing the Bridging Documents for the Project. The term "Design Consultant" means Design Consultant or Design Consultant's authorized representative, but does not mean the architect of record or engineer of record for the Project.

**DESIGN DEVELOPMENT DOCUMENTS:** The Design Documents prepared by DBE and approved by City for preparation of the final Construction Documents.

**DESIGN DOCUMENTS:** The plans and specifications developed by DBE as part of the Design Services, including, collectively, the Design Development Documents and Construction Documents.

**DESIGN PROFESSIONAL:** An architect, engineer, landscape architect or land surveyor licensed and in good standing under the applicable provisions of the Business and Professions Code, who is retained by DBE to provide Design Services for the Project.

**DESIGN SERVICES:** All services necessary to design the Project in conformance with the Bridging Documents, including, but not limited to all services required to be provided by or under the direction of a Design Professional, and excluding the Construction Services.

**DRAWINGS:** The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."

**ESCROW AGENT:** A state or federally chartered bank in the State of California which holds securities pursuant to an escrow agreement as set forth in Section 9.5 of these General Conditions.

**EXCUSABLE DELAY:** A Delay for which DBE may be entitled under the Contract Documents to an extension of time, but not compensation.

**EXISTING IMPROVEMENTS:** All improvements located on the Site as of the date of execution of the Design-Build Contract, whether above or below the surface of the ground, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

**EXTRA WORK:** Additional Work or costs due to a Change in the Work that is not described in or reasonably inferable from the Contract Documents which may be the basis for an adjustment of the Contract Sum and/or the Contract Price under the terms of the Contract Documents. Extra Work shall not include additional Work or costs arising from DBE's failure to perform any of its duties or obligations under the Contract Documents.

**FIELD ORDER:** A written instrument signed by the City or its Construction Manager that authorizes and directs performance of the Work described therein, and which may or may not include adjustments (increase or decrease) to the Contract Sum and/or Contract Time.

**FINAL COMPLETION:** Full completion of all Work required by the Contract Documents, including all punch list items, and submission of Record Documents, all to City's satisfaction.

**FINAL PAYMENT:** Final payment of the Contract Sum following Final Completion, including release of undisputed retention, less any amounts withheld or offset pursuant to the Contract Documents, including, but not limited to, liquidated damages, unreleased stop notices, amounts subject to setoff, and up to 150% of unresolved third-party claims for which DBE is required to indemnify City, and up to 150% of any amounts in dispute as authorized by Public Contract Code Section 7107.

**FRAGNET:** A "Fragnet", sometimes referred to as "time impact analysis," is a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Change Order or Delay, with logic ties to all affected existing activities noted on the Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such

specific Delay in relation to past and/or other current Delays and to provide a method for incorporating adjustments to the Contract Time into the Construction Schedule.

**GENERAL CONDITIONS:** That portion of the Contract Documents relating to the administrative procedures to be followed by DBE in carrying out the Work.

**HAZARDOUS SUBSTANCES:** Refers to, without limitation, the following: any chemical, material or other substance defined as or included within the definition of hazardous substances, hazardous materials, hazardous wastes, extremely hazardous substances, toxic substances, toxic material, restricted hazardous waste, special waste, universal wastes or words of similar import under any Environmental Law.

**LOSSES:** Any and all losses, costs, liabilities, Claims, damages, liquidated damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorneys' fees.

**NOTICE OF AWARD:** Written notice issued by City notifying DBE of issuance of the Design-Build Contract.

**NOTICE TO PROCEED:** Written notice issued by City to DBE to begin the Design-Build Services. **PERFORMANCE**

**BOND, PAYMENT BOND:** The performance and payment bonds to be provided by DBE for the Construction Services.

**PLANS:** The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."

**PRE-CONSTRUCTION MEETING:** A meeting held with the Project Team prior to beginning construction in order to review Contract Documents and clarify roles, responsibilities and authority of the Project Team.

**PROJECT:** The total design and construction of which the Design-Build Services provided by DBE under the Contract Documents may be the whole or part and which may include Work performed by City's own forces or by Separate Contractors, of the public improvement(s) specified in the RFP.

**PROJECT TEAM:** Collectively, the DBE, City, Design Consultant, Construction Manager and other consultants and Contractors providing professional and technical consultation for the design and construction of the Project.

**PROPOSAL:** A written proposal submitted to City for the Project in response to City's Invitation for Proposals.

**PROPOSER:** An individual or entity that submits a Proposal.

**RECORD DOCUMENTS:** The term "Record Documents" refers to, collectively, the As-Built Documents, warranties, guarantees and other documents required to be submitted by DBE as a condition of Final Completion.

**REQUEST FOR INFORMATION:** A written instrument, prepared by DBE, which requests an interpretation or clarification in the Design-Build Services or a response to a question concerning the Design-Build Services. A Request for Information does not entitle DBE to an adjustment in the Contract Sum unless it requires Extra Work and DBE requests and is entitled to such an adjustment in accordance with the provisions of the Contract Documents.

**REQUEST FOR INFORMATION RESPONSE:** A written instrument, usually prepared by the Design Consultant, which sets forth an interpretation or clarification or a response to a DBE question concerning the Design-Build Services.

**REQUEST FOR PROPOSALS or RFP:** The City's formal, written request for Design-Build Services for the Project and the Contract Documents provided with or incorporated into the RFP.

**SCHEDULE OF VALUES:** A detailed, itemized breakdown of the Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Design-Build Services.

**SEPARATE CONTRACTOR:** A person or firm under separate contract with City or other entity performing other Work at the Site.



**SITE:** The physical site located within City where the Project is to be constructed, including all adjacent areas for staging, storage, parking and temporary offices.

**SPECIAL PROVISIONS:** The portions of the Contract Documents consisting of additional written requirements for materials, equipment, standards, skill, quality for the Design-Build Services. These provisions may also contain amendments, deletions or additions to the General Conditions.

**STATEMENT OF CONTRACT DISPUTE:** The DBE's written statement prepared in accordance with Article 4 of these General Conditions required as a condition of its initiating the Contract Dispute Resolution Process set forth in the Design-Build Contract.

**SUBCONTRACTOR:** A person or firm that has a contract with a DBE to perform a portion of the Work. The term "Subcontractor" includes suppliers and vendors and is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. "Subcontractor" includes Subcontractors of any tier.

**SUBCONTRACTOR MARKUPS:** A fixed sum calculated as fifteen percent (15%) of the Subcontractor's Allowable Costs incurred by Subcontractor for performing Extra Work, which is deemed to be full compensation for DBE's indirect costs for having the Extra Work performed by the Subcontractor, including, overhead, profit, and other indirect costs not included in Allowable Costs. Subcontractor Markup is separate from and does not include DBE Markup as defined herein.

**SUBMITTALS:** All shop drawings, samples, exemplars, product data and other submittals required to be submitted to the City by DBE under the Contract Documents.

**SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE:** As determined by City, the point at which the Work is sufficiently complete to be occupied and utilized by City for its intended purpose, and DBE has fulfilled its obligations under the Contract Documents, except for minor punchlist items which do not impair City's ability to so occupy and utilize the Project.

**SUPERINTENDENT:** The person appointed by DBE, subject to approval by City, to supervise and coordinate DBE's own forces and Subcontractors in all aspects of the Construction Services.

**UNEXCUSED DELAY:** Any Delay in the path of activities that is critical to Substantial Completion of the Work within the Contract Time and which Delay is not attributable to the City. An Unexcused Delay shall not entitle DBE to either an extension of the Contract Time or an adjustment of the Contract Sum. To the extent an Unexcused Delay is concurrent with an Excused Delay, the Excusable Delay shall be conclusively deemed an Unexcused Delay.

**WORK:** All labor, materials, equipment, services, permits, fees, licenses and taxes, and all other things necessary for DBE to perform its obligations and to fully design and construct the Project, including, without limitation, any changes or additions requested by City, in accordance with the Contract Documents and all Applicable Code Requirements.

## **1.2 OWNERSHIP AND USE OF DOCUMENTS**

1.2.1 All originals, copies and electronic forms of Plans, Drawings, and technical specifications (including, without limitation, the Bridging Documents) shall not be used by DBE, or any Subcontractor, for any purpose other than providing the Design-Build Services for the Project. DBE and Subcontractors are granted a limited license, revocable at will by City, to use and reproduce applicable portions of the Contract Documents appropriate to and for providing Design-Build Services under the Contract Documents; provided however, that such use shall not reduce City's rights to use and ownership of the documents.

1.2.2 DBE shall keep on the Site of the Project, at all times, a complete set of City approved, permitted Contract Documents for use by City.

1.2.3 Proposed Changes or refinements and clarifications to the Approved Construction Documents will be provided to DBE in the form of reproducible prints. DBE shall, at its own expense and without adjustment to the Contract Sum, reproduce and distribute such prints as are necessary for the complete pricing of the Change and for performance of the Work.

1.2.4 DBE shall include a provision in all contracts with Subcontractors who perform Work on the Project,

protecting and preserving City's rights to ownership and use of documents as set forth in this Section 1.2.

### **1.3 INTERPRETATION OF CONTRACT DOCUMENTS**

1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

1.3.2 In general, the Drawings will show dimensions, positions, and type of construction to be completed; and the Special Provisions and technical specifications will define materials, quality and standards. Any Work called for on the Drawings and not mentioned in the Special Provisions and technical specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

1.3.3 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.4 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.5 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include the other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.6 Any cross-references indicated between various subparagraphs or Drawings and Documents are provided for the DBE's convenience and shall not be all-inclusive.

1.3.7 Unless specifically noted to the contrary, all Work, equipment, casework, mechanical, electrical and similar devices of whatever nature in the Contract Documents shall be completely installed, hooked-up, made operational and made functional for the purpose such are intended, and all costs therefor are included in the Contract Sum.

1.3.8 Figured dimensions on scale Drawings and on full size Drawings shall govern over scale Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, unless marked "not to scale," must be brought to the Construction Manager's attention before proceeding with the Work affected by the discrepancy.

1.3.9 If there is a conflict between any of the Contract Documents, DBE shall immediately bring such conflict to the attention of City, whose decisions regarding such conflict shall be final and binding as to the requirements of the Contract Documents. In the event of any conflicts between or among the Applicable Code Requirements, the more stringent shall govern. In the event a conflict between any of the Contract Documents is not resolved by the order of precedence established in the Contract Documents, the highest standard of quality and skill, the most stringent requirements, and the most specific provision of the Contract Documents shall govern and shall be required in the performance of the Design-Build Services.

1.3.10 The general character of the Design-Build Services is shown in the Contract Documents, but Changes, modifications, clarifications and refinements may be made in details when needed to more fully explain the Work. Provided that they are a logical evolution of the Bridging Documents that were provided with the Request for Proposals or were reasonably inferable as necessary to provide a completed and fully operational system, facility or structure, the same shall be considered part of the scope of the Design-Build Services to be provided without adjustment in the Contract Sum or the Contract Time.

1.3.11 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work.

1.3.12 DBE will provide all necessary labor, equipment, transportation and incidentals required to complete the Design-Build Services, even if the Contract Documents do not describe the Work in complete detail.

1.3.13 Drawings and diagrams for mechanical, plumbing and electrical Work shall be considered as diagrammatic only and shall not to be used for any structural guidance or physical layout, unless specifically detailed or dimensioned, and DBE shall be responsible to provide any and all numbers and lengths of mechanical, plumbing or electrical fittings, wire, conduit, connections, attachments or similar materials needed to complete the Work, at no adjustment to the Contract Sum or Contract Time, whether or not they exceed the numbers of such pieces or the lengths indicated by the Drawings.

1.3.14 City, in its sole discretion, will interpret the Contract Documents and make the determination of whether or not DBE has fulfilled the requirements of the Contract Documents. Such interpretations and decisions of City shall be final and binding upon DBE.

## **ARTICLE 2 –CITY’S RIGHTS AND OBLIGATIONS**

### **2.1 INFORMATION AND SERVICES PROVIDED BY CITY**

2.1.1 Except as otherwise provided in the Special Provisions and Bridging Documents, DBE shall obtain and pay for any permits, easements and governmental approvals, including City building and related permits, for the use or occupancy of permanent structures required in connection with the Design-Build Services.

2.1.2 Requests for Information Responses, Approvals and decisions required of City, Design Consultant or Construction Manager under the Contract Documents shall be provided by the Construction Manager to DBE upon request in a timely manner in order to avoid unreasonable Delay in the orderly and sequential progress of the Design-Build Services. Notwithstanding the foregoing, failure by City, Design Consultant, Construction Manager or City’s other consultants to provide Request for Information Response, Approvals or decisions shall not be considered as a basis for DBE to seek adjustment in the Contract Time until ten (10) Days after DBE has delivered written notice to City and to the person from whom such information, Approval or decision is requested, including the following:

(i) The notice must include the following statement: “You are hereby notified that certain information, approval or decision described herein has not been provided in accordance with Paragraph 2.1.2 of the General Conditions and if not provided within ten (10) Days from this notice may result in additional cost or a request for time extension due to Delay.”

(ii) A detailed description of the information, approval or decision required, accompanied by copies of DBE’s prior written request(s).

(iii) The date by which the information, approval or decision must be received so as to not result in Delay to the Project, which shall in no event be earlier than ten (10) Days after the date of City’s receipt of such notice.

2.1.3 City’s failure to provide the requested information, approval or decision within ten (10) days following receipt of the above notification will not entitle DBE to an increase in the Contract Sum or Contract Time unless the delay was unreasonable under the circumstances and DBE requests an increase in the Contract Sum and/or Contract Time by submitting a Change Order Request in compliance with Article 7 herein. DBE will not be entitled to an increase in the Contract Time if the City’s delay in responding was 1) reasonable under the circumstances, 2) caused by DBE’s failure to timely or properly submit its request for information, or 3) the requested information was already provided or available to the DBE.

### **2.2 ACCESS TO PROJECT SITE**

City will make available, no later than the commencement date designated in the current construction Schedule accepted by City, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities

designated in the Contract Documents, for use by DBE.

### **2.3 CITY'S RIGHT TO STOP THE WORK**

If DBE fails to correct Defective Work as required by Section 12.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents, or violates any Applicable Code Requirement, City may, without terminating the Contract, direct DBE to stop the Work, or any portion thereof, until the cause for such order has been eliminated by DBE. DBE shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. City shall have no duty or responsibility to DBE or any other party to exercise the right to stop the Work.

### **2.4 CITY'S RIGHT TO CARRY OUT THE WORK**

If DBE fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails within the time specified in the Contract Documents, after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have and without terminating the Contract, correct such failure at DBE's expense. In such case, City shall be entitled to deduct from payments then or thereafter due DBE the cost of correcting such failure, including compensation for the additional services and expenses of City and City's consultants made necessary thereby. If payments then or thereafter due DBE are not sufficient to cover such amounts, DBE shall pay the additional amount to City.

### **2.5 ACCESS TO MUNICIPAL SERVICE CENTER**

For all Projects which require DBE access to City's Municipal Service Center (MSC), all DBEs shall provide and all DBE's personnel shall at all times display, in the form of badges, identification which shall include the DBE's name, the employee's name, City's Project Managers name and telephone number, and the name and number of the Project being performed. Badge identification information shall correspond with information contained in the bearer's driver license or with other City approved identification. Any discrepancies, or failure of DBE's personnel to display proper identification, will in result their removal from the Project, or in refusal of access to the MSC.

### **2.6 EMERGENCY TERMINATION OF CONTRACT**

The Design-Build Contract is subject to termination as provided by Section 4410 and Section 4411 of the Government Code of the State of California, being portions of the Emergency Termination of Public Contract Act of 1949. In the event that the Design-Build Contract is terminated pursuant to said section, compensation to the DBE shall be determined on the basis of the reasonable value of the Design-Build Services completed, including preparatory work. As an exception of the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate unit or contract price, the unit or contract price shall control.

## **ARTICLE 3 – DBE'S RIGHTS AND OBLIGATIONS**

### **3.1 REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS**

3.1.1 DBE warrants that it is satisfied as to character, quality, and quantities of visible surface and subsurface materials or obstacles to be encountered insofar as reasonably ascertainable from a careful inspection of the Site (including, without limitation, Existing Improvements on the Site), and from the geological investigation reports, data and similar information, if any, made available to DBE by City. Any failure by DBE to take such information or conditions into consideration will not relieve DBE from responsibility for estimating the difficulty and cost of successfully completing the Work within the Contract Sum and Contract Time.

3.1.2 DBE warrants and represents that it has carefully reviewed the Proposal and Contract Documents prior to submitting its Proposal and executing the Contract. The DBE shall not be entitled, and conclusively waives any right, to an adjustment in the Contract Sum or Contract Time for any additional or unforeseen costs or Delay in the performance of Work due to conditions in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements, if such conditions were either discovered by DBE or could have been reasonably discovered by DBE or its Subcontractors in the exercise of care and diligence in the review of the Contract Documents, subject to the limitations of Public Contract Code Section 1104.

3.1.3 If DBE discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents, then DBE shall, within two (2) days of discovery, notify City or the Construction Manager in writing stating both of the following:

- (i) A detailed description of the conditions discovered.
- (ii) DBE's request for clarification, further details or correction of the Contract Documents.

Failure by DBE to provide written notice within the period of time required shall result in DBE waiving any right to adjustment in the Contract Sum or Contract Time on account thereof.

3.1.4 If DBE believes it is entitled to an adjustment of the Contract Sum or Contract Time for Extra Work based upon additional written or verbal instructions, information, or direction from City, Design Consultant, or Construction Manager, it may submit a Change Order Request pursuant to Article 7 of the General Conditions within ten (10) days of receipt of such instructions, information, or direction.

3.1.5 The DBE shall take field measurements of the existing field conditions verified. DBE shall carefully compare the field conditions with the Contract Documents and other information known to DBE before commencing the Work. DBE shall promptly report in writing to the Construction Manager any errors, inconsistencies, or omissions the DBE discovers.

3.1.6 If DBE performs any portion of the Work which it knows, or in the exercise of care and diligence should have known, involves an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Code Requirements, without notifying and obtaining the written Approval of City or before obtaining a written clarification, interpretation, instruction or decision from Construction Manager, then any Work that is performed that is not in conformance with the clarifications, interpretation, instruction or decision of City, Design Consultant or Construction Manager shall be removed or replaced and DBE shall be responsible for the resultant Losses with no adjustment in the Contract Sum or Contract Time.

3.1.7 Existing improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by DBE, but only upon the specific direction and control of City. Without limitation to the foregoing, and notwithstanding any information provided by City pertaining to groundwater elevations and/or geological and soils conditions encountered, it is understood that it is DBE's responsibility to determine and allow for the elevation of groundwater, and the geological and soils conditions at the date of performance of the Work.

## **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 DBE shall supervise, coordinate and direct the Construction Services using DBE's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion of the Work. DBE and its subcontractors shall be solely responsible for and have control over construction means, methods, techniques, safety, sequences, procedures and the coordination of all portions of the Work.

3.2.2 DBE shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to City any discrepancies before proceeding with related Work.

3.2.3 DBE may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. DBE shall be responsible for leaving the space in as good condition as DBE found it, or restoring it to the condition it was in prior to DBE commencing the Work.

3.2.4 DBE shall be responsible to City for acts and omissions of DBE's agents, employees, and Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to DBE, when used in reference to an obligation bearing upon performance of the Project, shall be deemed to include DBE's Subcontractors.

3.2.5 DBE shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents by the act(s) or omission(s) by City in the administration of the Contract, or by tests, inspections or Approvals required or performed by persons or firms other than DBE.

### **3.3 RESPONSIBILITY FOR THE WORK**

3.3.1 DBE shall be in charge of and responsible for all portions of the Work of the Contract, and shall be responsible for conforming such portions to the requirements of the Contract Documents and readying such portions to receive subsequent Work.

3.3.2 DBE shall at all times maintain good discipline and order among its employees and Subcontractors. DBE shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each Subcontractor engaged on the Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with Separate Contractors or other persons engaged in work for City on the Site.

3.3.3 During the installation of Work, DBE shall insure that existing facilities, fences, and other structures are all adequately protected. Upon Final Completion of all Work, all facilities that may have been damaged shall be restored to a condition acceptable to City.

3.3.4 DBE is responsible for the security of the Site and all Work provided under the terms of this Contract, as well as all Work provided by Separate Contractors that occurs on the Site at any time prior to Final Completion and Acceptance of the Work by City.

### **3.4 LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS**

DBE shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Unless otherwise provided in the Contract Documents or otherwise Approved by the Construction Manager, all articles, equipment and materials incorporated in the Work shall be new, of good quality, undamaged and not defective.

### **3.5 DBE'S WARRANTY**

3.5.1 In addition to the guarantee to repair referenced in Article 12 and any specific warranty mentioned in the Project specifications, DBE warrants to City that all materials and equipment used in or incorporated into the Work will be of good quality, new and free of liens, Claims and security interests of third parties; that all labor, installation, materials and equipment used or incorporated into the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents and Applicable Code Requirements. If required by City, DBE shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufactured items installed in the Work and not specifically covered in the Contract Documents are to be installed in strict accordance with manufacturers' current printed instructions.

3.5.2 All materials to be incorporated in the Work shall be protected from damage during delivery, storage, and handling, and after installation until Substantial Completion of the Work, and DBE shall, without charge to City, be responsible for all damage to the materials or the Work due to DBE's failure to provide such proper protection.

### **3.6 CONSTRUCTION METHODS AND PROCEDURES**

3.6.1 The methods and procedures adopted by DBE and its subcontractors for Construction Services shall be such as to secure a quality of Work satisfactory to City and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate, City may order DBE to improve the character or increase efficiency, and DBE shall conform to such order; but the failure of City to order such improvement of methods or increase of efficiency will not relieve DBE from its obligation to perform the Work in accordance with the Contract Documents or within the Contract Time.

3.6.2 If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, DBE shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If DBE determines that such means, methods, techniques, sequences or procedures may not be safe, DBE shall give written notice to City and shall not proceed with that portion of the Work without further written instruction by City.

### **3.7 TAXES**

3.7.1 DBE and Subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by DBE and Subcontractors.

3.7.2 All DBEs and Subcontractors for Design-Build Contracts equal to or greater than \$5 million dollars shall be required to obtain a sub permit with the California Board of Equalization for a direct allocation of any and all applicable use tax to the City of Palo Alto, where the jobsite is located. DBE and applicable Subcontractors shall apply for and comply with all of the conditions of the sub permit pursuant to Section 260.020 of the California State Board of Equalization, Chapter 2, "Compliance Policy and Procedures Manual: Registration, subchapter DBEs," as may be amended from time to time.

### **3.8 LEGAL REQUIREMENTS**

3.8.1 DBE shall perform the Work in accordance with all Applicable Code Requirements, even though such requirements are not specifically referenced in the Contract Documents.

3.8.2 When the Work required by the Contract Documents is in conflict with any Applicable Code Requirement, DBE shall notify Construction Manager and shall not proceed with the Work until Construction Manager provides direction to the DBE.

### **3.9 PROJECT STAFF**

3.9.1 DBE shall employ a complete and competent project staff for the duration of the Construction Services, which shall include separate individuals designated to act as Superintendent, project manager, project engineer(s) and administrative assistant(s), plus such other persons necessary to diligently prosecute the Work. DBE shall not replace the designated Superintendent or project manager without a minimum seven (7) Day written notice. Any Project staff member and any replacement member shall be subject to the approval of City, which may be granted or withheld in its sole discretion. Upon notice from City requesting replacement of any Project staff member who is unsatisfactory to City, DBE shall in a timely manner, but in no event longer than three (3) Days after notification, replace such member with a competent member satisfactory to City. Failure by DBE to comply with the provisions of this Paragraph shall entitle City, at its option exercised in its sole discretion, to terminate the Contract or suspend the Work until DBE complies with this Paragraph. All costs or damages associated with such termination or suspension shall be borne by DBE, without adjustment in the Contract Sum or Contract Time.

3.9.2 The Superintendent shall be at the Site at all times during the performance of the Work. The Superintendent shall represent DBE and communications given to and acknowledged by the Superintendent shall be binding on DBE. Further, communications issued by or received from the Superintendent shall be deemed as binding on DBE. The Superintendent must be able to read, write and communicate fluently in English.

### **3.10 SCHEDULES REQUIRED OF DBE**

DBE shall submit a preliminary Construction Schedule to City in a form approved by the Construction Manager at the Pre-Construction Meeting.

3.10.1 Updated Construction Schedules shall be submitted in the form and frequency required by the Construction Manager.

3.10.2 The Construction Schedule and Construction Schedule updates shall meet the following requirements:

- .1 Schedules must be suitable in format and clarity for monitoring progress of the Work and shall utilize the critical path method of scheduling.
- .2 Schedules must provide necessary data about the timing for City's decisions and City-furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning and staffing for the Work.
- .4 Schedules must represent a practical plan to complete the Work within the Contract Time. If at

any time during the Work, any activity is not completed by its latest scheduled completion date, DBE shall notify the Construction Manager within five (5) Days of DBE's plans to reorganize the work force to return to the schedule and prevent Delays on any other activity.

- .5 An updated Construction Schedule shall be submitted with each progress payment request, but no less frequently than monthly, and shall include all of the following:
- (i) A written narrative report detailing the actual progress of the Work as of the date of submission;
  - (ii) The expected progress of the Work as of such date according to the approved Construction Schedule;
  - (iii) The reasons for any variance between the approved Construction Schedule and the updated Construction Schedule; and
  - (iv) If required, DBE's recovery plan for placing the Work back on Schedule, at DBE's expense.

Failure to timely comply with the above requirements may be grounds for rejection of a request for extension of time.

3.10.3 DBE shall plan, develop, supervise, control and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted Construction Schedule. DBE shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data in updated Construction Schedules and Record Documents, and shall monitor the progress of the Work and the delivery of equipment. DBE shall act as the expeditor of potential and actual delays, interruptions, hindrances or disruptions for its own forces and those forces of Subcontractors, regardless of tier. DBE shall cooperate with City in the development of the Construction Schedule and updated Construction Schedules.

3.10.4 City's review, comments, requests for revisions, or acceptance of any schedule or scheduling data shall not:

- (i) Relieve DBE from its sole responsibility for the feasibility of the schedule and to plan for, perform, and complete the Work within the Contract Time;
- (ii) Transfer responsibility for any schedule from DBE to City; nor
- (iii) Imply City's agreement with any assumption upon which such schedule is based or any matter underlying or contained in such schedule.

3.10.5 Failure of City to discover errors or omissions in Construction Schedules that it has reviewed or Approved, or to inform DBE that DBE, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve DBE from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.10.6 DBE shall cooperate with and coordinate its Construction Schedule with work of City and City's Separate Contractors.

### **3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE**

3.11.1 DBE shall maintain one (1) set of As-Built Documents at the Site, which shall be kept up to date on a daily basis during the performance of the Work. All performed changes, deletions or additions in the Work from that shown in the Contract Documents shall be recorded accurately and completely in the Record Documents. Upon Final Completion and as a condition to Final Payment, each sheet of the As-Built Documents and other Record Documents shall be signed and attested to by the DBE's Superintendent as being complete and accurate.



3.11.2 DBE shall, at all times during performance of the Work, also maintain the following at the Site:

- (i) The latest updated Construction Schedule approved by City;
- (ii) Shop Drawings, product data, and samples; and
- (iii) All other required Submittals.

At all times during the course of the Project, these documents shall be available to City, the Construction Manager and the Design Consultant to audit, excerpt, or copy as they see fit. Upon Final Completion or termination of the Design-Build Contract, these documents shall be delivered to City in the format requested by the City.

3.11.3 It shall be the responsibility of DBE to maintain a current and complete record of all Changes performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the As-Built Documents on which daily recordings are made by DBE, indicating in detail and dimension each variation from the original set of Contract Documents for all of the Work. At the completion of construction, DBE shall, as a requirement of the Final Completion of the Work, certify that to the best of its knowledge, the As-Built Documents are true and accurate, and that the indications thereon represent all Changes performed during the construction of the Project. At Final Completion, the As-Built and other Record Documents shall become the property of City.

3.11.4 DBE, in concert with the Design Consultant and the Construction Manager, shall review DBE's As-Built Documents for conformance with all current Changes prior to presenting its monthly Application For Payment. The monthly progress payment statement will not be accepted or processed by City unless the As-Built Documents are current and complete, and Approved by City.

3.11.5 At Final Completion, the DBE shall provide the fully completed As-Built Documents to the City. These As-Built Documents will become the permanent property of City at Final Completion. If the As-Built Documents are prepared on a computer, then the revised computer files shall also be provided to City in the file format specified by City.

### **3.12 SUBMITTALS**

3.12.1 Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, how DBE proposes to conform to the information given and the design concept expressed in the Contract Documents. Prior to starting Work, DBE shall provide to City an initial schedule for submission of the Submittals for which shop drawings are required by the Contract Documents. For each required shop drawing, DBE shall provide to City the date for the drawing's intended Submittal to the Design Consultant for review. The date required for its return to avoid Delay in any activity beyond the scheduled start date shall also be given.

3.12.2 All shop drawings and other Submittals shall be provided at DBE's expense, and at the time required by the Contract Documents or requested by the Construction Manager.

3.12.3 DBE shall review, approve, and submit to the Construction Manager, all Submittals required by the Contract Documents to be submitted and reviewed by the Design Consultant. Submittals to the Construction Manager without evidence thereon of DBE's approval shall be returned, without review, for resubmission in accordance with these requirements. Submittals shall be provided within the time frame specified in the Special Provisions and technical specifications in accordance with the Construction Schedule, and in such sequence as to cause no Delay in the Work or in the activities of City or of Separate Contractors. Submittals made by DBE which are not required by the Contract Documents, may be returned without action by the Construction Manager or Design Consultant. Submittal to the Construction Manager and Design Consultant must include a statement, in writing, identifying any deviations from the Contract Documents required due to manufacturing or installation limitations contained in the Submittal.

3.12.4 All Submittals shall be submitted in two (2) sets, accompanied by letters of transmittal, and addressed to the Construction Manager for review. Unless otherwise specified in the Contract Documents, Submittals consisting of Drawings or Plans shall be in the form of six (6) copies. The Submittal must be prepared and submitted in accordance with all applicable provisions in the Contract Documents. If the Submittal involves a request for substitution of materials, the request shall be clearly identified on the Submittal that it is a "Request for Substitution." Unless so clearly marked, Submittals shall not be considered as a request for substitution. The Construction Manager shall return to DBE three (3) marked-up prints. Submittals shall include all relevant catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams, or product samples, necessary to describe a system, product, or item. The letter of

transmittal shall include a list of the accompanying documents and the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of DBE, shall be numbered consecutively, and shall be referenced to the sheets or paragraphs of the Contract Documents, referenced by sheet or subparagraph affected. Submittals shall be combined for singular assemblies, items or materials.

3.12.5 No Work requiring a Submittal shall be performed by DBE until the Submittal has been reviewed and approved by City, Construction Manager or Design Consultant, as appropriate, and the Design Consultant has documented the exceptions noted on the Submittal. DBE shall allow twenty (20) Days for review of timely and complete Submittals. Once the Submittal is returned to DBE by the Construction Manager with a statement that it has been reviewed and no exceptions are taken or further action requested, such Work shall be performed in accordance with the Submittal and the Contract Documents.

3.12.6 DBE's Submittals represent that DBE has determined or verified materials and field measurements and conditions related thereto and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and Submittals for related Work.

3.12.7 If DBE discovers any conflicts, omissions or errors in Submittals, DBE shall notify the Construction Manager and receive instruction before proceeding with the affected Work.

3.12.8 DBE shall remain solely responsible, notwithstanding City, Construction Manager or Design Consultant's review or approval of Submittals, for deviations (including, without limitation, those arising from standard shop practice) from the Contract Documents, unless DBE has specifically informed City, Construction Manager or Design Consultant in writing of such deviation at the time of transmitting the Submittal and City, Construction Manager or Design Consultant has given written approval of such deviation. No adjustment in the Contract Sum or Contract Time shall be permitted with respect to any such deviations that are noted in writing by DBE and as to which City, Construction Manager or Design Consultant takes no exception or approves.

3.12.9 After review of DBE's Submittals by City, Construction Manager or Design Consultant, as appropriate, the Construction Manager will transmit to DBE one set of Submittals. If the Submittals are found to be incomplete or incorrect, DBE shall resubmit after corrective action has been taken. DBE shall reimburse City, or City may withhold from payments due DBE, sums owing by City for any fees charged by City, Construction Manager or Design Consultant or City's other consultants for more than two (2) reviews of a Submittal, or for accelerated review in a shorter time than set forth in the approved Construction Schedule, if requested by DBE or caused by late Submittals by DBE. The return of a Submittal due to failure to comply with the Contract Documents or for correction or additional information shall be considered a review.

3.12.10 Review of Submittals by City, Construction Manager or Design Consultant will be general and for conformance with design intent, and shall not relieve DBE from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contract which may not be indicated on the reviewed Submittals.

3.12.11 Submittals shall be in English, be of good quality, and be of a size and scale to clearly show all necessary details. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings required by other Separate Contractors for attaching their Work. When required by City, Construction Manager or Design Consultant, engineering computations shall be submitted. DBE shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

3.12.12 DBE shall, at all times, maintain at the Site a complete file of all City, Construction Manager or Design Consultant-reviewed Submittals.

### **3.13 TRADE NAMES, SUBSTITUTIONS**

3.13.1 Any request for substitution of "or equal" items by the DBE shall be made within 35 days of award of the contract, unless otherwise specified in these Contract Documents, and shall be governed by Public Contract Code Section 3400.

3.13.2 If City accepts for use in the Project a substitute material or process which in the opinion of City, Construction Manager or Design Consultant is not the equal of that specified, a Change Order shall be issued issuing a

credit to City for the difference in value.

3.13.3 Substitutions by DBE that are incorporated into the Work without the prior review and Approval by City, Construction Manager or Design Consultant in accordance with the requirements of the Contract Documents shall be deemed to be Defective Work.

3.13.4 The specified completion time shall not be affected by any circumstance developing from the substitution provisions of this Section.

### **3.14 DAILY REPORTS BY DBE**

3.14.1 At the end of each working day, DBE shall submit a daily report to the Construction Manager (on a form provided by or accepted by the Construction Manager) listing:

- (i) Labor - Names of workers, classification, hourly rates and hours worked.
- (ii) Material - Description and list of quantities of materials used.
- (iii) Equipment - Type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- (iv) Inspection and Testing Activities - Name, City or company and items involved.
- (v) Areas of Work - The areas of the Site on which Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the day.
- (vi) Accidents, Delays, Defective Work - Description in detail of any injuries to workers, accidents, Delays, or Defective Work that were encountered.
- (vii) Other Services and Expenditures - Description in such detail as City may require of other services and expenditures.

3.14.2 Reports by Subcontractors that comply with the requirements of this Section 3.14 shall also be submitted to the Construction Manager through DBE at the end of each working day.

3.14.3 Submission of daily reports by DBE and Subcontractors performing Work on the Site shall be a condition precedent to DBE's right to payment under the Contract.

3.14.4 Facts, notice or information contained in daily reports of DBE or its Subcontractors, whether known or not known to City or Construction Manager, shall under no circumstances be considered evidence of compliance by DBE with any of the specific written notice requirements of the Contract Documents.

### **3.15 CUTTING AND PATCHING**

3.15.1 DBE shall do all cutting, fitting, or patching of the Work required to make all parts of the Work join properly and to allow the Work to join the work of Separate Contractors shown in, or reasonably implied by, the Contract Documents.

3.15.2 DBE shall not endanger the Work, the Project, Existing Improvements, or adjacent property by cutting, digging, or otherwise. DBE shall not cut or alter the work of any Separate Contractor without the prior written consent of City.

3.15.3 In all cases, cutting shall be performed under the supervision of competent workers skilled in the applicable trade and shall cause the openings to be cut as small as possible to minimize unnecessary damage.

### **3.16 ACCESS TO THE WORK**

3.16.1 City, Construction Manager, Design Consultant, their consultants and other persons authorized by City

shall at all times have access to the Work wherever it is in preparation or progress. DBE shall provide safe and proper facilities for such access and for inspection.

3.16.2 City may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other work by City labor or other contracts or for any other purpose. DBE shall cooperate with City and not interfere with other work being done by or on behalf of City.

### **3.17 ROYALTIES AND PATENTS**

DBE shall pay all royalties and license fees required for the performance of the Work. DBE shall immediately notify City if it learns of any circumstances that may constitute an infringement of patent rights and shall defend and indemnify City and the members of the Project Team in accordance with the indemnity requirements of the Design-Build Contract against Losses, liabilities, suits or Claims resulting from DBE's or any Subcontractor's or infringement of patent rights.

### **3.18 PERMITS AND LICENSES**

The DBE shall comply with all provisions of any permits necessary to accomplish the Work as specified in this Contract. DBE shall obtain and be responsible for the cost of all permits and applications related to the construction of the Project.

### **3.19 DIFFERING SITE CONDITIONS**

3.19.1 Except as provided in this Section 3.19, DBE agrees to solely bear the risk, including any additional costs and Delay, of any and all concealed and unknown site conditions, without adjustment to the Contract Sum or Contract Time. This provision is applicable if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface. DBE shall promptly, and before the following conditions are disturbed, provide written notice to City if the DBE finds any of the following conditions:

- .1 Material that DBE believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.
- .2 Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to Proposers prior to the deadline for submitting Proposals.
- .3 Unknown physical conditions at the Site of any unusual nature, differing materially different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

3.19.2 City shall promptly investigate any of the above the conditions and if City finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in DBE's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in the Contract Documents. The City may, acting in its sole discretion, extend the applicable deadline for submitting a Change Order Request when it is based upon differing conditions subject to Public Contract Code Section 7104.

3.19.3 In the event that a dispute arises between the City and the DBE regarding any of the matters specified in subsection 3.19.1, above, DBE shall not be excused from any scheduled completion date provided for in the Contract Documents, but shall proceed with all Work to be performed under the Contract. DBE shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between DBE and City.

### **3.20 INSPECTIONS**

3.20.1 In order to allow for inspection by City and other agencies, or any inspection required elsewhere in the Special Provisions and technical specifications, DBE shall notify City in writing three (3) Days in advance of the permanent concealment of any materials or Work.

3.20.2 Whenever DBE desires to carry on the Construction Services of this Design-Build Contract at hours other than those specifically required by the City or 8:00 AM to 6:00 PM, Monday through Friday or from 9:00 AM to 5:00 PM on Saturdays, it shall request authorization in writing from City for such Work at least twelve (12) Days in advance and, if approved to proceed, DBE agrees to pay the costs incurred by the City to provide inspectors during these times and the

costs incurred for the Construction Manager, Design Consultant and/or other City consultants whose presence at the Site is necessary. City offices are closed on alternate Fridays commencing January 12, 2001, and every other Friday thereafter. Inspections by City Building Department may not be available on these days.

3.20.3 If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to City that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by DBE at its expense. DBE shall replace, at its own expense and without reimbursement by City, any materials or Work damaged by exposure and any faulty materials or work evidenced by such exposure or testing, and shall be responsible for any Delay caused thereby.

3.20.4 When, in order to comply with the intent of the Contract Documents, inspection must be made at the plant or mill of the manufacturer or fabricator of material or equipment, DBE shall notify City a sufficient length of time in advance to allow for arrangements to be made for such inspection. If required testing and/or inspection must be conducted at a location more than one hundred (100) miles from the Site, DBE shall be responsible for the additional travel costs required for testing and/or inspection at such location.

3.20.5 Any inspection or approval by any representative or agent of City will not relieve DBE of the responsibility of incorporating into the Work only those materials which conform to the Contract Documents, and any nonconforming materials shall be removed from the Site whenever identified, at DBE's sole expense.

3.20.6 When DBE believes it has achieved either Substantial or Final Completion of the Work, DBE shall notify City and the Construction Manager in writing and request a Substantial or Final Completion inspection of the Work. City, Design Consultant and Construction Manager will make such inspection as soon thereafter as possible.

### **3.21 STOP NOTICES**

DBE must promptly pay its Subcontractors in accordance with the subcontract requirements and California prompt payment statutes. If any stop notice or other claim is served, filed or recorded in connection with the Work, City shall have the option, in its sole discretion, to permit DBE immediately and at its own expense obtain a bond executed by a good and sufficient surety, in accordance with Civil Code section 9364, in a sum equal to one hundred twenty-five percent (125%) of the amount of such stop notice or claim. Such bond shall guarantee the payment of any amounts which the claimant may recover on the stop notice or claim, together with the claimant's costs of suit in any action to enforce such stop notice or claim if the claimant recovers therein. This remedy shall be in addition to all other rights and remedies of City under the Contract Documents and applicable law, including, without limitation, the right to withhold funds from sums due to DBE. **DBE shall timely notify City of DBE's receipt of any stop notice or other third-party claim, valid or invalid, relating to the Contract Documents.**

### **3.22 PARKING**

DBE shall provide and maintain suitable parking areas, for use by all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, construction activities or public parking. The Construction Manager shall approve the location of all off-site parking in the City.

### **3.23 USE OF THE PROJECT SITE AND CLEAN UP**

3.23.1 DBE shall confine operations at the Site to areas permitted by Applicable Code Requirements and the Contract Documents. DBE shall not encumber the Site with materials or equipment so that Separate Contractors' work is hindered or impeded due to such encumbrances.

3.23.2 DBE shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by DBE or any Subcontractors. DBE shall continuously and daily remove all excess dirt, waste material, water and rubbish caused by DBE and all tools, equipment, machinery and surplus materials from the Site and surrounding area at end of each day. Adequate cleanup will be a condition for progress payments.

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

3.23.4 Upon Final Completion of the Work, DBE shall remove all construction facilities, appurtenances, tools, material and other articles from the Site. The entire area, including all fixed equipment, floors, surfaces and hardware shall be cleaned and restored to their original condition in accordance with the Special Provisions and technical specifications.

3.23.5 In addition to water sprinkling, temporary enclosures and anti-dust sweeping compounds should be used to limit dust and dirt rising and to keep the Site clean.

3.23.6 Construction materials shall be neatly stacked by DBE when not in use. Loose materials, whether on the Site or in transit, shall be covered to prevent dust. DBE shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from the affected surfaces to prevent marring or other damage to the Work.

3.23.7 Volatile wastes shall be properly stored in covered metal containers and removed daily. All other trash receptacles shall be promptly emptied when full.

3.23.8 DBE shall promptly and legally transport and dispose of removed and demolished items and waste materials not identified to be recycled or reused in compliance with local ordinances and anti-pollution laws. No rubbish or waste materials shall be burned, buried, or otherwise disposed of on the Site.

3.23.9 The DBE shall provide sanitary facilities at the Site, which shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. DBE shall require all personnel to use the sanitary facilities. Sanitary facilities shall be on a portable trailer and shall be removed from the Site at the end of each workday. For sewer lining projects, DBE shall provide additional sanitary facilities on a portable trailer to be used by the residents during lining installation (one sanitary facility per each 30 meters [100 feet]). DBE shall remove the sanitary facilities as soon as relief holes are cut and notices of completion are delivered.

### **3.24 ENVIRONMENTAL CONTROLS**

Full compensation for conforming to the requirements of this Section shall be considered as included in the prices paid for the various contract items of Work involved and no additional compensation will be allowed.

3.24.1 **AIR POLLUTION CONTROL.** DBE shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any Work performed pursuant to the Contract, including rules promulgated by the Bay Area Air Quality Management District, the California Department of Public Health or any other applicable agency. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paint thinners, curing compounds, parts cleaners and degreasers and liquid asphalt used on the Project shall comply with the applicable material requirements of the Bay Area Air Quality Management District. All containers of paint thinner, curing compound parts cleaners and degreasers or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements. Material to be disposed of shall not be disposed of onsite (i.e. used up inappropriately or burned). Compressed gases contained within cylinders or aerosol cans shall never be released for any purpose other than that intended by the manufacturer.

**.1 Mold.** The DBE shall take steps to prevent mold from developing on the Site, or being released into the air and shall promptly decontaminate any areas of mold that develop.

**.2 VOC's.** Only construction materials that emit low levels of volatile organic compounds (VOC) shall be used within indoor areas. Adequate ventilation of packaged dry products shall be used prior to installation. DBE is responsible to ventilate the building during the application of wet products (e.g., paints, glues, sealants), which release their highest levels of VOC's during the curing period immediately after the application. Also, wet products shall be applied before installing materials that act as "sinks" such as carpets, fabric, ceiling tiles, movable partitions, furniture, etc. in order to reduce the chance of the "sinks" absorbing contaminants and slowly releasing them into the building over time.

**.3 Off-Gassing.** DBE is responsible for identifying specific materials that require more complex ventilation to accelerate off-gassing. In addition to paints, glues and sealants, those materials that generally require temporary ventilation include, without limitation: composite wood products, plastics, waterproofing, insulation, fireproofing, caulking, acoustical ceilings, resilient flooring and wood preservatives.

**.4      Barriers.** Barriers shall be used to prevent the migration of airborne pollutants from areas under construction and to mitigate any construction noise that may disrupt occupant activities. If effective controls for pollution emissions cannot be practically implemented, activities involving significant airborne pollutants shall be scheduled during off-hours at DBE's expense. The Site shall be ventilated with fresh outside air during and immediately after the noxious activity.

**.5      Exhaust.** DBE shall install temporary exhaust systems in construction areas to prevent contaminated air from entering the building's return-air system, including, without limitation:

- (i)      Removing windows in a space.
- (ii)     Using available or dedicated exhaust systems (e.g., kitchen or toilet exhaust) that are not tied into the building's overall return-air system.

**.6      Treated wood waste (TWW).** TWW is any wood treated with preserving chemicals that protect the wood from insect attack or fungal decay (typically railroad ties, power poles, or bollards) shall be managed by DBE to minimize dust generation. DBE shall never grind TWW and shall be properly dispose TWW at a permitted TWW disposal facility. If DBE size-reduces the TWW then DBE shall collect all dust generated for proper offsite disposal.

**.7      Contaminated Soil Removal.** Unless approved by the City, contaminated soils that are being removed shall be loaded directly into truck trailers that shall transport the soils directly to disposal facilities and not stockpiled onsite or elsewhere. If the City approves the temporary stockpiling of soils onsite, then DBE shall cover the soil with visqueen (or other suitable material) within 1 hour.

The building shall be flushed with full outdoor air for seven (7) Days prior to occupancy. Full capacity of the HVAC system shall be used for at least 2.5 ACH (air changes per hour), provided by temporary fans. During this time, the interiors shall be thoroughly cleaned, the HVAC ducts vacuumed, and air and HVAC system filters replaced.

### 3.24.3    WATER POLLUTION CONTROL.

**.1      DBE shall at a minimum use applicable Best Management Practices listed in the California Stormwater Quality Association Construction Handbook <http://www.cabmphandbooks.com/Construction.asp> to prevent the pollution of storm drains and watercourses by discharges of materials other than uncontaminated storm water. Prohibited discharges include storm water runoff discharges that may threaten to cause pollution, contamination or nuisance, sanitary waste, sediment and debris from erosion and other substances resulting from construction activities. Sanitary wastes will not be permitted to enter any storm drain or watercourse and must be routed to the sanitary sewer system. No sediment, debris or construction materials will be permitted to enter sanitary sewers.**

**.2      DBE shall provide effective and continuous control of water pollution, including Work in small or multiple units, on an out of phase schedule or with modified construction procedures. DBE shall determine which methods are most effective in achieving control of water pollution as a result of DBE's operations. DBE shall coordinate water pollution control work with all other Work performed by DBE and Separate Contractors.**

**.3      Before starting any Work on the Project, DBE shall submit to the Construction Manager for acceptance a Storm Water Pollution Prevention Plan (SWPPP) for effective control of storm water pollution. Such plan shall show the schedule and detailed description for the storm water pollution prevention and erosion control work or practices included in the Design-Build Contract and for all storm water pollution control measures which DBE proposes to employ in connection with construction of the Project to minimize the effects of their operations upon storm drains, adjacent streams, and other bodies of water. DBE shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Construction Manager, until such SWPPP has been approved by a City representative or the Construction Manager. DBE shall revise and bring up to date said SWPPP at any time the Construction Manager makes written request for such revisions.**

- .4 City shall not be liable to DBE for failure to accept all or any portion of any originally submitted or revised SWPPP, or for any Delays to the Work due to DBE's failure to submit an acceptable SWPPP. DBE assumes sole responsibility for all costs associated with treatment of storm water polluted as a result of DBE's Site activities, whether treatment is initiated by DBE or City.
- .5 DBE may request the Construction Manager to waive the requirement for submission of a written SWPPP when the nature of DBE's operation is such that pollutant discharge or soil erosion is not likely to occur. Waiver of this requirement will not relieve DBE from responsibility for compliance with the other provisions of this Section. Waiver of the requirement for a written SWPPP will not preclude City requiring submittal of a SWPPP at a later time if the Construction Manager deems it necessary because of the effect of DBE's operations.
- .6 Where erosion damage which will cause storm water pollution is probable due to the nature of the material or the season of the year, DBE's operation shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.
- .7 All storm water pollution control work required elsewhere in the Contract Documents which may be accomplished under the various contract items of Work will be measured and paid for as provided in said items of Work elsewhere in these Contract Documents.

3.24.4 URBAN RUNOFF. At a minimum, the following specific Best Management Practices which address the potential pollution impacts of urban runoff shall apply to all projects undergoing construction in City. The Best Management Practices listed below (in addition to those listed in the technical specifications) are required by City, and shall apply at the time of demolition of an existing structure or commencement of construction until receipt of a certificate of occupancy or certificate of completion:

- .1 Sediment and construction waste from construction sites and parking areas shall not leave the Site.
- .2 Any sediments or other construction materials which are tracked off the Site shall be removed the same day. Straw wattles or another temporary sediment barrier shall be installed around the perimeter of the Site to prevent the sediment from leaving the Site.
- .3 On an emergency basis only, plastic covering may be utilized to prevent erosion of an otherwise unprotected area, along with runoff devices to intercept and safely convey the runoff.
- .4 Excavated soil shall be located on the Site in a manner that eliminates the possibility of sediment running into the street, storm drains, water bodies, or adjoining properties. Material stockpiles shall be covered within 1 hour of stockpiling the material until the material is either used or removed.
- .5 No washing of construction vehicles shall be allowed on or adjacent to the Site.
- .6 Drainage controls shall be utilized as needed, depending on the extent of proposed grading and topography of the Site, including, but not limited to the following: (i) detention ponds or sedimentation ponds; and (ii) dikes, berms or ditches; and (iii) down drains, chutes or flumes.

3.24.5 STORM WATER POLLUTION PREVENTION DURING ROADWORK. To avoid storm water pollution, DBE shall plan roadwork and pavement construction as follows:

- .1 Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting storm water runoff.
- .2 Cover storm drain inlets and manholes when paving or applying seal coat, slurry seal, fog seal, etc.
- .3 Always park paving machines over drip pans or absorbent materials.
- .4 When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation. Shovel or vacuum the slurry residue from the pavement and remove from the Site.



3.24.6 STORMWATER POLLUTION. To avoid stormwater pollution, DBE shall plan roadwork and pavement construction as follows:

- .1 Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting stormwater runoff.
- .2 Cover storm drain inlets and personnel access holes when paving or applying seal coat, slurry seal, fog seal, etc.
- .3 Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.
- .4 When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation and contain the slurry by placing straw bales, sand bags, or gravel dams around the catch basin. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from the Site.

3.24.7 DRAINAGE CONTROL. DBE shall provide for the drainage of storm water and such water as may be applied or discharged on the Site in performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, Site and adjacent property. Also drainage facilities shall be constructed to minimize the potential pollution to the ocean.

Existing drainage channels and conduits shall be cleaned, enlarged or supplemented as necessary to carry all increased runoff attributable to DBE's operations. Dikes shall be constructed as necessary to divert increased runoff from entering adjacent property (except in natural channels), to protect City's private property and utility owner's facilities and the Work, and to direct water to drainage channels or conduits. Retention of drainage on the Site shall be provided as necessary to prevent downstream flooding.

3.24.8 DUST CONTROL. As elsewhere provided herein, the DBE shall be responsible for all dust alleviation and control measures necessary and required for the public safety and convenience during the life of the contract. The DBE shall use reclaimed water to control dust from unpaved surfaces as needed on a daily basis or as directed by the Construction Manager. The water shall be applied at a limited rate so as to avoid the creation of runoff from the site. The DBE shall not use water to flush down paved or impervious surfaces as a means of dust control. Paved or impervious surfaces shall be swept with a street sweeper as needed to control dust on the site. Compensation for water applied as alleviation and/or prevention of dust nuisance and street sweeping shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be madetherefor.

3.24.9 SPECIAL HAZARDOUS SUBSTANCES AND PROCESSES. DBE shall comply with the provisions of all applicable hazardous materials Standards including but not limited to California Code of Regulations (CCR) Title 8, Chapter 4, Group 16 (CalOSHA Control of Hazardous Substances), CCR Title 22, Division 4.5, (hazardous waste management standards), California Health & Safety Code Division 20, Section 6.5 (hazardous waste control), California Fire Code, Code of Federal Regulations (CFR) 49 (DOT regulations), CFR 40, Part 60 (U.S. hazardous waste standards) and applicable sections of the Palo Alto Municipal Code. DBE shall at all times maintain an inventory of hazardous materials stored onsite and all applicable Material Safety Data Sheets (MSDSs) available for review by the City.

For City-generated hazardous waste removal, the City will take full generator status for the hazardous wastes as described under CCR 22. The City will obtain any EPA Identification numbers for the project and will sign each manifest as the generator before the material is transported. DBE shall fully manage the hazardous wastes for the City including the removing, storing, transporting, and disposing of the hazardous wastes. For construction activities that remove existing hazardous wastes, such as, asbestos removal, contaminated soil removal, lead paint removal or other contamination abatement projects, DBE shall develop a hazardous materials management plan (HMMP). The HMMP shall contain sufficient information that shall demonstrate how the DBE will remove, secure and store, transport to a permitted disposal facility. DBE shall submit the HMMP to the City for approval. At a minimum, the HMMP shall include:

- Project map that shall show hazardous waste removal areas, storage areas (including all fencing, gates, locks, structures etc.;
- Hazardous waste expected inventory including quantities and types of wastes;
- Security program – how the DBE will keep hazardous materials secure from public contact;
- Monitoring and inspection program;

- Inventory of emergency equipment onsite;
- Transportation Plan includes how the DBE plans to package and transport the hazardous wastes;
- Disposal facility name and location;
- Any other information that would reasonably describe DBE hazardous waste removal, storage and disposal plans.

City has the sole right to reject the hazardous waste transporter and/or disposal facility from DBE's consideration.

Hazardous wastes that are generated from DBE's activities while completing the Project (i.e. equipment maintenance fluids, empty oil or solvent drums, etc. shall be the sole responsibility of the DBE who is the generator of the wastes under the Hazardous Waste Generator Regulations CCR Title 22. Wastes must be handled, recycled or disposed of in the United States.

**3.24.10 ENVIRONMENTAL PURCHASING POLICY.** The DBE shall comply with the City of Palo Alto's Environmental Purchasing Policy, as amended from time to time. A copy is available at the City's Purchasing Division.

**3.24.11 ZERO WASTE REQUIREMENTS.** The DBE shall comply with waste reduction, reuse, recycling and disposal requirements of the City's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, DBE shall comply with the following zero waste requirements:

- All printed materials provided by DBE to City generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by the City's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- Goods purchased by DBE on behalf of the City shall be purchased in accordance with the City's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Office.
- Reusable/returnable pallets shall be taken back by the DBE, at no additional cost to the City, for reuse or recycling. DBE shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

#### **3.24.12 SOUND CONTROL.**

- .1** DBE shall comply with the City's Noise Ordinance set forth in Chapter 9.10 of the Palo Alto Municipal Code, except as modified in the Special Provisions and technical specifications. Copies of the Noise Ordinance are available in the Purchasing Division.
- .2** Each internal combustion engine used for any purpose on the Site or otherwise within the City of Palo Alto shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without said muffler. This requirement in no way relieves DBE from responsibility for complying with local ordinances regulating noise level.
- .3** The noise level requirement shall apply to all equipment on the Work or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by DBE. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.
- .4** Prior to starting construction, all equipment to be used on the Project shall be inspected and tested for compliance with the requirements of this Project. Sound blankets or other sound mitigation equipment approved by the Construction Manager shall be required to bring equipment into compliance with the requirements of this Project.

### **3.25 TEMPORARY WATER, LIGHT AND POWER**

Water for any purpose shall be obtained by DBE, at its expense, from City. DBE is to contact the Construction Manager for a phone number and contact person. In no case may DBE obtain water from unmetered fire hydrants. The costs of obtaining water shall be included in the prices paid for the various contract items of Work included and no additional compensation will be allowed therefor, unless otherwise specified in the Contract Documents. The City imposes a penalty for taking water from an unmetered fire hydrant. The penalty shall be deducted from the payment due DBE. DBE shall purchase power from the City, at DBE's expense.

### **3.26 CITY TRUCK ROUTE ORDINANCE**

The DBE and any Subcontractors or suppliers shall at all times comply with the requirements of the City of Palo Alto Truck Route Ordinance set forth in Chapter 10.48 of the Palo Alto Municipal Code.

### **3.27 UNFAIR BUSINESS PRACTICES CLAIMS**

DBE offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract Documents. This assignment shall be made and become effective at the time City tenders Final Payment to DBE, without further acknowledgment by the parties. DBE shall incorporate this provision in all Subcontractor contracts.

### **3.28 EXISTING UTILITIES**

3.28.1 Prior to the start of any grinding or any excavation, the DBE shall be responsible for notifying Underground Services Alert (USA) 800-642-2444 at least 5 days prior to beginning underground work so that existing utilities can be marked in the field. The DBE is responsible for the location of all utilities, both public and private. DBE shall give specific address for grinding or excavation location. Each location shall be marked by the DBE in the field with white paint.

3.28.2 The DBE shall acknowledge that the marking of underground utilities is only approximate, and it shall take all necessary precautions to avoid damaging these utilities.

3.28.3 All Underground Services Alert marking shall be removed by the DBE. Any utilities damaged or altered in any way during the performance of the work under this Contract shall be promptly reported to the Engineer, and shall be restored to their original condition at the DBE's expense.

3.28.4 If the DBE comes into contact with any existing utilities during his operations, he shall notify the Engineer before proceeding with the Work involved.

3.28.5 Pursuant to Government Code Section 4215, if, during the performance of the Work, DBE discovers utility facilities not identified by City in the Contract Documents, DBE shall immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if such utilities are not identified in the Contract Documents. DBE shall be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to DBE's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans or specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. DBE shall not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of such utility facilities.

## **ARTICLE 4 – ADMINISTRATION OF THE CONTRACT**

### **4.1 CONTRACT ADMINISTRATION BY CITY, DESIGN CONSULTANT AND CONSTRUCTION MANAGER**

4.1.1 City and the Construction Manager will provide administration of the Construction Contract as provided in the Contract Documents.

4.1.2 No actions taken by City, Construction Manager or Design Consultant shall relieve DBE of its obligations described in the Contract Documents.

4.1.3 The Construction Manager will be present on the Site during the performance of the Work primarily for the purposes of providing administration, inspection and expediting communications between City, Design Consultant and DBE.

4.1.4 Neither City, Design Consultant nor Construction Manager will have control over, will be in charge of, or will be responsible for construction means, methods, techniques, safety, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the sole responsibility of DBE.

4.1.5 Unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized, communications between DBE and City or Design Consultant shall be in writing through Construction Manager. Communications by DBE or Subcontractors and with Separate Contractors shall be through the Construction Manager. DBE shall not rely on oral or other non-written communications.

4.1.6 Based on the Construction Manager's Site visits and evaluations of DBE's Applications For Payment, the Construction Manager will review and recommend to City for City approval the amounts, if any, due DBE.

4.1.7 Construction Manager will make recommendations to City to reject the Work, or any portion thereof, which does not conform to the Contract Documents. City alone shall have the authority to stop the Work or any portion thereof. Whenever City considers it necessary or advisable, City will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed or completed. However, no authority of City conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by the Construction Manager, shall give rise to a duty or responsibility of City or the Construction Manager to DBE or its Subcontractors.

4.1.8 Construction Manager's authority includes, but is not limited to the following:

- .1 Conduct or direct inspections to determine suitability of the Project or portion thereof for Beneficial Occupancy.
- .2 Assist City in determining the dates of Substantial Completion and Final Completion;
- .3 Review any records, written warranties and related documents required by the Contract Documents and assembled by DBE; and
- .4 Make recommendations to City for issuance of Final Payment upon DBE's compliance with the requirements of the Contract Documents.

4.1.9 City, with the assistance of recommendations from the Design Consultant and/or Construction Manager, shall be the ultimate interpreter of the requirements of the Contract Documents and the judge of performance thereunder by DBE. Such decisions by City will be final and binding upon DBE.

## **4.2 CLAIMS**

4.2.1 Accrual of Claim. A Claim accrues and arises upon issuance of a decision by the City or Construction Manager denying, in whole or in part, a Change Order Request, which was previously submitted in compliance with these Contract Documents. A Claim that demands an extension of time or an increase in the Contract Sum does not accrue unless DBE has previously submitted such demand(s) in a Change Order Request.

4.2.2 Claims must be submitted in writing. All Claims and all supporting documentation and certifications, as further detailed below, must be filed within fourteen (14) Days after the Claim arises. Any Claim which is not submitted prior to Final Payment is deemed waived.

4.2.3 A Claim must include the following:

- .1 A statement that it is a Claim and must clearly specify the amount with respect to Claims for payment, and must specify the days with respect to Claims for an extension of the Contract Time;

- .2 A detailed description of the act, error, omission, Differing Site Condition, event or other circumstance giving rise to the Claim; and
- .3 A statement demonstrating that a Change Order Request was submitted in a timely manner as required by Section 7.2 of these General Conditions.
- .4 All documents necessary to substantiate the Claim, including, without limitation:
- (i). A detailed cost breakdown in the form required for submittal of Change Order Requests and subject to the provisions in Article 7 of these General Conditions prohibiting adjustment to the Contract Sum be based upon any methodology such as total cost or modified total cost methodologies that purports to calculate DBE's additional costs based on the difference between DBE's Proposal and DBE's actual cost to perform the Work.
  - (ii). Copies of actual job cost records demonstrating that the costs have been incurred.
  - (iii). If the Claim is based on an error, omission, conflict or ambiguity in the Contract Documents: (i) a sworn statement by DBE and any Subcontractor involved in the Claim, to the effect that the error, omission, conflict or ambiguity was not discovered prior to submission of the Proposal, and (ii) if not discovered, a statement demonstrating that the error, omission, conflict or ambiguity could not have been discovered by DBE, its Subcontractor(s) or in exercise of the degree of care required of them under the Contract Documents for review of the Contract Documents prior to submission of the Proposal.
- .5 If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that DBE has complied with the requirements of the Contract Documents pertaining to proving the right to an extension of time and demonstrating that DBE is entitled to an extension of time under the Contract Documents.
- .6 A written certification signed by a responsible managing officer of DBE's organization, who has the authority to sign subcontracts and purchase orders on behalf of DBE and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

*I hereby certify under penalty of perjury under the laws of the State of California that I am a managing officer of and that I have reviewed the Claim presented herewith on DBE's behalf and/or on behalf of \_\_\_\_\_ and that the following statements are true and correct.*

- (i) The facts alleged in or that form the basis for the Claim are true and accurate; and,*
- (ii) DBE does not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,*
- (iii) DBE has, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by DBE and by any Subcontractor of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the Losses or damages suffered by DBE and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,*
- (iv) DBE has, with respect to any request for extension of time or claim of Delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by DBE and by any Subcontractor involved in the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by DBE and /or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,*
- (v) DBE has not received payment from City for, nor has DBE previously released City from, any portion of the Claim.*

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

*Name:* \_\_\_\_\_

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

*Company:* \_\_\_\_\_

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

4.2.4 Failure to submit any of the information, documentation or certifications required herein shall result in the Claim being returned to DBE without any obligation for the City to take further action.

4.2.5 Claims shall be first submitted to City via the Construction Manager for decision by City.

4.2.6 Notwithstanding the submission of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by City, DBE shall not delay, slow or stop performance of the Work, but shall diligently proceed with performance in accordance with the Contract Documents and City will continue to make payments as required by the Contract Documents.

4.2.8 No Claim may be asserted unless DBE has strictly complied with the requirements of Section 4.2 of these General Conditions, which shall be considered conditions precedent to DBE's rights to assert the Claim and to initiate the Contract Dispute Resolution Process set forth below with respect to such Claim.

4.2.9 Claims less than \$50,000 shall be responded to by City in writing within forty-five (45) Days of receipt of the Claim, unless City requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case City shall respond to the Claim within fifteen (15) Days after receipt of the further information or documentation or within a period of time no greater than that taken by DBE in producing the additional information or documentation, whichever is greater.

4.2.10 Claims of \$50,000 or greater shall be responded to by City in writing within sixty (60) Days of receipt of the Claim, unless City requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case City shall respond to the Claim within fifteen (15) Days after receipt of the further information or documentation or within a period of time no greater than that taken by DBE in producing the additional information or documentation, whichever is greater.

4.2.11 If DBE disputes City's response, or if City fails to respond within the prescribed time set forth above, DBE may so notify City, in writing, within fifteen (15) Days of City's response or within fifteen (15) Days of City's failure to respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, City shall schedule a meet and confer conference within thirty (30) Days (unless such time is extended by mutual agreement) for discussion of settlement of the dispute.

4.2.12 If the Claim is not fully resolved during the meet and confer conference, as to those portions of the Claim which remain in dispute, DBE may commence the Contract Dispute Resolution Process set forth below by filing a Statement of Contract Dispute with the City within thirty (30) Days after receipt of City's written response to the Claim, or within thirty (30) days following the meet and confer conference if the parties have participated in a meet and confer conference. If DBE fails to submit a Statement of Contract Dispute within the applicable thirty (30) day period, City's written response will become final and binding upon DBE, and DBE shall be deemed to have waived and release any further right to pursue the Claim.

4.2.13 The Claim procedures set forth herein do not apply to the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency.
- (ii) Tort claims for personal injury or death.
- (iii) False claims liability under California Government Code Section 12650, et seq.

- (iv) Defects in the Work first discovered by City after Final Payment by City to DBE.
- (v) Stop notices.
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

#### **4.3 RESOLUTION OF CONTRACT DISPUTES.**

Contract Disputes shall be resolved by the parties in accordance with the Contract Dispute Resolution Process set forth in this Section 4.3 of the General Conditions in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Contract Disputes shall be subject to the Contract Dispute Resolution Process set forth in this Section 4.3, which shall be the exclusive recourse of DBE and City for such Contract Disputes.

##### **4.3.1 Non-Contract Disputes.** Contract Disputes shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by DBE or its Subcontractors or Sub-Subcontractors of any tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by City after Final Payment by City to DBE;
- (v) Stop notices; or
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

##### **4.3.2 Litigation, City Election.**

Matters that do not constitute Contract Disputes shall be resolved by way of an action filed in the Superior Court of the State of California, County of Santa Clara, and shall not be subject to the Contract Dispute Resolution Process. However, the City reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes. Upon written notice by City of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, City's right under Paragraph 4.3.5 to defer resolution and final determination until after Final Completion of the Work.

##### **4.3.3 Submission of Contract Dispute.**

###### **.1 By DBE.**

DBEs may commence the Contract Dispute Resolution Process upon City's written response denying all or part of a Claim pursuant to Section 4.2 of the General Conditions. DBE shall submit a written Statement of Contract Dispute (as set forth below) to City within thirty (30) Days after receipt of City's written response to the Claim, or within thirty (30) days following the meet and confer conference if the parties have participated in a meet and confer conference. Failure by DBE to submit its Statement of Contract Dispute in a timely manner shall result in City's decision by City on the Claim becoming final and binding. DBE's Statement of Contract Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the asserted effect on the Contract Sum and the Contract Time. The Statement of Contract Dispute shall include adequate supporting data to substantiate the disputed Claim, in compliance with the Change Order Request requirements set forth herein.

###### **.2 By City.**

City's right to commence the Contract Dispute Resolution Process shall arise at any time following City's actual discovery of the circumstances giving rise to the Contract Dispute. City may also assert a Contract Dispute in response to a Contract Dispute asserted by DBE. A Statement of Contract Dispute submitted by City shall state the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by City as a result of such events.

###### **.3 Contract Dispute Resolution Process.**

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence

they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, and good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

#### **4.3.4 Direct Negotiations.**

Designated representatives of City and DBE shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor against DBE that is in turn being asserted by DBE against City ("Pass-Through Claim"), then the Subcontractor shall also have a representative attend the negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or any party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

#### **4.3.5 Deferral of Contract Disputes.**

Following the completion of the negotiations required by Paragraph 4.3.4, above, all unresolved Contract Disputes shall be deferred pending Final Completion of the Project, subject to City's right, in its sole and absolute discretion, to require that the Contract Dispute Resolution Process proceed prior to Final Completion. All Contract Disputes that have been deferred until Final Completion shall be consolidated within a reasonable time after Final Completion and thereafter pursued to resolution pursuant to this Contract Dispute Resolution Process. The parties can continue informal negotiations of Contract Disputes; provided, however, that such informal negotiations shall not be alter the provision for deferring final determination and resolution of unresolved Contract Disputes until after Final Completion.

#### **4.3.6 Mediation.**

If the Contract Dispute remains unresolved after negotiations pursuant to Paragraph 4.3.4, above, the parties shall submit the Contract Dispute to non-binding mediation before a mutually acceptable third party mediator.

- .1 Qualifications of Mediator.** The parties shall endeavor to select a mediator who is a retired judge or an attorney with at least five (5) years of experience in public works Design-Build Contract law and in mediating public works construction disputes. In addition, the mediator shall have at least twenty (20) hours of formal training in mediation skills.
- .2 Submission to Mediation and Selection of Mediator.** The party initiating mediation of a Contract Dispute shall provide written notice to the other party of its decision to mediate. In the event the parties are unable to agree upon a mediator within fifteen (15) Days after the receipt of such written notice, then the parties shall submit the matter to JAMS at its San Francisco Regional Office for selection of a mediator in accordance with the current Mediation Rules, except that if any such Mediation Rules conflict with or are inconsistent with provisions of these Contract Documents, the provisions of the Contract Documents shall control.
- .3 Mediation Process.** The location of the mediation shall be at the offices of the mediator or City, at the City's election. The costs of mediation shall be shared equally by the parties. The mediator shall provide an independent assessment on the merits of the Contract Dispute and recommendations for resolution. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152. If the mediator declares that the parties are at impasse and notifies the parties in writing that the mediation has concluded, DBE may, within sixty (60) days thereafter, submit a written request that those portions of its Claim that remain unresolved be submitted to binding arbitration as set forth below. If DBE fails to request binding arbitration within the 60-day period, its Claim shall be deemed waived.

#### **4.3.7 Binding Arbitration.**



- .1 **Process.** Any Claim submitted for binding arbitration, as set forth above, shall be determined by arbitration at the San Francisco JAMS' offices, and administered by JAMS pursuant to its Engineering and Construction Arbitration Rules & Procedures for Expedited Arbitration. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction within Santa Clara County, and no other place.
- .2 **Waiver of Jury Trial.** DBE and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 4.3. DBE shall include this provision in its contracts with its Subcontractors who provide any portion of the Work.

**4.3.8 Non-Waiver.**

Participation in the Contract Dispute Resolution Process shall not waive, release or compromise any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of DBE that are the basis of a Contract Dispute were previously waived by DBE due to DBE's failure to comply with the Contract Documents, including, without limitation, DBE's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

**ARTICLE 5 – SUBCONTRACTORS**

**5.1 DBE'S AWARD OF SUBCONTRACTS**

5.1.1 DBE shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4114. Nothing herein shall be deemed to entitle DBE, without the written approval of City, to substitute other Subcontractors for those named in DBE's List of Subcontractors contained in the completed Proposal; and, except with such approval, no such substitution shall be made. Should DBE violate any of the provisions of the Subletting and Subcontracting Fair Practices Act, such violation shall be deemed a violation of the Design-Build Contract, entitling City, without limitation to any other rights or remedies under the law, to suspend or terminate the Design-Build Contract.

5.1.2 Except as hereinafter provided, any increase in the cost of the Work or Contract Time resulting from the replacement or substitution of a Subcontractor, shall be borne solely by DBE and without any adjustment in Contract Sum or Contract Time.

5.1.3 Where a hearing is held pursuant to the provisions of Chapter 2, Division 5, Title 1 of the Public Contract Code (commencing with Subparagraph 4100), by the awarding authority or a duly appointed hearing officer, City's representative shall prepare and certify a statement of all costs incurred by City for investigation and conduct of the hearing, including the costs of any hearing officer and reporter appointed. The statement shall then be sent to DBE who shall reimburse City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to DBE.

**5.2 SUBCONTRACTOR RELATIONS**

5.2.1 Prior to the execution of each subcontract agreement, DBE shall make available to each proposed Subcontractor, copies of the Contract Documents. DBE must incorporate the terms of these Contract Documents into each subcontract, so that each Subcontractor will be bound by the terms of these Contract Documents, including, but not limited to, the provisions for dispute resolution. Within thirty (30) Days of the Notice To Proceed, DBE shall provide City with a complete listing of all Subcontractors, which shall include, but not be limited to, the Work contracted for, Subcontractor's name, address, telephone and facsimile numbers, form for doing business (i.e., sole proprietor, corporation, partnership), point-of-contact and Subcontractor's license classification and number.

5.2.2 Any part of the Work performed for DBE by a first Tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require that the Subcontractor:

- (i) Perform the Work in accordance with the terms of the Contract Documents.
- (ii) Assume toward DBE all the obligations and responsibilities which DBE assumes towards City by the

Contract Documents.

- (iii) Preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
- (iv) Waive all rights that the Subcontractor may have against City for damages caused by fire or other perils covered by builder's risk property insurance carried by DBE or City, except for such rights Subcontractor may have to the proceeds of such insurance held by City under Article 11 of these General Conditions.
- (v) Afford City and entities and agencies designated by City the same rights and remedies with respect to access to and the right to audit and the right to copy at City's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memoranda relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of at least three (3) years after Final Completion.
- (vi) Recognize the rights of City under Section 5.3 of the General Conditions, Contingent Assignment of Subcontracts, including, without limitation, City's right to elect to accept assignment of the subcontract and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by City, to execute a written agreement on terms acceptable to City confirming that the Subcontractor is bound to City under the same terms as the subcontract.
- (vii) Submit Applications for payment, requests for Change Orders and extensions of time and Claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow DBE time to comply with its obligations under the Contract Documents.
- (viii) Purchase and maintain insurance in accordance with the requirements of the Contract Documents and reserving the right to City to purchase, in its sole discretion, such insurance pursuant to an City Controlled Insurance or other form of wrap-up program.
- (ix) Provide the same defense indemnification of the City as is required of the DBE.
- (x) Agree to participate in the dispute resolution procedures specified in the Construction Contract, at the election of City.

5.2.3 DBE shall promptly, after execution, furnish to City true, complete, and executed copies of all subcontracts, and any change orders and modifications thereto. Progress payments shall not be made for items of Work for which City has not received executed subcontracts and, if applicable, Change Orders.

5.2.4 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and City, except when, and only to the extent that, City elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 5.3, Contingent Assignment of Subcontracts. Notwithstanding the foregoing, City is deemed a third party beneficiary of each subcontract agreement.

5.2.5 City and the Construction Manager shall have the right to communicate with DBE's Subcontractors with respect to matters that are related to DBE's performance of its obligations under the Contract Documents. DBE shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such Subcontractor.

### **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

In the event of any suspension or termination of the Design-Build Contract, DBE is hereby deemed to have offered to assign to City all its interest in contracts with Subcontractors now or hereafter entered into by DBE for performance of any part of the Work. The assignment will be effective upon acceptance by City in writing and only as to those contracts which City designates in writing. City may accept, at its sole election, said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of DBE's rights under the Contract Documents. Such assignment is part of the consideration to City for entering into the Contract with DBE and may not be withdrawn prior to Final Completion.

#### **5.4 DBE AND SUBCONTRACTOR RESPONSIBILITY**

DBE shall be responsible to City for acts and omissions of DBE's agents, employees, and of DBE's Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to DBE, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include DBE's Subcontractors.

### **ARTICLE 6 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**

#### **6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Site, including portions of the Work which have been deleted by modification. DBE shall cooperate with City's forces and Separate Contractors.

6.1.2 City shall provide coordination of the activities of City forces and of each Separate Contractor with the Work of DBE. DBE shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. DBE shall make necessary revisions to the Construction Schedule after such joint review.

6.1.3 Without limitation upon any of the rights or remedies of City under the Contract Documents or under law arising from a default by DBE, in the event that DBE fails to have personnel on Site to supervise the Work, City shall have the right, in its sole discretion, but not the responsibility, upon twenty-four (24) hours' telephonic notice to DBE, to provide such supervision on a temporary basis. DBE shall, notwithstanding City's providing such temporary supervision, remain solely responsible for all actions of its personnel and Subcontractors and shall defend and indemnify City in accordance with the Design-Build Contract against any Losses arising therefrom. City shall have the right, in its discretion, to deduct from the sums owing to DBE the reasonable cost of such temporary supervision.

#### **6.2 MUTUAL RESPONSIBILITY**

6.2.1 DBE shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. DBE shall schedule and coordinate its Design-Build Services with the construction and operations of Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by Separate Contractors, DBE shall inspect such other construction or operations before proceeding with its portion of the Work. DBE shall promptly report to City apparent discrepancies or defects which render the other construction or operations unsuitable to receive the DBE's Work. Unless otherwise directed by City, DBE shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of DBE to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.2.3 In the event of Delays, improperly timed activities or Defective Work by the DBE or the Separate Contractors, the costs of such occurrences shall be borne by the party responsible therefor.

6.2.4 If DBE wrongfully causes damage to completed or partially completed construction or to property of City or Separate Contractors, DBE shall promptly remedy damage as provided in Paragraph 12.2 of these General Conditions.

6.2.5 If a dispute, or other matters in question arise between DBE and a Separate Contractor, these occurrences shall be subject to the provisions of Section 4.2 and 4.3 of the General Conditions. DBE shall immediately notify the Construction Manager in writing of such occurrences.

#### **6.3 CITY'S RIGHT TO CLEAN UP**

---

If a dispute arises between DBE and Separate Contractors as to the responsibility under their respective contracts for

maintaining the Site and surrounding areas free from waste materials and rubbish, City may clean up and allocate the cost between those firms it deems, in its sole discretion, to be responsible.

## **ARTICLE 7 – CHANGES**

### **7.1 CHANGES**

7.1.1 City may, at any time and without notice to DBE's sureties, order Changes in the Work without invalidating the Design-Build Contract and without relieving DBE's sureties of their obligations to City.

7.1.2 City shall receive a deductive adjustment in the Contract Sum for Changes that result in a reduction in the cost to perform the Work and shall be entitled to an adjustment reducing the Contract Time for Changes that enable the DBE to complete the Work earlier than the Contract Time.

7.1.3 Unless such rights have been waived and provided that DBE has complied with the requirements of the Contract Documents with respect to, without limitation, complete and timely submission of all notices, requests and supporting documentation, DBE shall receive an additive adjustment to the Contract Sum for Changes that increase the cost to perform the Work and/or an adjustment extending the Contract Time for Excusable Delay (subject to offset for concurrent Unexcused Delay).

7.1.4 DBE shall not be entitled to an adjustment of the Contract Sum or Contract Time for Changes that are not authorized by an Approved Change Order or Field Order signed by City or Construction Manager. All Changes in the Work that are the basis of an adjustment to the Contract Sum or Contract Time must be authorized in advance, in writing, by City or Construction Manager. Accordingly, no verbal directions, course of conduct between the parties or express or implied Acceptance of Changes or Work, and no claim that the City has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for an adjustment to the Contract Sum or Contract Time if DBE has not obtained advance written authorization to perform the Change in the manner required herein.

7.1.5 City or the Construction Manager may authorize and direct Changes by requesting that DBE submit a Change Order Request or by issuing a Field Order. A Field Order may be issued to direct performance of Work under the following circumstances:

- .1 When there is a dispute as to whether or not the Work described therein constitutes or includes a Change or Extra Work,
- .2 When there is a dispute regarding the basis or amount of compensation for Changed or Extra Work,
- .3 When there is a dispute regarding whether or how the Contract Time should be adjusted, or
- .4 As otherwise deemed necessary by City to ensure the timely performance of the Work and timely completion of the Project.

The purpose of a Field Order is to ensure the timely performance of the Work and timely completion of the Project, and issuance of a Field Order shall not be construed as an acknowledgment by City that the Work described constitutes a Change or Extra Work if that is in fact not the case.

7.1.6 City can make whatever Changes that it determines in its sole discretion are necessary and in its best interests and under no circumstances shall the number (individual or cumulative value) or scope of Changes become a basis for DBE to claim that the Design-Build Contract has been rescinded, terminated, abandoned or should be reformed nor shall such circumstances be the basis for DBE, or any Subcontractor to recover any compensation or damages not permitted by, or in excess of that allowed under, the Contract Documents.

7.1.7 City shall have authority to order minor Changes in the Work that do not increase the cost or time to perform the Work, and which are consistent with the intent of the Contract Documents. Such changes may be directed by a Field Order, and shall be binding on City and DBE. DBE shall carry out such written orders promptly.

### **7.2 CHANGE ORDER REQUESTS AND CHANGE ORDERS**

7.2.1 DBE may request adjustments to the Contract Sum or Contract Time or the terms of a Field Order by submitting a written Change Order Request if, and only if, DBE follows the procedures specified in the Contract Documents, including, without limitation, the procedures set forth in this Section 7.2. A Change Order Request must be submitted

within ten (10) Days after the occurrence of the circumstances giving rise thereto. At the City's election, the DBE shall submit all Change Order requests on a form prepared by the City. The Change Order Request must clearly describe the circumstances that are the basis of the Change, with reference, to the particular provisions of the Contract Documents involved, and also to all other directly relevant documents, including, but not limited to, related Requests for Information and responses thereto, and Field Orders. A Change Order Request seeking an adjustment to the Contract Sum must identify the proposed basis of compensation, the amount of the requested adjustment, and a detailed breakdown of the amount requested. A Change Order Request seeking an adjustment to the Contract Time must include all information required by the Contract Documents, including, but not limited to strict compliance with Section 8.5 of the General Conditions pertaining to requests for extension of Contract Time. A request for an extension of Contract Time must be accompanied by a "Fragnet" or "time impact analysis," which identifies all critical and non-critical activities affected by the Change Order Request and showing logic ties into all existing affected activities noted on the latest approved, updated Construction Schedule. Change Order Requests must be submitted to the Construction Manager. Incomplete Change Order Requests or requests that are not submitted on the City's Change Order Request Form will be returned without review.

7.2.2 Adjustments to the Contract Sum, whether increases or decreases, shall be computed at City's sole election on the basis of one or more of the following methods:

- .1 Unit Pricing: Unit prices stated in the Contract Documents or agreed upon by City and DBE, which shall be deemed to include all Allowable Costs, DBE Markup and Subcontractor Markup.
- .2 Lump Sum Pricing: A lump sum agreed upon by City and DBE, based on the estimated Allowable Costs, DBE Markup, and Subcontractor Markup computed in accordance with this Section.
- .3 Time and Materials: Work performed on a time and materials basis shall be calculated as the sum of Allowable Costs, plus applicable DBE Markup, as set forth herein.

The above methods are the exclusive methods for calculating adjustments to the Contract Sum. Under no circumstances will adjustment to the Contract Sum be based upon any methodology such as total cost or modified total cost methodologies that purports to calculate DBE's additional costs based on the difference between DBE's total actual Project or line item costs and its original Proposal estimate for the Project or any original Proposal estimate line item.

7.2.3 Changes involving Extra Work that City elects to have performed on a time and material basis, whether performed by DBE's forces or the forces of Subcontractors, shall be compensated by an increase in the Contract Sum based on actual Allowable Costs and applicable Markup, as set forth herein. When Work is performed on a time and material basis, by DBE or any of its Subcontractors, DBE shall submit on a daily basis to the Construction Manager daily time and material tickets which include the identification number assigned to the Change; the location and description of the Change; the classification of labor employed (and names and social security numbers if requested); the materials used; the equipment rented (not tools); and such other receipts, invoices, or other evidence of cost as the Construction Manager may require. The Construction Manager may require authentication of all time and material tickets and invoices by persons designated by the Construction Manager for such purpose. The failure of DBE to provide any required authentication shall, if City elects to treat it as such, constitute a waiver by DBE of any right to adjustment of the Contract Sum for the cost of all or that portion of the Extra Work covered by a non-authenticated ticket or subsequent invoice. The adjustment to the Contract Sum for the Extra Work will be based on the total sum of Allowable Costs for performance of that Extra Work and applicable Markup as provided herein.

7.2.4 Allowable Costs include and are limited to the sum of direct, actual costs necessarily incurred by DBE and any Subcontractors that actually perform Extra Work, and are strictly limited to the following:

- .1 **Labor.** The actual costs for straight-time (and the premium time portion of overtime, if approved in writing in advance by City or the Construction Manager) wages or salaries for employees performing the Extra Work, whether at the Site, or at fabrication sites off the Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs required by Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of employees with a labor classification which would increase the Allowable Costs will not be permitted unless DBE establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be payable under this Paragraph only when such costs are not included in

the invoice for equipment rental.

**.2      Material.** The actual cost of materials, supplies and consumable items which are required for the Work at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, including sales tax, freight and delivery. City reserves the right to approve materials and sources of supply, or to supply materials to DBE, if necessary, for the Work. No Markup shall be applied to any material provided by City. Material re-stocking charges shall be limited to 5% of the amount of material. All discounts, rebates and refunds from the sale of surplus materials and consumable items shall accrue to City, and DBE shall make provision so that they may be obtained.

**.3      Tool and Equipment Rental.** Rental charges actually incurred for necessary machinery and equipment, whether owned or hired, as authorized in writing by City or the Construction Manager, exclusive of hand tools. No payment will be made for the use of tools that have a replacement value of \$500 or less. When the equipment is owned by DBE, the rental rate shall be as listed for such equipment in the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," which is in effect on the date the Work is accomplished. When equipment is not listed in said publication, the rate to be paid shall be as herein defined, or a suitable rental rate for such equipment will be established by the Construction Manager. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment is used intermittently, when not in use it shall be returned to its rental source unless DBE elects to keep it at the Site at no expense to City. The reported rental time for equipment already at the Site shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

**.4      Royalties and Permits.** Costs of royalties and permits solely related to the Extra or Deleted Work.

**.5      Insurance and Bonds.** Additional costs of insurance and bonds, not to exceed two percent (2%) of the total of Parts .1 through .4, above.

7.2.5      Allowable Costs shall not include any of the following, which are deemed to be included in DBE's Markup:

- (i)      Superintendent(s)
- (ii)      Assistant Superintendent (s)
- (iii)      Project Engineer(s), Assistant Project Engineer(s).
- (iv)      Project Manager(s), Assistant Project Manager(s).
- (v)      Scheduler(s), Administrative Assistant(s), Health and Safety personnel.
- (vi)      Estimator(s), Clerk(s), Secretary(s), Accountant(s) or any Home Office personnel.
- (vii)      Drafting or detailing.
- (viii)      Small tools (with a replacement value under \$500).
- (ix)      Home or field office expenses, including staff, materials, and supplies.
- (x)      Trailer or storage rental and expense, whether on the Site or off the Site.
- (xi)      Data processing personnel and equipment.
- (xii)      Site fencing.

- (xiii) Utilities, including, without limitation, gas, electric, sewer, water, telephones.
- (xiv) Telephone, cell phone, radios, computer, tablet devices, facsimile, e-mail and copier.
- (xv) Overhead, administrative, or general expenses of any kind.
- (xvi) Loss of efficiency or productivity, or other impact cost due to the effect of the Extra Work on the performance of other Work or the Work of other trades on the Project.
- (xvii) Capital expenses, including interest on capital employed in connection with Extra Work.
- (xviii) Legal costs.
- (xix) Federal, State, or local income and franchise taxes.
- (xx) Profit.
- (xxi) Costs incurred more than twenty (20) Days prior to submission of a Change Order Request seeking compensation for those costs.
- (xxii) Cost of any item not specifically and expressly included in Allowable Costs.

7.2.6 DBE Markup for Extra Work is to be calculated as ten percent (10%) of the Allowable Costs DBE or Subcontractor actually incurred to perform the Work with its own forces. Subcontractor Markup by DBE for Extra Work performed by Subcontractor is to be calculated as fifteen percent (15%) of the total Subcontractor Allowable Costs incurred for Extra Work. The total amount of markup for Extra Work may not exceed twenty-five percent (25%) of the total Allowable Costs.

7.2.7 Change Order Requests or requests for payment for time and material work directed by a Field Order must include a complete breakdown of actual costs, including credits, and shall itemize all Allowable Costs, subcontract costs if applicable, DBE Markup, and Subcontractor Markup if applicable. All claimed costs must be fully documented and objectively verifiable. In connection with the foregoing, DBE must generate and maintain complete and accurate cost accounting records that will reflect:

- .1 The actual Allowable Costs incurred or saved for each individual item of Extra Work or Deleted Work, and
- .2 On an event-by-event basis, the effect of each Delay that forms the basis of any request for extension of time, regardless of scope, number, complexity, cumulative effect or time of issuance or occurrence.

7.2.8 The Contract Sum will be adjusted for direct Allowable Costs incurred due to Excusable Delay only if and to the extent allowed by the Contract for Compensable Delay. Such adjustments in the Contract Sum shall be DBE's sole and exclusive remedy and recovery for Excusable Delay, including any alleged disruption, hindrance, interference, loss of productivity, labor or material cost escalations, inefficiency, acceleration, impact costs, extended or extraordinary overhead (direct or indirect), home office overhead, or other Losses or damages due to Delay, of any kind.

7.2.9 City has the right to increase or decrease the quantity of any unit price item for which an estimated quantity is stated in the Contract Documents, and the Contract Sum will be adjusted accordingly.

7.2.10 Allowance Adjustments: An Allowance is an amount included in the Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after Proposal time. If the Contract Sum includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the stated amount, the Contract Sum shall be increased or decreased accordingly by the amount of the difference. The Contract Sum shall also be adjusted by the amount of any unused Allowance that was specifically and expressly included in the original Contract Sum.

7.2.11 Change Orders: Approved Change Order Requests and Changes directed by a Field Order, including

adjustments to Contract Sum and Contract Price, shall be incorporated into a Change Order for approval by the City. City shall prepare each Change Order for execution by DBE and the City. Change Orders shall be in substantially the same form as Attachment B to the General Conditions. An Approved Change Order becomes binding upon City and DBE when fully executed by both parties. Full execution of a Change Order is deemed full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Work covered by the Change Order, whether known or unknown at the time of execution of the Change Order, and that are related to the subject matter of the Change Order, including, without limitation, all Claims, costs or damages for Delay, disruption, hindrance, interference, extended or extraordinary direct and indirect overhead, multiplicity of Changes, loss of productivity, labor or material cost escalations, inefficiency, the impact of the Change on the Work, legal expenses, consultant costs, interest, lost profits or revenue, bond or insurance costs, currency fluctuations, changes in taxes or other related Claims, costs or damages. Change Orders shall be executed by DBE in the form approved by the City Council or its authorized designee, and without any express reservation of rights by DBE to reserve for the future the right to assert or recover from City any such Claims, costs or damages.

7.2.12 If DBE fails to timely execute a Change Order, the City may unilaterally approve the Change Order to increase the Contract Sum and/or to extend the Contract Time. DBE may dispute the terms of a unilaterally-approved Change Order, in whole or in part, by submitting a Claim in accordance with the Dispute Resolution Procedures set forth herein within fourteen (14) days after the Change Order is approved by the City. If DBE fails to submit a Claim within that 14-day period, with respect to all or part of the unilaterally-approved Change Order, those portions of the Change Order which have not been disputed by timely submission of a Claim shall be deemed to have the same effect as if the Change Order was fully executed by both parties as set forth above.

### **7.3 FIELD ORDERS**

A Field Order will include a description of the Work to be performed, and the selected basis for adjusting the Contract Sum (increase or decrease) as set forth herein (i.e., unit pricing if applicable, lump sum, or time and materials). A Field Order may or may not include the total amount of the City's proposed adjustment to the Contract Sum or Contract Time, and may also include a not-to-exceed limit for any increases to the Contract Sum. Upon receipt of a Field Order, DBE shall, within a reasonable time, proceed with the Work described in the Field Order. If DBE disputes the proposed basis or amount of adjustment to the Contract Sum or Contract Time, it may request to change the disputed portions of the Field Order by submitting a Change Order Request within ten (10) Days following issuance of the disputed Field Order. Failure by DBE to submit a timely Change Order Request seeking modification of the terms of the Field Order shall be deemed full acceptance of and agreement to all of the terms of the Field Order, and a release and waiver of any right to subsequently dispute any or all of the terms of that Field Order. Field Orders shall be in substantially the same form as Attachment A to the General Conditions.

### **7.4 DISPUTES REGARDING CHANGES**

No dispute, disagreement, nor failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the Contract Sum or Contract Time, shall relieve DBE from the obligation to proceed with performance of the Design-Build Services, including, without limitation, performance of Work directed by a Field Order or as modified by a Change Order, promptly and expeditiously. DBE shall not delay, slow, interrupt, or suspend the performance of any Design-Build Services or any Change because of a dispute between the parties, including, but not limited to, disputes pertaining to an adjustment in the Contract Sum or Contract Time. If DBE disputes the rejection of any Change Order Request in whole or in part, DBE's exclusive remedy is to submit a Claim in compliance with the Dispute Resolution Procedures set forth in Article 4 herein.

## **ARTICLE 8 – CONTRACT TIME**

### **8.1 COMMENCEMENT OF THE WORK**

Commencement of the Design-Build Services shall begin on the date specified in the Notice to Proceed.

### **8.2 PROGRESS AND COMPLETION**

8.2.1 DBE agrees that the Contract Time is reasonable for performing the Design-Build Services and that DBE is able to perform the Work within the Contract Time.

- .1 The Construction Schedule may reflect a period of performance that is shorter than the Contract Time;



provided however, that the difference shall be deemed as float and nothing in this Paragraph or in any other provision of the Contract Documents shall be construed as creating any contractual right, express or implied, on the part of DBE to finish the Project earlier than the Contract Time and under no circumstances shall City be liable to DBE for any costs, damages or compensation due to the inability of DBE to complete the Design-Build Services earlier than the Contract Time, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of City.

- .2 DBE has included in its Proposal price the costs of all DBE and Subcontractor overhead (direct and indirect) for the entire duration of the Contract Time. The above costs are included in DBE's Proposal notwithstanding DBE's anticipation of completion in fewer days than established by the Contract Time.
- .3 No increase in the Contract Sum shall be made or granted for Delay if DBE completes the Design-Build Services before expiration of the Contract Time.
- .4 No reduction in the Contract Sum shall be made nor will DBE be required to remain on the Project Site if the Design-Build Services is completed before expiration of the Contract Time.
- .5 The Construction Manager will schedule and hold weekly progress meetings and other meetings to be required by progress of the Work as determined by the Construction Manager. DBE and/or DBE's designee shall be present at each meeting. DBE may also be required to request attendance by representatives of DBE's suppliers, manufacturers and Subcontractors.

8.2.2 Except by agreement or instruction of City in writing, DBE shall not commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by DBE. DBE's obligations to commence the Design-Build Services and to complete the Design-Build Services within the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 DBE shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If City determines and notifies DBE that DBE's progress is such that DBE will not complete the Design-Build Services within the Contract Time, DBE shall, immediately and at no additional cost to City, take all measures necessary, including working such overtime and additional shifts (other than City's normal working hours of 8:00 AM to 6:00 PM, Monday through Friday and 9:00 AM to 6:00 PM on Saturday), to ensure that the Work is Substantially Completed within the Contract Time. Upon receipt of such notice from City, DBE shall immediately respond in writing setting forth a detailed plan for accelerating the Work in a manner acceptable to City. DBE shall not be entitled to any reimbursement or payment of costs, expenses or damages incurred as a result of an acceleration of the Work. City may also take all necessary measures to prevent the need for subsequent accelerations of the Work. DBE shall reimburse City, or City may withhold from payment due to DBE, sums expended by City to perform such measures.

8.2.4. During unfavorable weather, wet ground or other unsuitable construction conditions, DBE shall confine the operations to Work that will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality thereof or be detrimental to the quality of water discharges, unless special means or precautions are taken by DBE to perform the Work in a proper and satisfactory manner.

### **8.3 CONSTRUCTION HOURS**

Work shall be performed during the hours of 8:00 AM to 6:00 PM Monday through Friday and 9:00 AM to 6:00 PM on Saturday, unless otherwise specified in the Special Provisions or approved in writing by the City Engineer. Construction is prohibited on Sundays and holidays defined in Section 8.4 below.

### **8.4 HOLIDAYS**

No work may be performed on the City holidays identified: January

- 1 (New Year's Day)
- Third Monday in January (Martin Luther King Day)
- Third Monday in February (Washington's Birthday) Last
- Monday in May (Memorial Day)
- July 4 (Independence Day)
- First Monday in September (Labor Day) Second

Monday in October (Columbus Day) November 11  
(Veteran's Day)  
Fourth Thursday in November (Thanksgiving Day) Day  
after Thanksgiving  
December 25 (Christmas Day)

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday. In the event that any of the above days falls on a Saturday, then the preceding Friday shall be considered a holiday.

## **8.5 DELAY**

8.5.1 DBE may request an extension of the Contract Time for an Excusable Delay or a Compensable Delay, subject to the following:

- .1** In order to avoid double counting concurrent Delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first Delay to the cessation of the Delay which ends last.
- .2** If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcused Delay.
- .3** If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the number of Days of Excusable Delay, as determined pursuant these General Conditions, exceeds the number of Days of the Unexcused Delay.

8.5.2 As a condition precedent to DBE's right to an extension of Time adjusting the Contract Time and the Contract Sum for Compensable Delay, DBE must provide written notice to City within ten (10) Days of the date that DBE learned of the Delay or should have learned of the Delay in exercise of diligence and reasonable care, setting forth:

- (i) A description of the Delay;
- (ii) A statement that the Delay is critical to completion; and
- (iii) The probable effect of the Delay in terms of the number of Days' extension DBE believes are required to the Contract Time.

The written notice required by this Paragraph is necessary for City to adequately monitor the progress of the Design-Build Services, to differentiate between critical and non-critical Delays, and to prioritize its actions in a manner that is appropriately targeted to mitigate the effect of Delays. Accordingly, DBE's failure to provide written notice in the manner required by this Paragraph 8.5.2 shall constitute DBE's waiver of the right to an adjustment of the Contract Sum and Contract Time on account thereby, regardless of whether the circumstances of the Delay may have been known or suspected by City or the Construction Manager and that no other form of notice (including, without limitation, meeting minutes, log entries or schedule updates) shall suffice as constituting notice to City in accordance with this Paragraph 8.5.2.

8.5.3 Adequate supporting data for a request for extension of time shall include both of the following:

- (i) All relevant scheduling data including a Fragnet, and
- (ii) A detailed, event-by-event description of the impact of each event on completion of Work. Documentary support for any related increase in the Contract Sum must include both of the following:
  - (a) A detailed cost breakdown, and
  - (b) Supporting cost data in such form and including such information and other supporting data as required for submission of Change Order Requests.

8.5.4 City may order Changes, whether or not resulting in Extra Work and regardless of the extent and number of Changes, or may suspend the Design-Build Services.

8.5.5 The determination of whether a Delay is an Excusable Delay, Compensable Delay or Unexcused Delay shall not be affected by the fact that any earlier Delay occurred, regardless of fault or causation.

8.5.6 All time limits stated in the Contract Documents are of the essence.

8.5.7 Excusable Delay means any Delay to the path of activities that is critical to Substantial Completion of the Work within the Contract Time caused by conditions beyond the control or foreseeability, and without the fault or negligence of DBE or its Subcontractors, such as, but not limited to: war, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions that are unusual and unseasonable and in which the Work cannot continue. Without limitation to the foregoing, the financial inability of DBE or any Subcontractor, shall not be deemed conditions beyond DBE's control or foreseeability. DBE may claim an Excusable Delay only if all Work on a critically scheduled activity is stopped for more than six (6) hours of a normal eight (8) hour work day, or if three to six hours are lost in one work day, then it may be claimed for one-half day.

8.5.7.1 Excusable Delay does not include Delay caused by weather conditions which are normal for the location of the Project, as determined by weather records for the preceding five (5) year period.

8.5.7.2 Excusable Delay does not include Delay caused by DBE's failure to order equipment and materials sufficiently in advance of the time needed for the Work.

8.5.7.3 Excusable Delay does not include Delay caused by DBE's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work.

8.5.7.4 Excusable Delay does not include Delay caused by foreseeable conditions DBE could have ascertained from reasonably diligent inspection of the Site and/or review of the Contract Documents.

8.5.8 Compensable Delay means any Excusable Delay to the path of activities that is critical to DBE's Substantial Completion of the Work within the Contract Time, which Delay is all of the following:

(i) Solely due to acts or omissions within the City's control, including but not limited to Changes requested by City that involve Extra Work;

(ii) Not due, in whole or in part, to the fault or negligence or breach of DBE or any Subcontractor; and

(iii) Not concurrent with another Excusable Delay or any Unexcused Delay.

8.5.9 Compensation for delay shall be limited to actual, direct, reasonable, and substantiated Project costs, and shall not include home office overhead, or markup for overhead and profit.

## **ARTICLE 9 – PAYMENTS AND COMPLETION**

### **9.1 SCHEDULE OF VALUES**

Within thirty (30) Days after signing the Contract, but in any event not later than fourteen (14) Days following receipt of the Notice to Proceed, DBE shall submit to City through the Construction Manager a Schedule of Values reflecting cost breakdown of the Contract Sum in a form approved by the Construction Manager. The Schedule of Values shall itemize as separate line items the cost of each scheduled Design Services and Construction Services activity and all other costs, including warranties, Record Documents, insurance, bonds, overhead and profit, the total of which shall equal the Contract Sum and shall be made out in a form approved by the Construction Manager. The Schedule of Values, when approved by City, shall become the basis for determining the cost of Design-Build Services requested on DBE's Applications For Payment. DBE shall submit a statement based upon this breakdown, and if required, itemized in such form and supported by such evidence as the Construction Manager may direct, showing DBE's right to the payment claimed.

### **9.2 PROGRESS PAYMENT**

9.2.1 City shall retain five percent (5%) of the undisputed amount due on each progress payment, or the

percentage stated in the Request for Proposals, whichever is greater, as retention to ensure full and complete performance of the Design-Build Services. Subject to City's right of withholding under Paragraph 9.4.2 of these General Conditions, City agrees to pay to DBE within thirty (30) Days of receipt of a properly submitted Application for Payment an amount equal to ninety-five percent (95%), or a lesser amount if corresponding to a higher retention percentage, if applicable, of the sum of the following, excepting therefrom any amounts which are disputed by City:

- (i) Construction Manager's determination of the value, expressed as a percentage of the Contract Sum, of the Work in permanent place that has been tested and accepted as of the end of the preceding month.
- (ii) Construction Manager's determination of the value of materials suitably stored but not yet incorporated into the Work, subject to Paragraph 9.3.5 of these General Conditions.
- (iii) Less amounts previously paid.

9.2.2 At any Time after fifty percent (50%) of the Construction Services has been determined by Construction Manager to be completed, City may in its sole discretion, make any of the remaining progress payments in accordance with the calculation in Paragraph 9.2.1 of these General Conditions based on one hundred percent (100%) of City's determination of the value of the Work in place and of stored materials not yet incorporated into the Work.

9.2.3 Progress payments shall not be construed as City's Acceptance of any or all of the Design- Build Services and shall not be a waiver of any or all rights City has under the Contract Documents.

### **9.3 APPLICATION FOR PAYMENT**

9.3.1 At the end of each month, DBE shall submit to City an itemized Application for Payment, requesting payment for Design-Build Services as of the end of that month that is calculated in accordance with the formula for payment set forth in Paragraph 9.2.1 of these General Conditions. The Application for Payment shall be prepared:

- (i) Utilizing the format as designated by City or the Construction Manager.
- (ii) Itemized in accordance with the Approved Schedule of Values.
- (iii) Showing the results of a successful system test (for example a pressure test for gas project) of the system installed or completed in the pay period covering the Application for Payment.
- (iv) Including such data substantiating DBE's right to payment as City may reasonably require, such as invoices, payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) Days prior to the date of the Application for Payment.
- (v) Showing itemized amounts for Change Orders, Modifications and retention.

9.3.2 Applications for Payment shall not include requests for payment on account of increases to the Contract Sum which have not been authorized by Change Orders or amounts DBE does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by City, an Application for Payment shall be accompanied by all of the following:

- (i) A summary showing payments that DBE will make to Design Professionals or Subcontractors covered by such application.
- (ii) Conditional waivers and releases of claims and stop notices from DBE and each Subcontractor listed in the current Application for Payment covering sums requested in the current Application for Payment.
- (iii) Unconditional waivers and releases of claims and stop notices, from DBE and each Subcontractor listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 DBE warrants that, upon submittal of an Application for Payment, all Design-Build Services for which Certificates for Payment have been previously issued and payment has been received from City, shall be free and clear of all claims, stop notices, security interests and encumbrances in favor of DBE or Subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials or equipment relating to the Design-Build Services.

9.3.5 At the sole discretion of City, the Construction Manager may approve for inclusion in DBE's Application for Payment the cost of materials to be incorporated in the Work but not yet incorporated in the Work and already delivered and suitably stored either at the Site or at some other appropriate location acceptable to City. In such case, DBE shall furnish evidence satisfactory to City:

(i) Of the cost of such materials.

(ii) That such materials are under the exclusive control of DBE, or if not, that title to the materials is in City's name, free of any lien or encumbrance and that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to City to cover any Loss.

(iii) Photographs of such materials if requested by the City.

Any payment pursuant to this Paragraph shall not be construed as an inspection or acceptance of the materials nor shall it relieve DBE of its continuing and sole responsibility for the care and protection of such materials nor shall it relieve DBE from sole responsibility for any loss or damage to the materials from any cause whatsoever, nor act as a waiver of the right of City to require strict fulfillment by DBE with all terms of the Contract Documents.

9.3.6 City shall have the right, in its sole discretion, to make payments of monies owing to DBE by means of direct payment to Subcontractors of any unpaid work performed by any Subcontractor or by joint payment to DBE and to Subcontractors. The making of such payments shall not be construed as the assumption of any obligation on the part of City or as creating any contractual relationship between City and any Subcontractor and shall not relieve DBE of any of its obligations under the Contract Documents.

9.3.7 If the Contract Sum includes an Allowance from the Proposal and the cost of performing the Design-Build Services covered by that Allowance is greater or less than the amount of that Allowance, the Contract Sum shall be increased or decreased accordingly.

#### **9.4 CERTIFICATE FOR PAYMENT**

9.4.1 Approval of all or any part of an Application for Payment may be withheld, a Certificate For Payment may be withheld, or all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment in order to protect City against actual or threatened loss as a result of any of the following:

(i) Defective Work not remedied or failure to pass required system tests.

(ii) Third-party claims against DBE or City arising from the acts or omissions of DBE, its Design Professionals or Subcontractors.

(iii) Stop notices.

(iv) Failure of DBE to make timely payments due Subcontractors for material or labor.

(v) A reasonable doubt that the Design-Build Services can be completed for the balance of the Contract Sum then unpaid.

(vi) Damage to City or Separate Contractor for which DBE is responsible.

(vii) Reasonable evidence that the Project will not be completed within the Contract Time.

(viii) Failure of DBE to maintain and update As-Built or Record Documents.

- (ix) Failure of DBE to timely submit Construction Schedules, reports, Submittals or their updates as required by the Contract Documents.
- (x) Performance of Work by DBE without Approved Submittals.
- (xi) Liquidated or actual damages assessed in accordance with the Design-Build Contract.
- (xii) Any other failure of DBE to perform an obligation under the Contract Documents.

9.4.2 Subject to the withholding provisions of Paragraph 9.4.2 and when any or all of the noted deficiencies or others have been removed, City shall pay DBE the amount set forth in the Certificate for Payment in accordance with its normal disbursement procedures.

9.4.3 Neither City nor the Construction Manager shall have an obligation to pay or to see to the payment of money to a Design Professional or Subcontractor, except as may otherwise be required by Law.

9.4.4 Neither a Certificate for Payment nor any payment (progress or final) shall be construed as a waiver of any rights arising from Defective Work.

9.4.5 City may, at any time, require that payment of any undisputed amount is contingent upon DBE furnishing City with a release of all claims against City which are related to those undisputed payments. Any disputed amount may be expressly excluded from such release.

9.4.6 The City may require a tri-party agreement among the City, the DBE, and the DBE's surety as a condition to making full progress payments if the Work is behind schedule, in order to avoid exoneration of the surety bond or impairment of the surety's security.

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

9.5.1 At the request and expense of DBE, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by City under Section 9.2 of these General Conditions to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by DBE with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Paragraph 9.5.3 until Final Payment is due in accordance with Section 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. DBE shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Paragraph 9.5.1 of these General Conditions, and at the request and expense of DBE, City shall deposit retention directly with the Escrow Agent. DBE may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by the Escrow Agent upon the same terms provided for securities deposited by DBE.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by DBE, City, and the Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention forms provided by City. The terms of such escrow agreement are incorporated into the requirements of this Section 9.5.

9.5.4 Release of funds or securities from escrow to DBE shall be made upon receipt by Escrow Agent of written notification by City that the DBE has complied with all requirements and procedures applicable to the Contract.

9.5.5 City has the right to draw upon the securities in the event of default by DBE, as determined by City pursuant to the provisions of these Contract Documents. Within seven (7) days following receipt of the City's written notice of such default, Escrow Agent must immediately convert the securities to cash and distribute the cash as instructed by City.

## **9.6 BENEFICIAL OCCUPANCY**

9.6.1 City reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work, at any time prior to issuing the Certificate of Substantial Completion, upon seven (7) Days' notice to DBE. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- .1 City, Design Consultant and Construction Manager will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected prior to issuing the Certificate of Substantial Completion.
- .2 Beneficial Occupancy by City shall not be construed by DBE as Acceptance by City of that portion of the Work which is to be occupied. City may, however, at its sole option, relieve DBE of Contract requirements to protect Work being beneficially occupied by City where such relief is specifically designated by City in writing.
- .3 Beneficial Occupancy by City shall not constitute a waiver of City's right to assess liquidated damages as otherwise provided in these Contract Documents.
- .4 DBE shall provide, in the areas beneficially occupied and on a continual basis (if required), utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with DBE while the equipment is so operated. DBE shall submit to City an itemized list of each piece of equipment so operated with the date operation commences.
- .5 The Guarantee to Repair Periods, as defined in Section 12.2 of these General Conditions, will commence upon the first dates of actual occupancy or use of portions of the Work to which the City has taken Beneficial Occupancy and to equipment or systems fully utilized.
- .6 City shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
- .7 City shall pay all utility costs which arise out of the Beneficial Occupancy.
- .8 DBE shall not be responsible for providing security in areas beneficially occupied.
- .9 City shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of DBE's remaining Work.
- .10 DBE shall not be required to repair damage caused by City in its Beneficial Occupancy.
- .11 Except as provided in this Section 9.6 of these General Conditions, there shall be no added cost to City due to Beneficial Occupancy.
- .12 DBE shall continue to maintain all insurance required by the Contract in full force and effect.

## **9.7 SUBSTANTIAL COMPLETION**

9.7.1 When DBE gives notice to City that the Work, or portion thereof designated by City for separate delivery, is Substantially Complete, unless City determines that the Work or designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, Design Professional or Construction Manager will inspect the Work, or such designated portion thereof, and prepare and give to DBE a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. DBE shall promptly proceed to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of DBE to complete all Work in accordance with the Contract Documents. City will then make a further inspection to determine whether the Work or such designated portion thereof is Substantially Complete. If City's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, DBE shall, before City's issuance of the Certificate of Substantial Completion, complete or correct such item. DBE shall then submit a request for another

inspection by City to determine Substantial Completion.

9.7.2 When City determines that the Work or such designated portion thereof is Substantially Complete, City will prepare a Certificate of Substantial Completion on City's form, which when signed by City shall establish the date of Substantial Completion and the responsibilities of City and DBE for security, maintenance, heat, utilities, insurance, completion of minor items and correction or repair of the Work or such designated portion thereof. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work (which is defined in Article 12, Section 12.2.1), or such designated portion thereof covered by the Certificate of Substantial Completion, excluding any systems provided by Separate Contractors which are not yet fully operational or accepted by City, shall commence on the date of Substantial Completion of the Work or such designated portion thereof. The Guarantee To Repair Period for systems which become fully operational or Accepted subsequent to Substantial Completion will begin on the later of the date they are operational or Acceptance of the Project by City.

## **9.8 FINAL COMPLETION AND FINAL PAYMENT**

9.8.1 Upon receipt of notice from DBE that the Work is ready for final inspection, City will make such inspection. City will file a notice of completion with the County Clerk within ten (10) Days after Acceptance by City. Thirty-five (35) Days after filing the notice of completion, the City may release the final retention provided the requirements in this paragraph are met.

9.8.2 Without limitation to any other provisions of the Contract Documents, before Final Payment (including release of undisputed retention) for Design-Build Services under this Design-Build Contract is authorized, the DBE shall have completed the Design-Build Services in accordance with the Contract Documents and all applicable standards of care and the following requirements of the Contract Documents must be fulfilled by DBE:

- (i) The submittal of an application for Final Payment, together with supporting documentation, as required by Section 9.3 of these General Conditions.
- (ii) Completion and delivery by DBE to City of all required written guarantees, warranties, operation and maintenance manuals, As-Built Documents and other Record Documents, drawings, schedules, certificates and such other documents as required by the Contract Documents. All approvals and acceptances shall have been made pursuant to Applicable Code Requirements.
- (iii) Delivery by DBE to City of an affidavit, signed under penalty of perjury, stating that all workers and persons employed, all firms supplying the materials, and all Design Professionals and Subcontractors have been paid in full; and that there are no bills outstanding against the Work for either labor or materials, except certain items, to be set forth in such affidavit covering disputed claims or items in connection with which notices to withhold have been filed under the provisions of the statutes of the State of California.
- (iv) Completion of all construction Work, including corrective and punch list items, in a manner acceptable to City. All rubbish, tools, scaffolding and surplus materials and equipment have been removed from the Site.
- (v) Submission of conditional releases of claims and stop notices from DBE and its Subcontractors with no reservation of rights for disputed claims or amounts.
- (vi) If a Stop Notice(s) is received by the City after the Notice of Completion has been filed and prior to Final Payment, the City may, at its election, withhold the amount specified in the Stop Notice plus reasonable cost of any litigation pursuant to Civil Code Section 9358 from the Final Payment or require the DBE to supply a stop notice release bond in the amount of 125% of the stop notice amount from a Surety acceptable to the City.

9.8.3 For purposes of determining the last day for submission of a Claim pursuant to Article 4, the date of Final Payment is deemed to be the date that the City acts to release undisputed retention as part of Final Payment, either by transmitting a written request to the retention Escrow Agent or by transmitting a payment directly to DBE, whichever occurs first. Acceptance of Final Payment by DBE shall constitute a complete waiver of all Claims, except those previously made in writing and identified by DBE as unsettled at the time of the Application for Final Payment.



9.8.4 DBE shall pay or cause to be paid to Subcontractors, the amount stated in the conditional releases within five (5) Days after receipt of the Final Payment, and shall promptly thereafter furnish evidence of such payment to City.

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

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 DBE shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the performance of the Design-Build Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7-day week basis.

10.1.2 Prior to the start of construction, DBE shall submit to Construction Manager a copy of DBE's safety program for the Project. A copy of this program shall be maintained on Site at all times. The safety program shall include, at a minimum:

- (i) Management policy, illness and injury prevention program (as described below).
- (ii) Safety meetings.
- (iii) Accident investigation.
- (iv) Basic accident causes.
- (v) Safety inspection check list.
- (vi) Fire prevention and control.
- (vii) Report forms.
- (viii) Employee safety manual.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

10.2.1 The DBE shall be solely and completely responsible for job site conditions and safety during the life of the Contract. This obligation shall include the safety of all persons within or affected by the line of construction and all private property affected by the work

10.2.2 At its sole expense, DBE shall furnish, erect and maintain such temporary fences, barricades, signs, lights, ramps, and temporary construction of whatever nature as may be necessary to provide access to abutting properties and to warn the public of the work in progress and of any dangerous conditions as may exist due to the work in progress. The DBE's responsibility shall be continuous and not be limited to working hours or days, and shall not cease until formal acceptance of the Work by the City except that if the City should make partial acceptance of the Work, the DBE's responsibility for the portion of the Work so accepted shall thereupon cease, except for latent errors in the work or faulty construction.

10.2.3 The duty of the Construction Manager, its agents, or employees, to conduct construction review of the DBE's performance and operations is not intended to, and does not include review of or responsibility for the adequacy of the DBE's safety measures and procedures in, on, or adjacent to the site of the Work.

10.2.4 DBE shall protect persons and property on the Site at all times. DBE shall have available at the Site copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the California Division of Industrial Safety. DBE shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

10.2.5 DBE shall immediately respond to notice from City of unsafe conditions, shall take adequate precautions for safety of persons on the Site, and shall provide adequate protection to prevent injury or Loss to the

following:

- (i) Employees involved in the Work and other persons who may be affected thereby.
- (ii) The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of DBE or Subcontractors.
- (iii) Other property at the Site and adjoining property(ies).

10.2.6 DBE shall promptly remedy damage and Loss (other than damage or Loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by DBE or its Subcontractors or anyone for whose acts they may be liable and for which DBE is responsible.

10.2.7 DBE shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection of persons and property, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.8 When use or storage of hazardous materials, equipment, or unusual methods are necessary for execution of the Work, DBE shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.9 DBE shall be required to provide at the Site a member of DBE's organization, typically the Superintendent, whose responsibility it shall be to provide instruction to persons present on the Site about prevention of accidents and overall jobsite safety. DBE shall notify City in writing if DBE replaces the person responsible for safety.

10.2.10 DBE shall be responsible for locating, providing, and coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load/store or permit any part of the Work on the Site to be loaded/stored so as to endanger the safety of persons or property.

10.2.11 DBE shall protect its materials and the Work from damage in a manner satisfactory to City and shall make good, without charge to City, all damage due to negligence in providing proper protection.

10.2.12 DBE shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property.

10.2.13 DBE shall not permit the possession or use of alcohol or controlled substances on the Site.

10.2.14 Explosives may be used only when authorized in writing by City. Explosives shall be handled, used and stored in accordance with applicable regulations.

### **10.3 EMERGENCIES**

In an emergency affecting the safety of persons or property, DBE shall immediately act to prevent or minimize damage, injury or loss. DBE shall immediately notify the Construction Manager and City, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation, of the occurrence of such an emergency and DBE's action.

### **10.4 TRENCH SAFETY**

In accordance with the California Labor Code, where the Work will involve trenches five feet or more in depth and the estimated or Proposal cost of excavation is in excess of \$25,000, the DBE shall submit to and receive from the City of Palo Alto, or its designee, the acceptance of a detailed plan showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazards of caving ground. Such plan shall be submitted at least five (5) days before the DBE intends to begin work on the trenches.

If such plan varies from the shoring system standards established by the Construction Safety Orders of the State of California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer.

The DBE shall not use shoring, sloping, or protective systems less effective than that required by the Construction Safety Orders of the Division of Industrial Safety.

The City shall not be responsible or liable for the safety of such trenching or trenching plans.

Whenever the work called for on these plans or Contract Documents involves the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or excavations, which are five feet or deeper, DBE shall include in its Proposal Price, the cost of design and construction of adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders.

## **ARTICLE 11 – INSURANCE AND BONDS**

### **11.1 DBE'S INSURANCE**

11.1.1 DBE, at its sole expense, shall for the term of the Contract obtain and maintain insurance in the amounts for the coverage specified below, or as modified by the Special Provisions (if applicable), afforded by companies with AM Best's Key Rating of A-Vii, or higher, licensed or authorized to transact insurance business in the State of California.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	REQUIRED LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	COMMERICAL GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - EACH PERSON - EACH OCCURRENCE  PROPERTY DAMAGE  BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000
	PROFESSIONAL LIABILITY, INCLUDING NEGLIGENT ACTS, ERRORS AND OMISSIONS	PERSONAL INJURY AND PROPERTY DAMAGE	\$2,000,000 per claim and aggregate	
	EXCESS / UMBRELLA LIABILITY	EACH OCCURRENCE	\$1,000,000	

YES

**THE CITY OF PALO ALTO AND ITS COUNCIL MEMBERS, OFFICERS, AND EMPLOYEES ARE TO BE INCLUDED AS AN ADDITIONAL INSURED UNDER DBE'S GENERAL LIABILITY POLICY AND AUTOMOBILE LIABILITY POLICY.** DBE, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF THE AGREEMENT AND FOR 3 YEARS AFTER WORK IS COMPLETED, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING DBE AND ITS EMPLOYEES.

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF COVERAGE CANCELLATION; AND
  - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR DBE UNDER THE GENERAL LIABILITY AND AUTOMOBILE LIABILITY POLICIES REQUIRED ABOVE.
  - C. DEDUCTIBLE AMOUNTS SHALL BE THE RESPONSIBILITY OF DBE.
- II. DBE MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, UNDER THIS AGREEMENT FOR THE REQUIRED WORK HEREIN WHERE ADDITIONAL INSURED COVERAGE IS REQUIRED, INSURANCE AS AFFORDED BY THESE POLICIES ARE PRIMARY AND ARE NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE INCLUSION OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS ADDITIONAL INSURED UNDER THE POLICIES WHERE ADDITIONAL INSURED COVERAGE IS REQUIRED SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE INCLUSION OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

- 1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, DBE SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
- 2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON- PAYMENT OF PREMIUM, DBE SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND CONTRACT ADMINISTRATION CITY  
OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**

11.1.2 DBE shall furnish City with the certificates of insurance and with copies of endorsements affecting coverage required under this Contract within ten (10) business days following issuance of the Notice of Award. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage on its behalf.

11.1.3 DBE shall require all Subcontractors to obtain and maintain types and limits of insurance appropriate for their portions of Work, and shall furnish separate certificates and endorsements for each Subcontractor in compliance with this Article. Applicable coverages for Subcontractors shall be subject to all of the requirements stated herein.

11.1.4 In the event DBE does not provide reasonable evidence via a certificate of insurance that it is complying with these insurance requirements, City may, at its option, provide insurance coverage to protect City; and the cost of such insurance shall be paid by DBE and may be deducted from the Contract Sum.

11.1.5 The requirements of this Section may only be modified in writing by the City's Risk Manager.

11.1.6 Builder's Risk Insurance: DBE shall procure and maintain from insurance companies authorized to do business in the state of California "All Risk" Builders Risk property insurance upon the entire Work to the full value of the Work, to replace or repair the insured property. The Builders Risk insurance shall include as additional named insureds the City, DBE, and Subcontractors of every tier, as well as architects, engineers, and suppliers as their interests may appear. Such insurance shall include, but not be limited to, the perils of fire, windstorm, theft, vandalism, collapse, flood, earthquake, and debris removal. The Builders Risk insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at any other temporary location. To the fullest extent permitted by law, the City and DBE waive and release all rights against each other and their officers, directors, agents, or employees for all damages caused by fire or other perils covered by property insurance, or that could have been covered by property insurance if a party is instead self-insured, and including deductibles in all cases. Such waiver and release includes all rights of subrogation and rights of recovery, except such rights as they may have to any proceeds of insurance, during and after the completion of DBE's Work.

## **11.2 BOND REQUIREMENTS**

11.2.1 Prior to commencing Work on the Project, DBE shall file with City good and sufficient Labor and Material Payment and Performance Bonds each in the amount of 100% of the Contract Sum for Construction Services. The bonds shall be in substantially the same form as contained in the Contract Documents or such other form as required by City and shall be signed by both DBE and Surety and properly notarized. Should any bond required hereunder or any surety on such bond become or be reasonably determined by City to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section 11.2. No further payments to DBE for Work performed shall be made or due until DBE has fully complied with the requirements of this Section 11.2.

11.2.2 The Payment Bond shall remain in effect at least until the time for filing a claim on a stop notice has expired pursuant to the California Civil Code. The Performance Bond provided by DBE shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all DBE's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination, such as, but not limited to DBE's warranty and indemnity obligations.

11.2.3 DBE shall promptly furnish such additional security as may be required by City to protect its interests and those interests of persons or firms supplying labor or materials to the Work, subject to an appropriate Change Order.

11.2.4 Surety companies used by DBE shall be, on the date the Contract is signed by City and at all times while the bonds are in effect, either California Admitted Sureties or listed in the latest published United States Treasury Department list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies and either have a current A.M. Best A VIII rating or be an admitted surety that meets the requirements of Code of Civil Procedure Section 995.660.

11.2.5 The premiums for all Bonds are included in the Contract Sum and shall be paid by DBE.

11.2.6 The bonds shall name City as obligee.

11.2.7 Change Orders, Field Orders, Modifications, Changes in the Work and adjustments in the scope of

Work Contract Sum or Contract Time shall in no way release or exonerate DBE or its sureties from their obligations and notice thereof shall be waived by such sureties.

11.2.8 City and the Construction Manager shall have the right to communicate with DBE's sureties with respect to matters that are related to DBE's performance of its obligations under the Contract Documents. DBE shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such surety.

11.2.9 In the event of a significant (15% or more) increase in Contract Sum, replacement bonds totaling the new Contract Sum may be required by City.

## **ARTICLE 12 – DEFECTIVE WORK**

### **12.1 UNCOVERING OF WORK**

12.1.1 If a portion of the Work is covered contrary to Construction Manager's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by City, be uncovered for City's observation and be replaced at DBE's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Work has been covered which is not required by the Contract Documents to be observed or inspected prior to its being covered and which City has not specifically requested to observe prior to its being covered, City may request to see such Work and it shall be uncovered and replaced by DBE. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, DBE shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

### **12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD**

12.2.1 In addition to any specific warranty mentioned in these Contract Documents, the DBE shall guarantee that all material, apparatus, equipment, and workmanship used, installed, or incorporated in the work is free from defects, and agrees to replace at no expense to the City any and all defective Work or materials which become evident within one (1) year ("Guarantee To Repair Period"), unless a longer period of time is specified in the Special Provisions and technical specifications, commencing as follows:

- (i) For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
- (ii) For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Section 9.6, from the first date of such Beneficial Occupancy or actual use, as established in an appropriate written authorization for Beneficial Occupancy.
- (iii) For all Work other than (i) or (ii) above, from the date of filing of notice of completion pursuant to Section 9.8 above.

12.2.2 DBE shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (ii) replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any expense whatsoever to City. City will give notice of observed Defective Work with reasonable promptness, and DBE shall promptly commence such correction, replacement, repair or restoration upon notice from City, but in no case later than seven (7) Days after receipt of such notice. DBE shall diligently and continuously prosecute such correction to completion. DBE shall bear all costs of such correction, replacement, repair, or restoration and all Losses resulting from such Defective Work, including additional testing, inspection and compensation for City's or City's services and expenses. DBE shall perform corrective Work at such times that are acceptable to City and in such a manner as to avoid, to the extent practicable, disruption to City's activities. Ordinary wear and tear, unusual abuse or neglect are excepted from this guarantee. DBE shall notify City upon completion of

repairs.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of City, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further Loss to City or to prevent interruption of operations of City, City will attempt to give immediate notice to DBE. If DBE cannot be contacted or does not comply with City's request for correction within a reasonable time as determined by City, City or Separate Contractors under City's direction, may, notwithstanding the provisions of this Article, proceed to make such corrections or provide such attention; and the costs of such correction or attention shall be charged against DBE. Such action by City will not relieve DBE of the guarantees provided in this Article or elsewhere in the Design- Build Contract. DBE shall replace, repair or restore to City's satisfaction any other parts of the Work and any other real or personal property, which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 DBE shall promptly remove from the Site those portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by DBE nor accepted by City.

12.2.5 If DBE fails to commence correction of Defective Work within seven (7) Days as required in Section 12.2.3 after notice from City or fails to diligently prosecute such correction to completion, City may correct the Defective Work in accordance with Section 2.4; and, in addition, City may remove the Defective Work and store salvageable materials and equipment at DBE's expense.

12.2.6 If DBE fails to pay the costs of such removal and storage as required by Paragraphs 12.2.4 and 12.2.5 within seven (7) Days after written demand, City may, without prejudice to other remedies, sell such materials at auction or at private sale or otherwise dispose of such material. DBE shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which DBE is liable to City, including compensation for City's services and expenses. If such proceeds of sale do not cover costs and damages for which DBE is liable to City, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due DBE or the remaining payments are insufficient to cover such deficiency, DBE shall promptly pay the difference to City.

12.2.7 DBE's obligations under this Article are in addition to and not in limitation of its warranty under Section 3.5 or any other obligation of DBE under the Contract Documents. Enforcement of DBE's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of DBE under the Contract Documents, which may be longer specified periods. Establishment of the Guarantee To Repair Period relates only to the specific obligation of DBE to correct the Work and in no way limits either DBE's liability for Defective Work or the time within which proceedings may be commenced to enforce DBE's obligations under the Contract Documents.

### **12.3 ACCEPTANCE OF DEFECTIVE WORK**

Notwithstanding the provisions of Section 12.2 of these General Conditions, City shall have the option, at its sole discretion and by notice to DBE, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to City the Work would have had were it complete, correct and in conformity with the Contract Documents and the value to City of such Defective Work. Such option shall be exercised solely by notice to DBE and shall not be implied from any act or omission by City or Construction Manager. If there are no remaining payments of the Contract Sum to be made to DBE, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, DBE shall promptly pay to City the amount of any such deficiency.

## **ARTICLE 13 – STATUTORY REQUIREMENT**

### **13.1 STATE LABOR LAW**

DBE, its agents, and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work. If prevailing wages are required for this Project, copies of the prevailing rate of per diem wages may be obtained at the Purchasing Office of the City of Palo Alto. DBE must post or require its Subcontractors to post job site notices, as prescribed by regulation pursuant to California Labor Code Section 1771.4.

### **13.2 WORK DAY**

DBE shall not permit any worker to labor more than eight (8) hours during any one (1) Day or more than forty (40) hours during any one (1) calendar week, unless overtime is paid pursuant to Labor Code Section 1861 or except as otherwise permitted by law. DBE shall forfeit to City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Design-Build Contract by DBE, or any Subcontractor, for each Day during which such worker is required or permitted to Work more than eight (8) hours in any one (1) Day and forty (40) hours in any one (1) calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. DBE and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each Day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of City, its officers and agents, and to the inspection of the appropriate enforcement agency or representative and the State of California.





CITY OF  
**PALO  
ALTO**

# FIELD ORDER

CITY OF PALO ALTO  
DEPARTMENT OF PUBLIC WORKS

\_\_\_\_\_Project

This Field Order, issued pursuant to Article 7 of the Contract General Conditions directs and authorizes DBE to proceed with the Work described below. Upon receipt of this Field Order, DBE shall, within a reasonable time, proceed with the Work described in the Field Order. Unless otherwise stated below, this Field Order shall not be construed as an acknowledgment by City that the Work described constitutes a Change or Extra Work. If DBE disputes the proposed basis or amount of adjustment to the Contract Sum or Contract Time, it may request to change the disputed portions of this Field Order by submitting a Change Order Request within ten (10) Days following issuance of this Field Order. Failure by DBE to submit a timely Change Order Request seeking modification of the terms of this Field Order shall be deemed full acceptance of and agreement to all of the terms herein, and a release and waiver of any right to subsequently dispute any or all of the terms of this Field Order.

Project Number: _____		Field Order Number: XXX	
Contract Number: _____		Issuance Date: ____ / ____ / ____	
DBE's Name: _____		Prepared by: _____	
<b>Description of Work:</b> <b>Title:</b> _____ <b>Ref:</b> _____ 1. _____			
City has determined that the above Work: ____ is Extra Work ____ is <b>not</b> Extra Work  City has determined that DBE is: ____ <b>not</b> entitled to an extension of time ____ entitled to an extension of ____ days  Basis of Extra Work Cost: ____ Unit Cost* ____ Lump Sum: \$ _____ ____ Time and Materials* ____ Other* *The Contract Sum will be [increased][decreased] by an amount not to exceed: \$ _____		1. Consultant shall sign prior to DBE and return to City. Indicate N/A if not applicable.  Consultant Approval: _____ Title: <u>Senior Project Manager</u> Date: _____	
2. DBE shall sign and return to City for City approval signatures.  DBE Approval: _____ Title: <u>Project Manager</u>  Date: _____		3. Signature required on all Field Orders.  City Approval: _____ Title: <u>Project Manager</u>  Date: _____	
4. Division Head signature required for Field Orders exceeding \$15,000.  City Approval: _____ Title: <u>Assistant Director of Public Works</u>  Date: _____		5. Department Head signature required for Field Orders exceeding \$25,000.  City Approval: _____ Title: <u>Director of Public Works</u>  Date: _____	

Distribution:    ☐ DBE                      ☐ Division Head                      ☐ File  
                          ☐ Consultant                      ☐ Project Manager  
    ☐ Inspector



# CHANGE ORDER REQUEST

CITY OF PALO ALTO  
DEPARTMENT OF PUBLIC WORKS

## Contract Change Order Request

<b>Project Title:</b>		<b>Project No.:</b>	
<b>Contract Number:</b>		<b>Date:</b>	
<b>DBE:</b>		<b>Change Order Request No.:</b>	

<b>Description of Change Order Request</b> (Attach additional sheets as needed)	
<b>Reason for Change Order Request:</b>	
<b>Description of Work to be Performed:</b>	

<b>Requested Change to Contract Sum:</b>  <input type="checkbox"/> No cost change: N/A <input type="checkbox"/> Increase cost by \$ _____ <input type="checkbox"/> Decrease cost by \$ _____	<b>Request for Extension of Contract Time</b> (check one):  <input type="checkbox"/> No Change to Contract Time <input type="checkbox"/> Time Extension Requested for _____ days* ○ _____ days Excusable Delay ○ _____ days Compensable Delay  <input type="checkbox"/> Decrease time by ____ days  <small>* Include all information and documentation required by Section 8.5 of the Contract General Conditions</small>
<b>Basis for requested change in cost:</b>  <input type="checkbox"/> Unit pricing <input type="checkbox"/> Lump sum: \$ _____ <input type="checkbox"/> Time and Materials not to exceed: * \$ _____ <input type="checkbox"/> Compensable Delay Costs: \$ _____ <input type="checkbox"/> Other: _____  <small>* Final value shall not exceed amount shown without additional written CO authorization. Complete Time and Materials Breakdown on following page</small>	<b>Reference Documents:*</b>  RFI:  ASI:  Field Order:  Specifications:  Plans:  Other: (specify):  <small>* Provide specific number/section/sheet references as applicable</small>

Line	Time and Materials Breakdown (Reference Section 7.2 of General Conditions for Allowable Costs and markup)	Added	Credit
	All lines shall be filled in (zero values acceptable)		
	<b>DBE'S WORK</b>		
1.	Material (attach itemized quantity and unit cost)		
2.	Labor (attach itemized hours and rates)		
3.	Equipment (attach invoices)		
4.	Royalties and Permits		
5.	Additional insurance and bond costs, not to exceed two percent (2%) of lines 1-4		
6.	<b>Subtotal</b>		
7.	DBE's markup on work performed by Contractor's forces, not to exceed ten percent (10%) of line 6		
8.	<b>Subtotal</b> for DBE's Work (sum of lines 6 and 7)		
	<b>SUBCONTRACTED WORK</b> (Provide separate breakdown for each subcontract) <sup>1</sup>		
9.	Material (attach itemized quantity and unit cost)		
10.	Labor (attach itemized hours and rates)		
11.	Equipment (attach invoices)		
12.	Royalties and Permits		
13.	Additional insurance and bond costs, not to exceed two percent (2%) of lines 9-12		
14.	<b>Subtotal</b>		
15.	Subcontractor's markup on work performed by Subcontractor's forces, not to exceed ten percent (10%) of line 14		
16.	<b>Subtotal</b>		
17.	General DBE's Subcontractor Markup, not to exceed fifteen percent (15%) of line 16		
18.	<b>Subtotal</b> for Subcontracted Work (sum of lines 14 and 16)		
19.	<b>TOTAL</b> (sum of lines 8 and 18)		

<sup>1</sup> Attach additional copies of this page as required to summarize additional subcontracts.

### **Contract Change Order Request – continued**

**DBE CERTIFICATION:** By signing below, the undersigned DBE certifies under penalty of perjury that its statements and representations in this Change Order Request are true and correct. DBE warrants that this Change Order Request is comprehensive and complete with respect to the Change in the Design-Build Services described herein, and agrees that any costs, expenses, or time extension request, including, but not limited to, compensation for delay, lost productivity, inefficiency, or disruption, which is not included with this Change Order Request, shall be deemed waived. DBE understands that submission of claims which have no basis in fact or which DBE knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.

#### **Submitted by DBE:**

**Signature:**

**By:**

**Title:**

**Date:**

#### **Design Consultant Recommendation**

**By:**

**Title:**

**Date:**

**Recommendation:**

#### **Construction Manager Recommendation**

**By:**

**Title:**

**Date:**

**Recommendation:**

#### **City Approval – Division Head Signature required on all Change Order Requests**

**By:**

**Title:** Brad Eggleston  
Assistant Director, Public Works Engineering

**Date:**

<b>City Approval – Department Head</b> <b>Signature required when any individual Change Order Request exceeds \$10,000.</b>	
<b>By:</b>	
<b>Title:</b>	Mike Sartor Director of Public Works
<b>Date:</b>	



# CONTRACT CHANGE ORDER

CITY OF PALO ALTO  
DEPARTMENT: PUBLIC WORKS ENGINEERING

\_\_\_\_\_Project

## Contract Change Order #

Project Title:		Project No.:	
Contract Number:		Date:	
DBE:		Change Order:	

Description of Change Order	
Background Information:	
Change Order Justification:	
Description of Work to be Performed:	
Incorporates Field Order Number(s):	

Cost	Time
<b>This Change Order will:</b> <input type="checkbox"/> No cost change: N/ <input type="checkbox"/> Increase cost by \$ 0.0 <input type="checkbox"/> Decrease cost by \$ N/	<b>This Change Order will:</b> <input type="checkbox"/> <u>Not change time</u> <input type="checkbox"/> Increase time by days ○ days Excusable Delay ○ days Compensable Delay <input type="checkbox"/> Decrease time by days
<b>G/L account number (s):</b> _____	<b>The date of completion as of this Change Order is</b>
<b>Basis for change in cost:</b> <input type="checkbox"/> Unit price(s) <input type="checkbox"/> Lump sum Time and Materials <input type="checkbox"/> Compensation for Compensable Delay <input type="checkbox"/> Other: _____	

## Contract Change Order – continued

**DBE CERTIFICATION:** By signing below, DBE agrees that this Change Order constitutes full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Work or Design-Build Services covered by this Change Order, as more fully set forth in Article 7 of the Contract General Conditions.

**FAILURE TO EXECUTE:** If DBE fails to promptly execute this Change Order after it has been submitted for DBE's signature, the City may unilaterally approve this Change Order as set forth in Article 7 of the Contract General Conditions. DBE may dispute the terms of a unilaterally- approved Change Order, in whole or in part, by submitting a Claim in accordance with the Dispute Resolution Procedures set forth herein within fourteen (14) days after the Change Order is approved by the City. If DBE fails to submit a Claim within that 14-day period, with respect to all or part of the unilaterally-approved Change Order, those portions of the Change Order which have not been disputed by timely submission of a Claim shall be deemed to have the same effect as if the Change Order was fully executed by both parties as set forth above.

<b>Accepted for DBE:</b>	<b>Accepted for City of Palo Alto:</b>
<b>By:</b>	<b>By:</b>
<b>Title:</b>	<b>Title:</b> Public Works Engineering - Sr. Project Manager
<b>Date:</b>	<b>Date:</b>

### Scope of Work or Services

PCO No.	ASJ	FO	COR	CO	Description	Amount	Reason for Change
Total for this Change Order						\$ 0.00	

Contract Change Order –continued		
Summary of Amounts Payable Under Contract (For Internal Purposes Only)		
Original Contract Sum:	\$	0.00
Previous Change Orders	\$	0.00
This Change Order	\$	0.00
Revised Contract Sum:	\$	0.00
Compare to:		
Original Contract Authorization:	\$	0.00
		Contingency:
Contract Amendment Authorizations	\$	0.00
		Contingency added:
Contingency Authorizations:	\$	0.00
		Used to date
Total Authorized Funding:	\$	0.00
		Balance remaining
Change Orders shall not be initiated for Council-approved contracts if the revised Contract Sum exceeds the total authorized funding amount.		

Document Preparation	
By:	
Title:	
Date:	

City Approval – Division Head	
Signature required on all Change Orders	
By :	
Title :	Brad Eggleston Assistant Director, Public Works Engineering
Date:	

City Approval – Department Head:	
Signature required when any individual Change Order exceeds \$10,000.	
By:	
Title:	Mike Sartor Director of Public Works
Date:	