

DOCUMENT 00 5200

AGREEMENT

THIS AGREEMENT, dated this **15th** day of **July**, 2024, by and between **G. Bortolotto & Company, Inc.** whose place of business is located at **582 Bragato Road, San Carlos, CA 94070 (Contractor)**, and **CITY OF FOSTER CITY**, a political subdivision of the State of California (**Owner**), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

WHEREAS, Owner, by its Resolution No. **[Insert Number]** adopted on the **15th** day of **July 2024** awarded to Contractor the following Contract:

**STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024
At VARIOUS LOCATIONS**

PROJECT NUMBER CIP301-716

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

- A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (**Work**).

1.02 Price for Completion of the Work

- A. Owner shall pay Contractor the following Contract Sum (**Contract Sum**) for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.
- B. The Contract Sum includes all allowances (if any).

\$1,989,541.55

- C. The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and" vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited' to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

COMMENCEMENT AND COMPLETION OF WORK

1.03 Commencement of Work

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. Owner reserves the right to modify or alter the Commencement Date.

1.04 Completion of Work

- A. Contractor shall achieve Substantial Completion of the entire Work within **100 Calendar Days** from the Commencement Date.
- B. Contractor shall achieve Final Completion of the entire Work within **110 Calendar Days** from the Commencement Date.

ARTICLE 2 PROJECT REPRESENTATIVES

2.01 Owner's Project Manager

- A. Owner has designated **Amy Zhou** as its Project Manager to act as Owner's Representative in all matters relating to the Contract Documents. If Project Manager is an employee of Owner, Project Manager is the beneficiary of all Contractor obligations to Owner including, without limitation, all releases and indemnities.
- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative.

2.02 Contractor's Project Manager and Other Key Personnel

- A. Contractor has designated **Amy Zhou** as its Project Manager to act as Contractor's Representative in all matters relating to the Contract Documents.
- B. Contractor has designated the following other Key Personnel for the Project:

<u>Name</u>	<u>Position</u>
_____	_____
_____	_____
_____	_____

ARTICLE 3 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

3.01 Liquidated Damage Amounts

- A. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7200 (General Conditions).

ARTICLE 4 LIQUIDATED DAMAGES FOR UNAUTHORIZED CHANGES OF KEY PERSONNEL

4.01 Liquidated Damage Amounts

- A. See Document 00 7200 (General Conditions) Paragraph 11.07.D for liquidated damages provisions pertaining to Key Personnel.

ARTICLE 5 CONTRACT DOCUMENTS

5.01 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 5100	Notice of Award
Document 00 5200	Agreement
Document 00 5500	Notice to Proceed
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6290	Escrow Agreement for Security Deposits
Document 00 6325	Substitution Request Form
Document 00 6530	Release of Claims
Document 00 6536	Guaranty
Document 00 7200	General Conditions
Document 00 7301	Supplemental General Conditions
Document 00 7316	Supplemental Conditions – Insurance and Indemnification
Document 00 7320	COVID Requirements
Document 00 7324	In-Use Off-Road Diesel-Fueled Fleets Regulation
Document 00 7380	Apprenticeship Program and Skilled and Trained Workforce Requirements
Document 00 9113	Addenda

5.02 There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7200 (General Conditions).

ARTICLE 6 MISCELLANEOUS

6.01 Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein.

6.02 Contractor and Owner understand and agree that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise. Contractor and Owner further understand and agree that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

6.03 Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

6.04 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body 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 public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.

6.05 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Owner's **Public Works Department**, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>] and are deemed included in the Contract Documents, and shall be made available to any interested party on request. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every

contractor will be required to secure the payment of compensation to Contractor's employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

6.06 This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Foster City, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of San Mateo, California.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

CITY OF FOSTER CITY:

CONTRACTOR:

By: _____
Mayor

Name: Robert Bortolotto

By: _____
(Signature)

Its: President
Title (If Corporation: Chairman, President
or Vice President)

ATTEST:

By: _____
City Clerk

By: _____
(Signature)

Its: _____
Title (If Corporation: Chairman, President
or Vice President)

APPROVED AS TO CONTENT:

1099 INFORMATION:

By: _____
[]

Contractor Taxpayer I.D. No.: _____

APPROVED AS TO FORM:

[CITY TO CONFIRM PROPER SIGNATORIES]

By: _____
City Attorney

APPROVED AS TO ADMINISTRATION:

By: _____
City Manager

END OF DOCUMENT

DOCUMENT 00 5500
NOTICE TO PROCEED

Dated: _____, 2024

To: _____
(Contractor)

Address: _____

CONTRACT FOR: STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024) PROJECT AT VARIOUS LOCATIONS

You are notified that the Contract Time under the above Contract will commence to run on _____ [20__]. On that date, you are to start performing your obligations with respect to Work at the Site under the Contract Documents. In accordance with Article 2 of Document 00 5200 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are _____, [20__] and _____, [20__], respectively.

Before you may start any Work at the Site, you must:

1. Submit certified Safety Program and related information
2. Submit copies of applicable permits
3. [Other]

OWNER: CITY OF FOSTER CITY

By: _____

Its: _____

END OF DOCUMENT

DOCUMENT 00 6113.13

CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND (**Bond**) is dated **[Month, Day]**, 202_ is in the amount of **[Insert Amount]** (**Penal Sum**), which is 100% of the Contract Sum and is entered into by and between the parties listed below to ensure the faithful performance of the Contract identified below. This Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this page. Any singular reference to **G. Bortolotto & Company, Inc. (Contractor)**, **[Insert name of Surety] (Surety)**, **CITY OF FOSTER CITY (Owner)**, or other party shall be considered plural where applicable.

CONTRACTOR:

G. Bortolotto & Company, Inc.

Address

City/State/Zip

SURETY:

[Insert name of Surety]

Principal Place of Business

City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the City of Foster City, Foster City Street Rehabilitation Project, located at various Foster City streets, dated **July 15, 2024**, in the amount of **\$1,989,541.55**.

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

Signature: _____

Name: _____

Title: _____

SURETY

Company: (Corp. Seal)

Signature: _____

Name: _____

Title: _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Owner provides Surety with written notice that Owner has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 Owner has agreed to pay the Balance of Contract Sum:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract; or
 - 3.2.2 To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without Owner's consent; or
 - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Owner and the contractor or Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of Contract Sum, then Surety shall pay to Owner the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of

Surety's tender under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
 - 6.2 Contractor's obligations to pay liquidated damages; and
 - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages which Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety which is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Contractor regarding the Construction Contract, or in the Superior Court of the County of Alameda, California, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner

to Surety under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.

12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5200 (Agreement). Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. **Definitions**
 - 14.1 **Balance of Contract Sum:** The total amount payable by Owner to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.
 - 14.2 **Construction Contract:** The agreement between Owner and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
 - 14.3 **Contractor Default:** Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7200 (General Conditions).
 - 14.4 **Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

DOCUMENT 00 6113.16

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, **CITY OF FOSTER CITY (Owner)** has awarded to **G.Bortolotto & Company, Inc.** as Principal, Contract Number **CIP716** dated the **15th** day of **July**, 2024 (the **Contract**), titled the Foster City Street Rehabilitation and Park Pathway Restoration Project in the amount of **\$\$1,989,541.55**, which Contract is by this reference made a part hereof, for the work of the following Contract:

Project Number CIP301-716 to construct STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024) located at various locations.

1.02 AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

1.03 NOW, THEREFORE, we, the undersigned Principal and **(Name of Surety)**, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE (**\$**), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

1.05 This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

1.06 Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

1.07 Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

1.08 Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

END OF DOCUMENT

DOCUMENT 00 6290

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

Public Contract Code Section 22300

THIS ESCROW AGREEMENT ("**Escrow Agreement**") is made and entered into this **15h** day of **July, 2024**, by and between **City of Foster City ("Owner")**, whose address is 610 Foster City Boulevard, Foster City, California 94404, **G.Bortolotto & Company, Inc. ("Contractor")**, whose principal place of business is located at **582 Bragato Road, San Carlos, CA 94070**, and Owner, as escrow agent **[OR [Name of Bank]**, a state or federally chartered bank in the State of California, whose place of business is located at **[Address]** ("**Escrow Agent**").

For the consideration hereinafter set forth, Owner, Contractor and Escrow Agent agree as follows:

1. Pursuant to Public Contract Code Section 22300, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to Contract Number **CIP716** entered into between Owner and Contractor for the Street Rehabilitation and Park Pathway Restoration Project in the amount of **\$1,989,541.55** dated **July 15, 2024** (the "**Contract**"). Alternatively, on written request of Contractor, Owner shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within ten Days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between Owner and Contractor. Securities shall be held in name of _____, and shall designate Contractor as the beneficial owner.
2. Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified in Paragraph 1 of this Document 00 6290.
3. When Owner makes payment(s) of retention earned directly to Escrow Agent, Escrow Agent shall hold said payment(s) for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when Owner pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of Owner. Such expenses and payment terms shall be determined by Owner, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to Escrow Agent that Owner consents to withdrawal of amount sought to be withdrawn by Contractor.
7. Owner shall have the right to draw upon the securities in event of default by Contractor. Upon seven Days written notice to Escrow Agent from Owner of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Owner.
8. Upon receipt of written notification from Owner certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from Owner and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Document 00 6290 and Owner and Contractor shall hold Escrow

Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth.

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF OWNER:

ON BEHALF OF CONTRACTOR:

Title

Name

Signature

Address

City/State/Zip Code

Title

Name

Signature

Address

City/State/Zip Code

ON BEHALF OF ESCROW AGENT:

Title

Name

Signature

Address

City/State/Zip Code

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

OWNER:

CONTRACTOR

CITY OF FOSTER CITY

Title

Name

Signature

Title

Name

Signature

ATTEST

Signature

Print Name

Secretary

ESCROW AGENT

Title

Print Name

Signature

[IF REQUIRED] REVIEWED AS TO FORM:

Counsel for Owner

Print Name

Date

At the time the Escrow Account is opened, Owner and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Document 00 6290.

END OF DOCUMENT

DOCUMENT 00 6325

SUBSTITUTION REQUEST FORM

To: **CITY OF FOSTER CITY, Owner**

PROJECT: CITY OF FOSTER CITY, STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024)	Contractor:
Owner Project No: CIP301-716	

Substitution Request By:	Firm:
--------------------------	-------

Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Contractor to Owner					
Contractor to Architect					
Owner / Architect to Consultant					
Architect to Owner Representative					
Owner Representative to Contractor					

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	Article	Specified Item
Proposed Substitution:		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

Contractor to complete questions that follow and certify to the accuracy of all answers:

A.	Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:
B.	Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:
C.	What effect does the substitution have on other trades? No effect: ___ / Some effect ___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:
D.	Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:
E.	Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:
F.	What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups? [If substitution requested during bid period, skip this question.]
G.	Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ____; No _____. If No, please explain why substitution is equivalent to originally specified item:

H.	Contractor accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ___. If No, please state reasons and explain why substitution is equivalent to originally specified item:
I.	Contractor states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ___. If No, please explain why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: _____ Signature: _____
Firm: _____ Date: _____
Address: _____ Phone / Fax: _____

Remarks: _____

Consultant Response
___ Accepted
___ Not Accepted
___ Accepted As Noted
___ Received Too Late

Owner Representative Response
___ Accepted
___ Not Accepted
___ Accepted As Noted
___ Received Too Late

Remarks: _____

By: _____

Remarks: _____

By: _____

END OF DOCUMENT

DOCUMENT 00 6530

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

[Public Contract Code Section 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this [date] day of [Month], [202], by and between **CITY OF FOSTER CITY (Owner)**, and [Enter Name of Contractor] (**Contractor**), whose place of business is at [Enter Address of Contractor].

RECITALS

- A. Owner and Contractor entered into Contract (the “**Contract**”) of STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024), located at VARIOUS LOCATIONS.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$	
Modified Contract Sum	\$	
Payment to Date	\$	
Liquidated Damages	\$	
Payment Due Contractor	\$	
- 2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor the sum of [_____] Dollars and [_____] Cents (\$ _____) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Contractor’s continuing obligations described in Paragraph 6 of this Document 00 6530.
- 4. The following claims submitted under Document 00 7200 (General Conditions), Article 12, are disputed (**Disputed Claims**) and are specifically excluded from the operation of this Agreement and Release.

[Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 6530, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530.
8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

OWNER: CITY OF FOSTER CITY

By: _____
Signature

Name: _____
Print

Its: _____
Title

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

[IF REQUIRED] REVIEWED AS TO FORM:

Dated: _____, [20__]

By: _____
Counsel for Owner

Name: _____
Print

END OF DOCUMENT

DOCUMENT 00 6536

GUARANTY

TO: The **CITY OF FOSTER CITY (Owner)**, for construction of STREET REHABILITATION AND PARK PATHWAY RESTORATION (2023-2024), located at VARIOUS LOCATIONS

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

- 1.01** Contractor hereby grants to Owner for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.
- 1.02** Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year or longer if specified, from the date of Final Acceptance of the Work completed.
- 1.03** If within **one year** after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to comply promptly with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- 1.04** Contractor shall respond within 72 hours to any claim made by Owner pursuant to this guaranty.
- 1.05** Observation and inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
- 1.06** This Guaranty is in addition to any other Contractor warranties contained in the Contract Documents, and not in lieu of, any and all other Contractor liability imposed under the Contract Documents or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any Contractor warranty or obligation Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to Owner.

(Signature line on next page)

Date: _____, 20__

Contractor's Name

By: _____
Signature

Print Name

Title

Street Address

City, State, Zip code

END OF DOCUMENT

DOCUMENT 00 7200

GENERAL CONDITIONS

	<u>Page</u>
ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS	1
1.01 Interpretation of Documents.....	1
1.02 Order of Precedence of Documents	1
ARTICLE 2 - PRE-BID INVESTIGATIONS.....	1
2.01 Pre-Bid Investigations Required	1
2.02 Limited Reliance Permitted On Owner's Existing Conditions Data.....	2
2.03 Pre-Bid Investigation Requirements For Excavation and Utilities Relocation Projects	2
ARTICLE 3 - SUBCONTRACTORS	2
3.01 Subcontractor Listing Law.....	3
3.02 Subcontracts	3
ARTICLE 4 - DRAWINGS AND SPECIFICATIONS	3
4.01 Intent of Drawings and Specifications.....	3
4.02 Checking of Drawings and Specifications.....	3
4.03 Interpretation of Drawings and Specifications.....	4
4.04 Use of Drawings and Specifications	4
ARTICLE 5 - COMMENCEMENT OF THE WORK.....	4
5.01 Submission of Required Schedules	4
5.02 Commencement Date of Contract Time	5
ARTICLE 6 - CONTRACTOR'S ORGANIZATION AND EQUIPMENT.....	5
6.01 Contractor's Legal Address.....	5
6.02 Contractor's Superintendents or Forepersons	5
6.03 Proficiency In English.....	5
6.04 Contractor's and Subcontractors' Employees.....	5
6.05 Contractor's Use of The Site.....	5
6.06 Contractor's Site Office	6
ARTICLE 7 - OWNER'S ADMINISTRATION OF WORK.....	6
7.01 Owner's Representative(s)	6
7.02 Owner's Observation of The Work.....	6
7.03 Consultant's Observation of Work	6
7.04 Owner's and Consultant's Exercise of Contract Responsibilities.....	7
7.05 Owner's Right of Access to The Work	7
7.06 Owner's Right of Separate Construction.....	7

ARTICLE 8 - CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK7

- 8.01 Contractor to Supervise The Work.....7
- 8.02 Contractor to Maintain Cost Data.....8
- 8.03 Contractor to Supply Sufficient Workers and Materials8
- 8.04 Contractor to Maintain Project Record Documents.....9
- 8.05 Contractor to Not Disrupt Owner Operation.....9
- 8.06 Contractor to Provide Temporary Facilities and Controls9

ARTICLE 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK9

- 9.01 Warranty and Guaranty.....9
- 9.02 Inspection of Work10
- 9.03 Correction of Defective Work11
- 9.04 Acceptance of Defective Work.....12
- 9.05 Rights upon Inspection, Correction or Acceptance.....12
- 9.06 Proof of Compliance of Contract Provisions12
- 9.07 Correction Period and Project Warranty Period.....13
- 9.08 No Waiver13

ARTICLE 10 - MODIFICATIONS OF CONTRACT DOCUMENTS.....13

- 10.01 Owner's Right to Direct Changed Work13
- 10.02 Required Documentation for Changed Work14
- 10.03 Procedures and Pricing of Changed Work.....14

ARTICLE 11 - TIME ALLOWANCES14

- 11.01 Time Allowances14
- 11.02 Excusable Delay and Inexcusable Delay Defined14
- 11.03 Notice of Delay.....15
- 11.04 Compensable Time Extensions15
- 11.05 Non-Compensable Time Extensions15
- 11.06 Adverse Weather15
- 11.07 Liquidated Damages16

ARTICLE 12 - CLAIMS BY CONTRACTOR17

- 12.01 Obligation to File Claims for Disputed Work17
- 12.02 Form and Contents of Claim17
- 12.03 Administration During/After Claim Submission18
- 12.04 Compliance18
- 12.05 Mediation18

ARTICLE 13 - UNDERGROUND CONDITIONS19

- 13.01 Contractor to Locate Underground Facilities19
- 13.02 Contractor to Protect Underground Facilities.....19

13.03	Concealed or Unknown Conditions.....	20
13.04	Notice of Hazardous Waste or Materials Conditions	21
ARTICLE 14 - LEGAL AND MISCELLANEOUS		22
14.01	Laws and Regulations.....	22
14.02	Permits and Taxes	22
14.03	Communications and Information Distribution	22
14.04	Suspension of Work.....	23
14.05	Termination of Contract for Cause.....	23
14.06	Termination of Contract for Convenience	24
14.07	Contingent Assignment of Subcontracts.....	24
14.08	Remedies and Contract Integration	25
14.09	Interpretation.....	25
14.10	Patents	25
14.11	Substitution for Patented and Specified Articles	26
14.12	Interest of Public Officers.....	26
14.13	Limit of Liability	26
14.14	Public Records Act.....	26
ARTICLE 15 - WORKING CONDITIONS AND PREVAILING WAGES		26
15.01	Use of Site/Sanitary Rules	26
15.02	Protection of Work, Persons, and Property.....	27
15.03	Responsibility For Safety and Health.....	28
15.04	Emergencies	28
15.05	Use of Roadways and Walkways.....	28
15.06	Nondiscrimination	28
15.07	Prevailing Wages and Working Hours	28
15.08	Environmental Controls.....	30
15.09	Shoring Safety Plan	30

GENERAL CONDITIONS

ARTICLE 1 INTERPRETATION OF CONTRACT DOCUMENTS

1.01 Interpretation of Documents

- A. Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Contract Documents subdivide at first level into Articles, and then into paragraphs.

1.02 Order of Precedence of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Contract Forms (Document 00 5200 and other 5000 and 6000 series Documents), and terms and conditions referenced therein;
 - 3. Supplemental General Conditions (Document 00 7301 and other 7300 series Documents), if included;
 - 4. General Conditions (Document 00 7200);
 - 5. Division 01 General Requirements, if included;
 - 6. Drawings and Technical Specifications (Division 02 and above);
 - 7. Written words over figures, unless obviously incorrect;
 - 8. Figured dimensions over scaled dimensions;
 - 9. Large-scale Drawings over small-scale Drawings.
- B. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- C. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- D. All Technical Specifications included in the Project manual shall be included within the Contract Documents unless identified otherwise.

ARTICLE 2 PRE-BID INVESTIGATIONS

2.01 Pre-Bid Investigations Required

- A. Prior to and as a condition of submitting a Bid and executing Document 00 5200 (Agreement), Contractor shall make reasonable efforts to investigate fully the Work of the Contract. Contractor shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. Contractor's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by Owner for pre-bidding or contracting purposes or during Contractor's pre-bid investigations, of existing above ground and (to the extent applicable) below ground conditions (together, Existing Conditions Data), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear or be referenced in the Project Manual or the in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- C. Contractor's investigations shall consider fully the fact that Existing Conditions Data is in many cases based on information furnished to Owner by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor shall also: (i.) provide Owner with prompt written notice of all

conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and (ii.) subject to Owner's approval, conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which Contractor may deem necessary in order to perform and furnish the Work in accordance with the terms and conditions of Contract Documents.

- D. During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing these pre-bid investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

2.02 Limited Reliance Permitted On Owner's Existing Conditions Data

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Owner does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Contractor must independently verify such information as part of its pre-bid investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to Owner's attention through written question issued during the bid period. In executing Document 00 5200 (Agreement), Contractor shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.03 Pre-Bid Investigation Requirements For Excavation and Utilities Relocation Projects

- A. As part of its pre-bid investigations for Projects involving excavation and/or relocation of existing utilities, Contractor shall make reasonable efforts to verify information regarding Underground Facilities including, without limitation, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of Owner and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Contractor shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, manholes, new asphalt, meters and junction boxes, on or adjacent to the Site). Contractor shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

ARTICLE 3 SUBCONTRACTORS

3.01 Subcontractor Listing Law

- A. Contractor shall comply with the Subcontractor Listing law, Public Contract Code Sections 4101, et seq. Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid except as may be allowed by law.
- B. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without Owner's written approval. At Owner's request, Contractor shall provide Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.

3.02 Subcontracts

- A. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (i) to be bound to the terms of Contract Documents and (ii) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents. (These agreements include, without limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- B. Contractor shall provide for the assignment to Owner of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge Owner as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

ARTICLE 4 DRAWINGS AND SPECIFICATIONS

4.01 Intent of Drawings and Specifications

- A. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards.
- B. As part of the **Work**, Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- C. Contractor shall perform reasonably implied parts of Work as **incidental work** although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents. Contractor shall perform incidental work without extra cost to Owner. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

4.02 Checking of Drawings and Specifications

- A. Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Figures shown on Drawings shall be followed; Contractor shall not scale measurements. Contractor shall promptly report to Owner, in writing, any conflict,

error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby. Contractor shall provide Owner with a follow-up correspondence every ten Days until it receives a satisfactory interpretation or clarification.

4.03 Interpretation of Drawings and Specifications

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by Owner. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.
- B. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to Owner, in writing, with a copy to the Architect/Engineer. Owner will issue (or cause to be issued) with reasonable promptness written responses, clarifications or interpretations as Owner may determine necessary. All written responses, clarifications and interpretations under this Paragraph shall be consistent with the intent of and be reasonably inferable from Contract Documents, and binding upon Contractor. If Contractor believes that a written response, clarification or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give Owner prompt written notice. If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with Owner's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12.
- C. The following general specifications shall apply wherever in the Specifications, or in any directions given by Owner in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited herein, for first class work of the kind required. Contractor shall specify in writing to Owner, at least 10 Business Days prior to furnishing such materials or performing such Work, the materials to be used or Work to be performed under this Paragraph.

4.04 Use of Drawings and Specifications

- A. Drawings, Specifications and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Owner. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

ARTICLE 5 COMMENCEMENT OF THE WORK

5.01 Submission of Required Schedules

- A. Unless otherwise indicated in Contract Documents, Contractor shall submit to Owner in draft for review and discussion at the Preconstruction Conference, and in final prior to the first payment application, the following schedules:
 - 1. Schedule of Values;
 - 2. Progress Schedule, and
 - 3. Schedule of Submittals.
- B. No progress payment shall be due or owing to Contractor until such schedules are submitted to and acceptable to Owner and/or Architect/Engineer as meeting the requirements of the Contract Documents. In Owner's sole discretion, Owner may elect to instead withhold a portion of any progress payment for unacceptable compliance with contract requirements for such schedules.

- C. Owner's acceptance of Contractor's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work, nor will it interfere with or relieve Contractor from Contractor's full responsibility therefore.

5.02 Commencement Date of Contract Time

- A. The Contract Time will commence to run on the 60th Day after the issuance of the Notice of Award or, if a Notice to Proceed is given, on the date indicated in the Notice to Proceed.
- B. Owner may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

ARTICLE 6 CONTRACTOR'S ORGANIZATION AND EQUIPMENT

6.01 Contractor's Legal Address

- A. Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address or facsimile number, and which Owner accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at Contractor's legal address, or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

6.02 Contractor's Superintendents or Forepersons

- A. Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

6.03 Proficiency In English

- A. Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

6.04 Contractor's and Subcontractors' Employees

- A. Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of Owner.

6.05 Contractor's Use of The Site

- A. Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between Owner and any Owner, former Owner or tenant of such land, structure or buildings. Contractor may not occupy Owner-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from Owner.

6.06 Contractor's Site Office

- A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide a site office staffed by a resident project manager or job superintendent.

ARTICLE 7 OWNER'S ADMINISTRATION OF WORK

7.01 Owner's Representative(s)

- A. Owner's Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Contractor through Owner's Representative, and Contractor shall issue all communications to Owner through Owner's Representative in a written document delivered to Owner.
- C. Should any direct communications between Contractor and Owner's consultants, architects or engineers not identified in Article 2 of Document 00 5200 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to Owner.

7.02 Owner's Observation of The Work

- A. Work shall be performed under Owner's general observation and administration. Contractor shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- B. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

7.03 Consultant's Observation of Work

- A. Owner may engage one or more of the following to assist in administering the Work: an Architect/Engineer, Project Manager, Construction Manager, or any other independent consultant (collectively for purposes of this Article 7, **Consultant**). If so engaged, Consultant will advise and consult with Owner, but will have authority to act on behalf of Owner only to extent provided in the Contract Documents or as set forth in writing by Owner. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- B. Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- C. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Owner that it disapproves or rejects Work that Consultant believes to be Defective or will not produce a complete Project that conforms to Contract Documents, or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Consultant may also recommend to Owner special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.
- D. Consultant may conduct observations or inspections to recommend to Owner the dates that Contractor has achieved Substantial Completion and Final Completion, and will receive and forward to Owner for review written warranties and related documents required by Contract Documents.

7.04 Owner's and Consultant's Exercise of Contract Responsibilities

- A. Owner, Consultant, and all Owner's representatives, in performing their duties and responsibilities under the Contract Documents, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Contractor, any Subcontractor, sub-Subcontractor or supplier, except those set forth expressly in the Contract Documents.

7.05 Owner's Right of Access to The Work

- A. During performance of Work, Owner, Consultant, and all Owner's representatives may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.

7.06 Owner's Right of Separate Construction

- A. Owner may perform with its own forces, construction or operations related to the Project, or the Site during Contractor's operations. Owner may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility Owners perform other work.
- B. Contractor shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility districts and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work, do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, and shall cooperate with them to facilitate the progress of the Work.
- C. To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected.

ARTICLE 8 CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK

8.01 Contractor to Supervise The Work

- A. Subject to those rights specifically reserved in the Contract Documents, Contractor shall supervise, direct, have control over, and be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without Owner's express written consent and, if applicable, payment of liquidated damages as required by Document 00 5200 (Agreement). The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.
- C. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.

- D. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.
- E. Contractor shall conduct monthly Contractor Safety Committee meetings, and weekly toolbox safety talks.

8.02 Contractor to Maintain Cost Data

- A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide Owner with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide Owner with a copy of such report upon Owner's request.
- B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide Owner with copies for each Day Contractor works on the Project, to be delivered to Owner either the same Day or the following morning before starting work at the Site. Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. Owner shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including, without limitation, financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of Government Code Section 8546.7. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

8.03 Contractor to Supply Sufficient Workers and Materials

- A. Unless otherwise required by Owner under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then Owner may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as Owner may consider necessary, at no cost to Owner. If Contractor does not comply with the notice within three Business Days of date of service thereof, Owner shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as Owner may elect. Owner may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that Owner exercises this right. Owner will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. Owner will deduct from funds or appropriations set aside for purposes of Contract Documents the

amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of Owner from claims of others.

- C. Exercise by Owner of the rights conferred upon Owner in this subparagraph is entirely discretionary on the part of Owner. Owner shall have no duty or obligation to exercise the rights referred to in this subparagraph and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of Owner's right to exercise such rights in other concurrent or future similar circumstances. (The rights conferred upon Owner under this subparagraph are, like all other such rights, cumulative to Owner's other rights under any provision of the Contract Documents.)

8.04 Contractor to Maintain Project Record Documents

- A. As more specifically described in Section 01 7839, Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Owner for reference. Upon completion of the Work, Contractor shall deliver to Owner, the Project Record Documents, Samples and Shop Drawings and as-built drawings.
- B. Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to Owner. At the completion of the Project, Contractor shall deliver all such records to the Owner to have a complete set of record as-built drawings.

8.05 Contractor to Not Disrupt Owner Operation

- A. Contractor shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations including, without limitation, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using Owner facilities or doing business with Owner. Contractor shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interference of construction with Owner, which **Owner will reasonably cooperate with.**

8.06 Contractor to Provide Temporary Facilities and Controls

- A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary utilities (including without limitation electricity, water, natural gas), lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing or completion of the Work.

ARTICLE 9 WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 Warranty and Guaranty

- A. General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work including, without limitation, each item of materials and equipment

incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- B. Extended Warranties: Any warranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply Owner with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, without limitation, Project completion. Contractor covenants, warrants and represents to Owner that:
 - 1. To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to Owner.
 - 2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
 - 3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to Owner.
 - 4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide Owner with copies thereof.

9.02 Inspection of Work

- A. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to Owner. Contractor shall submit all Samples in ample time to enable Owner to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

- C. Contractor shall give Owner timely notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- D. Upon advance notice as set forth above, Owner will endeavor to schedule required inspections, but if resources are not available, Contractor may need to reschedule the Work at no additional cost to the Owner.
- E. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- F. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Contractor shall uncover the Work at Owner's request. Contractor shall bear the expense of uncovering Work and replacing Work. In any case where Contractor covers Work contrary to Owner's request, Contractor shall uncover Work for Owner's observation or inspection at Owner's request. Contractor shall bear the cost of uncovering Work.
- G. Whenever required by Owner, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, Owner, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- H. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents and to immediately correct Defective Work immediately upon Contractor's knowledge.
- I. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.03 Correction of Defective Work

- A. Owner may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Also, if Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Owner may direct Contractor to perform the Work in accordance with the Contract Documents, correct or replace any such Defective Work, or stop any portion of Work.
- B. Owner may correct and remedy the Defective Work or perform any other work, corrective or otherwise, if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work; or provide a plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take

possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, its representatives, agents, employees, and other contractors and consultants' access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Owner in exercising rights and remedies under this Paragraph. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from monies due Contractor, all such claims, costs, losses and damages caused by or resulting from exercising its rights and remedies. If Contractor disagrees with Owner's calculations, it may make a claim as provided in Article 12 of this Document 00 7200.
- D. These Owner rights and remedies are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Contractor or any other party. Owner's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law. Owner's failure to demand correction of defective work does not relieve the Contractor from delivering a Project that comports with the Project's plans and specifications.

9.04 Acceptance of Defective Work

- A. Owner may in its sole discretion elect to accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with Owner's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 7200. If Owner accepts any Defective Work after final payment, Contractor shall pay to Owner, an appropriate amount as determined by Owner.

9.05 Rights upon Inspection, Correction or Acceptance

- A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article. Where Owner exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, without limitation, the right to terminate Contractor's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Observation or inspection by Owner or its authorized agents or representatives shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

9.06 Proof of Compliance of Contract Provisions

- A. In order that Owner may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to Owner properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

- B. Before commencing any portion of Work, Contractor shall inform Owner in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Contractor proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Contractor.

9.07 Correction Period and Project Warranty Period

- A. If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws, regulations or by the terms of Contract Documents or any extended warranty or guaranty, any Work (completed or incomplete) is found to be Defective, Contractor shall promptly without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- B. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- C. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this Paragraph after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

9.08 No Waiver

- A. Neither recordation of Final Acceptance, nor final certificate for payment, nor provision of the Contract, nor partial or entire use or occupancy of premises by Owner shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to Owner, Owner shall have the right to operate and use materials or equipment until said materials and equipment can, without damage to Owner, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.
- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to Owner for damages sustained as result of latent defects in materials or equipment caused by negligence of Contractor, its agents, suppliers, employees, or Subcontractors.

ARTICLE 10 MODIFICATIONS OF CONTRACT DOCUMENTS

10.01 Owner's Right to Direct Changed Work

- A. Owner may, without notice to the sureties and without invalidating the Contract, make changes in the Work (Changed Work), including without limitation: alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the

change is ordered. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such Owner-furnished labor, materials, and equipment.

- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Contractor and Owner may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as Owner may direct (with Contractor retaining its rights under Article 12 herein).

10.02 Required Documentation for Changed Work

- A. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order or Change Directive that shall specify:
 - 1. The Work performed in connection with the change to be made;
 - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 - 3. The extent of the adjustment in the Contract Time, if any.
- B. A Change Order or Change Directive will become effective when signed by Owner, notwithstanding that Contractor has not signed it. A Change Order will become effective without Contractor's signature, provided Owner indicates same thereon (by indicating it as a "unilateral change order").
- C. All changes in any plans and specifications approved by any authority with jurisdiction may also require addenda or change orders approved by that authority.
- D. Where Owner requests, a performance bond rider covering the changed Work must be executed and delivered to Owner before proceeding with the changed Work or shortly in time thereafter.

10.03 Procedures and Pricing of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Section 01 2600 (Modification Procedures).

ARTICLE 11 TIME ALLOWANCES

11.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.
- B. Float. Float shall be treated as a Project resource. Contractor shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.
- C. Time extensions will not be granted unless substantiated by the Critical Path Method (CPM) Schedule, and then not until the CPM project float becomes zero. If Contractor fails to submit a Time Impact Evaluation (TIE), as required by Section 01 2600 (Modification Procedures) and Section 01 3200 (Progress Schedules and Reports), within the required time period, then Contractor shall be deemed to have agreed that there is no time impact and that Contractor has irrevocably waived its rights to any additional Contract Time.

11.02 Excusable Delay and Inexcusable Delay Defined

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
 - 1. Changes in the Work ordered by Owner (**Changes**);
 - 2. Acts or neglect by Owner, Architect, any Owner Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including, without limitation, pre-bid investigations) (**Acts or Neglect**); or
 - 3. Acts of God, fires, floods, earthquake, other natural disasters, epidemics and pandemics (other than COVID-19 or variants), abnormal weather conditions beyond the parameters

otherwise set forth in this Article, nuclear accidents, strikes, lockouts, freight embargos, interruptions in service by a regulated utility, or governmental statutes or regulations enacted or imposed after the fact (together, "force majeure events"), provided damages or delays resulting therefrom are not the result of Contractor's fault or negligence, including without limitation failure to protect the Work or mitigate any adverse impacts as required by Contract Documents (**Force Majeure**).

- B. **Inexcusable Delay.** Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Contractor's risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.

11.03 Notice of Delay

- A. Within seven Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify Owner in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor shall submit a TIE, in accordance with by Section 01 2600 (Modification Procedures) and Section 01 3200 (Progress Schedules and Reports), within ten days of the notice of delay. Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed twenty-one days from the beginning of the delay event), Owner may in its sole discretion recognize a claim for delay accompanied with the proper TIE, provided Contractor also shows good faith and a manifest lack of prejudice to Owner from the late notice.

11.04 Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Sum in addition to Contract Time for:
1. Excusable delay caused solely by Changes in the Work ordered by Owner, as provided above, and/or
 2. Excusable delay caused solely by Acts or Neglect by Owner or other person, as provided above.

11.05 Non-Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
1. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
 2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or unexcusable, such as: acts or neglect of Contractor, Subcontractors or others for whom Contractor is responsible; other acts, omissions and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided above in this Article.

11.06 Adverse Weather

- A. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds the parameters listed or referenced immediately below in this subparagraph and Contractor proves that adverse weather actually caused delays to work on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
- B. Claims for extension of time for rain delay will not be granted unless the number of days work is prevented by rain exceeds **[insert either]** 100% of the historical average number of rain days for

the period of the Contract Time, based on the records of the National Oceanic & Atmospheric Administration (**NOAA**) weather station identified in Supplemental Conditions or, if not, the station closest to the Project Site (in either case, **Weather Station**), as measured and reported by NOAA. (For example, for California, Oregon and Washington, these figures are contained in the ">=0.10 inch" column at the applicable weather station's "General Climate Summary Table" for "Precipitation" at <http://www.wrcc.dri.edu/climate-summaries/>), pro-rated in the individual month Contractor starts and finishes Work. **[or]** the total number of adverse weather days indicated in the Supplemental Conditions, based on the records of the National Oceanic & Atmospheric Administration National Weather Service (**NOAA**) weather station identified in Supplemental Conditions or, if not, the station closest to the Project Site (in either case, **Weather Station**). **[Whichever of the above alternatives is selected, continue]** Delays due to adverse weather conditions will not be allowed for weather conditions that fall within these parameters.

- C. In order to qualify as an adverse weather delay day with respect to the foregoing parameters, daily rainfall must exceed 0.1 inch at the Weather Station, as measured and reported by NOAA. Notwithstanding these allowances, Contractor shall at all times employ all available mitigation measures to enable Work to continue, Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for Owner to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.
- D. Contractor shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Contractor shall notify Owner and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float available to either Owner or Contractor.
- E. Adverse weather delay for precipitation shall be recognized for the actual period of time Contractor proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves to Owner's satisfaction that precipitation exceeding the specified parameters causes delay to Contractor for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
- F. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to Owner representative and the Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Contractor responsible, at no increase in Contract Sum, for corrections Owner may require. Commencement of Work constitutes acceptance of surface.

11.07 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that Owner will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
- B. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- C. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost

revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

- D. **[Optional]** Contractor and Owner agree that the Key Personnel listed in Contractor's Statement of Qualifications (Document 00 4513) were a material factor in Owner's assessment of Contractor's experience and the adequacy of Contractor's supervisory personnel. Accordingly, Contractor and Owner agree that Contractor shall not remove, reassign or make changes to any of the Key Personnel without Owner's prior written approval. In the event that any Key Personnel leaves the Project, is reassigned and/or is removed and replaced by Contractor before Project Final Completion, for any reason other than departure from Contractor, Contractor agrees to pay Owner liquidated damages as set forth in the Agreement (Document 00 5200), unless Contractor can demonstrate to Owner's satisfaction that the Key Personnel were reassigned and/or removed and replaced for reasons beyond Contractor's control.

ARTICLE 12 CLAIMS BY CONTRACTOR

12.01 Obligation to File Claims for Disputed Work

- A. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER (collectively, **Disputed Work**), then Contractor shall first follow procedures set forth in the Contract Documents (including, without limitation, Paragraphs 11.03, 11.04, 13.03 and 13.04 of this Document 00 7200 and Section 01 2600.) If a dispute remains, then Contractor shall give written notice to Owner that expressly invokes this Article 12. Owner shall decide the issue in writing within 15 days; and Owner's written decision shall be final and conclusive. If Contractor disagrees with Owner's decision, or if Contractor contends that Owner failed to provide a decision timely, then Contractor's **SOLE AND EXCLUSIVE REMEDY** is to file a written claim within the time limits set forth in Paragraph 12.02 of this Article setting forth Contractor's position as required herein.
- B. **Duty to Work During Disputes.** Notwithstanding any dispute or Disputed Work, Contractor shall continue to prosecute the Work and the Disputed Work in accordance with the Owner's determinations. Contractor's **SOLE AND EXCLUSIVE REMEDY** for Disputed Work is to file a written claim within the time limits set forth in Paragraph 12.02 of this Article setting forth Contractor's position as required herein.

12.02 Form and Contents of Claim

- A. Contractor's written claim must identify itself as a **Claim** under this Article 12 and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a Time Impact Evaluation of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to Owner within thirty (30) calendar days of receiving Owner's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Section 01 2600, and must be updated monthly as to cost and entitlement if a continuing claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a claim. Contractor shall bear all costs incurred in the preparation and submission of a claim.
- B. Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichleay" or other formula. Rather,

Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 2600 (Modification Procedures) in order to request, claim or prove compensation for delay.

12.03 Administration During/After Claim Submission

- A. Owner may render a final determination based on the Claim or may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by Owner prior to rendering a final determination. Should Owner take no action on the Claim within 45 days of submission, it shall be deemed denied.
- B. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed work to final completion in accordance with Owner's determination.
- C. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls. See Section 01 4100.

12.04 Compliance

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code Claim under the Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.03 above of the claims asserted. No suit may be brought against Owner arising out of or in connection with the Project unless and until Contractor presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910, et seq. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.
- B. Failure to submit and administer claims as required in Article 12 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.
- C. Contractor shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. Owner shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.
- D. Owner shall not be deemed to waive any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both Owner and Contractor; oral or implied modifications shall be ineffective.

12.05 Mediation

- A. All Contractor claims not otherwise subject to Public Contract Code Sections 20104, et seq., shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding, pursuant to the construction mediation procedures of JAMS in Foster City, California, and utilize the services of a mediator mutually acceptable to the parties. If the parties are unable to agree, the mediator will be selected by JAMS from its panel of approved construction industry mediators, having a minimum of 20 years' experience in the construction industry.

- B. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of a mediation pursuant to this Paragraph, upon notice of the other party, exchange relevant, non-privileged project documents in compliance with Code of Civil Procedure Sections 2031.010, et seq. Additionally, the parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et. seq. The Mediator will have jurisdiction to resolve any discovery disputes relating to the Mediation.

ARTICLE 13 UNDERGROUND CONDITIONS

13.01 Contractor to Locate Underground Facilities

- A. During construction, Contractor shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part: "Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to respond. However, an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator."
- B. Contractor shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide Owner with copies of all USA records secured by Contractor. Contractor shall advise Owner of any conflict between information provided in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Contractor's excavation shall be subject to and comply with the Contract Documents.
- C. Contractor shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, manholes, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Existing Conditions Data, Contract Documents, or USA records, or discovered during Contractor's pre- or post-bid investigation. Contractor shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

13.02 Contractor to Protect Underground Facilities

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Existing Conditions Data, Contract Documents, USA records, or any material otherwise reasonably available to Contractor or discovered during Contractor's pre- or post-bid investigations. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to Owner for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention,

including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7200.

- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown, indicated, or discovered in the materials and investigations described in Paragraph 13.02B, above, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, without limitation, Existing Conditions Data, and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents or reasonably available information, or indicated by visual observation including, without limitation, and by way of example only, through performance of all pre-Bid investigations required by this Document 00 7200 and Bidding Documents and post-Bid investigations required by this Document 00 7200, and by engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding. Owner will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for bidding with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

13.03 Concealed or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an emergency as set forth in this Document 00 7200, and in no event later than seven Days after first observance of:
 - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Contractor's Notice of Differing Site Conditions under this Paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If Owner determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document 00 7200.)
- C. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Contractor knew or should have known of the existence of such conditions at the time Contractor submitted its Bid, failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.

- D. Regarding Underground Facilities, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
1. Was not shown or indicated in the Contract Documents or in the information supplied for bidding purposes or in information on file at USA; and
 2. Contractor did not know of it; and
 3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor.)
- E. Contractor shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations on Owner's Project, and Contractor is to apply its skill and industry to verify the information available.
- F. Contractor's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Contractor's or its subcontractor's bid amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Contractor excavates in an area unexpected, then such costs would be recoverable entirely; while if Contractor extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

13.04 Notice of Hazardous Waste or Materials Conditions

- A. Contractor shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document 00 7200), and in no event later than 24 hours after first observance of any:
1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the California Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (**hazardous material**); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (**other materials**).
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Contractor's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.

- D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
 - 1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
 - 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
 - 3. Contractor failed to give the written notice within the required timeframe set forth below.
- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Contractor in writing, stating the reasons for its determination.
- F. In addition to the parties' other rights under this Document 00 7200, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.
- G. If Contractor does not agree with any Owner determination of any adjustment in the Contract Sum or Contract Time under this Article, Contractor may make a claim as provided in Article 12 of this Document 00 7200.

ARTICLE 14 LEGAL AND MISCELLANEOUS

14.01 Laws and Regulations

- A. Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

14.02 Permits and Taxes

- A. Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Owner will pay applicable building permits, sanitation and water fees for the completed construction, except as otherwise provided in the Contract Documents. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

14.03 Communications and Information Distribution

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFIs shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No.

1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Contractor may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.

- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.
- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of PDF copies of required correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to Owner's and Contractor's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between Owner and Contractor shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

14.04 Suspension of Work

- A. Owner may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures). No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible.

14.05 Termination of Contract for Cause

- A. Owner may declare Contractor in default and terminate Contractor's right to proceed under the Contract Documents, for cause, should Contractor be the subject of a voluntary or involuntary petition in bankruptcy or admit in writing its inability to pay debts as they may become due. The Contractor shall be in default of the Contract Documents and Owner may terminate the Contractor's right to proceed under the Contract Documents, for cause, in whole or in part, should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from Owner to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide Owner within the ten (10) day period with a written cure plan acceptable to Owner that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written plan)
- B. If Owner at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided above, then Owner may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents that Owner may advise Contractor of in writing. Contractor shall, within ten (10) Days of Owner's request, deliver a written cure plan that meets the requirements of the written cure plan as defined above. Failure of Contractor to provide such written assurances of performance and the required written cure plan within ten (10) Days of request will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- C. In the event of termination by Owner for cause as provided herein, the Contractor shall deliver to Owner possession of the Work in its then condition including, without limitation, all designs,

engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right that Owner may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and/or failure to comply with the Contract Documents.

- D. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

14.06 Termination of Contract for Convenience

- A. Owner may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.
- B. Contractor shall comply strictly with Owner's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, Owner shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.
- D. Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination.

14.07 Contingent Assignment of Subcontracts

- A. Contractor hereby assigns to Owner each Subcontract for a portion of the Work, provided that:
 - 1. The assignment is effective only after Owner's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein.
 - 2. The assignment is effective only for the Subcontracts which Owner expressly accepts by notifying the Subcontractor in writing;
 - 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 - 4. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in this Document 00 7200), sign all instruments and take all actions reasonably requested by Owner to evidence and confirm the effectiveness of the assignment in Owner; and
 - 5. Nothing in this Paragraph shall modify or limit any of Contractor's obligations to Owner arising from acts or omissions occurring before the effectiveness of any Subcontract assignment including, without limitation, all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

14.08 Remedies and Contract Integration

- A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between Owner and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located. All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications, Change Orders and Change Directives, as further described in Section 01 2600, shall represent the entire and integrated agreement between Owner and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. Owner and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other information, which shall be inadmissible in any proceeding to enforce these documents.
- C. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- D. Neither acceptance of the whole or any part of Work by Owner nor any verbal statements on behalf of Owner or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein nor any right to damages provided in the Contract Documents.

14.09 Interpretation

- A. Should any part, term or provision of this Contract or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Contract and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Project Manager or any Owner's representative and Contractor; (ii) Owner and/or its Representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than Owner and Contractor.

14.10 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid

price for doing the Work. Contractor shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents including, without limitation, the Board and each Owner's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

14.11 Substitution for Patented and Specified Articles

- A. Except as noted specifically in Document 00 2113 (Instructions to Bidders) or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal." Contractor may offer any substitute material or process that Contractor considers "Equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of Owner, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in Document 00 2113 (Instructions to Bidders). A substitution will be approved only if it is a true "or Equal" item in every aspect of its design and quality including, without limitation, its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

14.12 Interest of Public Officers

- A. No representative, officer, or employee of Owner no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

14.13 Limit of Liability

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, WITHOUT LIMITATION, PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

14.14 Public Records Act.

- A. Contractor is aware that this Contract and any documents provided to the Owner may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of Contractor to clearly identify information in those documents it considers to be confidential under the California Public Records Act. To the extent that Owner agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

ARTICLE 15 WORKING CONDITIONS AND PREVAILING WAGES

15.01 Use of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Owner's approval.
- B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Owner, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to Owner or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall clean the site, remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by Owner at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

15.02 Protection of Work, Persons, and Property

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.
- B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owners of adjacent property and of Underground Facilities and utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Contractor shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- D. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and Owner receives satisfactory evidence to that effect.

- F. Work within the right-of-way lines of any City, County and/or State shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Contractor before executing the work within such right-of-ways.

15.03 Responsibility For Safety and Health

- A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Owner's safety regulations as amended from time to time. Contractor shall comply with all Owner directions regarding protective clothing and gear.
- B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify Owner, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, Owner-designated routes for ingress and egress thereto, and any other Owner-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.04 Emergencies

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

15.05 Use of Roadways and Walkways

- A. Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with Owner's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

15.06 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Government Code Section 12940. Every contractor for public works violating the provisions of Labor Code Section 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the California Labor Code.

15.07 Prevailing Wages and Working Hours

- A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing

- rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- B. Contractor shall forfeit, as a penalty to Owner, \$200.00 for each laborer, worker, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, worker or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the Labor Code. The sums and amounts that are forfeited pursuant to this Paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 7200 and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, Labor Code Sections 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Sections 1810-1815.
1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any worker employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
 2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.
 3. Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code Sections 1810-1815.
 4. Work performed on the Project by employees of Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.
- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.
1. Contractor and Subcontractors 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 by him or her in connection with the Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
 2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.

- (a) Contractor shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 - (b) Contractor or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.
- 3. With each payment application, Contractor shall also deliver certified payrolls to Owner as set forth above in this Document 00 7200 (General Conditions), and concurrently therewith (but in no event less frequently than monthly) directly to the Labor Commissioner in the format prescribed by the Labor Commissioner.
 - 4. Contractor shall post all jobsite notices if and when prescribed by regulation.

15.08 Environmental Controls

- A. Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, stormwater management and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.09 Shoring Safety Plan

- A. Any conflict between this Paragraph and the Technical Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five Days in advance of any excavation five feet or more in depth, Contractor shall submit to Owner a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- C. During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this Paragraph.
- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

END OF DOCUMENT

DOCUMENT 00 7301

SUPPLEMENTAL GENERAL CONDITIONS

PART 1 - GENERAL

1.1 DEFINITIONS

Wherever in the specifications and other contract documents the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

- A. City/District: The City of Foster City/Estero Municipal Improvement District.
- B. Council: The City Council of the City of Foster City.
- C. Board of Directors: The Board of Directors of the Estero Municipal Improvement District.
- D. Proposer: Any individual, partnership, joint venture, or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- E. Contractor: The individual, partnership, joint venture, or corporation with whom the contract is made by the City/District.
- F. Engineer: The City/District Engineer acting directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them. See Paragraph 1.08 regarding the authority of the Engineer.
- G. Manager: The City Manager or District Manager of the City of Foster City/Estero Municipal Improvement District.
- H. Days: Unless otherwise designated, days as used in the specifications will be understood to mean calendar days.

1.2 TRANSFER OF INTEREST

No interest in the contract shall be transferred to any other party without permission of the City.

1.3 WORKING HOURS

- A. Work or activity of any kind shall be limited to the hours from 8:00AM to 4:00PM, Monday through Friday, except as otherwise stipulated in the contract documents. Work hours shall be limited to 9:00AM to 3:00PM on all Boulevards.
- B. Work in excess of eight hours per day, on Saturdays, on Sundays, or on City holidays requires prior consent of the Engineer and is subject to Cost of Overtime Construction Inspection.
- C. City holidays are:
 - New Year's Day
 - Martin Luther King's Birthday
 - Presidents' Day (3rd Monday in February)
 - Memorial Day (last Monday in May)
 - Independence Day
 - Labor Day
 - Veteran's Day

Thanksgiving Day and following Friday
Christmas Eve
Christmas Day
New Year's Eve

1.4 SUBCONTRACTORS

- A. When requested, the Contractor shall furnish the name and address of each subcontractor contracting directly with the Contractor, together with a statement showing the character and location of the work, time limit, if any, and if requested, the amount of money involved in each subcontract. Each subcontract shall contain a reference to the contract between the City and the principal Contractor, and the terms of the contract and all parts thereof shall be made part of each subcontract insofar as applicable to the work covered thereby. Each subcontract shall provide for its annulment at the order of the Engineer, if, in the Engineer's opinion, the subcontractor fails to comply with the requirements of the principal contractor insofar as the same may be applicable to the Contractor's work.
- B. Nothing contained in this Specification shall be construed as creating any contractual relationship between any subcontractor and the City. The sections of this Specification are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.
- C. The Contractor shall be considered the employer of and as fully responsible to the City for the acts and omissions of subcontractors and of persons employed by them as the Contractor is for the acts and omissions of persons directly employed by the Contractor.
- D. The Contractor shall be responsible for the coordination of the trades, subcontractors, and material personnel engaged upon the Contractor's work. It shall be the Contractor's duty to see that all of the subcontractors commence their work at the proper time and carry it on with due diligence so that they do not delay or injure either the work or materials; and that all damage caused by them or their workers is made good by them or by the Contractor at the Contractor's expense.
- E. The City will not undertake to settle differences between the Contractor and their subcontractors or between subcontractors.
- F. The Contractor shall utilize the services of specialty subcontractors, without additional expense to the City, on those parts of the work which are specified to be performed by specialty contractors.

1.5 CHANGES

A. General:

The City reserves the right to make such alterations, deviations, additions to or deletions from the drawings and specifications, including the right to increase or decrease the quantity of any item or portion of work or to omit any item or portion of the work, and to require such changes in the work as are determined by the Engineer to be necessary or advisable for proper completion or construction of the whole work contemplated.

Work will be issued to the Contractor as a Work Order on an as-needed basis during the two year contract period. Each Work Order will identify the location and type of work to be performed, the effective date for commencement of work, specific work item quantities and the Work Order amount based on the unit prices listed in the Contractor's Proposal Schedule. The Contractor shall complete any given work order within thirty (30) calendar days of commencement of work.

B. Increases or Decreases in Unit Price Quantities:

1. Increased or Decreased Quantities:

Increases or decreases in the quantity of a contract item of work will be determined by comparing the quantity of work as listed in the proposal schedule with the actual quantity of work performed by the Contractor, as measured by the Engineer. The City shall have the right to make changes in the plans and/or specifications and the Contractor shall perform the work as changed.

No adjustment to the unit price for any item in the Proposal Schedule shall be made in the event the number of repair locations are increased or decreased from the scheduled maintenance program. All work performed shall be measured and paid based on the contract unit price included in the proposal schedule.

2. Eliminated Items:

- a. The City of Foster City reserves the right to eliminate any of the scheduled work. The unit price shall not be subject to change based on the deletion of work.

Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities bid or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.

Should any contract item of the work be eliminated in its entirety, unless otherwise provided for in the contract, payment will be made to the Contractor for actual costs incurred in connection with such eliminated contract item if incurred prior to the date of notification in writing by the Engineer of such elimination.

The City shall have the right for the partial or full removal of Bid Alternate 1 and 2 from the scope of work and will not provide compensation for removed items.

- a. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Engineer, and if orders for such material cannot be canceled, it will be paid for at the actual cost to the Contractor. In such case, the material paid for shall become the property of the City and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the Engineer so directs, the material shall be returned and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The actual cost of handling returned material will be paid for. Written documentation of costs of cancellation or return must be submitted.
- b. The actual costs or charges to be paid by the City to the Contractor as provided in this section will be computed based on the unit prices listed in the Proposal Schedule.

C. Protest Procedure (Change Orders):

1. Should the Contractor disagree with any terms or conditions set forth in an approved change order which the Contractor has not executed, the Contractor shall submit a written protest to the Engineer within 15 calendar days after the receipt of such approved contract change order. The protest shall state the points of disagreement, contract references, quantities, and costs involved. The Engineer shall consider and investigate such protest within a reasonable time. If a written protest is not submitted, adjustment of the contract time and payment will be made as set forth in the approved contract change order and shall constitute full compensation for all work included therein or required thereby. An unprotested change order will be considered as an executed contract change order.
2. When the protest concerning an approved change order relates to compensation, the Contractor shall keep full and complete records of the costs of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work.
3. When the protest concerning an approved work order relates to the adjustment of contract time for the completion of the work, the time to be allowed will be determined as provided in Paragraph 1.15 of this section.

D. Extra Work:

Extra work will not be paid for unless ordered in writing by the Engineer. When authorized, extra work will be paid for in accordance with the Proposal Schedule or by a negotiated adjustment.

E. REPORTING, INVOICING, AND PAYMENT

1. All work shall be reported monthly upon Total Work Order Sheets furnished by the Engineer to the Contractor and signed by both parties, which monthly reports shall thereafter be considered the true record of work done.
2. Contractor shall submit a record of work completed with each payment request. Record of work shall include detailed invoices. Those not so detailed will not be processed for payment until details are furnished.
3. Completed work shall be paid for on a monthly basis by Contract Change Order.

1.6 COST OF OVERTIME CONSTRUCTION INSPECTION

Overtime construction work performed at the option of, or for the convenience of, the Contractor will be inspected by the City at the expense of the Contractor. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays, the charges for City personnel will be as shown in the currently adopted rate schedule, available at the Public Works office. There will be no charges for the inspection of overtime work ordered by the Engineer. ALL OVERTIME MUST BE APPROVED BY THE CITY ENGINEER.

1.7 CHANGES AT THE CONTRACTOR'S REQUEST

If the Contractor, on account of conditions developing during the progress of the work, finds it impracticable to comply strictly with this Specification and applies in writing for a modification of the requirements or of methods of work, such change may be authorized by the Engineer, if not detrimental to the work and if without additional cost to the City. The Contractor's written request for deviation shall be submitted prior to the start of affected work with enough time allowed to give

the Engineer a reasonable review period. Only written authorization from the Engineer will permit deviations from the specifications.

1.8 AUTHORITY OF THE ENGINEER

- A. On all questions concerning the acceptability of material or machinery, the classification of material, the execution of the work, and conflicting interests of contractors performing related work, the decision of the Engineer shall be final and binding upon both parties, except in the case of gross error.
- B. The Engineer will make periodic observations of materials and completed work to observe their compliance with plans, specifications, and design and planning concepts, but the Contractor shall be responsible for the superintendence of construction processes, coordination of subcontractors or materials, site conditions, operations, equipment, personnel, or the maintenance of a safe place to work or any safety in, on, or about the site of the work.
- C. Authority and Duties of Engineer's Field Representatives:
 - 1. Field representatives of the Engineer may be stationed on the project site to report to the Engineer as to the progress of the work, the manner in which it is being performed, and to report whenever it appears that material furnished and work performed by the Contractor fail to fulfill the requirements of the contract documents. The representative may direct the attention of the Contractor to such failure or infringement but such construction review shall not relieve the Contractor from any obligation to furnish acceptable materials or to provide completed construction in a safe and satisfactory manner in every particular.
 - 2. In case any dispute arises between the Engineer's field representative and the Contractor as to materials furnished or the satisfactory performance of the work, the representative shall have the authority to reject materials or recommend suspension of the work by the Engineer until the question and issue can be referred to and decided by the Engineer. Such authority, however, shall not give rise to any duty on the part of Engineer's field representative to exercise this right for the benefit of Contractor or any other party. Field representatives are not authorized to revoke, alter, enlarge, relax or release any requirements of the contract documents nor to issue instructions contrary to the contract documents. Field representatives shall in no case act as foremen, superintendents, or perform other duties for the Contractor or interfere with the management of the work by the Contractor.

1.9 INSPECTION BY CITY, QUALITY ASSURANCE BY CONTRACTOR, TESTING

- A. All materials furnished and work done under this contract will be subject to inspection. The Contractor shall furnish, without extra charge, the necessary test pieces and samples, including facilities and labor for obtaining them, as requested by the Engineer. Work or material that does not conform to the specifications may be rejected at any stage of the work notwithstanding previous inspections by the Engineer.
- B. Quality control of the work to ensure compliance with the contract documents is the responsibility of the Contractor. Testing and inspection of the work, or the lack thereof, by the City does not relieve the Contractor of the responsibility to provide a quality assurance program to ensure compliance with the contract documents.

- C. The Engineer may perform or have the Contractor perform tests of material and equipment to demonstrate compliance with the contract documents. If such tests were not required to be performed by the Contractor by the contract documents, the cost of testing will be paid for by the City when tests show that materials or equipment comply with the contract documents, and shall be paid for by the Contractor when tests show that materials or equipment fail to comply with the contract documents.

1.10 DATA TO BE FURNISHED BY THE CONTRACTOR

The Contractor shall furnish the Engineer reasonable facilities for obtaining such information as the Engineer may desire respecting the character of the materials and the progress and manner of work, including information necessary to determine its costs, such as the number of personnel employed, their pay, the time during which they worked on the various classes of construction, and other pertinent data.

1.11 SUPERINTENDENCE

- A. The Contractor shall designate in writing before starting work one authorized representative who shall have the authority to represent and act for the Contractor.
- B. Said authorized representative shall be present at the site of the work at all times while work is actually in progress on the contract. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required. The superintendent or foreman in charge shall be deemed to be the authorized representative of the Contractor and accepts such orders on behalf of the Contractor.

1.12 SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of all specifications, drawings, and change orders pertaining to the work and shall at all times give the Engineer access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications shall be of like effect as though shown or mentioned in both.

1.13 LINES, GRADES, AND MEASUREMENTS

All lines and grades shall be established by the Contractor. The cost of surveying to establish lines and grades shall be included in the various items of work and no separate payments will be made.

1.14 RIGHT OF WAY

- A. The site for the installation of equipment or the right of way for the works to be constructed under this contract will be provided by the City.
- B. The City will provide the appropriate rights of way and property for pipelines and structures. The Contractor will be held responsible for any damage to structures, streets, and roads, and for any damage that may result from the Contractor's use of City property.
- C. In case areas in addition to those available on the City's right of way or property are required by the Contractor for the Contractor's operations, the Contractor shall make arrangements with the property owners for the use of such additional areas at the Contractor's own expense.

1.15 DELAYS AND EXTENSION OF TIME

- A. If any delay having a direct effect on the work is caused by factors within the Contractor's control, it is non-excusable and the Contractor will not be entitled to compensation for damages resulting directly or indirectly therefrom, or for any extension of time.
- B. If any delay having a direct effect on the work is caused by unusually severe weather conditions, including periods exceeding the "Normal Rainfall Days", or by strikes, or act of God, such delay may be excusable and may entitle the Contractor to an equivalent extension of time, provided that the Contractor has taken reasonable precautions to foresee and prevent delays due to such causes and provided that the Contractor has notified the Engineer in writing of the causes of the delay within 7 calendar days from the beginning of any such delay. In such event the Contractor shall be entitled to time only. Additional costs incurred because of the delay will be paid for by the Contractor at no additional cost to the City.
 - 1. No extension of time will be granted for normal rainfall. However, during the specified contract time, a day-for-day extension of time will be given for each day the rainfall is in excess of 0.1 inch of rain when the total number of rainy days (0.1 inch or greater) exceed the normal based on monthly precipitation records for the previous 10-year period from the weather recording station at the San Francisco International Airport.

Normal number of rain days for which rainfall has exceeded 0.1 inches for the 10-year period from 2006 to 2015 is as follows:

Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept.	Oct.	Nov.	Dec.
5	7	6	4	1	1	0	0	0	2	4	8

- C. If any delay having a direct effect on the work is caused by the specific orders of the Engineer to stop work, or by the performance of extra work ordered by the Engineer, or by failure of the City to provide material, or necessary instructions for carrying on the work, or to provide the necessary right of way or site for installation, or failure of a utility to remove or relocate an existing facility, such delay may be compensable and may entitle the Contractor to an equivalent extension of time, and may entitle the Contractor to damages resulting directly from any of the causes of delay hereinabove specified or from delays or hindrances to the work, provided that the Contractor has taken reasonable precautions to prevent delays due to such causes and provided that the Contractor has notified the Engineer in writing of the causes of the delay within 10 calendar days from the beginning of any such delay.
- D. When a Contractor experiences two concurrent delays, one compensable and the other non-compensable, no compensation other than time extensions will be allowed.
- E. An extension of time must be approved by the Engineer to be effective, but an extension of time whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract.

1.16 CLIMATIC CONDITIONS

The Engineer may order the Contractor to suspend any work that may be subject to damage by climatic conditions. In such event the Contractor shall be entitled to time only. Additional costs incurred because of the delay will be paid for by the Contractor at no additional cost to the City. When delay is caused by an order to suspend work given on account of climatic conditions that could have been reasonably foreseen, the Contractor will not be entitled to any extension of time on account of such order.

1.17 ROADS AND FENCES

Roads subject to interference from the work covered by this contract shall be kept open, and the fences subject to interference shall be kept up by the Contractor until the work is finished.

1.18 INFRINGEMENT OF PATENTS

The Contractor shall hold and save the City, its officers, agents, servants, and employees harmless from and against all and every demand or demands, of any nature or kind, for or on account of the use of any patented invention, process, equipment, article, or appliance employed in the execution of the work or included in the material or supplies agreed to be furnished under the contract, and should the Contractor, the Contractor's agents, servants, or employees, or any of them, be enjoined from furnishing or using any inventions, processes, equipment, articles, materials, supplies, or appliances supplied or required to be supplied or used under this contract, the Contractor shall promptly substitute other inventions, processes, equipment, articles, materials, supplies, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Engineer. Or in the event that the Engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such inventions, processes, equipment, articles, materials, supplies, or appliances, as may by this contract be required to be supplied and used, the Contractor shall at the Contractor's expense pay such royalties and secure such valid licenses as may be requisite and necessary to enable the City, its officers, agents, servants, and employees, or any of them, to use such inventions, processes, equipment, articles, materials, supplies, or appliances without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse promptly to make the substitution hereinbefore required, or to pay such royalties and secure such licenses as may be necessary and requisite for the purpose aforesaid, then in that event the Engineer shall have the right to make such substitution, or the City may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the City, or recover any amount thereof from the Contractor and the Contractor's surety, notwithstanding final payment under this contract may have been made.

1.19 PROTECTION OF PERSONS AND PROPERTY

A. Contractor's Responsibility:

Notwithstanding any other provision of these specifications, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property, during performance of the work. This requirement will apply continuously and will not be limited to normal working hours. Safety and sanitary provisions shall conform to applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

B. Public Safety:

During the performance of the work, the Contractor shall erect and maintain all necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards as shall be appropriate under the circumstances in his judgment for the prevention of accidents; and the Contractor shall take other precautions as necessary for public safety including, but not limited to, traffic control.

C. Engineer's Responsibility:

1. The Engineer's review of the Contractor's construction performance is not intended to include review of the adequacy of the Contractor's safety or sanitary measures in, on, or near the construction site. The City assumes no responsibility for the inspection of safety precautions or for the enforcement of safety precautions required by law.

2. The Engineer may suspend operations if the Contractor determines that an imminent safety hazard exists.

1.20 CONTRACTOR'S FINANCIAL OBLIGATION

The Contractor shall promptly make payments to all persons supplying labor and materials in the execution of the contract.

1.21 PROTESTS - CONTRACT REQUIREMENTS

- A. If work demanded of the Contractor is considered by the Contractor to be outside the requirements of the contract, or if the Contractor considers any record or ruling of the Engineer or any inspector to be unfair, the Contractor shall immediately upon such work being demanded or such record or ruling being made, ask for written instructions or decision, whereupon the Contractor shall proceed without delay to perform the work or conform to the record or ruling. If the Contractor still wishes to protest, the Contractor shall, within 15 calendar days after receipt of same, file a written protest with the Engineer, stating clearly and in detail the Contractor's objections and reasons therefor. Except for such grounds or protest or objections as are made of record in the manner specified and within the time stated herein, the Contractor hereby waives all grounds for protest or objections to the records, rulings, instructions, or decisions of the Engineer, and hereby agrees that as to all matters not included in such protests, the records, instructions, and decisions of the Engineer shall be final and conclusive.
- B. No later than thirty (30) calendar days following the submission of a protest in accordance with subsection A, the Contractor shall submit to the Engineer his claim concerning the matter so noticed. The claim shall set forth clearly and in detail, for each item of additional compensation or time adjustment claimed, the reasons for the claim, references to applicable provisions of the specifications, the nature and amount of cost or time involved, or both, the computations used in determining such cost or time, or both, and all other pertinent factual data. The Contractor shall furnish such clarification and further available information and data as may be requested in writing by the Engineer within the time specified in such request. In addition, the Contractor shall maintain complete and accurate daily records of the cost of any portion of the work for which additional compensation is claimed, and shall give the Engineer access thereto or certified copies thereof as requested.
- C. Any decision, order, instructions, notice, or act or omission of the Engineer for which the Contractor has submitted a protest shall be final and conclusive on the Contractor if the Contractor fails to submit or document a claim with respect thereto in the manner and within the times above stated, and such failure shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature, provided that the Engineer may, if the Contractor shows good cause, and if the interests of the City will not be prejudiced, consider and decide a properly documented claim on its merits notwithstanding the Contractor's failure to submit it within the time above stated. The foregoing provision shall create no right to the Contractor, and failure or refusal of the Engineer to exercise the Engineer's authority thereunder shall not be subject to claim by the Contractor.

1.22 CONTRACTOR'S RESPONSIBILITIES FOR LOSSES OR LIABILITIES

- A. Risk of Loss:

Except as otherwise provided in the contract documents and except as to the cost of repair or restoration of damage to the work caused by an act of God as that term is defined in Section 7105 of the Public Contract Code of the State of California, the Contractor shall

bear all losses resulting to the Contractor on account of the amount or character of the work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the work, or because the nature of the ground in or on which the work is done is different from what is assumed, or on account of the weather, or floods, or other causes.

B. Materials and Facilities:

1. The Contractor shall be responsible for materials and facilities as hereinafter provided and in the event of the Contractor's failure to carry out said responsibilities, the same may be carried out by the City at the expense of the Contractor.
 - a. The Contractor shall be responsible for any material furnished the Contractor and for the care of all work until its completion and final acceptance, and the Contractor shall at the Contractor's own expense replace damaged or lost material and repair damaged parts of the work.
 - b. The Contractor shall protect the City facilities from damage resulting from the Contractor's work. City facilities damaged by or as a result of the Contractor's work under this contract shall be repaired or replaced, as directed by the Engineer, at the Contractor's expense.
 - c. The Contractor shall remove from the vicinity of the completed work all buildings, rubbish, unused material, concrete forms, and other materials belonging to the Contractor or used under the Contractor's direction during construction.

1.23 CONTRACTOR USE OF PREMISES

- A. Confine operations at site to areas permitted by the contract documents.
- B. Do not encumber site with excessive material or equipment.
- C. Do not impose any load on any structure that will damage or endanger structure.
- D. Take precautions necessary to prevent annoyance to occupants adjacent to or in the vicinity of the work.

1.24 COOPERATION WITH OTHER WORK FORCES

- A. Other Contractors, other utilities and public agencies or their Contractors, other City Contractors, and City personnel may be working in the vicinity during the project construction period.
- B. There may be some interference between these activities and the work under this Specification. The Contractor shall cooperate and coordinate their work with that of other work forces to assure timely contract completion.
- C. Coordinate all activities in and around repair locations.
- D. Any costs for providing cooperation with other work forces shall be considered as included in the proposal price for the various contract items of work and no separate payment will be made therefor.

1.25 PRECONSTRUCTION CONFERENCE

- A. A preconstruction conference will be held at the time and place designated by the Engineer.

- B. The Contractor shall be present or be represented by an agent with authority to act for the Contractor and in responsible charge of the work to be accomplished.

1.26 MATERIAL AND WORKMANSHIP

- A. Omissions from the Plans and Specifications:

Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that the Contractor shall provide and install such materials as necessary for a complete and functional facility at no additional cost to the City. All work shall be done and workmanship completed consistent with the quality of work standard for the industry for commercial work, notwithstanding any omission from the specifications or the drawings. It shall be the duty of the Contractor to call attention to apparent errors and omissions and request instructions before proceeding with the work. The Engineer may, by appropriate instructions, correct errors and omissions, which instructions shall be as binding upon the Contractor as though contained in the original specifications or drawings.

- B. Compliance with Jurisdictional Agency Requirements:

All work performed under this Specification may be inspected as provided in Paragraph 1.09. All work performed within city or county streets or State of California freeway rights of way shall meet the requirements of the agency having jurisdiction. All materials furnished and all work done must be satisfactory to the Engineer. Work, material, or equipment not in accordance with the contract documents shall be made to conform thereto. Unsatisfactory material and equipment will be rejected, and if so ordered by the Engineer, shall, at the Contractor's expense, be immediately removed from the vicinity of the work.

1.27 SATURDAY, SUNDAY, AND HOLIDAY WORK

Without the written consent of the Engineer, no installation or construction work shall be done on Saturdays, Sundays, or holidays. Holidays are defined as City holidays which are listed in Document 00800, Paragraph 1.04.

1.28 COOPERATION

The City reserves the right to perform other work at or near the site at any time by the use of its own forces or other contractors. The Contractor shall coordinate their work and cooperate with City forces and other contractors to the end that any delay or hindrance to their work will be avoided.

1.29 AGREEMENTS WITH ADJACENT PROPERTY OWNERS

Agreements with property owners for spoiling excavated material, storing materials, or other purpose related to the work shall be made in writing and a copy submitted to the Engineer for their information.

1.30 EMERGENCY WORK

- A. During Working Hours:

In case of an emergency which threatens loss or injury of property, and/or safety of life during working hours, the Contractor shall act, without previous instructions from the City, as the situation may warrant. The Contractor shall notify the Engineer of the emergency and the action taken immediately thereafter. Any compensation claimed by the Contractor, together with substantial documents in regard to expense, shall be submitted to the

Engineer within 15 calendar days after the emergency. Compensation, if allowed, will be paid for as extra work.

B. Outside Working Hours:

Whenever in the opinion of the City there shall arise outside of the regular working hours on the contract work, an emergency involving utility services to the public or danger to public safety, the City's forces may choose to handle such emergency work. If such emergency arises out of or is the result of operations by the Contractor, the cost of the corrective measures will be billed to the Contractor and deducted from their payment as provided in the contract documents. The performance of emergency work by City forces will not relieve the Contractor of any of his responsibilities, obligations, or liabilities under the contract.

1.31 CONFLICT AMONG DRAWINGS, SPECIFICATIONS, AND/OR STANDARDS

In case of conflict among contract documents, the document of highest precedence shall prevail. The descending order of precedence shall be:

1. Permits and Agreements with Other Agencies
2. City Codes
3. Technical Specifications
4. Contract Requirements
5. Project Drawings
6. City Standards
 - a. Specifications
 - b. Drawings
7. Referenced Specifications and Standards
8. Referenced Drawings

1.32 FIRE PROTECTION

- A. The Contractor shall provide access to all fire hydrants located along the line of their work. Such access shall meet the approval of the City Public Safety Department, and should it be necessary to close a portion of a street for a limited time, such street shall not be closed until the Contractor has the approval of said Department.
- B. The City Public Safety Department shall be notified when a street is opened after it has been closed.
- C. Approval shall be obtained from that Department for the use of any fire hydrant.

1.33 ORDER OF WORK

- A. When required by specifications or plans, the Contractor shall follow the sequence of operations as set forth therein.
- B. Full compensation for conforming to such requirements will be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed therefor.

1.34 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- B. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the contract.
- C. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

1.35 PROCEDURES FOR FILING AND RESOLVING CLAIMS

Any claim arising under this contract which the Contractor wishes to assert against the City shall be governed by California Public Contract Code Section 9204. Claims which do not exceed three hundred seventy-five thousand dollars (**\$375,000**) are also subject to the provisions of Article 1.5 of the California Public Contract Code (commencing with Section 20104).

Pursuant to California Public Contracts Code Section 9204, claims shall be resolved as follows:

- (1) (a) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
 - (b) The claimant shall furnish reasonable documentation to support the claim, pursuant to Appendix B (General Conditions), Section 2.16.
 - (c) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
 - (d) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

- (2) (a) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (b) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.
- (c) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
- (d) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- (e) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.
- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor

presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

1.36 PROCEDURES FOR CIVIL ACTIONS FILED TO RESOLVE CLAIMS

A. The following procedures are established for all civil actions filed to resolve claims subject to this article in accordance with the State of California, Public Contract Code, Section 20104.4.

1. Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1142.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules and pertaining to judicial arbitration.
3. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (a) arbitrators shall, when possible, be experienced in construction law, and (b) any party appealing an arbitration award who does not obtain a more favorable judgment shall in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

1.37 PERMITS AND LICENSES

A. The Contractor shall secure and pay for, as necessary for proper execution and completion of work:

1. All permits, including CAL/OSHA excavation permit, not specifically furnished by the City.
4. Government fees.
5. Licenses.
6. Certifications.
7. Business License from the City of Foster City.
8. Building, Plumbing, and Electrical Permits from the City of Foster City.

- B. Give required notices as required by the permits prior to work.
- C. Comply with codes, ordinances, rules, regulations, orders, and other legal requirements of public authorities which bear on performance of work.
- E. Provide copies of all permits to the Engineer prior to work.

1.38 EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the policy of the City that all qualified persons shall be afforded equal opportunities of employment on any public works contract entered into with the City. To prohibit discrimination because of race, color, religion, sex or national origin, all proposers shall be prepared to demonstrate that they and their subcontractors have undertaken a continuing program to promote the full realization of equal employment opportunities.

1.39 OWNER'S RIGHT TO CORRECT DEFICIENCIES

If the Contractor should neglect to prosecute the work properly in accordance with the contract documents, the owner, after 10 consecutive calendar days following written notice to the contractor and their surety may, without prejudice to any other remedy the owner may have, and without declaring the contract in default or terminating the contract, correct such deficiencies in work intended to become a permanent part of the project, and may deduct the cost thereof from the payment then or thereafter due the Contractor or the entire cost thereof shall be paid by the Contractor or the Contractor's surety. The owner reserves the right to take over work in the event of an emergency.

1.40 NOTIFICATIONS

- a. City Standard Letter
 - i. Along with the Contractors notification letter, the Contractor shall be responsible for printing and delivering a City Standard Letter 7 days prior to construction.

1.41 ORDER PROCEDURES

- a. Work shall follow the following priority procedures. Work may be done concurrently at the approval of the City.
 - ii. Concrete Work
 - iii. Digouts
 - iv. Utility Adjustments as needed.
 - v. Grind and Overlay
 - vi. Crack Sealing
 - vii. Loop Detection
 - viii. Slurry
 - ix. Striping
 - x. Signage
- b. Special Events and Schedule Constraints
 - i. E. Hillsdale Blvd. and Center Park Ln. intersection work shall begin no earlier than July 5, 2024. The site must be cleared, secured, safe, and accessible one day prior to and during Parks and Recreation's Summer Days Event on August 16-18, 2024.
- c. Slurry Closures
 - i. Contractor shall plan on maintaining a lane of travel in each direction for all sites, unless approved by the City Engineer.
 - ii. Slurry shall not be started until the school district is on summer break.
 - iii. Streets in vicinity to schools shall take priority and be completed including striping, prior to the start of school.

1.42 OUTSIDE COORDINATION

- 1) Contractor shall make arrangements with all outside services to minimize disturbance. This includes, but is not limited to:
 - a) USPS, UPS, FedEx
 - b) Recology
 - c) SamTrans

DOCUMENT 00 7316

SUPPLEMENTAL CONDITIONS – INSURANCE AND INDEMNIFICATION

ARTICLE 1 INSURANCE

- 1.01** At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to Owner satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:
- A. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (**Occurrence Form**). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards. The limits of such insurance shall not be coverage of less than **\$2,000,000** each occurrence, **\$4,000,000** general aggregate limit, and **\$2,000,000** aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
 - B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **\$2,000,000** each person Bodily Injury, **\$2,000,000** each occurrence Bodily Injury, and **\$2,000,000** each occurrence Property Damage.
 - C. All-Risk Course of Construction Insurance including damage to property owned by Owner, Contractor or third parties caused by fire. Insurance shall be in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed **\$10,000**. Each loss shall be borne by Contractor.
 - D. Workers' Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
 - E. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- 1.02** If Contractor normally carries insurance in an amount greater than the minimum amounts required by Owner in Paragraph 1.01 above, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.
- 1.03** All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of **A-, VIII** or better, unless otherwise specified in Contract Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.
- 1.04** Required Endorsements: The policies required under Document 00 7200 (General Conditions) and this Document 00 7316 (including any umbrella or excess liability policy(ies)) shall be endorsed as follows and provided prior to execution of the Contract Documents.
- A. Commercial General Liability Endorsement

Contractor shall furnish to the City the “Commercial General Liability Endorsement” as provided in this Document 00 7316. The preferred form is a CG 20 10 11 85, but the Contractor may substitute an alternative endorsement, with prior approval by the City, provided the endorsement references “your work” and contains the following minimum specific components:

1. The insurance policy number.
2. A statement that includes the following language: “The City of Foster City, including its officers, officials, employees, and volunteers, are included as insureds.”
3. A statement acknowledging the insured's insurance as primary as respects the City of Foster City and that any other insurance maintained by the City of Foster City shall be in excess of the insured's insurance and shall not be called upon to contribute with it.
4. A statement that the policy shall not be canceled except after thirty (30) days prior written notice to the City of Foster City.
5. An original, authorized signature.
6. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

An alternative to the submission of a CG 20 10 11 85 form is available. A CG 20 10 10 01 or a CG 20 33 10 01 (or similarly worded document) along with a CG 20 37 10 01 will be acceptable in lieu of a CG 20 10 11 85 form.

Note: Policies that include endorsement numbers CG 22 94 10 01 and/or CG 22 95 10 01, or have the endorsement wording written into the policy language, are not acceptable.

B. Automobile Liability Special Endorsement

Contractor shall furnish to the City the "Automobile Liability Special Endorsement" as provided in this Document 00 7316. The Contractor may substitute an alternative endorsement with prior approval by the City, provided the endorsement contains the following minimum specific components:

1. The insurance policy number.
2. A statement that includes the following language: "The City of Foster City, including its officers, officials, employees, and volunteers, are included as insureds."
3. A statement acknowledging the insured's insurance as primary as respects the City of Foster City and that any other insurance maintained by the City of Foster City shall be in excess of the insured's insurance, and shall not be called upon to contribute with it.
4. A statement that the policy shall not be canceled except after thirty days prior written notice to the City of Foster City.
5. An original, authorized signature.
6. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto).

C. Workers' Compensation and Employer's Liability Special Endorsement

Contractor shall furnish to the City the "Workers' Compensation and Employer's Liability Special Endorsement" as provided in this Document 00 7316. The Contractor may substitute an alternative endorsement with prior approval by the City, provided the endorsement contains the following minimum specific components:

1. A waiver of subrogation clause which states the following:
"This insurance company agrees to waive all rights of subrogation against the City of Foster City, its officers, officials, employees, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City."
2. The insurance policy number.
3. A statement that the policy shall not be canceled except after thirty days prior written notice to the City of Foster City.
4. An original, authorized signature.
5. Contractor shall maintain limits for employer's liability no less than \$1,000,000 per accident for bodily injury or disease.

As an alternative, the City will accept State Compensation Insurance Fund endorsement documentation in lieu of the form of endorsement provided in this Document 00 7316, provided that the documentation contains State Fund endorsement numbers 2065 and 2570.

- D. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
- E. Contractor or its insurance broker shall submit to Owner a copy of the "Declarations Page" for each policy identified under Paragraph 1.01 above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of

insurance provided, the effective date(s) of the policy, the insurance broker's name and license number, and a list of all coverage forms and endorsements.

- F. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner as an additional insured. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.
- 1.05** Certificates of insurance and endorsements shall have clearly typed thereon Owner Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to Owner (Attention: Owner Risk Manager / Purchasing Agent) at the address listed in Document 00 5200 (Agreement), 60 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 Days of cancellation. Contractor shall maintain all insurance in full force and effect during entire period of performance of Contract Documents, including warranty and guarantee periods. However, Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment, and shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph 1.01 above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon Owner's request, Contractor shall submit to Owner, within 30 Days, copies of the actual insurance policies or renewals or replacements.
- 1.06** Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, Owner may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
- 1.07** If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Owner under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Owner, Owner may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Owner is compelled to pay compensation, Owner may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse Owner.
- 1.08** Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.09** Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain **\$1,000,000** in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to Owner within ten Days of Owner's request.
- 1.10** The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work (Professional).
- A. Each Professional shall maintain the following insurance, unless otherwise specified in Contract Documents:
- B. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than **\$1,000,000** combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.

1. Professional shall satisfy all other provisions of this Document 00 7316 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.

ARTICLE 2 RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

- 2.01** Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Contractor shall defend, indemnify, and hold harmless, Owner and each of its officers, officials, employees, consultants and agents including, without limitation, the governing board, Project Manager and each Owner's Representative, from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except for liability for loss, damage, or expense arising from Owner's sole negligence, willful misconduct, or active negligence.
- 2.03** With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against Owner and each of its officers, officials, employees, consultants and agents including, without limitation, Owner, the governing board, Project Manager and each Owner's Representative. Owner shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Public Contract Code Section 9201.
- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, passive negligence, fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, Owner may in its discretion back charge Contractor for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.

(CONTRACT AGREEMENT PACKAGE)

(Attach completed Contractor's Commercial General Liability "Certificate of Insurance" to this page)

(CONTRACT AGREEMENT PACKAGE)

(Attach completed Contractor's "Commercial General Liability Endorsement" to this page.)

(CONTRACT AGREEMENT PACKAGE)

(Attach completed Contractor's "Automobile Liability Special Endorsement" to this page.)
REV. 2/08

(CONTRACT AGREEMENT PACKAGE)

(Attach completed Contractor's "Workers' Compensation and Employer's Liability Special Endorsement" to this page.)

END OF DOCUMENT

DOCUMENT 00 7320

COVID REQUIREMENTS

ARTICLE 1 DEFINITIONS

1.01 The following definitions apply to this Document 00 7320:

- A. The 2019 novel coronavirus (including all variants) and the disease it causes are collectively referred to herein as **COVID-19**.
- B. A **COVID-19 Condition** is something attributable to COVID-19 not caused by Contractor (which for purposes herein includes all subcontractors and suppliers) and beyond its reasonable control, including without limitation COVID-19 Proclamations and supply chain disruptions due to COVID-19, and other circumstances concerning COVID-19 not caused by Contractor and which are beyond its reasonable control.
- C. A **COVID-19 Proclamation** includes without limitation orders, directives and guidance concerning COVID-19 that have been issued, and which may be issued from time to time, by public agencies or regulatory bodies, including without limitation the CDC, OSHA, Cal/OSHA, County or Owner, including without limitation the CalOSHA COVID-19 Prevention Emergency Temporary Standards. Contractor acknowledges that those orders, directives and guidance may require the Project to shut down or otherwise increase Contractor's cost or time of performance by calling for things such as social distancing and the use of personal protective equipment. In the event of conflicting COVID-19 Proclamations, Contractor shall follow the most applicable, restrictive and newest COVID-19 Proclamations.
- D. An **Unknown COVID-19 Condition** is a COVID-19 Condition Contractor did not know about, and reasonably should not have known about, as of the date Contractor submitted its Bid. The requirements contained in COVID-19 Proclamations issued before submission of a Bid are not Unknown COVID-19 Conditions, and Contractor will be deemed to have knowledge of those requirements.
- E. An **Unknown COVID-19 Cost** is a cost that: (i) is solely attributable to an Unknown COVID-19 Condition; (ii) is reasonable under the circumstances; (iii) is not the result of Contractor's failure to comply with the contract documents or a COVID-19 Proclamation; and (iv) is not the result of a subcontractors' or suppliers' failure to comply with a COVID-19 Proclamation while on the Project Site or in connection with performance of the Work.

ARTICLE 2 COVID-19 CONDITIONS AND BID.

2.01 Contractor is expected to know and is deemed to have known about COVID-19 Conditions when it submits its Bid, and COVID-19 Conditions must be accounted for in Contractor's price and schedule. In order to be entitled to any relief from a COVID-19 Condition, Contractor must demonstrate that the issue, cost or delay is due to an Unknown COVID-19 Condition

ARTICLE 3 COMPLIANCE WITH COVID-19 PROCLAMATIONS.

3.01 Contractor shall comply with COVID-19 Proclamations in performance of the Work, irrespective of when the COVID-19 Proclamations are issued, and as they pertain to performance of the Work. The cost of such compliance is non-compensable, except as otherwise expressly stated in this Document 00 7320.

- 3.02** Contractor is responsible to ensure that its subcontractors and suppliers comply with COVID-19 Proclamations while they are on the Project Site and in connection with the performance of their portion of the Work.

ARTICLE 4 DELAY.

- 4.01** Contractor is entitled to a reasonable time extension for an Unknown COVID-19 Condition. Such time extension is non-compensable.

ARTICLE 5 OWNER DIRECTED SUSPENSION.

- 5.01** Owner may suspend work at the Project site due to COVID-19 health concerns, even though Contractor may be allowed to proceed with Work based on COVID-19 Proclamations. Owner may suspend the work for its convenience. Contractor is entitled to a time extension for an Owner Directed Suspension, and the contract amount will be equitably adjusted if and to the extent Contractor incurs increased costs that are Unknown COVID-19 Costs.

ARTICLE 6 COMPENSATION FOR COVID-19 COSTS.

- 6.01** Owner will reimburse Contractor for costs attributable to COVID-19, and which are not included in the Schedule of Values, only if the cost is an Unknown COVID-19 Cost

ARTICLE 7 SAFE WORK PRACTICES.

- 7.01** Contractor shall implement safe work practices recommended by CDC or OSHA or Cal/OSHA, which may include, inter alia, screening all employees, subcontractors, laborers or suppliers (**worker(s)**) on the construction site in advance of their arrival on the job site for signs and symptoms of COVID-19; adopting staggered work schedules, e.g., providing alternating workdays or extra shifts, to reduce the total number of employees on a job site at any given time and to ensure physical distancing; identifying choke points where workers are forced to stand together, such as hallways, hoists and elevators, ingress and egress points, break areas, and buses, and implement policies to maintain social distancing; coordinating site deliveries in line with the employer's minimal contact and cleaning protocols; and instituting a rigorous housekeeping program to reduce dust levels on the job site. Contractor remains fully responsible for following and complying with changes to recommended safe work practices from time to time.

ARTICLE 8 MONITORING AND REPORTING.

- 8.01** Owner may require Contractor to actively monitor the health of its workers through temperature checks and questionnaires of major COVID-19 symptoms, including but not limited to cough, fever above 100.4 degrees Fahrenheit and shortness of breath. Contractor shall immediately report to Owner any outbreaks of COVID-19 among its workers. Contractor shall not knowingly allow any worker who has tested positive with COVID-19 to enter an Owner building. In the event of an outbreak or an exposure to COVID-19, Owner may impose appropriate mitigation strategies which may be in consultation with the public health officer.

ARTICLE 9 PRECEDENCE.

- 9.01** This Document 00 7320 shall take precedence over any other conflicting Contract Document.

DOCUMENT 00 7324
IN-USE OFF-ROAD DIESEL-FUELED FLEETS REGULATION

Attention is directed to provisions of the California Code of Regulations Sections 2449, 2449.1, and 2449.2, Title 13, relating to In-Use Off-Road Diesel-Fueled Fleets (Regulation), issued by the California Air Resources Board (CARB). Contractor warrants that it shall be knowledgeable of and comply with the Regulation, including without limitation the matters contained in this Document 00 7304, at all times prior to and during its work on the Project. The Regulation shall control in the event of any conflict between this Document 00 7304 and the Regulation.

1. Contracting Requirements.

a. If the Project involves the use of vehicles subject to the Regulation, Contractor must obtain copies of the valid Certificates of Reported Compliance, as described in Regulation section 2449(n), for the fleet selected for the Contract and its listed subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

b. Contractor shall not enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and Contractor's listed Subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet.

c. The Certificates of Reported Compliance received by the Contractor for the Project must be retained for three years after the Project's completion. Upon request by CARB, these records must be provided to CARB within five business days of the request.

d. If the Project is considered to be an emergency operation, as defined in Regulation section 2449(c)(18), it is exempt from the requirements in Regulation section 2449(i)(1)-(3). Nevertheless, Contractor must still retain records verifying vehicles subject to the Regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

2. Other Contractor Requirements.

a. Between March 1 and June 1 of each year, Contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in Regulation section 2449(n), from all fleets that have an ongoing contract with the Contractor as of March 1 of that year. Contractor must not write contracts to evade this requirement.

b. Contractor shall only allow fleets with valid Certificates of Reported Compliance on Contractor's job sites.

c. If Contractor discovers that any fleet intending to operate vehicles subject to the Regulation for Contractor does not have a valid Certificate of Reported Compliance, as defined in Regulation section 2449(n), or if Contractor observes any noncompliant vehicles

subject to the Regulation on Contractor's job site, then Contractor must report the required information to CARB when as provided and within the time period contained in in the Regulation

d. Upon request by CARB, Contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to the Regulation operating at the job site or for Contractor.

e. If applicable, Contractor shall prominently display signage for any project where vehicles subject to the Regulation as provided and within the time period contained in in the Regulation.

END OF DOCUMENT

DOCUMENT 00 7380

APPRENTICESHIP PROGRAM AND SKILLED AND TRAINED WORKFORCE REQUIREMENTS

ARTICLE 1 COMPLIANCE REQUIRED

- 1.01** Contractor and Subcontractors shall comply with the requirements of Labor Code Sections 1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

ARTICLE 2 CERTIFICATION OF APPROVAL

- 2.01** Labor Code Section 1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:
- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
 - B. When the number of apprentices in training in the area exceeds a ratio of one to five;
 - C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
 - D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

ARTICLE 3 FUND CONTRIBUTIONS

- 3.01** Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

ARTICLE 4 APPRENTICESHIP STANDARDS

- 4.01** Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 5 APPRENTICESHIP STANDARDS

- 5.01** Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 6 SKILLED AND TRAINED WORKFORCE REQUIREMENTS

- 6.01** Contractor, if and to the extent otherwise required by law, shall meet the requirements of Public Contract Code § 2601(d) subject to certain exceptions set forth therein, that the required percentage of the skilled journeypersons or skilled journeyperson hours employed to perform work

on the Project by the Contractor and all subcontractors are graduates of an apprenticeship program for the applicable apprenticeable occupation.

“Skilled Journeyman” means a worker who either:

- A. Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or apprenticeship program located outside California and approved for federal purposes, pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor.
- B. Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program that is approved by the Chief.

A graduate of an apprenticeship program means either of the following:

- C. An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code; or
- D. An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

Pursuant to Public Contract Code section 2602 and if and to the extent otherwise required by law, Contractor shall certify that it, and all its contractors and subcontractors at every tier will comply with the Skilled and Trained Workforce Requirements of Public Contract Code Chapter 2.9 (Sections 2600 through 2603). Prime Contractor also understands and acknowledges that it shall provide the Owner a monthly report, in the form in Attachment A below or a substantially similar form, demonstrating compliance with the Skilled and Trained Workforce Requirements listed in Public Contract Code Chapter 2.9 (Sections 2600 through 2603). If Contractor fails to provide the monthly report, or a report that is incomplete, Owner will withhold future payments until a complete report is provided. The definitions, obligations, rights and remedies set forth in Public Contract Code Section 2600-2603 are hereby incorporated by reference and made a part of this agreement.

Attachment
Skilled and Trained Workforce Monthly Compliance Report

A

DIRECTIONS: This form is required to be submitted by the Contractor for all contractors regardless of tier by the 20th of the following month for work performed corresponding to this reporting period. Items with a red asterisk (*) indicate a required field.

Project Title:	
*Project Number:	
*Prime Contractor:	
*Subcontractor:	
*Contact Name:	
*Contact Number:	

Month	Year
-------	------

Exceptions:*		
*Work Month & Year:		

*Report: Please fill out the following report of all apprenticeable occupations utilized in this reporting period.

SKILLED JOURNEYPERSON (SJ) REPORT							
*Apprenticeable Occupation	*Required minimum SJ: Apprentice Graduate % (see 2nd page attachment)	Number of Skilled Journeypersons (SJ) employed by the contractor to perform work on the project		SJ ratio between the number of SJ: Apprentice Graduate s to SJ: On-The-Job Experience Workers	Number of hours worked by SJ employed by the contractor to perform work on the project		SJ ratio of hours worked by SJ: Apprentic e Graduate s compare d with SJ: On-The-Job Experience Workers
		*SJ: Apprentice Graduate	*SJ: On-The-Job Experience		*SJ: Apprentice Graduate	*SJ: On-The-Job Experience	
EXAMPLE Laborer	40%	7	3	70%	30	70	30%

Terms	Definitions
Apprentice	Defined in Labor Code 3077
Skilled Journeyperson: Apprentice Graduate	Defined in Public Contracts Code 2601 (e) (1)
Skilled Journeyperson: On-The-Job-Experience	Defined in Public Contracts Code 2601 (e) (2)

END OF DOCUMENT

