

REQUEST FOR COST PROPOSALS



ON-CALL CONTRACT FOR

Vision Zero Rapid Response Safety Program

CITY CONTRACT NUMBER

C02585

ISSUED BY

CAPITAL PROJECTS ENGINEERING DIVISION

CITY OF SANTA ROSA, CALIFORNIA

2026

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Request for Cost Proposals

The City of Santa Rosa ("City") requests cost proposals ("Proposals") from qualified contractors (individually, a "Respondent" and collectively, "Respondents") to provide on-call work for Vision Zero Rapid Response Safety Program, Contract No. C02585 ("Project"), as further specified in this Request for Cost Proposals.

1. Contract Information.

- 1.1 Scope of Work.** The City anticipates that it will issue individual Work Orders on an on-call, as-needed basis, for improvements that enhance safety and accessibility for the pedestrians, bicyclists, transit riders, motorists, and individuals with disabilities. The improvements are intended to reduce crashes, improve multimodal connectivity, and create safer and more accessible transportation corridors for all users. The scope of work may include installation or upgrade of sidewalks with ADA compliant curb ramps, bicycle lanes, high-visibility crosswalks, traffic calming features, transit amenities, lighting improvements, minor drainage and grading to support safety improvements, and streetscape enhancements. The Work may involve civil, mechanical, electrical, and structural trades. The City anticipates that it will primarily issue short duration Work Orders, which may be completed in less than one week. Some Work Orders may require immediate completion, as set forth in Section 3.3 of the Contract. Contractor must be able to mobilize to the Project site within 24 hours following City's issuance of a Work Order.
- 1.2 Term.** The Contract is structured for a two-year Term, which may be renewed by the City for up to two additional one-year Extension Term(s) subject to the limitations on the Maximum Price. (See Section 5 of the Contract.)
- 1.3 No Guarantee.** There is no guarantee as to the quantity of Work under the Contract or as to the number of Work Orders to be issued by City. There is also no guaranteed total payment under the Contract.
- 1.4 Definitions.** The definitions provided in Article 1 of the General Conditions apply to all Contract Documents, including this Request for Cost Proposals.

2. Proposal Submission.

- 2.1 Proposal Deadline.** Proposals must be received by the City on May 14, 2026, before 2:00 pm. ("Proposal Deadline"), at its Transportation and Public Works office, located at 69 Stony Circle, Santa Rosa, California. Late submissions (i.e., submissions at or after the exact hour of the Proposal Deadline) will be returned unopened. City reserves the right to postpone the date or time for receiving Proposals.
- 2.2 Submission Requirements.** Each Proposal must be completed legibly, using the Cost Proposal form included in the Contract Documents, signed, and submitted to City in a sealed envelope, with all required forms and attachments. Faxed or emailed Proposals will not be accepted, unless otherwise specified. The sealed envelope containing the Proposal and all required forms and attachments must be clearly labeled and addressed as follows:

PROPOSAL:

On-Call Contract for Vision Zero Rapid Response Safety Program
Contract No. C02585

Transportation and Public Works Department
69 Stony Circle
Santa Rosa, California 95401
Attn: Sheila Edwards

The envelope must also be clearly labeled, as follows, with Respondent's name, address, and its registration number with the California Department of Industrial Relations ("DIR") (Labor Code §§ 1725.5 and 1771.1):

[Contractor company name]
[street address]
[city, state, zip code]
DIR Registration No: _____

2.3 Proposal Form and Enclosures. The Cost Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible and must be initialed by the Respondent's authorized representative. A Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Proposal must be accompanied by a Noncollusion Declaration using the form included with the Contract Documents, and any additional forms required by this Request for Cost Proposals.

2.4 Authorization and Execution. Each Proposal must be signed by the Respondent's authorized representative. A Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Proposal under California Corporations Code § 313 or as otherwise authorized by law.

3. License, Registration, and Certificate Requirements.

3.1 License. The Work requires a valid California contractor's license for the following classification(s): A. The successful Respondent and its Subcontractors, if any, must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful Respondent must also obtain a City business tax certificate, issued pursuant to Chapter 6.04 of the City Code, within ten days following issuance of the Notice of Award. Subcontractors must also obtain a City business tax certificate before performing any Work.

3.2 DIR Registration. City may not accept a Proposal from, or enter into the Contract with, a Respondent without proof that the Respondent is registered with the DIR to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions. If City is unable to confirm that a Respondent is currently registered with the DIR, City may disqualify the Respondent. (Labor Code §§ 1725.5 and 1771.1(a).)

3.3 Certificates of Reported Compliance. If the Work may involve the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), then within ten calendar days following City's issuance of the Notice of Award, the successful Respondent must submit to City valid Certificates of Reported Compliance for its fleet and its Subcontractors, if applicable, in accordance with the Off-Road Regulation, unless exempt under the Off-Road Regulation.

4. Prevailing Wage Requirements.

4.1 General. Pursuant to California Labor Code § 1720 et seq., the Contract is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

- 4.2 Rates.** The prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to perform Work under the Contract. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- 4.3 Compliance.** The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.
- 5. Payment Bond.** Within ten calendar days following issuance of the Notice of Award, the successful Respondent must submit a payment bond to City as specified in the Contract Documents using the bond form included in the Contract Documents. The bond must be in the amount of 100% of the Maximum Price, as specified in the Contract Documents.
- 6. Substitution of Securities.** Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300.
- 7. Pre-Submittal Conference.** No pre-submittal conference will be held for this project.
- 8. Requests for Information.** Questions or requests for clarifications regarding the Project, the Request for Cost Proposals process, or any of the Contract Documents must be submitted in writing via email to Danny Chen at dchen@srcity.org. Oral responses are not authorized and are not binding on the City. Respondents should submit any such written inquiries at least five Working Days before the scheduled Proposal Deadline. Questions received any later might not be addressed before the Proposal Deadline. An interpretation or clarification by City in response to a written inquiry will be issued in an addendum.
- 9. Addenda.** Subject to the limitations of Public Contract Code § 4104.5, City reserves the right to issue addenda prior to the Proposal Deadline. Any addenda issued prior to the Proposal Deadline are part of the Contract Documents. Each Respondent is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its Proposal.
- 10. Document Review.** Each Respondent is responsible for review of the Contract Documents and any informational documents provided “For Reference Only,” e.g., as-builts, technical reports, test data, and the like. A Respondent is responsible for notifying City of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the City no later than five Working Days before the scheduled Proposal Deadline. City expressly disclaims responsibility for any assumptions a Respondent might draw from the presence or absence of information provided by City in any form.
- 11. Respondents Interested in More Than One Proposal.** No person, firm, or corporation may submit or be a party to more than one Proposal unless alternate Proposals are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a Respondent may submit subcontract proposals or quotes to other Respondents.
- 12. Brand Designations and “Or Equal” Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and Respondents may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Award unless otherwise provided in the Contract Documents. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code § 3400(c).

- 13. Protest.** Any protest against another Respondent must be submitted in writing and received by City at 69 Stony Circle, Santa Rosa, CA95401 or sent via email at dchen@srcity.org before 5:00 p.m. no later than two Working Days following the date on which the City notifies Respondents via email of the results of the Request for Cost Proposals process (“Protest Deadline”), and must comply with the following requirements:
- 13.1 General.** Only a Respondent who has actually submitted a Proposal is eligible to submit a protest against another Respondent. Subcontractors are not eligible to submit protests. A Respondent may not rely on the protest submitted by another Respondent, but must timely pursue its own protest. For purposes of this Section 13, a “Working Day” means a day that City is open for normal business, and excludes weekends and holidays observed by City.
- 13.2 Protest Contents.** The protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Protest Deadline will not be considered. The protest must refer to the *specific* portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting Respondent and any person submitting the protest on behalf of or as an authorized representative of the protesting Respondent.
- 13.3 Copy to Protested Respondent.** Upon submission of its protest to City, the protesting Respondent must also concurrently transmit the protest and all supporting documents to the protested Respondent, and to any other Respondent who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Protest Deadline.
- 13.4 Response to Protest.** The protested Respondent may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two Working Days after the Protest Deadline or after actual receipt of the protest, whichever is sooner (the “Response Deadline”). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested Respondent if different from the protested Respondent.
- 13.5 Copy to Protesting Respondent.** Upon submission of its response to the protest to the City, the protested Respondent must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting Respondent and to any other Respondent who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 13.6 Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the Respondent’s sole and exclusive remedy in the event of a protest. A Respondent’s failure to comply with these procedures will constitute a waiver of any right to further pursue a protest, including filing a Government Code Claim or initiation of legal proceedings.
- 13.7 Right to Award.** City reserves the right, acting in its sole discretion, to reject any protest that it determines lacks merit, to award the Contract to the Respondent it has determined to be the responsible Respondent submitting the lowest responsive Proposal, in accordance with Section 14.1, below, and to issue Work Order(s) notwithstanding any pending or continuing challenge to its determination.
- 14. Award and Reservation of Rights.**
- 14.1 Award.** The Contract will be awarded, if at all, within 90 days after the Proposal Deadline or as otherwise specified in the Special Conditions, to the responsible Respondent that

submitted the lowest responsive Proposal. The lowest Proposal will be determined based on the lowest labor markup percentage. (See Section 1 of the Cost Proposal.) If two or more Proposals contain the same and the lowest labor markup percentage, the City may accept the one it chooses.

14.2 Notice of Award. Within ten days following issuance of the Notice of Award, the successful Respondent will: execute and submit the enclosed Contract in accordance with the terms of the Proposal; submit a payment bond for 100% of the Maximum Price; submit the insurance certificates and endorsements; and submit valid Certificates of Reported Compliance as required by the Off-Road Regulation, if applicable, and any other submittals, if any, required by the Contract Documents or Notice of Award. If the successful Respondent fails to comply with these obligations, the City may award the Contract to the responsible Respondent that submitted the next lowest responsive Proposal.

14.3 Reservation of Rights. Subject to the provisions of its charter and the Santa Rosa City Code ("City Code"), City reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial irregularities in Proposals; to accept or reject any or all Proposals; to cancel or reschedule the procurement process; to postpone or abandon the Work anticipated by the Contract entirely; or to perform all or part of the Work with its own forces. City reserves the right, acting in its sole discretion, to set the Maximum Price for the Contract, which is the maximum compensation available for all Work Order(s) issued by City under the Contract. There is no minimum compensation. City reserves the right to issue Work Order(s) when the City determines, in its sole discretion, that there is a need for Work and it is appropriate to commence Work. City does not guarantee any quantity or amount of Work under the Contract, and City is not obligated to issue any Work Order(s) under the Contract. Each Respondent is solely responsible for all of its costs to prepare and submit its Proposal and by submitting a Proposal waives any right to recover those costs from City.

15. Ineligible Subcontractor. Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Contract.

16. Community Workforce Agreement. If checked below, the Work is subject to the City's Community Workforce Agreement ("CWA") and the successful Respondent must comply with the requirements therein.

Select One:

The Work is subject to the City's CWA, which is available on the City's website at <https://www.srcity.org/165/Bids-Proposals> and incorporated herein by reference. Within three Working Days following a request from City, a Respondent must submit to City an executed Appendix A, Contractor Agreement to be Bound, using the form provided with the Contract Documents. Each Respondent must provide a copy of the CWA to its Subcontractors, and the successful Respondent and its Subcontractors must comply with the CWA. Entering into the CWA is a condition of award of the Contract.

This Work is not subject to the City's CWA.

By: 
Greg Mariscal, Supervising Engineer

Date: 4/22/2026

END OF REQUEST FOR COST PROPOSALS

Cost Proposal

On-Call Contract for Vision Zero Rapid Response Safety Program, Contract No. C02585

_____ (“Respondent”) hereby submits this Cost Proposal (“Proposal”) to the City of Santa Rosa (“City”) for the above-referenced Contract in response to the Request for Cost Proposals and in accordance with the Contract Documents.

1. **Labor Markup.** Respondent proposes to perform and fully complete each Work Order issued under the Contract as specified in the Contract Documents. Respondent agrees to supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities. For each Work Order authorized on a time and materials basis, Respondent proposes the following markup percentage for labor:

Labor Markup Percentage: _____%

2. **Addenda.** Respondent agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued in connection with the Request for Cost Proposals. Respondent waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Respondent specifically acknowledges receipt of the following addenda (if any):

Addendum:	Date Received:
#01	_____
#02	_____
#03	_____
#04	_____

3. **Respondent’s Certifications and Warranties.** By signing and submitting this Proposal, Respondent certifies and warrants the following:

- 3.1 **Examination of Contract Documents.** Respondent has thoroughly examined the Contract Documents and represents that, to the best of Respondent’s knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.
- 3.2 **Local Conditions.** Respondent has had the opportunity to examine the local conditions at any anticipated locations for Work specified in the Contract Documents.
- 3.3 **Respondent’s Responsibility.** Respondent is a responsible contractor, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to timely perform or cause the Work to be timely performed in accordance with the Contract Documents.
- 3.4 **Responsibility for Proposal.** Respondent has carefully reviewed this Proposal and is solely responsible for any errors or omissions contained in its completed Proposal. All statements and information provided in this Proposal and enclosures are true and correct to the best of Respondent’s knowledge.
- 3.5 **Nondiscrimination.** In preparing this Proposal, the Respondent has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.
- 3.6 **Agreement to be Bound by CWA.** If the Contract is subject to the City’s CWA, Respondent will submit an executed Appendix A, Contractor Agreement to be Bound, using the form provided with the Contract Documents, within three Working Days following a request from City. (See Section 16 of the Request for Cost Proposals.)

4. **Award of Contract.** By signing and submitting this Proposal, Respondent agrees that, if City issues the Notice of Award to Respondent, then within ten days following issuance of the Notice of Award, Respondent will do all of the following:

- 4.1 **Execute Contract.** Enter into the Contract with City in accordance with the terms of this Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;
- 4.2 **Submit Required Payment Bond.** Submit to City a payment bond for 100% of the Maximum Price, using the bond form provided and in accordance with the requirements of the Contract Documents;
- 4.3 **Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents; and
- 4.4 **Certificates of Reported Compliance.** Submit to City valid Certificates of Reported Compliance for its fleet and its Subcontractors, if applicable, if the Work involves the use of vehicles subject to the Off-Road Regulation.

This Proposal is hereby submitted on _____, 20_____.

s/ _____

Name and Title

s/ _____
[See Section 2.4 of Request for Cost Proposals]

Name and Title

Company Name

License #, Expiration Date, and Classification

Address

DIR Registration #

City, State, Zip

Phone

Contact Name

Contact Email

END OF COST PROPOSAL

Noncollusion Declaration

TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH PROPOSAL

The undersigned declares:

I am the _____ [title] of _____
[business name], the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham Proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any Respondent or anyone else to put in a sham Proposal, or to refrain from submitting a Proposal. The Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the percentage specified in the Proposal of the Respondent or any other Respondent, or to fix any overhead, profit, or cost element of the Proposal, or of that of any other Respondent. All statements contained in the Proposal are true. The Respondent has not, directly or indirectly, submitted his or her labor markup percentage or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, depository, or to any member or agent thereof, to effectuate a collusive or sham Proposal, and has not paid and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Respondent.

This declaration is intended to comply with California Public Contract Code § 7106 and Title 23 U.S.C § 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

s/ _____

Name [print]

END OF NONCOLLUSION DECLARATION

On-Call Contract

This On-Call Contract ("Contract") is entered into on _____ ("Effective Date") by and between the City of Santa Rosa ("City") and _____ ("Contractor"), for Vision Zero Rapid Response Safety Program, Contract No. C02585 ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Request for Cost Proposals, Contractor has submitted a Proposal to perform Work pursuant to Work Orders issued by City on an on-call, as-needed basis. On _____, 20____, the Awarding Authority authorized award of this Contract to Contractor for the Maximum Price set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all Contract Documents, including this Contract.
 - 2.1 Request for Cost Proposals;
 - 2.2 Addenda, if any;
 - 2.3 Proposal and attachments thereto;
 - 2.4 Contract;
 - 2.5 Payment Bond and Warranty Bond(s);
 - 2.6 General Conditions;
 - 2.7 Special Conditions, if any;
 - 2.8 Plans and Specifications, if any;
 - 2.9 Work Order(s), including any attachments thereto and the associated Final Payment Report(s);
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 City Standards and City Specifications, as applicable;
 - 2.13 City's CWA, if applicable;
 - 2.14 Caltrans Standard Specifications (excluding Division I) and Caltrans Standard Plans, as applicable; and
 - 2.15 The following: No other documents
3. **Work Order Procedure.** The Work to be performed under this Contract will be completed through individual Work Orders on an on-call, as-needed basis, as set forth below. Contractor agrees to perform all Work required for each Work Order, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, services, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor will self-perform the majority of the Work under this Contract. Contractor agrees to use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
 - 3.1 **Work Order.** When the need for Work arises under this Contract, as determined by City, City will issue a written Work Order to Contractor, identifying the nature and location(s) of the specific Work to be performed; the basis for compensation under the Work Order; whether the Work constitutes emergency-related Work; and any other information or instructions that may be relevant to performance of the Work encompassed in the Work Order ("Work Order"). As directed by City, the parties will review the Work Order in the field to determine the full scope of Work, subject to adjustment by the Engineer.
 - 3.2 **Work Order Price.** Unless otherwise specified by City, following the parties' field review of the Work Order, and prior to the start of Work under a Work Order, Contractor will

submit to City the following: (1) a detailed cost proposal to complete the Work specified in the Work Order, either on a time and materials or lump sum basis, as directed by the Engineer; and (2) an accounting of total costs incurred under the Contract to date. The detailed cost proposal, subject to any adjustments by the Engineer, will serve as the not-to-exceed amount for a Work Order authorized on a time and materials basis, or as the total compensation to be paid to Contractor for performance of the Work Order, for a Work Order authorized on a lump sum basis (the "Work Order Price").

3.3 Start of Work. Following City's issuance of a Work Order, Contractor will mobilize and start the Work specified in the Work Order as follows:

(A) **Emergency Work.** If the Work Order specifies that the Work is emergency-related Work, Contractor must start the Work specified in the Work Order within 24 hours following City's issuance of the Work Order. For emergency-related Work, the Engineer may waive the requirement for a field review and/or for a detailed cost proposal prior to the start of Work, but the parties will conduct a field review and/or Contractor will submit a cost proposal for the Work Order as soon as practicable.

(B) **Non-Emergency Work.** If the Work Order does not specify that the Work is emergency-related Work, then the Work is non-emergency Work and Contractor must start the Work specified in the Work Order within ten calendar days following City's issuance of the Work Order, unless otherwise specified by City.

3.4 Work Order Time. A Work Order may specify the time for completion of the Work included in the Work Order (the "Work Order Time"). Contractor will fully complete the Work required by a Work Order within the Work Order Time, if any. Contractor must immediately notify the City if Contractor believes it will not be able to complete the Work within the Work Order Time. If Contractor fails to complete the Work within the Work Order Time, City may assess liquidated damages in the amount set forth in the applicable Work Order, if any, for each day of unexcused delay in achieving Final Completion, and any such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract. City reserves the right to separately contract with another contractor or to use its own forces to perform Work that Contractor is unable or unwilling to perform within the Work Order Time.

3.5 Daily Work Reports. At the end of each day that Work is performed, Contractor must submit a daily report of the Work performed that day, signed by the Engineer and Contractor, identifying the labor, materials, and equipment used in direct performance of the Work ("Daily Work Report"). The Engineer may adjust the Daily Work Report(s) based on the Engineer's records of the Work. The Daily Work Report enables the parties to document and track the Work performed each day. The Engineer's signature on the Daily Work Report is intended to document City's receipt of the Daily Work Report and agreement to the labor, materials, and equipment used in direct performance of the Work; it does not constitute any acknowledgement, acceptance, or approval of the Work. Contractor's failure to submit the Daily Work Report at the end of each day that Work is performed may be deemed a full and complete waiver of compensation for Work performed that day.

3.6 Final Payment Report. The Engineer will memorialize the final amount payable to Contractor for the Work set forth in the Work Order in a final report and accounting for the Work Order ("Final Payment Report"), which will be signed by each party and is hereby fully incorporated into the applicable Work Order. If Contractor fails to promptly sign a Final Payment Report or disputes the terms of a Final Payment Report, City may elect to issue the Final Payment Report unilaterally and proceed with processing Final Payment in order to close out the Work Order, as set forth in

Section 8.2(C) of the General Conditions. Contractor's sole recourse to dispute Final Payment is to submit a timely Claim pursuant to Article 12 of the General Conditions.

4. **Payment.** City will pay Contractor for full and satisfactory performance of each Work Order either on a time and materials basis or based on a mutually agreed upon, all-inclusive lump sum price for the Work, as set forth below and as determined by City in its sole discretion. The total compensation for all Work Orders issued by City under this Contract will not exceed \$461,000 ("Maximum Price"), except as expressly authorized by City in writing. Contractor is solely responsible for ensuring that it does not perform Work in excess of the Maximum Price. Contractor is not entitled to payment for any Work performed without a written Work Order, or for Work that exceeds the scope of or fails to comply with a Work Order.

4.1 Time and Materials Compensation.

(A) **Calculation.** For a Work Order authorized on a time and materials basis, time and materials compensation will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums:

- (1) **Labor.** All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus ___% markup as set forth in Contractor's Proposal;
- (2) **Materials.** All direct material costs provided by the Contractor, including sales tax, plus 15% markup;
- (3) **Equipment.** All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
- (4) **Subcontractors.** All direct labor, materials, and equipment costs for Work performed by Subcontractors plus markup on those costs not to exceed 10% of the cumulative total of those direct costs; and
- (5) **Bonds and Insurance.** Bond and insurance premium costs computed at 1.5% of the total of the previous four sums.

(B) **Limitations.** Time and materials compensation will be subject to a not-to-exceed amount, as specified in Section 3.2, above. The markup percentages for time and materials Work cover all overhead, profit, and other indirect costs of Contractor, including, but not limited to, insurance and bond premium costs, cost estimating, meetings, scheduling and submittal requirements (if applicable), temporary onsite facilities, utilities, and general administration, set up time, and superintendence for a Work Order. Contractor will not be entitled to compensation for travel time by Contractor or its Subcontractors between the Project site and yards, offices, or other business locations.

4.2 Lump Sum Compensation. For a Work Order authorized on a lump sum basis, City will pay Contractor a mutually agreed upon, all-inclusive lump sum price for all of Contractor's direct and indirect costs to perform the Work set forth in the Work Order, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the Contract Documents. Lump sum compensation will not be subject to markup for overhead, profit, or other indirect costs.

5. **Term and Extensions.** The Contract will remain in effect for two years following the Effective Date ("Term"), unless (A) the Maximum Price is exhausted before the end of the Term, (B) the Contract is terminated sooner in accordance with Article 13 of the General Conditions, or (C) the Contract is extended, as set forth herein. The City, acting in its sole discretion, may unilaterally elect to extend the Term to

allow for completion of any Work Order issued prior to expiration of the Term. City will provide written notice to Contractor of any such extension.

5.1 Extension Terms. At the City's option, to be exercised in the City's sole discretion, the Contract may be extended beyond the initial Term by up to two additional successive one-year terms (individually, an "Extension Term"), provided the total compensation due to Contractor under the Term and any Extension Term does not exceed the Maximum Price. The City may elect to extend the Contract for an Extension Term by providing written notice of intent to Contractor at least 30 days prior to expiration of the current Term or Extension Term, as applicable. If Contractor does not wish to extend the Contract, it must notify the City in writing within 10 days following the City's notice of intent to extend the Contract. Failure to timely notify the City in this regard will be deemed agreement to extend the Contract.

5.2 Conditions. Any Extension Term will be subject to the same terms and conditions applicable to the initial Term.

6. Labor Code Compliance.

6.1 General. This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

6.2 Prevailing Wages. This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are on file with the City and available online at <http://www.dir.ca.gov/DLSR>.

6.3 DIR Registration. City may not enter into the Contract with a Respondent without proof that the Respondent and its Subcontractors are registered with the DIR to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

- 7. Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 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."
- 8. Conflicts of Interest.** Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 9. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
- 10. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed

effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Transportation and Public Works Department
69 Stony Circle
Santa Rosa, CA 95401
707-543-3911
Attn: Danny Chen
dchen@srcity.org

Copy to: Sheila Edwards
sedwards@srcity.org

Contractor:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

11. General Provisions.

- 11.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 11.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 11.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Sonoma County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Sonoma County, California.
- 11.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 11.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 11.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 11.7 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313 or as otherwise authorized by law.

11.8 Electronic Signatures. In accordance with Government Code § 16.5 and Civil Code § 1633.1 et seq., the parties agree that this Contract may be transmitted and executed electronically and that electronic signatures will have the same force and effect as the use of manual signatures.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____

s/ _____

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Name, Title

Date: _____

CONTRACTOR:

Business Name

s/ _____

Seal:

Name, Title

Date: _____

Second Signature (See Section 11.7):

s/ _____

Name, Title

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT

Payment Bond

The City of Santa Rosa ("City") and _____ ("Contractor") have entered into an On-Call Contract for Vision Zero Rapid Response Safety Program, Contract No. C02585 ("Contract"), pursuant to which Contractor will perform Work for the City on an on-call basis. The Contract is incorporated by reference into this Payment Bond ("Bond").

- 1. General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than \$ _____, based on 100% of the Maximum Price as specified in Section 4 of the Contract, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
- 3. Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
- 4. Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
- 5. Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____

- 6. Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Sonoma County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF PAYMENT BOND

Warranty Bond

The City of Santa Rosa ("City") and _____ ("Contractor") have entered into an On-Call Contract for Vision Zero Rapid Response Safety Program, Contract No. C02585 ("Contract"), pursuant to which Contractor will perform Work for the City on an on-call basis. The Contract, including Work Order No. _____, dated _____ ("Work Order"), is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the amount of \$_____, which is 50% of the total amount payable to Contractor for the Work Order.
2. **Warranty Period.** The Contract requires Contractor to guarantee its Work under a Work Order and that of its Subcontractors on the Work Order, against defects in materials and workmanship which are discovered during the one-year period commencing with City's acceptance of the Work set forth in the Work Order, unless a longer guarantee is required by the Contract Documents ("Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract for the Work Order, and, on due notice from City, repairs and remedies, at its sole expense, any and all defects in materials and workmanship in the Work which are discovered during the Warranty Period applicable to the Work Order, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to make such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code §§ 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Sonoma County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Name, Title

END OF WARRANTY BOND

General Conditions

Article 1 - Definitions

Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day,” or “working day.”

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Awarding Authority means the City Council or its authorized delegee(s) unless the Contract is awarded by the Water Department, in which case it means the Board of Public Utilities or its authorized delegee(s).

Change Order means a written document duly approved and executed by City, which changes the scope of Work for a Work Order, the Work Order Price, or the Work Order Time.

City means the City of Santa Rosa, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

City Engineer means the City Engineer for City and his or her authorized delegee(s).

City Specifications means the City’s Construction Specifications for Public Improvements, which may be accessed on the City’s website at <https://www.srcity.org/2321/Design-Construction-Standards>.

City Standards means the City’s Design and Construction Standards, which may be accessed on the City’s website at <https://www.srcity.org/2321/Design-Construction-Standards>.

Claim means a separate demand by Contractor for a change in compensation for a Work Order or the Work Order Time, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; a written demand by Contractor disputing a unilateral Change Order or a portion thereof; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Request for Cost Proposals; addenda, if any; the Proposal and attachments thereto; the Contract; the Notice of Award; the payment bond and warranty bond(s); the General Conditions; the Special Conditions; Work Order(s), including attachments thereto and associated Final Payment Report(s); the Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided “For Reference Only,” or documents that are intended solely to provide information regarding existing conditions.

Contractor (or You) means the individual, partnership, corporation, or joint venture that has signed the Contract with City to perform the Work.

CWA means the Community Workforce Agreement for the City.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for the Work in a Work Order, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the City Engineer for the City of Santa Rosa and his or her authorized delegates.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extension Term has the meaning provided in Section 5.1 of the Contract.

Extra Work means new or unforeseen work related to a Work Order, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's cost proposal for a Work Order was submitted or Work that results from a substantially differing and unforeseeable condition.

Final Completion, for purposes of each Work Order, means Contractor has fully completed all of the Work required by the Work Order to the City's satisfaction, including all punch list items and any required commissioning or training, and has provided the City with all required submittals, including the warranty bond, instructions and manuals, product warranties, and as-built drawings, if applicable.

Final Payment, for purposes of each Work Order, means final payment to Contractor for any unpaid Work under a Work Order, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Materials Lab means City's Materials Engineering Laboratory, which may perform quality assurance functions for the Project or Work Order(s) relating to asphalt and concrete, including inspection and/or testing of workmanship, materials, and the manner of construction.

Maximum Price has the meaning set forth in Section 4 of the Contract.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements and/or individual Work Order requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract, which is comprised of any and all on-call Work directed by City pursuant to individual Work Order(s).

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegee(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Project site means the location(s) where Work is to be performed, as specified in a Work Order.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements and/or individual Work Order requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Term has the meaning provided in Section 5 of the Contract.

Water Department means the City of Santa Rosa Water Department.

Work means all of the construction and services necessary for or incidental to completing Work Order(s) in conformance with the requirements of the Contract Documents.

Work Day or **Working Day**, whether or not capitalized, means a weekday when the City is open for business, and does not include the following holidays observed by the City:

- (A) New Year's Day, January 1;
- (B) Martin Luther King Jr. Birthday, the third Monday in January;
- (C) President's Day, the third Monday in February;

- (D) Cesar Chavez Day, March 31;
- (E) Memorial Day, the last Monday in May;
- (F) Juneteenth, June 19;
- (G) Independence Day, July 4;
- (H) Labor Day, the first Monday in September;
- (I) Veterans Day, November 11;
- (J) Thanksgiving Day, the fourth Thursday in November;
- (K) The day after Thanksgiving Day; and
- (L) Christmas Day, December 25.

Work Order has the meaning set forth in Section 3 of the Contract.

Work Order Price means, for a Work Order authorized on a time and materials basis, the total not-to-exceed amount for performance of the Work set forth in the Work Order, based on the cost proposal for the Work, subject to any adjustments by the Engineer; and for a Work Order authorized on a lump sum basis, the mutually agreed upon total compensation to be paid to Contractor for performance of the Work in the Work Order. The Work Order Price may be amended by Change Order.

Work Order Time means the time specified for complete performance of the Work set forth in a Work Order, if any. The Work Order Time may be amended by Change Order.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 City.

(A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.

(B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of each Work Order. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

(C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative for day-to-day administration of each Work Order on behalf of City, including coordination and scheduling of each Work Order. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.

(D) **Design Professional.** The Design Professional is responsible for the overall design for each Work Order and, to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conferences, weekly meetings, and coordination meetings for Work Orders, if any. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested but not required by City or specified in the Contract Documents. From the date of commencement of the Work under a Work Order until the date on which City formally accepts the Work under a Work Order, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism, or theft, subject to the limitations of Laws, including Public Contract Code § 7105.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Unless otherwise specified by City, Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Work Order Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to each Work Order, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** If requested by City, Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must attend and participate in a pre-construction conference, progress meetings, and/or coordination meetings in connection with a Work Order.

(1) **Pre-Construction Conference.** If the City intends to conduct a pre-construction conference for a Work Order, City will designate a date and time for the pre-construction conference in the applicable Work Order. Work Order administration procedures and coordination between City and Contractor will be discussed. Contractor must present City with the following information or documents at the conference, unless otherwise specified by City, for City's review and acceptance before the Work commences:

a. Name, 24-hour contact information, and qualifications of the proposed on-site superintendent for the Work Order;

b. List of all key personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;

c. Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the vicinity of the Work for a Work Order;

d. If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;

e. Draft baseline schedule for the Work as required under Section 5.2, if requested by City;

f. Schedule with list of Work Order submittals that require City review, and list of the proposed material suppliers;

g. Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;

h. Videotape and photographs recording the conditions throughout the pre-construction site of the location where Work will be performed, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project site such as building faces, canopies, shades and fences, and any other features within the Work area limits;

i. If requested by City, Contractor's cash flow projections; and

j. Any other documents specified by City.

(2) **Progress Meetings.** If requested by City, Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must participate in progress meetings scheduled with City in connection with a Work Order.

(3) **Coordination Meetings.** If requested by City, Contractor must participate in coordination meetings with other parties relating to other work being performed on or near the Worksite or in relation to the Work under a Work Order, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** In addition to the requirements set forth in Section 3 of the Contract relating to Daily Work Reports, Contractor will also maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on each Work Order for each day that Work is performed for the Work Order. The daily report for each day must include the number of workers at the Project site; primary Work

activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of each Work Order, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. If requested by City in City's notice to correct, Contractor must submit a Work plan for correcting defective Work in advance of Contractor taking corrective action. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from any payment otherwise due to Contractor. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph also applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Records subject to this provision include complete Project cost records, copies of the insurance policies and endorsements required by the Contract Documents, and records relating to preparation of Contractor's Proposal, including estimates, take-offs, and price quotes or bids.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Work Order Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work.

Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after expiration of the Term or any Extension Term or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during the Term or any Extension Term.

(L) **Quality Control.** If requested by City, Contractor will develop, implement, and maintain a quality control plan for a Work Order that includes sampling, testing, and inspecting the Work to control material quality and to ensure that the Work satisfies the quality characteristics in the Contract Documents. If requested by City, Contractor will submit copies of the quality control plan to City and make one copy available at each Worksite.

(1) **Records.** Contractor must prepare and maintain quality control records, including the names and qualifications of samplers, testers, and inspectors; testing laboratories' identification and certifications; testing equipment calibrations and certifications; inspection reports; sampling and testing records organized by date and type of material; test results with comparison of quality characteristic requirements; test results in relation to action and any suspension limits; and records of corrective actions and suspensions. Contractor will submit any quality control test data and test results to the Engineer within two Working Days following test completion. Contractor must immediately notify the Engineer of any noncompliant Work.

(2) **Quality Control Manager.** If requested by City, before starting Work on a Work Order, Contractor will designate in writing, and provide complete contact information for, the quality control manager for the Work Order who will be responsible for receiving, reviewing, and approving all correspondence and submittals prior to submission to the City; signing and implementing Contractor's quality control plan; and maintaining quality control records. The quality control manager must either be an employee of Contractor, or a Subcontractor retained solely to provide quality control services for the Work Order. The quality control manager must not be employed or compensated by a Subcontractor who will provide other Work for the Work Order.

(3) **Test Modifications.** The following specific tests are modified as follows: For California Test 216 (Relative Compaction), a mechanical compactor (Ploog Engineering Co. Model M 100 or equal) with a 10-pound hammer and split compaction molds must be used in lieu of the specified manual compaction equipment. For California Test 231 (Nuclear Gage Determination of In-Place Density), in-place density and relative compaction may be determined on the basis of individual test sites in lieu of the area concept at the discretion of the Engineer.

(M) **Project Site(s).** Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the City in writing prior to Contractor's submission of a cost proposal for the Work Order, as required by Section 3.2 of the Contract. Any subsurface exploration at the Project site(s) must be done at the Contractor's expense, but only with prior written authorization from City. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. Contractor is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered changed Project site conditions. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information on the Project site(s) in City's possession that is necessary for Contractor to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business tax certificate before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code § 4107, as applicable.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any City work forces or utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any City work forces, utility company or agency, or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

(C) **Utility Company Standards.** The Work must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). Contractor may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Contractor is directed to contact the affected third party utility owners about their requirements before submitting a cost proposal for a Work Order, as required by Section 3.2 of the Contract.

2.5 Submittals. Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals requested by City in connection with a Work Order. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference for a Work Order, as may be specified in the Work Order.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work, if applicable, and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Work Order. Contractor must provide submittals in electronic format, unless otherwise specified by the Engineer.

(C) **Required Contents.** Each submittal must be uniquely numbered and include the Project name, contract number, Work Order number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s). Submittal resubmissions must include a revision designation.

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal. Except as required for corrections, Contractor will not make changes to a submittal upon resubmission. City reserves the right to reject a partial resubmission of a submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, Inspector, and Materials Lab.

(G) **Excessive RFIs.** A 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.

2.6 Shop Drawings. When Shop Drawings are requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. If requested by City, Shop Drawings must be provided to the Engineer for review and acceptance within the time specified by City. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

2.7 Material List. If requested by City, Contractor must submit to the Engineer, prior to the start of Work, a list of all materials proposed for use in the Work and any supporting documentation and samples required by the Contract Documents and source of supply. For a material listed on the "Engineer's List of Approved Items," located in the Sewer and Water sections of the City Standards, Contractor must provide the name of the manufacturer and model and part number for each material proposed for the Work, unless the item has been replaced for the Project or an individual Work Order, as specifically set forth in the Contract Documents or applicable Work Order. For all other materials, Contractor must provide the name of the manufacturer, model and part number, and supporting documentation and samples that will enable the Engineer to evaluate the material.

- 2.8 Access to Work.** Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.
- 2.9 Personnel.** Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on any Project site in any capacity without City's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) **Duty to Notify and Seek Direction.** If Contractor becomes aware of a changed condition in the Work, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on the Contractor. If Contractor proceeds with the related Work before obtaining the City's 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 to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to its compensation or Work Order Time, if any, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Work Order(s), including any attachments thereto and associated Final Payment Report(s);
- (E) Special Conditions;
- (F) General Conditions;
- (G) Payment Bond and Warranty Bond(s);
- (H) Specifications;
- (I) Plans;
- (J) Notice of Award;
- (K) Request for Cost Proposals;
- (L) Community Workforce Agreement, if applicable;
- (M) Contractor's Proposal and attachments;
- (N) City Standards and City Specifications, as applicable; and
- (O) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications, Caltrans Special Provisions, or Caltrans Standard Plans.

3.3 Caltrans Standard Specifications and Standard Plans. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments and revisions as of the date that Contractor's cost proposal for a Work Order, as required by Section 3.2 of the Contract, is due. Any reference to or incorporation of Caltrans' Standard Plans means the most current edition of Caltrans' Standard Plans, unless otherwise specified ("Caltrans Standard Plans"), including the most current amendments or revisions as of the date that Contractor's cost proposal for a Work Order, as required by Section 3.2 of the Contract, is due. The following provisions apply to use of or reference to the Caltrans Standard Specifications, Special Provisions, or Caltrans Standard Plans:

(A) **Limitations.** The "Division I General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents. Unless otherwise specified in the Specifications, the remaining Divisions of the Caltrans Standard Specifications, i.e., Division II through Division XII, are applicable to the extent relevant to the Work and are subject to any modifications set forth in the Specifications. A specific reference in the Specifications to a

section from the Caltrans Standard Specifications will not be construed as excluding other applicable sections from the Caltrans Standard Specifications.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

(1) Any reference to the “Engineer” or “Director” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

(3) Any reference to the “Department” or “State” is deemed to mean City.

(4) Any reference to “Laboratory” is deemed to mean the Materials Lab, or such other laboratory as may be authorized by the City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that the City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by the City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code, or regulation in effect on the date that Contractor’s cost proposal for a Work Order, as required by Section 3.2 of the Contract, is due.

3.6 Conformed Copies. If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor’s responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor’s sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than completion of the Work, as required under a Work Order, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop Drawings, or other documents (in paper or electronic form) developed by Contractor for the Work, and City will retain all rights to such works, including the right to possession.

Article 4 - Bond, Indemnity, and Insurance

- 4.1 Payment Bond.** Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond in the penal sum of not less than 100% of the Maximum Price, executed by Contractor and its surety using the bond form included with the Contract Documents. The bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, fees and costs of litigation or arbitration, and fees and expenses incurred in enforcing this Section) (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 submitting a Proposal or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's Proposal for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.
- 4.3 Insurance.** No later than ten days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work. The required insurance must remain in full force and effect at all times during the Term and any Extension Term, except as specified for commercial general liability insurance in subsection (A)(1), below, which requires a longer duration. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better. The City may, but has no obligation to, review insurance policies submitted by Contractor. The City's failure to demand evidence of full compliance with the insurance requirements set forth in this Contract or the City's failure to identify any insurance deficiency will not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance in accordance with this Section. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. The procurement of the required insurance, or Contractor's failure to procure and maintain the required insurance, will not be construed to limit Contractor's liability under this Contract. The procurement of the required insurance will not be construed to fulfill Contractor's indemnification obligations under this Contract.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

(1) *Commercial General Liability (“CGL”) Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form with coverage at least as broad as ISO CG 00 01, and must include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work, including contractor’s protective coverage, contractual liability, products liability, completed operations, and broad form property damage, with limits of at least \$3,000,000 per occurrence and at least \$3,000,000 general aggregate. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements. The products liability and completed operations coverage must continue for a period of three years following expiration of the Term or any Extension Term, whichever is later.

(2) *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least \$1,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired, owned, and non-owned auto liability. Coverage must be at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1).

(3) *Workers’ Compensation Insurance and Employer’s Liability:* The workers’ compensation and employer’s liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by statute, per accident for bodily injury or disease. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Pollution Liability Insurance:* The pollution liability insurance policy must provide coverage of at least \$1,000,000 per occurrence and \$1,000,000 aggregate for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work. If the Work involves lead-based paint or asbestos identification and/or remediation, the pollution liability insurance policy must not contain lead-based paint or asbestos exclusions. If the Work involves mold identification, the pollution liability policy must not contain a mold exclusion and the definition of “pollution” in the policy must include microbial matter, including mold.

(B) **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days prior written notice to City, unless due to non-payment of premiums, in which case ten days prior written notice must be made to City.

(C) **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.

(D) **Required Endorsements.** The CGL policy, automobile liability policy, and pollution liability policy must include the following specific endorsements:

(1) The City of Santa Rosa, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, “Additional Insured”) must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. Coverage for an Additional Insured will not be limited to the Additional Insured’s vicarious liability. The additional insured endorsement must be provided using

ISO forms at least as broad as CG 20 10 04 13 or 20 38 04 13 (ongoing operations) and CG 20 37 04 13 (completed operations), or equivalent form(s) approved by the City.

(2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(3) The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss. This endorsement must be provided using ISO form CG 20 01 04 13 or an equivalent form approved by the City.

(4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage. Contractor's insurance coverage applies to the full extent of the policies, and nothing contained herein will be construed to limit the application of such coverage.

(F) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$10,000 are subject to approval by the City's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the City's Risk Manager determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(G) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on a Work Order, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on a Work Order. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

4.4 Warranty Bond. Unless otherwise specified by City in a Work Order, as a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form included with the Contract Documents, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for 50% of the total amount payable to Contractor for the Work Order. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 – Work Order Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work in accordance with Section 3.3 of the Contract and complete it within the Work Order Time, if any.

(A) **General.** Contractor must commence the Work in accordance with Section 3.3 of the Contract, unless otherwise specified by City in the Work Order, and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Work Order Time, if any.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before City's issuance of a Work Order.

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Work Order Time, if any. Contractor will diligently prosecute the Work to minimize the public's exposure to construction activities. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. If requested by City in a Work Order, Contractor must prepare schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. Contractor must provide the Engineer with a license for use of Contractor's scheduling software, unless otherwise specified by the Engineer.

(A) **Baseline (As-Planned) Schedule.** If requested by City, within five calendar days following issuance of a Work Order (or as otherwise specified in the Work Order), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Work Order Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) **Specialized Materials Ordering.** If requested by City, within five calendar days following City's issuance of a Work Order, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(2) **High Dollar or Long Duration Projects.** In addition to the requirements set forth above, if the Work Order Time is 100 Working Days or more, Contractor's baseline (as-planned) schedule must include the following: the start and completion dates for submittal development, submittal review, milestones and

constraints, equipment and plant setup, interfaces with outside entities, erection and removal of falsework and shoring, test periods, major traffic stage change, and final cleanup; logical links between time-scaled Work activities; controlling activities; at least 50 but no more than 500 activities, unless otherwise specified or authorized by the Engineer; alphanumeric activity identification and activity description system for labeling Work activities; identification code for each activity for responsibility, stage, Work shifts, and location; activity durations of at least one Working Day and no more than 20 Working Days for each activity, unless otherwise authorized by the Engineer; and float as the predecessor activity to Final Completion. Each activity description must indicate its associated scope or location of Work.

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Work Order Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within five days (unless otherwise specified by City in the Work Order), must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Work within the Work Order Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) **Progress Schedules.** If requested by City, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve milestones within the Work Order Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Work, if requested by City.

(1) **Float.** The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Work Order and may be allocated by the Engineer to best serve timely completion of the Work in a Work Order.

(2) **Failure to Submit Schedule.** Reliable, up-to-date schedules are essential to efficient and cost-effective administration of each Work Order and timely completion of the Work Order. If Contractor fails to submit a schedule within the time periods specified in this Section or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 when requested by City will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.

(D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within five days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Work Order Time, based on actual progress to date.

(E) **Effect of Acceptance.** If schedule(s) are requested by City, Contractor and its Subcontractors must perform the Work in accordance with the most current City-

accepted schedule unless otherwise directed or approved by City. If Contractor wants to perform non-critical Work activities that are out of sequence with the current City-accepted schedule, Contractor must notify and request approval from the Engineer in advance of performance of any such activities. Performance of any such Work must not impact the critical path Work activities. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Work Order Time.

(F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office, if applicable.

(G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, to facilitate City's use of its property, or to minimize the public's exposure to construction activities. The Work Order Time or Work Order Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays observed by City, with noise generating activities limited to 7:00 a.m. to 7:00 p.m. and vehicular traffic impacts limited to 8:30 a.m. to 4:30 p.m., except as provided in a Work Order or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Work Order Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path or completion of the Work within the Work Order Time, if any, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Work Order Time, if any, may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Work Order Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, or diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Work Order Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Work Order Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-accepted schedule, if any. Contractor will be entitled to a non-compensable extension of the Work Order Time, if any, for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for

the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

- (1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Work Order Time.
 - (2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.
 - (3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.
- (D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, or diligence is “Non-Excusable Delay.” Contractor is not entitled to an extension of Work Order Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
 - (2) Contractor’s failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Work Order Time;
 - (3) Contractor’s failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Work Order Time;
 - (4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;
 - (5) Contractor’s failure, refusal, or financial inability to perform the Work within the Work Order Time, including insufficient funds to pay its Subcontractors or suppliers;
 - (6) performance or non-performance by Contractor’s Subcontractors or suppliers;
 - (7) the time required to respond to excessive RFIs (see Section 2.5(G));
 - (8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
 - (9) time required for repair of, re-testing, or re-inspection of defective Work;
 - (10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
 - (11) City’s exercise or enforcement of any of its rights or Contractor’s duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** If the Work Order specifies a Work Order Time, then in addition to entitlement to an extension of the Work Order Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties (“Compensable Delay”), pursuant to Public Contract Code § 7102. Contractor is not entitled to an extension of Work Order Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to Weather Delay Days in excess of normal for a given month, as set forth in Section 5.3(C), is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs (“Recoverable Costs”) for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(G) **Request for Extension of Work Order Time or Recoverable Costs.** A request for an extension of the Work Order Time, if any, or any associated Recoverable Costs must be submitted in writing to City within five calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Work Order Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Work Order and timely performance of the Work. Any request for an extension of Work Order Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor’s plan for continued mitigation of the delay or its effects.

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Work Order Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Work Order Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion within the Work Order Time.

(3) **Supporting Documentation.** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using

critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) **Burden of Proof.** Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements, if applicable; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) **Legal Compliance.** Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.

(6) **No Waiver.** Any grant of an extension of Work Order Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) **Dispute Resolution.** In the event of a dispute over entitlement to an extension of Work Order Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Work Order Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. If a Work Order specifies a Work Order Time, then it is expressly understood that if Final Completion is not achieved within the Work Order Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Work Order Time due to Contractor's Non-Excusable Delay, City may charge Contractor in the amount specified in the Work Order for each calendar day that Final Completion is delayed beyond the Work Order Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay or Compensable Delay, as set forth above.

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor.

(D) **Occupancy or Use.** Occupancy or use of any portion of the Work in whole or in part prior to Final Completion does not constitute City's acceptance of the Work and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Work Order Time. City retains its right to pursue all other remedies

under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work, the terms of a Work Order, including the Work Order Price or Work Order Time, or the Contract Documents will not be a valid and binding change to the Work Order or Contract unless it is formalized in a Change Order, including a “no-cost” Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor’s warranty obligations pursuant to Article 11 or any obligations of Contractor’s bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to compensation or the Work Order Time, if any, for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation for cost savings resulting from “value engineering” pursuant to Public Contract Code § 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Work Order Time, if any, or a change in compensation for the City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Work Order Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor’s sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** City may direct Contractor to perform Extra Work related to a Work Order. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Work Order Price or Work Order Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must notify the Engineer in writing, within one Working Day following the date the Contractor first encounters the circumstances giving rise to Contractor’s contention that Extra Work is necessary. Contractor’s written notice must specifically identify the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that

itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit, by no later than close of business on that same Working Day, a daily report of the Extra Work performed that day, signed by the Engineer and Contractor, identifying the labor, materials, and equipment used in the Extra Work ("Extra Work Report"). The Engineer may make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. The Extra Work Report enables the parties to document and track the Extra Work, or Work that the Contractor contends is Extra Work. City's signature on the Extra Work Report is intended solely to document City's receipt of the Extra Work Report; it does not constitute any acknowledgement, acceptance, or approval of the Extra Work by City. To request compensation for Extra Work, Contractor must comply with the requirements in Section 6.2, below, including submission of the Extra Work Reports and a breakdown of the costs related to the Extra Work, together with copies of certified payroll, invoices, and other documentation substantiating the costs. Failure to submit the Extra Work Report by close of business on the same Working Day as the Extra Work is deemed a full and complete waiver of any change in compensation, the Work Order Price, or the Work Order Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect compensation or the Work Order Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change in compensation or the Work Order Time.

(E) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from any payment otherwise due to Contractor.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation, or a change in the Work Order Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in compensation or the Work Order Time, if any, for a Work Order must be submitted in writing to the Engineer within five calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in compensation or impact on the Work Order Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in compensation or the Work Order Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must identify the applicable Work Order and include a complete breakdown of actual or estimated costs and credits, itemizing labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs, if applicable, must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered cost records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"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 as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Compensation. The amount of any increase or decrease in compensation will be determined based on one of the following methods listed below, in the order listed with lump sum taking precedence over time and materials. Markup applies only to City-authorized time and material Work and does not apply to any other payment methods. For Work items or components that are deleted from a Work Order in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work from the Work Order, with no markup for overhead, profit, or other indirect costs.

(A) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(B) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work) will be calculated in accordance with Section 4.1 of the Contract.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in compensation or the Work Order Time, if any, based on what the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in compensation or the Work Order Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Licenses, Certificates, and Taxes.

(A) **Fees, Licenses, Certificates, and Permits.** Contractor must obtain and pay for all fees, licenses, and certificates required to perform the Work, including a City business tax certificate. Contractor must obtain all permits required to perform the Work. Contractor is not responsible for the fees associated with obtaining permits unless otherwise specified in the Special Conditions, Specifications, or a Work Order. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all

records of permits and permit applications, payment of required fees, and any licenses and certificates required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Work, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Unless otherwise directed by City, Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities are set forth in this Article 7 and may also be included in the Specifications, Special Conditions, or a Work Order.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site and performance of the Work, including the piping, wiring, internet and Wi-Fi connections, and any related equipment necessary to maintain the temporary facilities. Contractor may obtain water from the City's water system or from a source other than City's water system, if approved in advance by the Engineer. Before obtaining water from the City's water system, Contractor must obtain a Water Use Permit from the Water Department and rent a hydrant or bridge meter. Contractor is responsible for the cost of all water and all related deposits, permits, and fees. Contractor is prohibited from operating gate valves or fire hydrants on the City's water system. The acquisition of water from the City's water system through un-metered hydrants or other facilities is a violation of Laws. Citations and fines may be levied for violation of these and other utility regulations and may be deducted from payment otherwise due Contractor.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 Noninterference and Site Management. Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours. Property owners, tenants, and businesses must have full access to their driveways during non-Work hours. The Engineer may, at any time, direct or approve of opening completed sections of surfacing, pavement, or structure roadway surface for public use.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space and obtain a temporary use permit, in accordance with City Code § 20-52.040. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, and pedestrian traffic.

(D) **Railroad Property.** Sonoma-Marín Area Rail Transit (“SMART”) maintains railroad property within the City. Contractor will not interfere with railroad operations or perform Work on or adjacent to railroad property unless Contractor has obtained an encroachment permit from SMART. Contractor is responsible for obtaining an encroachment permit from SMART if necessary for the Work or for Contractor’s traffic control. Contractor will not be entitled to an extension of time or additional compensation to obtain the SMART permit. For any excavation on or affecting railroad property, Contractor must submit Work plans to the City and SMART, if requested by SMART, showing the system to be used to protect the railroad facilities. Contractor will prevent material, equipment, and debris from falling onto railroad property.

(E) **Third Party Material Sourcing and Disposal.** If Contractor intends to procure materials from or dispose of materials on any property owned by a third party, before procuring material or disposing of material, Contractor must provide City with a copy of the agreement between Contractor and the third party authorizing the use of the property and absolving the City from responsibility in connection with the property. Contractor must obtain authorization from the third party to start sourcing or disposing of material on the property. As a condition precedent to Final Completion, Contractor must submit a document to the City, signed by the third party property owner, stating that the Contractor complied with its agreement with the third party.

7.4 Signs. No signs may be displayed on or about City’s property, except signage which is required by Laws or by the Contract Documents, without City’s prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Work set forth in a Work Order, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Work Order. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City’s property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor’s failure to adequately secure the Work or any Worksite.

(1) Subject to City’s approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City’s real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan,

subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(6) All valves, hydrants, and other appurtenances of the City's water system that are the property of City and removed by Contractor in the performance of the Work must be delivered to City's Municipal Services Center (55 Stony Point Road) as a condition precedent to Final Completion, unless Contractor has obtained specific written approval from the Water Department to dispose of the items.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) **Notification of Property Damage.** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project, including damage to City's water system. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and

names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

(F) **Damage to City's Water System.** Contractor must promptly repair and remediate, at its sole expense, any damage caused by Contractor to the City's water system, in a manner satisfactory to the Water Department. This includes damage to property and facilities resulting from Contractor's failure to make a written request for a markout or starting Work without providing the Water Department a reasonable opportunity to mark facilities; Contractor's destruction of markouts; Contractor's failure to perform hand digging or probing for utilities near markouts; and Contractor's failure to use reasonable caution, regardless of whether markouts are present or clear. Reasonable caution includes any efforts to avoid damaging existing facilities, such as when excavating in the vicinity of water mains. All repairs must be witnessed, inspected, and approved by the Water Department prior to backfilling the excavation. If backfilling occurs prior to inspection and approval, City may require re-excavation by Contractor, at Contractor's sole expense. Acting in its sole discretion, City may elect to have the damage remedied otherwise, including by its own forces, and may deduct the cost thereof from payment otherwise due to Contractor. If City elects to remedy damage to the water system with its own forces, the cost thereof will be in accordance with the emergency repair rate schedule of the Water Department.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. All materials, equipment, and tools furnished or installed by Contractor must meet or exceed applicable Occupational Safety and Health Administration ("OSHA") standards. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Work as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for a Work Order, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Upon request, Contractor must provide proof of any such authorization or license to City. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights.

(D) **Equipment Labeling and Information.** Contractor must label each piece of equipment, except hand tools, with the following information, at a clearly visible location on each piece of equipment using a stencil or stamp: an identifying number; and for compacting equipment, its make, model number, and empty gross weight that is either the manufacturer's rated weight or the scale weight, or for meters and on the load-receiving element and indicators of each scale, the make, model, serial number, and manufacturer's rated capacity. Upon request, Contractor must submit the manufacturer's information that designates portable vehicle scale capacities.

(E) **Measuring Devices.** For proportioning materials, Contractor must use measuring devices, material plant controllers, and undersupports that comply with 4 CCR § 4000 et seq. and Business and Professions Code § 12001 et seq. Measuring devices must be tested and approved under California Test 109 in the Engineer's presence by any of the following: County Sealer of Weights and Measures; Scale Service Agency; or Official of the Division of Measurement Standards. The indicator over-travel must be at least one-third of the loading travel. The indicators must be enclosed against moisture and dust. Contractor must group the measuring system dials such that the smallest increment for each indicator can be read from the location at which proportioning is controlled.

7.7 Substitutions.

(A) **"Or Equal."** Any Specification or Work Order designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications or Work Order, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item or service in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval sufficiently in advance of the time needed to avoid delay of the Work. A request for substitution must contain a description of any proposed changes to the Work required to accommodate the substitution and drawings and details showing all such changes.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.

(F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for

all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers' application or installation instructions must be provided to the Engineer at least five days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. City may record, including by photograph or video, all materials, equipment, and workmanship used in the Work. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor's duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor's expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor will coordinate directly with the Engineer when scheduling inspections or tests, unless otherwise specified in the Special Conditions, Specifications, or Work Order. Contractor must notify the Engineer no later than noon on the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor. Contractor will not coordinate directly with, or provide direction to, the Materials Lab.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or

testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Contractor has an independent duty to test and inspect its Work and perform quality control activities to ensure that the Work and the materials, products, and equipment incorporated into the Work comply with the Contract Documents. City is not responsible for any testing performed by Contractor or a third-party retained by Contractor. Contractor will submit its testing methodology to City for review and acceptance. Any Work done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided and properly maintained and serviced for all workers on the Project site, and located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep wastewater out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from any payment due to Contractor. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site.

Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work for a Work Order, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace, in accordance with City Standards, all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, gates, signs, landscaping, drainage ditches, irrigation systems, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Concrete surface treatment and score marks must match adjacent existing concrete improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in compensation or the Work Order Time, if any, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed pursuant to a Work Order.

(A) **Submittal Requirements.** The instructions and manuals, along with any required guarantees, must be delivered to City for review prior to requesting final inspection pursuant to Section 11.1(A), unless otherwise specified.

(B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Work Order.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements

must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment for each Work Order.

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must 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 those utilities are not identified in the Contract Documents. Contractor will 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 utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

(C) **Alteration or Relocation of Utilities.** If Contractor wishes to alter or relocate utilities for Contractor's convenience, and not due to a conflict that requires alteration or relocation, Contractor will be solely responsible for the time and cost required for such alteration or relocation, which may not proceed except as specified by the prior written authorization of the utility owner. Any damage to utilities or improvements caused by Contractor must be repaired by Contractor at its sole expense and to the full satisfaction of the utility owner and Engineer. Contractor will not be entitled to an extension of the Work Order Time in connection with any such Work.

7.13 **Notice of Excavation.** Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein, including, but not limited to, the requirement to notify Underground Service Alert ("USA") of a proposed excavation and provide USA all relevant data relating to the excavation, at least two Working Days before starting any excavation Work.

7.14 **Trenching and Excavations of Four Feet or More.** As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

(1) Material that Contractor believes may be a hazardous waste, as defined in § 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 Laws;

(2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to Respondents prior to the deadline for submitting a cost proposal in connection with a Work Order; or

(3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to Respondents, or 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, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Work Order Time, but must proceed with all Work to be performed under the Work Order. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. If the Work Order includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, the cost estimate submitted by Contractor prior to the start of Work must include a line item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707. As required by Labor Code § 6705, if the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards or if the trench is expected to exceed 20 feet, the plan must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Work schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Work unless otherwise specified in the Special Conditions or Work Order. All stakes or marks must be set by a California licensed land surveyor or a California registered civil engineer. All survey monuments that may be disturbed or destroyed during performance of the Work must be tied-out by Contractor prior to the start of Work. Contractor must also file a Pre-Construction Corner Record, prepared by a California licensed land surveyor, with the

County of Sonoma Surveyor's Office, prior to the start of Work. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Contractor must replace any survey monuments that are disturbed, damaged, or destroyed during the Work and must file a Post-Construction Corner Record, prepared by a licensed land surveyor as required by law, with the County of Sonoma Surveyor's Office. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with it at its sole cost and without adjustment of the Work Order Time, if any. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

(C) **Pest Management.** Contractor must comply with the City-Wide Integrated Pest Management ("IPM") Policy, Policy Number 000-74, which is available at <https://www.srcity.org/DocumentCenter/View/41774/Integrated-Pest-Management-Policy-030524>. Contractor will not use pesticides or herbicides in the Work without City's prior written approval. Contractor may submit a written request for use of pesticides or herbicides to the Engineer. Contractor's written request must include the location proposed for use, the proposed date and time of application, product specifications, and all other information required by the IPM policy. City reserves the right, in its sole discretion, to approve or reject the use of pesticides or herbicides, for any reason.

- 7.20 Noise Control.** Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.
- 7.21 Mined Materials.** Pursuant to Public Contract Code § 20676, Contractor will not purchase any sand, gravel, or other minerals for the Work from an operation subject to the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq.) unless Contractor certifies, under penalty of perjury, that the minerals are from a mining operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgf/Pages/AB-3098-List.aspx>.
- 7.22 Water Department Notification.** If Contractor requires the services of the Water Department in connection with the Work, Contractor must request such services at least two Working Days in advance of the time the services are needed. If the requested services require Water Department forces for more than eight hours or an extensive number of City-provided parts, Contractor must request services at least seven calendar days in advance of the time the services are needed.
- (A) **Service Shut Down.** Contractor must minimize disruption of utility service to the greatest extent practicable. Contractor must coordinate any shut down or disruption of utility service with the Engineer, Water Department, and affected utility customers. If it is necessary to shut down or disrupt utility service to any customer of the Water Department, Contractor must request the services of the Water Department an additional three Working Days in advance of the time such services are needed, for a total of five Working Days advance notification for a standard service request, to allow affected customers a minimum of three days' advance notice. If Contractor fails to keep field appointments, Contractor will be billed for scheduled Water Department crew standby time and for costs incurred by the Water Department for re-notification of customers.
- (B) **Water Department Scheduling.** Water Department crews work a 9/80 schedule. This schedule may prohibit shutdowns for tie-ins on alternating Fridays. After-hours work or weekend work may be performed if authorized in advance by the Engineer. Requests by Contractor for after-hours or weekend work are to be avoided when possible. Contractor will be responsible for any overtime costs incurred by City for such work and the cost thereof may be deducted from payment otherwise due Contractor.
- 7.23 Public Safety and Traffic Control.** Contractor must undertake all required and appropriate measures to ensure public safety during performance of the Work, in accordance with Laws, including, but not limited to, the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.). Contractor will ensure the safe passage of pedestrians around the Project site at all times. If Work is within a City-owned right-of-way, Contractor will ensure the safe passage of public traffic through the Project site at all times, consistent with the requirements of City Code Chapter 13-04. Contractor is solely responsible for the costs of all public safety and traffic control measures.
- (A) **Warning Devices.** Contractor must furnish, install, and maintain, at its sole expense, all fences, barricades, signs, lights, and other devices necessary to prevent accidents, injuries, death, and property damage. All such devices must conform to the requirements of the current edition of the California Manual on Uniform Traffic Control Devices ("CA MUTCD") and the directions of the Engineer. Contractor's warning and safety devices will not obscure the visibility of or conflict with existing signs and traffic control devices. Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic, as directed by the Engineer.
- (B) **Flaggers.** Contractor must also furnish, at Contractor's sole expense, trained flaggers as necessary to provide adequate warning to the public of construction conditions that may impact pedestrian or vehicular traffic.

(C) **Project Signage.** If requested by City, Contractor must install and maintain Project identification signs at each boundary of the Project site or as directed by the Engineer. Contractor must install the signs prior to the start of Work at the Project site, using sign panels furnished by City. To mount sign panels, Contractor must furnish and install 4" X 4" posts or mount by other appropriate methods as approved by the Engineer. Upon completion of the Work in a Work Order, Contractor will remove Project identification signs, in a timely manner, and return the City-furnished sign panels to the City Corporation Yard at 55 Stony Point Road.

(D) **Road Closure Signage.** If the Work requires road closures, Contractor must furnish and install advance notice signs for road closures at each boundary of the Project site. Panel construction and lettering are subject to advance approval of the Engineer. Contractor must install the signs prior to the start of Work at the Project site. The signs must remain in place for the duration of the road closure and must be removed by Contractor when no longer necessary for the Work.

(E) **Emergency Response Agencies.** Contractor is responsible for notifying emergency response agencies operating in the jurisdiction of the Worksite(s) of obstructions to roads resulting from Contractor's Work.

(F) **Additional Devices.** City reserves the right to require additional warning or safety devices for the Project at the Contractor's sole expense, but no actions by City to add to or improve signage or any other public safety requirements will waive or limit Contractor's duties under the Contract Documents.

(G) **Compliance.** If Contractor fails or refuses to comply with the requirements of this Section, the Engineer may take immediate action to protect the public, including, but not limited to, furnishing the required safety measures at Contractor's expense or suspending the Work, in addition to all other remedies available to City. Any such remedial costs incurred by City may be deducted from payment otherwise due to Contractor as specified in Section 8.3, Adjustment of Payment Application. If there are insufficient Contract funds remaining to cover the remedial costs, City is entitled to recover the balance from Contractor.

Article 8 - Payment

8.1 Schedule of Values. If requested by City, prior to the start of Work for a Work Order, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. For a Work Order authorized on a lump sum basis, each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Work Order Price for the applicable Work Order. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with the itemized or unit pricing submitted with Contractor's cost proposal for the Work Order.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Payment Application. Following completion of the Work Order, or as otherwise required by the Work Order or agreed upon by the parties, Contractor will submit to the Project Manager an application for payment for the Work Order.

(A) **Content.** Each application for payment must identify the applicable Work Order and itemize the labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as any authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's schedule of values (if applicable), Daily Work Reports, payroll records, invoices, and any other substantiating data required by the Contract Documents.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts from any payment due under the Contract as set forth in Section 8.3, below.

(C) **Final Payment.** Contractor's application for Final Payment must comply with the requirements set forth in Section 8.2(A), above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Work Order. For purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor.

8.3 Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed.

(F) For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.

(G) For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.

(H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other fines, payments, or penalties assessed against the City relating to Contractor's acts or omissions, including violations of Laws, City may withhold or deduct such amounts from payment otherwise due to Contractor.

(K) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither City's payment nor its partial or full use or occupancy of any part of the Work constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), as retention to ensure full and satisfactory performance of the Work under a Work Order. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's recordation of the Notice of Completion, subject to the terms of Public Contract Code § 7107.

(A) **Substitution of Securities.** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or back charges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) **Release of Undisputed Retention.** For each Work Order, all undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the Notice of Completion, and no later than 60 days following acceptance of the Work set forth in a Work Order by City's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Work set forth in a Work Order has not been accepted, no later than 60 days after the Work is otherwise considered complete pursuant to Public Contract Code § 7107(c).

8.6 Payment to Subcontractors and Suppliers. Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** Pursuant to Civil Code § 9358, City will withhold 125% of the amount claimed by an unreleased stop notice from any payment due or to become due to Contractor, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Work. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.

8.8 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.

(C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.

(D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 **Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code §§ 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

(A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 **Payroll Records.** Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must 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 in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct; and

(2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the

Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from any payment due to Contractor. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in compensation, or for a change in Work Order Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor

may continue Work in unaffected areas reasonably believed to be safe but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

10.6 Confined Space Operations. If the Work requires a confined space entry, including, but not limited to, manhole or water storage tank entry, Contractor must obtain a confined space entry permit pursuant to Cal/OSHA regulations, as set forth in 8 CCR § 5156 et seq. For any confined space entry for construction operations regulated by 8 CCR § 1502, Contractor must comply with 8 CCR § 5158. For any other confined space operations, Contractor must comply with 8 CCR § 5157. With respect to entry to any City-maintained confined space, Contractor is responsible for obtaining any available information regarding hazards and operations for any City-maintained confined spaces, pursuant to 8 CCR § 5157. The City-maintained Confined Space Entry Manual is available for viewing at the Water Department or Transportation and Public Works Department office. Contractor must immediately notify the Engineer of any previously unidentified hazards confronted or created during confined space entry.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection and Punch List.** When the Work required by a Work Order is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. If Contractor fails to complete or resolve the punch list items within the specified time, City may elect to complete or resolve the outstanding items and back charge Contractor for the City's cost, which may be deducted from any payment due or to become due to Contractor under the Contract, or it may withhold an amount from Final Payment as set forth in subsection (D), below. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including the warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) **Acceptance.** The Work will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of close out of a Work Order, the City may elect, acting in its sole discretion, to accept the Work as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the Notice of Completion. If Contractor fails to complete any of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's

warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of acceptance of the Work set forth in a Work Order pursuant to Section 11.1(C) (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications, Special Conditions, or the Work Order. If the City accepts the Work set forth in a Work Order as complete subject to exceptions for incomplete punch list item(s) and the Contractor thereafter completes the punch list item(s), the completed punch list item(s) will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon City's acceptance of the completed punch list item(s). Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs City incurs to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Work, or any portion thereof, prior to Final Completion if City has determined that the Work or any portion thereof is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Work, or any portion thereof, prior to Final Completion.

(A) **Non-Waiver.** Occupation or use of the Work set forth in a Work Order, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Work set forth in a Work Order that are being occupied or used before Final Completion of the Work Order. The Work Order Price or Work Order Time, if any, may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Work Order Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on a Work Order prior to City acceptance of that Work Order, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Work Order Time or a change in compensation, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(B) **Scope of Article.** This Article 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 § 9204 and § 20104 et seq., which are incorporated by reference herein.

(C) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to a Work Order or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work specified in a Work Order, including the Work pertaining to the Claim or other dispute.

(D) **Informal Resolution.** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing by registered or certified mail with return receipt requested and clearly identified as a "Claim" submitted pursuant to this Article 12. The Claim must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or

in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format and Content.** A Claim must be submitted in the following format:

(1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change in compensation and/or change to Work Order Time, if any).

(2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.

(3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:

- a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
- b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
- c. A chronology of relevant events; and
- d. Analysis and basis for claimed changes to compensation, Work Order Time (if any), or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline, below, the precise amount of the requested change in compensation or the Work Order Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) **Submission Deadlines.**

(1) A Claim disputing rejection of a request for a change in the Work Order Time, if any, or compensation must be submitted within 14 days following the date that City notified Contractor in writing that a request for a change in the Work Order Time or compensation, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 14 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Work Order Time or compensation. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 14 days of the effective date of Final Payment, under Section 8.2(C), Final Payment.

(4) 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.**

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code § 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

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

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City of the dispute and demand for an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

(A) **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.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten 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.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten 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, as provided under Public Contract Code § 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. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. City does not consent to arbitration unless required by Laws. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-

availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

- 12.9 Legal Proceedings.** In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.
- 12.10 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

- 13.1 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, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Work.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within five days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Work Order Time, if requested by City.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in the Work Order Time, if any, or compensation for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in-

progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the compensation due Contractor and the Work Order Time, if any, may be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Work Order Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Work Order Time; Contractor's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Work; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Work Order Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; Contractor's failure to procure, maintain, or renew insurance coverage or provide notice of any modifications or reductions in insurance coverage; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, 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 is liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Work and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Work for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the

termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

(1) **Completed Work.** The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) **Demobilization.** Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) **Termination Markup.** Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which are deemed to cover all overhead and profit to date.

(B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records,

contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

- (1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).
- (2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.
- (3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.
- (4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, and settle all outstanding liabilities and claims, subject to City's approval.
- (5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree 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. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 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 or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered

that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that Contractor's cost proposal for a Work Order, as required by Section 3.2 of the Contract, is due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 10, Notice, and subsections 11.1, 11.2, 11.3, 11.4, 11.5, and 11.6 of Section 11, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records; Section 2.3(C), Termination; Section 3.7, Ownership; Section 4.2, Indemnity; Article 12, Dispute Resolution; and Section 11.2, Warranty.

END OF GENERAL CONDITIONS