



CITY OF
**PALO
ALTO**

CONSTRUCTION CONTRACT

Contract No. C23185733

City of Palo Alto

**Rinconada Lap & Children's Pools Re-Plaster Project
(CIP: PF-01003-080/31260)**

CONSTRUCTION CONTRACT

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CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT entered into on _____ (“Execution Date”) by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“City”), and **ADAMS POOL SOLUTIONS** (“Contractor”), 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. Contractor is a Corporation duly organized and in good standing in the State of California, Contractor’s License Number 726779 and Department of Industrial Relations Registration Number 1000006072. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Construction Contract.

C. On October 17, 2022, City issued an Invitation for Bids (IFB) to contractors for the Rinconada Lap & Children’s Pools Re-Plaster (“Project”). In response to the IFB, Contractor submitted a Bid.

D. City and Contractor desire to enter into this Construction Contract for the Project, and other 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 substantive parts of this Construction Contract and are hereby incorporated herein by reference.

1.2 Definitions.

Capitalized terms shall have the meanings set forth in this Construction Contract (sometimes referred to herein as the “Contract”) and/or in the General Conditions. If there is a conflict between the definitions in this Construction Contract and in the General Conditions, the definitions in this Construction Contract shall prevail.

SECTION 2 **THE PROJECT.**

The Project is the Rinconada Lap & Children’s Pools Re-Plaster Project, located at 777 Embarcadero Road, Palo Alto, CA 94303 (“Project”).

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SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

The Contract Documents (sometimes collectively referred to as “Agreement” or “Bid Documents”) consist of the following documents which are on file with the Purchasing Division and are hereby incorporated into this Construction Contract by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Construction Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) General Conditions
- 7) Project Plans and Drawings
- 8) Technical Specifications
- 9) Instructions to Bidders
- 10) Invitation for Bids
- 11) Contractor's Bid/Non-Collusion Declaration
- 12) Reports listed in the Contract Documents
- 13) Public Works Department’s Standard Drawings and Specifications (most current version at time of Bid)
- 14) Utilities Department’s Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Bid)
- 15) City of Palo Alto Traffic Control Requirements
- 16) City of Palo Alto Truck Route Map and Regulations
- 17) Notice Inviting Pre-Qualification Statements, Pre-Qualification Statement, and Pre-Qualification Checklist (if applicable)
- 18) Performance and Payment Bonds

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 CONTRACTOR’S DUTY.

4.1 Contractor’s Duties

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

SECTION 5 PROJECT TEAM.

5.1 Contractor's Co-operation.

In addition to Contractor, City has retained, or may retain, consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that Contractor 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 set forth in the Contract Documents.

6.2 Commencement of Work.

Contractor shall commence the Work on the date specified in City's Notice to Proceed.

6.3 Contract Time.

Work hereunder shall begin on the date specified on the City's Notice to Proceed and shall be completed

- ☒ not later than April 14, 2023.
- ☒ within Forty-five **calendar** days (45) after the commencement date specified in City's Notice to Proceed.

By executing this Construction Contract, Contractor expressly waives any claim for delayed early completion.

6.4 Liquidated Damages.

Pursuant to Public Contract Code Section 7203, if Contractor fails to achieve Final 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 Final Completion, based on the amount of Three Thousand dollars (\$3,000.00) per day, or as otherwise specified in the Special Provisions. 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 Final 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 setoff the amount of liquidated damages assessed against any payments otherwise due to Contractor, 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 Contractor or its sureties. Occupancy or use of the Project in whole or in part prior to Final Completion, shall not operate as a waiver of City's right to assess liquidated damages.

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 Contractor's failure to achieve Substantial Completion of the entire Work within the Contract Time.

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 CONTRACTOR.

7.1 Contract Sum.

Contractor shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of **Four Hundred Eighty-Six Thousand Two Hundred Seventeen Dollars (\$486,217.00)**.

☐ [This amount includes the Base Bid and Additive Alternates .]

7.2 Full Compensation.

The Contract Sum shall be full compensation to Contractor for all Work provided by Contractor and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work, 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.

8.1 Standard of Care.

Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All services performed in connection with this Construction Contract shall be performed in a manner consistent with the 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.

9.1 Hold Harmless.

To the fullest extent allowed by law, Contractor will defend, indemnify, and hold harmless City, its City Council, boards and commissions, officers, agents, employees, representatives and volunteers (hereinafter individually referred to as an "Indemnitee" and collectively referred to as "Indemnities"), through legal counsel acceptable to City, from and against any and liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. Contractor shall pay City for any costs City incurs to enforce this provision. Except as provided in Section 9.2 below, nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.

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

9.2 Survival.

The provisions of Section 9 shall survive the termination or expiration of this Construction Contract.

SECTION 10 NON-DISCRIMINATION.

10.1 Municipal Code Requirement.

As set forth in Palo Alto Municipal Code section 2.30.510, Contractor certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. Contractor 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.

11.1 Evidence of coverage.

Within ten (10) business days following issuance of the Notice of Award, Contractor shall provide City with evidence that it has obtained insurance and shall submit Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions.

SECTION 12 PROHIBITION AGAINST TRANSFERS.

12.1 Assignment.

City is entering into this Construction Contract in reliance upon the stated experience and qualifications of the Contractor and its Subcontractors set forth in Contractor's Bid. Accordingly, Contractor shall not assign, hypothecate or transfer this Construction 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.

12.2 Assignment by Law.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if the Contractor is a partnership or joint venture or syndicate or co-tenancy shall result in changing the control of Contractor, shall be construed as an assignment of this Construction 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 Construction 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 to Recipients.

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from Contractor to City shall include the Project name and the number of this Construction 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

Copy to: ☒ City of Palo Alto
Public Works Administration
250 Hamilton Avenue
Palo Alto, CA 94301
Attn: Dennis Huebner

☐ [Include Construction Manager, If Applicable.]

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

In addition, copies of all Claims by Contractor under this Construction 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 sent by registered mail or certified mail with return receipt requested.

All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

To Contractor:
Adams Pool Solutions
3675 Old Santa Rita Road
Pleasanton, CA 94588
Attn: Debbie Eula

13.3 Change of Address.

In advance of any change of address, Contractor 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 Contractor 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 Contractor in the manner specified for the giving of notices in the Construction Contract, with a copy to Contractor's performance bond surety.

14.2 Opportunity to Cure Default.

Except for emergencies, Contractor 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, Contractor will commence to cure the breach within two (2) Days (or such shorter time as City may reasonably require) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

SECTION 15 CITY'S RIGHTS AND REMEDIES.

15.1 Remedies Upon Default.

If Contractor fails to cure any default of this Construction 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 Construction Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

15.1.2 Perform and Withhold. City may, without terminating the Construction Contract, engage others to perform the Work or portion of the Work that has not been adequately performed by Contractor and withhold the cost thereof to City from future payments to Contractor, reserving to itself all rights to Losses related thereto.

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

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

15.1.5 Invoke the Performance Bond. City may, with or without terminating the Construction 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 Construction Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. 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 Construction Contract, or prevent the City from terminating the Agreement for breaches that are not material. City's determination of whether there has been noncompliance with the Construction Contract so as to warrant exercise by City of its rights and remedies for default under the Construction 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 Contractor to recover all liquidated damages and Losses suffered by City.

15.2 Delays by Sureties.

Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety shall be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety shall be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

15.3 Damages to City.

15.3.1 For Contractor's Default. City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents.

15.3.2 Compensation for Losses. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to Contractor. If the Losses incurred by City exceed the amount payable, Contractor shall be liable to City for the difference and shall promptly remit same to City.

15.4 Suspension by City

15.4.1 Suspension for Convenience. City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work 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, Contractor shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work 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 Work covered by the Suspension Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. 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 Work.

15.4.2 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. Contractor shall not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents. City's right to suspend the Work shall not give rise to a duty to suspend the Work, and City's failure to suspend the Work shall not constitute a defense to Contractor'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 Construction Contract in part or in whole upon written notice to Contractor. Upon receipt of such notice, Contractor 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 Contractor's sole and exclusive compensation for such termination and Contractor 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 Contractor or its sureties from any of their obligations for Losses arising from or related to the Work performed by Contractor.

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

- .1 For Work Performed.** The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
- .2 For Close-out Costs.** Reasonable costs of Contractor 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.
- .4 Profit Allowance.** An allowance for profit calculated as four percent (4%) of the sum of the above items, provided Contractor can prove a likelihood that it would have made a profit if the Construction Contract had not been terminated.

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

15.6 Contractor's Duties Upon Termination.

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

- (i) Immediately discontinue the Work 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 Work 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 Contractor 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 Work as may be necessary to preserve and protect Work 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 drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

SECTION 16 CONTRACTOR'S RIGHTS AND REMEDIES.

16.1 Contractor's Remedies.

Contractor may terminate this Construction Contract only upon the occurrence of one of the following:

16.1.1 For Work Stoppage. The Work is stopped for sixty (60) consecutive Days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor 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 making material unavailable. 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 Contractor undisputed sums within ninety (90) Days after receipt of notice from Contractor, Contractor may terminate the Construction Contract (30) days following a second notice to City of Contractor's intention to terminate the Construction Contract.

16.2 Damages to Contractor.

In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Paragraph 15.5.1 above. Contractor 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.

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Construction Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy Contractor's 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. Contractor 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.

17.2 Compliance with City Requests.

Contractor'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 Contractor against City and to Contractor's right to receive further payments under the Contract Documents. City may enforce Contractor's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection or copying 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.

SECTION 18 INDEPENDENT PARTIES.

18.1 Status of parties.

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

SECTION 19 NUISANCE.

19.1 Nuisance Prohibited.

Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection in the performance of services under this Construction Contract.

SECTION 20 PERMITS AND LICENSES.

Except as otherwise provided in the Special Provisions and Technical Specifications, the Contractor 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 Work. Payment of all costs and expenses for such licenses, permits, and fees shall be included in one or more Bid items. No other compensation shall be paid to the Contractor for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.

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; COMPLIANCE WITH LAWS.

22.1 Governing Law and Venue.

This Construction Contract shall be construed in accordance with and governed by the laws of the State of California, without regard to conflict of law provisions, and venue shall be in a court of competent jurisdiction in the County of Santa Clara, California and no other place.

22.2 Compliance with Laws.

Contractor shall comply with all applicable federal and California laws and city laws, including, without limitation, ordinances and resolutions, in the performance of work under this Construction Contract.

22.2.1 Palo Alto Minimum Wage Ordinance. Contractor shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, Contractor shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, Contractor shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 23 COMPLETE AGREEMENT.

23.1 Integration.

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.

24.1 Survival of Provisions.

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

SECTION 25 PREVAILING WAGES.

☐ **This Project is not subject to prevailing wages and related requirements.** Contractor is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the Contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

Or

☒ **This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code Sections 1720 et seq. and related regulations. Contractor is required to pay general prevailing wages** as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et

seq., as amended from time to time. Pursuant to Labor Code Section 1773, the City 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 State of California Department of Industrial Relations ("DIR"). Copies of these rates may be obtained at the City's Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, website (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. Contractor shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including, but not limited to, Sections 1720, 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time.

SECTION 26 NON-APPROPRIATION.

26.1 Appropriations.

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 Construction 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.

SECTION 27 AUTHORITY.

27.1 Representation of Parties.

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

28.1 Multiple Counterparts.

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

SECTION 29 SEVERABILITY.

29.1 Severability.

In case a provision of this Construction 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.

30.1 Amendments to Laws.

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, as may be amended from time to time, unless otherwise required by law.

SECTION 31 WORKERS' COMPENSATION CERTIFICATION.

31.1 Workers Compensation.

Contractor shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700.

Pursuant to Labor Code Section 1861, by signing this Contract, Contractor thereby 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 DIR REGISTRATION AND OTHER REQUIREMENTS.

32.1 General Notice to Contractor.

City requires Contractor and its Subcontractors to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Additional information regarding public works and prevailing wage requirements is available on the DIR website (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

32.2 Labor Code section 1771.1(a)

City provides notice to Contractor of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

32.3 DIR Registration Required.

City will not accept a bid proposal from or enter into this Construction Contract with Contractor without proof that Contractor and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions.

32.4 Posting of Job Site Notices; Compliance Monitoring.

City gives notice to Contractor and its Subcontractors that Contractor is required to post all job site notices prescribed by law or regulation and Contractor is subject to compliance monitoring and enforcement by DIR.

32.5 Payroll Records.

Contractor shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

City requires Contractor and its Subcontractors to comply with the requirements of Labor Code section 1776, including but not limited to:

- (i) Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, Contractor and its Subcontractors, in connection with the Project.
- (ii) The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of Contractor and its Subcontractors, respectively.
- (iii) At the request of City, acting by its Project Manager, Contractor and its Subcontractors shall make the certified payroll records available for inspection or furnished upon request to the City's Project Manager within ten (10) days of receipt of City's request.

☐ City requests Contractor and its Subcontractors to submit the certified payroll records to the City's Project Manager at the end of each week during the Project.

- (iv) If the certified payroll records are not provided as required within the 10-day period, then Contractor and its Subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to Contractor. This provision supplements the provisions of Section 15 hereof.
- (v) Inform the City's Project Manager of the location of Contractor's and its Subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the City's Project Manager within five (5) business days of any change of location of those payroll records.

32.6 Employment of Apprentices.

Contractor shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

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

CITY OF PALO ALTO

City Manager

APPROVED AS TO FORM:

City Attorney or designee

APPROVED:

Public Works Director

ADAMS POOL SOLUTIONS

Officer 1

By: _____

Name: _____

Title: _____

Officer 2

By: _____

Name: _____

Title: _____

CITY OF PALO ALTO GENERAL CONDITIONS

**GENERAL CONDITIONS
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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:

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

1.1.2 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 Bids, which modify or interpret the Contract Documents by additions, deletions, clarifications or corrections

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

1.1.4 ALLOWANCE: An amount included in the Bid for Work that may or may not be included in the Project, or for portions of Work where the amount or scope of the Work cannot be ascertained at the time of Bid submissions.

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

1.1.5 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, Contractor or City.

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

1.1.7 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.

1.1.8 AS-BUILT DOCUMENTS: The Contract Documents 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 are maintained by Contractor on the Site and delivered, along with an electronic version of the set, to City upon Final Completion.

1.1.9 BASE BID: The sum stated in the Bid to perform the Work, exclusive of any Alternate(s).

1.1.10 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.

1.1.11 BID: A written bid proposal submitted to City for the Project in response to City's Invitation for Bids.

1.1.12 BIDDER: An individual or entity that submits a Bid.

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

1.1.14 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.

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

1.1.16 CHANGE ORDER REQUEST: Contractor's written request for a Change Order.

1.1.17 CITY: City of Palo Alto, a California chartered Municipal Corporation.

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

1.1.19 CLAIM: A separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, which has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part.

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

1.1.21 CONSTRUCTION CONTRACT or CONTRACT: The written contract executed between City and Contractor for construction of the Project.

1.1.22 COMPENSABLE DELAY: A Delay for which Contractor 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.

1.1.23 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.

1.1.24 CONSTRUCTION SCHEDULE: The Approved graphical representation of Contractor'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.

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

1.1.26 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.

1.1.27 CONTRACT DOCUMENTS: This term shall be as defined in Section 3 of the Construction Contract.

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

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

1.1.30 CONTRACTOR: The individual or firm under contract with City to serve as the General Contractor for construction of the Project, including Contractor's authorized representative.

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

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

1.1.33 DEFECTIVE WORK: Work by Contractor 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.

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

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

1.1.36 DESIGN CONSULTANT: The individual(s) or firm(s) under contract with City to provide design or engineering services for the Project and responsible for preparing the Contract Documents for the Project. The term "Design Consultant" means Design Consultant or Design Consultant's authorized representative.

1.1.37 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 Drawings are outlined in the Drawing Index. The term "Drawings" may be used interchangeably with "Plans."

1.1.38 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.

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

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

1.1.41 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 Contractor's failure to perform any of its duties or obligations under the Contract Documents.

1.1.42 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.

1.1.43 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.

1.1.44 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 Contractor is required to indemnify City, and up to 150% of any amounts in dispute as authorized by Public Contract Code Section 7107.

1.1.45 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.

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

1.1.47 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.

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

1.1.49 NOTICE OF AWARD: Written notice issued by City notifying Contractor of issuance of the Construction Contract.

1.1.50 NOTICE TO PROCEED: Written notice issued by City to Contractor to begin the Work.

1.1.51 PERFORMANCE BOND, PAYMENT BOND: The performance and payment bonds to be provided by Contractor for the Project.

1.1.52 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."

1.1.53 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.

1.1.54 PROJECT: The total construction, of which the Work performed by Contractor 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.

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

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

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

1.1.58 REQUEST FOR INFORMATION RESPONSE: A written instrument, usually prepared by the Design Consultant, provided in response to a Request for Information, setting forth an interpretation or clarification in the Work or a response to a Contractor question concerning the Work.

1.1.59 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 Work.

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

1.1.61 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.

1.1.62 SPECIAL PROVISIONS AND TECHNICAL SPECIFICATIONS: The portions of the Contract Documents consisting of the written requirements for materials, equipment, standards, skill, quality for the Work and performance of related services. These provisions may also contain amendments, deletions or additions to the General Conditions.

1.1.63 STATEMENT OF CONTRACT DISPUTE: The Contractor'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 Construction Contract.

1.1.64 SUBCONTRACTOR: A person or firm that has a contract with a Contractor 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.

1.1.65 SUBCONTRACTOR MARKUP: The markup the Contractor may make on Extra Work performed by a Subcontractor. 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 Contractor'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 made on the Subcontractor's incurred Allowable Costs only, which is separate from and does not include Contractor Markup, as defined herein, made by the Subcontractor.

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

1.1.67 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 Contractor 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.

1.1.68 SUPERINTENDENT: The person appointed by Contractor, subject to approval by City, to supervise and coordinate Contractor's own forces and Subcontractors in all aspects of the Work.

1.1.69 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 Contractor 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.

1.1.70 WORK: All labor, materials, equipment, services, permits, fees, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete 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 and Drawings, Technical Specifications, (including, without limitation, the Contract Documents) shall not be used by Contractor, or any Subcontractor, for any purpose other than performance of the Work. Contractor 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 performing the Work under the Contract Documents; provided however, that such use shall not reduce Owner's rights to use and ownership of the documents.

1.2.2 Contractor 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 will be provided to Contractor in the form of reproducible prints. Contractor 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 Contractor 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 Contractor'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 therefore 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, Contractor 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 Work.

1.3.10 The general character of the Work 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 Contract Documents that were bid by Contractor 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 Work to be performed 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 Contractor will provide all necessary labor, equipment, transportation and incidentals required to complete the Work, 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 Contractor 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 Contractor has fulfilled the requirements of the Contract Documents. Such interpretations and decisions of City shall be final and binding upon Contractor.

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 Technical Specifications, Contractor 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 Work.

2.1.2 If Contractor becomes aware of any ambiguity, uncertainty, conflict, inconsistency, discrepancy, omission, or error in or among the Contract Documents, Contractor must promptly submit a Request for Information (“RFI”) requesting clarification, interpretation, or direction. A Contractor RFI will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City’s costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.1.3 A Request for Information Response providing clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City’s Request for Information Response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor’s failure to submit a timely and complete RFI is not Excusable Delay. If Contractor believes that City’s response to an RFI justifies a change to the Contract Sum or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents.

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 Contractor.

2.3 CITY’S RIGHT TO STOP THE WORK

If Contractor 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 Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. Contractor 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 Contractor or any other party to exercise the right to stop the Work.

2.4 CITY'S RIGHT TO CARRY OUT THE WORK

If Contractor 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 Contractor's expense. In such case, City shall be entitled to deduct from payments then or thereafter due Contractor 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 Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to City.

2.5 ACCESS TO MUNICIPAL SERVICE CENTER

For all Projects which require Contractor access to City's Municipal Service Center (MSC), all Contractors shall provide and all Contractor's personnel shall at all times display, in the form of badges, identification which shall include the Contractor'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 Contractor'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 Construction 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 Construction Contract is terminated pursuant to said section, compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, 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 – CONTRACTOR'S RIGHTS AND OBLIGATIONS

3.1 REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 Contractor warrants that it is satisfied as to character, quality, and quantities of 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 Contractor by City. Any failure by Contractor to take such information or conditions into consideration will not relieve Contractor from responsibility for estimating the difficulty and cost of successfully completing the Work within the Contract Sum and Contract Time.

3.1.2 Contractor warrants and represents that it has carefully reviewed the Bid and Contract Documents prior to submitting its Bid and executing the Contract. The Contractor 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 Contractor or could have been reasonably discovered by Contractor 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 Contractor discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents, then Contractor 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) Contractor's request for clarification, further details or correction of the Contract Documents.

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

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

3.1.6 If Contractor 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 Contractor 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 Contractor, 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 Contractor'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 Contractor shall supervise, coordinate and direct the Work using Contractor's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion of the Work. Contractor 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 Contractor 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 Contractor may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Contractor shall be responsible for leaving the space in as good condition as Contractor found it, or restoring it to the condition it was in prior to Contractor commencing the Work.

3.2.4 Contractor shall be responsible to City for acts and omissions of Contractor's agents, employees, and of Contractor'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 Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor's Subcontractors.

3.2.5 Contractor 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 Contractor.

3.3 RESPONSIBILITY FOR THE WORK

3.3.1 Contractor 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 Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each Subcontractor and Sub-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, Contractor 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 Contractor 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

Contractor 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 CONTRACTOR'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, Contractor 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, Contractor 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 Acceptance of the Work, and Contractor shall, without charge to City, be responsible for all damage to the materials or the Work due to Contractor's failure to provide such proper protection.

3.6 CONSTRUCTION METHODS AND PROCEDURES

3.6.1 The methods and procedures adopted by Contractor 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 Contractor to improve the character or increase efficiency, and Contractor shall conform to such order; but the failure of City to order such improvement of methods or increase of efficiency will not relieve Contractor 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, Contractor shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor 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 Contractor 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 Contractor and Subcontractors.

3.7.2 All Contractors and Subcontractors for Construction 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. Contractor 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 Contractors," as may be amended from time to time.

3.8 LEGAL REQUIREMENTS

3.8.1 Contractor 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, Contractor shall notify Construction Manager and shall not proceed with the Work until Construction Manager provides direction to the Contractor.

3.9 PROJECT STAFF

3.9.1 Contractor shall employ a complete and competent project staff for the duration of the Work, 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. Contractor 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, Contractor 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 Contractor 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 Contractor complies with this Paragraph. All costs or damages associated with such termination or suspension shall be borne by Contractor, 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 Contractor and communications given to and acknowledged by the Superintendent shall be binding on Contractor. Further, communications issued by or received from the Superintendent shall be deemed as binding on Contractor. The Superintendent must be able to read, write and communicate fluently in English.

3.10 SCHEDULES REQUIRED OF CONTRACTOR

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

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

3.10.3 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, Contractor shall notify the Construction Manager within five(5) Days of Contractor'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, Contractor's plan for placing the Work back on Schedule, at Contractor's expense.

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

3.10.4 Contractor 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. Contractor 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. Contractor 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. Contractor shall cooperate with City in the development of the Construction Schedule and updated Construction Schedules.

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

- (i) Relieve Contractor 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 Contractor 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.

3.10.6 Failure of City to discover errors or omissions in Construction Schedules that it has reviewed or Approved, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve Contractor 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.

3.10.7 Contractor 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 Contractor 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 Contractor's Superintendent as being complete and accurate.

3.11.2 Contractor 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 Construction Contract, these documents shall be delivered to City in the format requested by the City.

3.11.3 It shall be the responsibility of Contractor 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 Contractor, indicating in detail and dimension each variation from the original set of Contract Documents for all of the Work. At the completion of construction, Contractor 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 Contractor, in concert with the Design Consultant and the Construction Manager, shall review Contractor'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 Contractor shall provide the fully 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Prior to starting Work, Contractor 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, Contractor 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 Contractor's expense, and at the time required by the Contract Documents or requested by the Construction Manager.

3.12.3 Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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. Contractor shall allow twenty (20) Days for review of timely and complete Submittals. Once the Submittal is returned to Contractor 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 Contractor's Submittals represent that Contractor 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 Contractor discovers any conflicts, omissions or errors in Submittals, Contractor shall notify the Construction Manager and receive instruction before proceeding with the affected Work.

3.12.8 Contractor 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 Contractor 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 Contractor and as to which City, Construction Manager or Design Consultant takes no exception or approves.

3.12.9 After review of Contractor's Submittals by City, Construction Manager or Design Consultant, as appropriate, the Construction Manager will transmit to Contractor one set of Submittals. If the Submittals are found to be incomplete or incorrect, Contractor shall resubmit after corrective action has been taken. Contractor shall reimburse City, or City may withhold from payments due Contractor, 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 Contractor or caused by late Submittals by Contractor. 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 Contractor 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. Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

3.12.12 Contractor 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 Contractor 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 Contractor 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 Construction Contract completion time shall not be affected by any circumstance developing from the substitution provisions of this Section.

3.14 DAILY REPORTS BY CONTRACTOR

3.14.1 At the end of each working day, Contractor 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 Contractor at the end of each working day

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

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

3.15 CUTTING AND PATCHING

3.15.1 Contractor 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 Contractor shall not endanger the Work, the Project, Existing Improvements, or adjacent property by cutting, digging, or otherwise. Contractor 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. Contractor 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. Contractor shall cooperate with City and not interfere with other work being done by or on behalf of City.

3.17 ROYALTIES AND PATENTS

Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor 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 provision in the Construction Contract against Losses, liabilities, suits or Claims resulting from Contractor's or any Subcontractor's or Sub-subcontractor's infringement of patent rights.

3.18 PERMITS AND LICENSES

The Contractor shall comply with all provisions of any permits necessary to accomplish the Work as presented in this Contract. Contractor 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, Contractor 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. Contractor shall promptly, and before the following conditions are disturbed, provide written notice to City if the Contractor finds any of the following conditions:

- .1 Material that Contractor 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 bidders prior to the deadline for submitting bids.
- .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 Contractor'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 Contractor regarding any of the matters specified in subsection 3.19.1, above, Contractor 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. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor 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, Contractor shall notify City in writing three (3) Days in advance of the permanent concealment of any materials or Work.

3.20.2 Whenever Contractor desires to carry on the Work of this Construction 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, Contractor 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 Contractor at its expense. Contractor 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, Contractor 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, Contractor 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 Contractor 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 Contractor's sole expense.

3.20.6 When Contractor believes it has achieved either Substantial or Final Completion of the Work, Contractor 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

Contractor 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 Contractor 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 Contractor. **Contractor shall timely notify City of Contractor's receipt of any stop notice or other third-party claim, valid or invalid, relating to the Contract Documents.**

3.22 PARKING

Contractor 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 Contractor shall confine operations at the Site to areas permitted by Applicable Code Requirements and the Contract Documents. Contractor 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 Contractor 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 Contractor or any Subcontractors. Contractor shall continuously and daily remove all excess dirt, waste material, water and rubbish caused by Contractor 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 Contractor 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, Contractor 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 Contractor when not in use. Loose materials, whether on the Site or in transit, shall be covered to prevent dust. Contractor 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 Contractor 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 Contractor 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. Contractor 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, Contractor 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]). Contractor 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. Contractor 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 Contractor 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. Contractor 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.** Contractor 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 Contractor's expense. The Site shall be ventilated with fresh outside air during and immediately after the noxious activity.
- .5 **Exhaust.** Contractor 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 Contractor to minimize dust generation. Contractor shall never grind TWW and shall properly dispose TWW at a permitted TWW disposal facility. If Contractor size-reduces the TWW then Contractor 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 Contractor 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.

3.24.2 WATER POLLUTION CONTROL.

- .1 Contractor 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 Contractor 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. Contractor shall determine which methods are most effective in achieving control of water pollution as a result of Contractor's operations. Contractor shall coordinate water pollution control work with all other Work performed by Contractor and Separate Contractors.
- .3 Before starting any Work on the Project, Contractor 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 Construction Contract and for all storm water pollution control measures which Contractor 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. Contractor 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. Contractor 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 Contractor for failure to accept all or any portion of any originally submitted or revised SWPPP, or for any Delays to the Work due to Contractor's failure to submit an acceptable SWPPP. Contractor assumes sole responsibility for all costs associated with treatment of storm water polluted as a result of Contractor's Site activities, whether treatment is initiated by Contractor or City.
- .5 Contractor may request the Construction Manager to waive the requirement for submission of a written SWPPP when the nature of Contractor's operation is such that pollutant discharge or soil erosion is not likely to occur. Waiver of this requirement will not relieve Contractor 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 Contractor'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, Contractor'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.

3.24.3 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.

3.24.4 STORM WATER POLLUTION PREVENTION DURING ROADWORK. To avoid storm water pollution, Contractor 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.

3.24.5 STORMWATER POLLUTION. To avoid stormwater pollution, Contractor 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.

3.24.6 DRAINAGE CONTROL. Contractor 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 Contractor'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.

3.24.7 DUST CONTROL. As elsewhere provided herein, the Contractor 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 Contractor 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 Contractor 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 made therefore.

3.24.8 SPECIAL HAZARDOUS SUBSTANCES AND PROCESSES. Contractor 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. Contractor 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. Contractor 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, Contractor shall develop a hazardous materials management plan (HMMP). The HMMP shall contain sufficient information that shall demonstrate how the Contractor will remove, secure and store, transport to a permitted disposal facility. Contractor 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 Contractor will keep hazardous materials secure from public contact;
- Monitoring and inspection program;
- Inventory of emergency equipment onsite;
- Transportation Plan includes how the Contractor plans to package and transport the hazardous wastes;
- Disposal facility name and location;
- Any other information that would reasonably describe Contractor hazardous waste removal, storage and disposal plans.

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

Hazardous wastes that are generated from Contractor's activities while completing the project (i.e. equipment maintenance fluids, empty oil or solvent drums, etc. shall be the sole responsibility of the Contractor 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.

3.24.09 ENVIRONMENTAL PURCHASING POLICY. The Contractor 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.

3.24.10 ZERO WASTE REQUIREMENTS. The Contractor 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, Contractor shall comply with the following zero waste requirements:

- All printed materials provided by Contractor 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 Contractor 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 Contractor, at no additional cost to the City, for reuse or recycling. Contractor shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

3.24.11 SOUND CONTROL.

- .1** Contractor 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 Contractor 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 Contractor. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.
- .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 Contractor, at its expense, from City. Contractor is to contact the Construction Manager for a phone number and contact person. In no case may Contractor 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 therefore, 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 Contractor. Contractor shall purchase power from the City, at Contractor's expense.

3.26 CITY TRUCK ROUTE ORDINANCE

The Contractor 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

Contractor 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 Contractor, without further acknowledgment by the parties. Contractor 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 Contractor shall be responsible for notifying Underground Services Alert (USA) 800-642-2444 at least five (5) days prior to beginning underground work so that existing utilities can be marked in the field. The Contractor is responsible for the location of all utilities, both public and private. Contractor shall give specific address for grinding or excavation location. Each location shall be marked by the Contractor in the field with white paint.

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

3.28.3 All Underground Services Alert marking shall be removed by the Contractor. 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 Contractor's expense.

3.28.4 If the Contractor comes into contact with any existing utilities during its operations, the Contractor 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, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor 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. Contractor shall be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor'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. Contractor 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 Contractor 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 Contractor.

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 Contractor.

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

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

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 Contractor 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 Contractor; and
- .4 Make recommendations to City for issuance of Final Payment upon Contractor'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 Contractor. Such decisions by City will be final and binding upon Contractor.

4.2 CLAIMS

4.2.1 Public Contract Code Section 9204. Public Contract Code Section 9204 ("Section 9204") sets forth certain pre-litigation claims procedures for public works projects that City is required to include in its Contract Documents. In summary, Section 9204 requires public entities to respond to claims within 45 days, to meet and confer if requested by the contractor, to promptly pay undisputed amounts, and to mediate unresolved claims prior to litigation, absent a mutual waiver of mediation. It expressly provides for the submission of subcontractor "pass-through" claims, and allows public entities to prescribe reasonable additional change order, claim, and dispute resolution procedures and requirements, so long as the additional provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204. The requirements of Section 9204 are incorporated and included in the following provisions, which also include reasonable additional procedures.

4.2.2 Scope and Authority. This Section 4.2 applies to any Claim, as defined in Section 1.1.19, above, arising from or related to the Contract or performance of the Work. It is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204, and Public Contract Code Sections 20104 et seq., which are incorporated by reference herein and included in these provisions.

4.2.3 Accrual of Claim. A Claim accrues and arises upon issuance of a written 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 Contractor has previously submitted such demand(s) in a Change Order Request.

4.2.4 Claims Submission Requirements and Deadlines. All Claims must be submitted in writing by registered mail or certified mail with return receipt requested. Except for Claims disputing the amount of Final Payment, all Claims and all supporting documentation and certifications, as further detailed below, must be filed within fourteen (14) Days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with the Contract Documents, has been rejected in whole or in part; any Claim which is not submitted prior to Final Payment is deemed waived. A Claim disputing the amount of Final Payment must be submitted within fourteen (14) Days of the effective date of Final Payment. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. **Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.**

4.2.5 Supporting Documentation. A Claim submittal must include the following:

- .1 A statement that it is a Claim, clearly specifying the amount requested (with respect to Claims for payment), and/or the number of days requested (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, along with a copy of the Change Order Request and the City's written rejection of the subject Claim.
- .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 limitations described in Article 7, below.
 - (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 Contractor 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 Bid, and (ii) if not discovered, a sworn statement demonstrating that the error, omission, conflict or ambiguity could not have been discovered by Contractor, 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 Bid.
- .5 If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that Contractor has complied with the requirements of the Contract Documents pertaining to proving the right to an extension of time and demonstrating that Contractor is entitled to an extension of time under the Contract Documents.
- .6 A written certification signed by a responsible managing officer of Contractor's organization, who has the authority to sign subcontracts and purchase orders on behalf of Contractor 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 Contractor'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) Contractor 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) Contractor 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 Contractor 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 Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(iv) Contractor 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 Contractor and by any Subcontractor involved in the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by Contractor 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) Contractor has not received payment from City for, nor has Contractor previously released City from, any portion of the Claim; and

(vi) Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.).

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

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

4.2.7 No Work Delay. Notwithstanding the submission of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by City, Contractor 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 City Response. City shall respond in writing within forty-five (45) Days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed or undisputed, unless the 45 Day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately documented, City may first request in writing, within thirty (30) days of receipt of the Claim, additional information or documentation supporting the Claim, or relating to defenses to the Claim that City may have against the Claim, in which case City shall respond to the Claim within forty-five 45 Days after receipt of the further information or documentation. If Contractor fails to submit the additional documentation to City within fifteen (15) Days of receipt of City's request, the Claim will be deemed waived. If City Council authorization is necessary for City to respond to a Claim, City will respond within three (3) Days following the Council's consideration of the Claim, which shall be scheduled in accordance with Section 9204.

4.2.9 Non-Waiver. Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

4.2.10 Payment on Undisputed Portion. Any payment due on an undisputed portion of the Claim shall be paid within 60 Days after the City issues its written response.

4.2.11 Meet and Confer. If Contractor disputes City's response, or if City fails to respond within the prescribed time set forth above, Contractor may so notify City and demand a meet and confer conference for settlement of the issues in dispute, in writing sent by registered mail or certified mail, return receipt requested, within fifteen (15) Days of City's response or within fifteen (15) Days of City's failure to respond. If Contractor fails to dispute City's response within the specified time, Contractor's Claim shall be deemed waived.

- .1 Schedule Meet and Confer. Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
- .2 Location for Meet and Confer. The meet and confer conference will be scheduled at a location at or near City's principal office.
- .3 Written Statement After Meet and Confer. Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
- .4 Submission to Mediation. If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for nonbinding mediation, as set forth below.

4.2.12 Mediation. Within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator and mediation process, consistent with and as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. 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. The parties will share the costs of mediation equally, except costs incurred by each party for its representation by legal counsel or any other consultants.

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 Contractor.
- (v) Stop notices.
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

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

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 Contractor 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 Contractor 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 Contractor;
- (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 Contractor.

Contractors may commence the Contract Dispute Resolution Process upon conclusion of the Claims process set forth in Section 4.2 above. Contractor shall submit a written Statement of Contract Dispute (as set forth below) to City within thirty (30) Days after conclusion of the meet and confer process or mediation, as applicable, set forth in Section 4.2. Failure by Contractor 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. Contractor'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 Contractor. 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 Contractor 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 Contractor that is in turn being asserted by Contractor 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 may choose, by mutual agreement, to conduct further mediation, however they shall be under no obligation to do so.

4.3.7 Binding Arbitration. Any remaining Contract Dispute shall be submitted for 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. Contractor 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. Contractor 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 Contractor that are the basis of a Contract Dispute were previously waived by Contractor due to Contractor's failure to comply with the Contract Documents, including, without limitation, Contractor'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 CONTRACTOR'S AWARD OF SUBCONTRACTS

5.1.1 Contractor shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4114. Nothing herein shall be deemed to entitle Contractor, without the written approval of City, to substitute other Subcontractors for those named in Contractor's List of Subcontractors contained in the completed Bid; and, except with such approval, no such substitution shall be made. Should Contractor violate any of the provisions of the Subletting and Subcontracting Fair Practices Act, such violation shall be deemed a violation of the Construction Contract, entitling City, without limitation to any other rights or remedies under the law, to suspend or terminate the Construction 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 Contractor 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 Contractor who shall reimburse City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to Contractor.

5.2 SUBCONTRACTOR RELATIONS

5.2.1 Prior to the execution of each subcontract agreement, Contractor shall make available to each proposed Subcontractor, copies of the Contract Documents. Contractor 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, Contractor 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 Contractor 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 Contractor all the obligations and responsibilities which Contractor 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 Contractor 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 Contractor 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 Owner to purchase, in its sole discretion, such insurance pursuant to an Owner Controlled Insurance or other form of wrap-up program.
- (ix) Provide the same defense indemnification of the City as is required of the Contractor.
- (x) Agree to participate in the dispute resolution procedures specified in the Construction Contract, at the election of City.

5.2.3 Contractor 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 Contractor's Subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor 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 Construction Contract, Contractor is hereby deemed to have offered to assign to City all its interest in contracts with Subcontractors now or hereafter entered into by Contractor 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 Contractor's rights under the Contract Documents. Such assignment is part of the consideration to City for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion.

5.4 CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY

Contractor shall be responsible to City for acts and omissions of Contractor's agents, employees, and of Contractor'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 Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor'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. Contractor 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 Contractor. Contractor shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor 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 Contractor, in the event that Contractor 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 Contractor, to provide such supervision on a temporary basis. Contractor 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 Construction Contract against any Losses arising therefrom. City shall have the right, in its discretion, to deduct from the sums owing to Contractor the reasonable cost of such temporary supervision.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Contractor shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall schedule and coordinate its construction and operations 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, Contractor shall inspect such other construction or operations before proceeding with its portion of the Work. Contractor shall promptly report to City apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Contractor's Work. Unless otherwise directed by City, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor 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 Contractor or the Separate Contractors, the costs of such occurrences shall be borne by the party responsible therefor.

6.2.4 If Contractor wrongfully causes damage to completed or partially completed construction or to property of City or Separate Contractors, Contractor 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 Contractor and a Separate Contractor, these occurrences shall be subject to the provisions of Section 4.2 and 4.3 of the General Conditions. Contractor shall immediately notify the Construction Manager in writing of such occurrences.

6.3 CITY'S RIGHT TO CLEAN UP

If a dispute arises between Contractor 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 Contractor's sureties, order Changes in the Work without invalidating the Construction Contract and without relieving Contractor'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 Contractor to complete the Work earlier than the Contract Time.

7.1.3 Unless such rights have been waived and provided that Contractor 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, Contractor 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 Contractor 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 Owner 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 Contractor 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 Contractor 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 Contractor to claim that the Construction Contract has been rescinded, terminated, abandoned or should be reformed nor shall such circumstances be the basis for Contractor, 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 Contractor. Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDER REQUESTS AND CHANGE ORDERS

7.2.1 Contractor 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, Contractor 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 Contractor 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 Contractor, which shall be deemed to include all Allowable Costs, Contractor Markup and Subcontractor Markup.
- .2 Lump Sum Pricing: A lump sum agreed upon by City and Contractor, based on the estimated Allowable Costs, Contractor 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 Contractor 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 Contractor's additional costs based on the difference between Contractor's total actual Project or line item costs and its original bid estimate for the Project or any original bid 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 Contractor'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 Contractor or any of its Subcontractors, Contractor 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 Contractor to provide any required authentication shall, if City elects to treat it as such, constitute a waiver by Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor, 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 Contractor 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 the Contractor 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 Contractor Markup for Extra Work is to be calculated as ten percent (10%) of the Allowable Costs the Contractor or Subcontractor actually incurred to perform the Extra Work with its own forces. Subcontractor Markup by Contractor for Extra Work performed by Subcontractor is to be calculated as fifteen percent (15%) of the total Allowable Costs the Subcontractor 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, Contractor Markup, and Subcontractor Markup if applicable. All claimed costs must be fully documented and objectively verifiable. In connection with the foregoing, Contractor 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 Contractor'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 Bid for Work that may or may not be included in the Project, depending on conditions that will not become known until after Bid 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 Contractor 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 Contractor 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 Contractor in the form approved by the City Council or its authorized designee, and without any express reservation of rights by Contractor to reserve for the future the right to assert or recover from City any such Claims, costs or damages.

7.2.12 If Contractor 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. Contractor 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 Contractor 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, Contractor shall, within a reasonable time, proceed with the Work described in the Field Order. If Contractor 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 Contractor 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 Contractor from the obligation to proceed with performance of the Work, including, without limitation, performance of Work directed by a Field Order or as modified by a Change Order, promptly and expeditiously. Contractor shall not delay, slow, interrupt, or suspend the performance of any Work 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 Contractor disputes the rejection of any Change Order Request in whole or in part, Contractor'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 Work shall begin on the date specified in the Notice to Proceed.

8.2 PROGRESS AND COMPLETION

8.2.1 Contractor agrees that the Contract Time is reasonable for performing the Work and that Contractor 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 Contractor to finish the Project earlier than the Contract Time and under no circumstances shall City be liable to Contractor for any costs, damages or compensation due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of City.
- .2 Contractor has included in its Bid price the costs of all Contractor and Subcontractor overhead (direct and indirect) for the entire duration of the Contract Time. The above costs are included in Contractor's Bid notwithstanding Contractor'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 Contractor completes the Work before expiration of the Contract Time.
- .4 No reduction in the Contract Sum shall be made nor will Contractor be required to remain on the Project Site if the Work 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. Contractor and/or Contractor's designee shall be present at each meeting. Contractor may also be required to request attendance by representatives of Contractor's suppliers, manufacturers and Subcontractors.

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

8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If City determines and notifies Contractor that Contractor's progress is such that Contractor will not complete the Work within the Contract Time, Contractor 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, Contractor shall immediately respond in writing setting forth a detailed plan for accelerating the Work in a manner acceptable to City. Contractor 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. Contractor shall reimburse City, or City may withhold from payment due to Contractor, sums expended by City to perform such measures.

8.2.4. During unfavorable weather, wet ground or other unsuitable construction conditions, Contractor 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 Contractor 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 Contractor 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 Contractor's right to an extension of Time adjusting the Contract Time and the Contract Sum for Compensable Delay, Contractor must provide written notice to City within ten (10) Days of the date that Contractor 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 Contractor 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 Work, 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, Contractor's failure to provide written notice in the manner required by this Paragraph 8.5.2 shall constitute Contractor'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 Work.

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 Contractor 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 Contractor or any Subcontractor, shall not be deemed conditions beyond Contractor's control or foreseeability. Contractor 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 Contractor'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 Contractor'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 Contractor 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 Contractor'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 Contractor 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, Contractor 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 Work 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 Work requested on Contractor's Applications For Payment. Contractor 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 Contractor'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 Notice Inviting Bids, whichever is greater, as retention to ensure full and complete performance of the Work. Subject to City's right of withholding under Paragraph 9.4.2 of these General Conditions, City agrees to pay to Contractor 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 9.3.6 of these General Conditions.
- (iii) Less amounts previously paid.

9.2.2 At any Time after fifty percent (50%) of the Work 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 Work 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, Contractor shall submit to City an itemized Application for Payment, requesting payment for Work 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 Contractor'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 Contractor 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 Contractor will make to Subcontractors covered by such application.
- (ii) Conditional waivers and releases of claims and stop notices from Contractor and each Subcontractor and Sub-subcontractor, of every Tier, 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 Contractor and each Subcontractor and Sub-subcontractor, of every Tier, listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 Contractor warrants that, upon submittal of an Application for Payment, all Work 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 Contractor or Subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials or equipment relating to the Work.

9.3.6 At the sole discretion of City, the Construction Manager may approve for inclusion in Contractor'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, Contractor shall furnish evidence satisfactory to City:

- (i) Of the cost of such materials.
- (ii) That such materials are under the exclusive control of Contractor, 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 Contractor of its continuing and sole responsibility for the care and protection of such materials nor shall it relieve Contractor 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 Contractor with all terms of the Contract Documents.

9.3.7 City shall have the right, in its sole discretion, to make payments of monies owing to Contractor by means of direct payment to Subcontractors of any unpaid work performed by any Subcontractor or by joint payment to Contractor 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 Contractor of any of its obligations under the Contract Documents.

9.3.8 If the Contract Sum includes an Allowance from the Bid and the cost of performing the Work 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 Contractor or City arising from the acts or omissions of Contractor, or Subcontractors.
- (iii) Stop notices.
- (iv) Failure of Contractor to make timely payments due Subcontractors for material or labor.
- (v) A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- (vi) Damage to City or Separate Contractor for which Contractor is responsible.

- (vii) Reasonable evidence that the Work will not be completed within the Contract Time.
- (viii) Failure of Contractor to maintain and update As-Built or Record Documents.
- (ix) Failure of Contractor to timely submit Construction Schedules, reports, Submittals or their updates as required by the Contract Documents.
- (x) Performance of Work by Contractor without Approved Submittals.
- (xi) Liquidated or actual damages assessed in accordance with the Construction Contract.
- (xii) Any other failure of Contractor 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 Contractor 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 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 Contractor 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 Contractor, and the Contractor'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 Contractor, 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 Contractor 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. Contractor 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 Contractor, City shall deposit retention directly with the Escrow Agent. Contractor 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 Contractor.

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 Contractor, 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 Contractor shall be made upon receipt by Escrow Agent of written notification by City that the Contractor 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 Contractor, 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 Contractor. 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 Contractor as Acceptance by City of that portion of the Work which is to be occupied. City may, however, at its sole option, relieve Contractor 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 Contractor 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 Contractor while the equipment is so operated. Contractor 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 Contractor 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 Contractor's remaining Work.
- .10 Contractor 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 Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When Contractor 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 Contractor a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. Contractor 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 Contractor 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, Contractor shall, before City's issuance of the Certificate of Substantial Completion, complete or correct such item. Contractor 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 Contractor 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 Contractor 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 fifteen (15) 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 Work under this Construction Contract is authorized, the Contractor shall have completed the Work in accordance with the Contract Documents and all applicable standards of care and the following requirements of the Contract Documents must be fulfilled by Contractor:

- (i) The submittal of an application for Final Payment, together with supporting documentation, as required by Section 9.3 of these General Conditions. By submitting an application for final payment, Contractor warrants that all workers and persons employed, all firms supplying the materials, and all Subcontractors have been paid in full with the exception of any Subcontractor retention payments that are not yet due pursuant to Public Contract Code section 7107(d) or (e), and that there are no bills outstanding against the Work for either labor or materials, except certain items, documented as disputed claims or pending stop payment notices.
- (ii) Completion and delivery by Contractor 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) 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.
- (iv) Submission of conditional releases of claims and stop notices from Contractor and its Subcontractors with no reservation of rights for disputed claims or amounts.
- (v) 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 permit the Contractor 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 Contractor, whichever occurs first. Acceptance of Final Payment by Contractor shall constitute a complete waiver of all Claims, except those previously made in writing and identified by Contractor as unsettled at the time of the Application for Final Payment.

9.8.4 Contractor 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 Contractor 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 Construction 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, Contractor shall submit to Construction Manager a copy of Contractor'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 Contractor 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, Contractor 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 Contractor'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 Contractor'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 Contractor's performance and operations is not intended to, and does not include review of or responsibility for the adequacy of the Contractor's safety measures and procedures in, on, or adjacent to the site of the Work.

10.2.4 Contractor shall protect persons and property on the Site at all times. Contractor 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. Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

10.2.5 Contractor 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 Contractor or Subcontractors.
- (iii) Other property at the Site and adjoining property(ies).

10.2.6 Contractor 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 Contractor or its Subcontractors or anyone for whose acts they may be liable and for which Contractor is responsible.

10.2.7 Contractor 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, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.9 Contractor shall be required to provide at the Site a member of Contractor'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. Contractor shall notify City in writing if Contractor replaces the person responsible for safety.

10.2.10 Contractor 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 Contractor 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 Contractor 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 Contractor 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, Contractor shall immediately act to prevent or minimize damage, injury or loss. Contractor 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 Contractor'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 bid cost of excavation is in excess of \$25,000, the Contractor 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 Contractor 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 Contractor 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, bidder shall include as a bid item, 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 CONTRACTOR'S INSURANCE

11.1.1 Contractors to the City, at their 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	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000

YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.

II. CONTACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, 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, THE CONTRACTOR 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, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

[HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569](https://www.planetbids.com/portal/portal.cfm?CompanyID=25569)

OR

[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP](http://www.cityofpaloalto.org/gov/depts/asd/planet_bids_how_to.asp)

11.1.2 Contractor shall furnish City with the certificates of insurance and with original 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 Subcontractors: Contractor shall include all Subcontractors and as insureds under its policies, or shall furnish separate certificates and endorsements for each Subcontractor in compliance with this Article. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

11.1.4 At the request of City, Contractor shall submit to City copies of the policies obtained by Contractor. In the event Contractor does not comply 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 Contractor 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.

11.2 BOND REQUIREMENTS

11.2.1 Within ten (10) Days after the issuance of the Notice of Award and prior to commencing Work on the Project, Contractor shall file with City good and sufficient Labor and Material Payment and Performance Bonds each in the amount of 100% of the Contract Sum. The bonds shall be in substantially the same form as contained in this IFB Packet or such other form as required by City and shall be signed by both Contractor and Surety and properly notarized. Should any bond required hereunder or any surety on such bond become or be 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 Contractor for Work performed shall be made or due until Contractor 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 Contractor 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 Contractor's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination or expiration, such as, but not limited to Contractor's warranty and indemnity obligations.

11.2.3 Contractor 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.

11.2.4 Surety companies used by Contractor 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 Contractor.

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 Contractor 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 Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Contractor 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 Contractor'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 Contractor. 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, Contractor 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 Contractor 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 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 Contractor 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 Contractor 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. Contractor shall diligently and continuously prosecute such correction to completion. Contractor 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. Contractor 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. Contractor 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 Contractor. If Contractor 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 Contractor. Such action by City will not relieve Contractor of the guarantees provided in this Article or elsewhere in the-Construction Contract. Contractor 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 Contractor 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 Contractor nor accepted by City.

12.2.5 If Contractor 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 Contractor's expense.

12.2.6 If Contractor 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. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor 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 Contractor is liable to City, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to City.

12.2.7 Contractor'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 Contractor under the Contract Documents.

Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents, which may be longer specified periods. Establishment of the Guarantee To Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor'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 Contractor, 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 Contractor 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 Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Contractor shall promptly pay to City the amount of any such deficiency.

ARTICLE 13 – STATUTORY REQUIREMENT

13.1 STATE LABOR LAW

Contractor, 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 Department of Industrial Relations' website: <http://www.dir.ca.gov/>

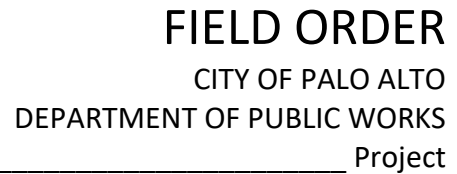
13.2 WORK DAY

Eight (8) hours labor constitutes a legal day's work. Contractor 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 1815 or except as otherwise permitted by law. Contractor shall forfeit to City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Construction Contract by Contractor, 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, including but not limited to Labor Code Sections 1810 through 1815. Such forfeiture amounts may be deducted from the Contract Sum. Contractor 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.

ARTICLE 14- JOB SITE NOTICES AND COMPLIANCE MONITORING

14.1 LABOR PROVISIONS

As required by California Labor Code section 1771.4(a)(1) and (a)(2), the City provides notice to all contractors and subcontractors that the Project that is the subject of this IFB and the Construction Contract, is a public works project, the contractor is required to post all job site notices prescribed by law or regulation, and the contractor is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR).



Project Number: _____		Field Order Number: XXX	
Contract Number: _____		Issuance Date: ____/____/____	
Contractor's Name: _____		Prepared by: _____	
Description of Work: Title: _____ 1. _____ Ref:			
City has determined that the above Work: ____ is Extra Work ____ is not Extra Work City has determined that Contractor is: ____ not 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 Contractor and return to City. Indicate N/A if not applicable. Consultant Approval: _____ Title: <u>Senior Project Manager</u> Date: _____	
2. Contractor shall sign and return to City for City approval signatures. Contractor 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:

☐ Contractor

☐ Consultant

☐ Division Head

☐ Project Manager

☐ Inspector

☐ File



CHANGE ORDER REQUEST

CITY OF PALO ALTO
DEPARTMENT OF PUBLIC WORKS

Contract Change Order Request

Project Title:		Project No.:	
Contract Number:		Date:	
Contractor:		Change Order Request No.:	

Description of Change Order Request (Attach additional sheets as needed)

Reason for Change Order Request:	
Description of Work to be Performed:	

Requested Change to Contract Sum:

- ☐ No cost change: N/A
- ☐ Increase cost by \$ _____
- ☐ Decrease cost by \$ _____

Request for Extension of Contract Time (check one):

- ☐ No Change to Contract Time
- ☐ Time Extension Requested for ____ days*
- ☐ ____ days Excusable Delay
 - ☐ ____ days Compensable Delay
- ☐ Decrease time by ____ days

* Include all information and documentation required by Section 8.5 of the Contract General Conditions.

Basis for requested change in cost:

- ☐ Unit pricing
- ☐ Lump sum: \$ _____
- ☐ Time and Materials not to exceed: * \$ _____
- ☐ Compensable Delay Costs: \$ _____
- ☐ Other: _____

* Final value shall not exceed amount shown without additional written CO authorization. Complete Time and Materials Breakdown on following page.

Reference Documents:*

RFI:

ASI:

Field Order:

Specifications:

Plans:

Other: (specify):

* Provide specific number/section/sheet references as applicable

Contract Change Order Request – continued

Line	Time and Materials Breakdown (Reference General Conditions, e.g. Sections 1 and 7.2, for Allowable Costs and markup)	Added	Credit
	All lines shall be filled in (zero values acceptable)		
	CONTRACTOR'S WORK		
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.	Subtotal (sum of lines 1 through 5)		
7.	Contractor Markup (Section 1.1.31 of the General Conditions) by Contractor on Extra Work performed by Contractor's forces, not to exceed ten percent (10%) of line 6		
8.	Subtotal for Contractor's Work (sum of lines 6 and 7)		
	SUBCONTRACTED WORK (Provide separate breakdown for each subcontract) ¹		
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.	Subtotal (sum of lines 9 through 13)		
15.	Contractor Markup (Section 1.1.31 of the General Conditions) by Subcontractor on Extra Work performed by Subcontractor's forces, not to exceed ten percent (10%) of line 14		
16.	Subcontractor Markup (Section 1.1.65 of General Conditions) by Contractor on Subcontractor's Allowable Costs, not to exceed fifteen percent (15%) of line 14		
17.	Subtotal for Subcontracted Work (sum of lines 14, 15 and 16)		
18.	TOTAL (sum of lines 8 and 17)		

¹ Attach additional copies of this page as required to summarize additional subcontracts.

Contract Change Order Request – continued

CONTRACTOR CERTIFICATION: By signing below, the undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order Request are true and correct. Contractor warrants that this Change Order Request is comprehensive and complete with respect to the Change in the Work 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. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq.

Submitted by Contractor:

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:

Assistant Director, Public Works Engineering

Date:

City Approval – Department Head – Signature required when any individual Change Order Request exceeds \$10,000.

By:

Title:

Brad Eggleston
Director of Public Works

Date:



CONTRACT CHANGE ORDER

CITY OF PALO ALTO
DEPARTMENT: PUBLIC WORKS ENGINEERING
_____ Project

Contract Change Order

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

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

Cost	Time
This Change Order will: ☐ No cost change: N/A ☐ Increase cost by \$ 0.00 ☐ Decrease cost by \$ N/A	This Change Order will: ☐ <u>Not change time</u> ☐ Increase time by ____ days ○ ____ days Excusable Delay ○ ____ days Compensable Delay ☐ Decrease time by ____ days
G/L account number (s): _____	The date of completion as of this Change Order is: _____
Basis for change in cost: ☐ Unit price(s) ☐ Lump sum Time and Materials ☐ Compensation for Compensable Delay ☐ Other: _____	

Contract Change Order – continued

CONTRACTOR CERTIFICATION: By signing below, Contractor 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 covered by this Change Order, as more fully set forth in Article 7 of the Contract General Conditions.

FAILURE TO EXECUTE: If Contractor fails to promptly execute this Change Order after it has been submitted for Contractor's signature, the City may unilaterally approve this Change Order as set forth in Article 7 of the Contract General Conditions. Contractor 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 Contractor 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.

Accepted for Contractor:**Accepted for City of Palo Alto:****By:****By:****Title:****Title:**

Public Works Engineering - Sr. Project Manager

Date:**Date:****Scope of Work**

PCO No.	ASI	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: 0.00
Contract Amendment Authorizations	\$	0.00	Contingency added: 0.00
Contingency Authorizations:	\$	0.00	Used to date (0.00)
Total Authorized Funding:	\$	0.00	Balance remaining 0.00
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 :	Assistant Director, Public Works Engineering
Date:	

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

SPECIAL PROVISIONS

IFB NO. 185733

PROJECT TITLE: Rinconada Lap & Children's Pools Re-plaster

NOT APPLICABLE

END OF SECTION