

DOCUMENT 00 72 00

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. GENERAL

1.1 Documents

Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Architect/Engineer or any City Representative and Contractor; (2) City and/or its representatives and (except as provided in paragraph 13.9 below) a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (3) between any persons or entities other than City and Contractor. City shall be deemed to be an intended third-party beneficiary of each agreement referenced in clause (2) above, and each such agreement shall so provide. 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.

1.2 Exercise Of Contract Responsibilities

In exercising its responsibilities and authorities under the Contract Documents, City does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's Subcontractors or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Engineer nor any City Representative assume any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assume any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

1.3 Defined Terms

All abbreviations and definitions of terms used and not otherwise defined in this Document are set forth in Section 01 42 16 (Definitions). This Document subdivides at first level into Articles, and then into paragraphs.

2. BIDDING

2.1 Investigation Prior To Bidding

2.1A Prior to bidding, Bidders shall perform the work, investigations, research and analysis required by Article 5 of Document 00 52 00 (Contract Agreement). Under the Contract Documents, Contractor is charged with all information and knowledge that a reasonable Bidder would ascertain from having performed the required work, investigations, research, and analysis. Bid prices shall

include entire cost of all “incidental work” to complete the Work, as that term is defined in paragraph 5.1C of this Document.

2.1B Conditions Shown on Contract Documents: Information as to underground conditions, as-built conditions, or other conditions or obstructions indicated in the Contract Documents, *e.g.*, on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in good faith. City warrants, and Contractor may rely on, the accuracy of only limited types of information as discussed below.

1. Aboveground and as-built conditions: There is no express or implied warranty and no express or implied representation that any information as to aboveground conditions or as-built conditions indicated in the Contract Documents is correctly shown, or indicated, or complete. As a condition to bidding, Contractor shall verify by independent investigation all aboveground and as-built conditions. In submitting its Bid, Contractor shall rely on the results of its own independent investigation and shall not rely on City-supplied information regarding aboveground conditions and as-built conditions.
2. Subsurface conditions: 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. City is not responsible for (1) the completeness of any subsurface condition information for bidding or construction, (2) Contractor’s conclusions or opinions drawn from any subsurface condition information, or (3) subsurface conditions that are not specifically shown. (For example, City is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.1C Conditions Shown in Reports and Drawings Supplied for Informational Purposes: City may have made available during Bidding certain geotechnical reports, “as built” information, and other drawings or other documents describing physical conditions in or relating to existing surface or subsurface conditions or structures at or contiguous to the Site. These materials are not Contract Documents and, except for any “technical data” regarding actual subsurface conditions (such as actual reported soil types, obstructions, structures, materials encountered) and “Underground Facilities” data, Contractor shall not in any manner rely on the information in these materials. Subject to the foregoing, Contractor shall make its own independent investigation of all conditions affecting the Work and must not rely on information provided by City.

2.2 Subcontractors

- 2.2A Consistent with 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. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without City's written approval. At City's request, Contractor shall provide City with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- 2.2B Subcontract agreements shall preserve and protect the rights of City 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 (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward City under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- 2.2C Contractor shall provide for the assignment to City of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guaranties relating to the Work performed by the Subcontractor under the Contract Documents.

3. COMMENCEMENT OF THE WORK

3.1 Commencement Of Work

- 3.1A The Contract Time will commence to run on the 30th 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. City may give a Notice to Proceed at any time within 30 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.

4. INSURANCE

4.1 Insurance Requirements

- 4.1A At or before the date specified in Document 00 21 00 (Instructions to Bidders), Contractor shall furnish to City 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:
1. 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 \$4,000,000 combined aggregate for products and completed operations. The policies shall be endorsed to provide Broad Form Property Damage Coverage.

2. 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.
 3. All-Risk Course of Construction Insurance including damage to property owned by City, 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.
 4. 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.
- 4.1.B All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of A-, VIII or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.
- 4.1.C Required Endorsements: The policies required under paragraphs 4.1.A.1 and 4.1.A.2 of this Document shall be endorsed as follows:
1. Name City, its City Council, and their employees, representatives, consultants, and agents, and Project Manager as additional insureds, but only with respect to liability arising out of the activities of the named insured.
 2. 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 under paragraphs 4.1.A.1 and 4.1.A.2 of this Document.

3. Insurance shall be primary to City and no other insurance or self-insured retention carried or held by City shall be called upon to contribute to a loss covered by insurance for the named insured.
- 4.1.D Certificates of insurance and endorsements shall have clearly typed thereon City Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City (Attention: Contract Administration/Inspection) at the address listed in Document 00 52 00 (Contract 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 insurance in full force and effect during entire period of performance of Contract Documents. Contractor shall keep insurance in force during warranty and guarantee periods, except that Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment. 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 City's request, Contractor shall submit to City, within 30 Days, copies of the actual insurance policies or renewals or replacements.
 - 4.1.E 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, City may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
 - 4.1.F 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 City under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City, City 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 City is compelled to pay compensation, City may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse City.
 - 4.1.G Nothing in paragraph 4.1 of this Document 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.
 - 4.1.H All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to City within ten Days of City's request.

- 4.1.1 The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work (“Professional”).

Each Professional shall maintain the following insurance:

1. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional’s Work on the Project, in an amount not less than \$2,000,000 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.
2. All insurance required by paragraphs 4.1.A.1, 4.1.A.2, and 4.1.A.4 of Document 00 72 00. Professional shall satisfy all other provisions of paragraph 4.1 of this Document relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.

5. DRAWINGS AND SPECIFICATIONS

5.1 Intent

- 5.1A Drawings and Specifications are intended to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents. Contractor shall perform any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. 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.
- 5.1B 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.

- 5.1C 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 City. 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.

5.2 Drawing Details

- 5.2A 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 City. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

5.3 Interpretation Of Drawings And Specifications

- 5.3A 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 City, in writing. City will issue with reasonable promptness written responses, clarifications or interpretations as City may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be 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 City 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 City’s response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document.

5.4 Checking Of Drawings

- 5.4A 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 City, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby. Contractor shall provide City with a follow-up correspondence every ten Days until it receives a satisfactory interpretation or clarification.

5.5 Standards To Apply Where Specifications Are Not Furnished

5.5A The following general specifications shall apply wherever in the Specifications, or in any directions given by City 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 in Section 01 42 16 (Definitions), for first-class Work of the kind required. Contractor shall specify in writing to City the materials to be used or Work to be performed under this paragraph 5.5A ten Business Days prior to furnishing such materials or performing such Work.

5.6 Deviation From Specifications And Drawings

- 5.6A Contractor shall perform Work in accordance with Drawings and Specifications. Contractor may deviate from Drawings or the dimensions given in the Drawings, and may deviate from the Specifications, only upon City's advance written approval of the proposed deviation.
- 5.6B City may order that locations, lines and grades for Work vary from those shown on Drawings. Changes may be made in locations, lines or grades for Work under any item of Contract Documents. No payment in addition to unit price fixed in the Contract Documents for Work under respective items will be allowed on account of variations from Drawings in unit price items. In lump sum contracts, or where there are no unit price items covering Work affected by variations of locations, lines or grades, all changes in the Contract Documents will be made as set forth in Article 14 of this Document.

5.7 Precedence Of Documents

- 5.7A 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. Document 00 52 00 (Contract Agreement), and terms and conditions referenced therein;
 3. Document 00 73 00 (Special Conditions), if included;
 4. Document 00 72 00 (General Conditions);

5. Division 1 Specifications;
 6. Division 2 Specifications;
 7. Drawings;
 8. Written numbers over figures, unless obviously incorrect;
 9. Figured dimensions over scaled dimensions;
 10. Large-scale drawings over small-scale drawings.
- 5.7B Any conflict between Drawings Specifications 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.
- 5.7C 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.
- 5.7D In the event the Specifications include divisions above Division 2 (e.g., Division 3 and above), then such divisions shall be included within the Contract Documents unless identified otherwise.

5.8 Ownership And Use Of Drawings, Specifications And Contract Documents

- 5.8A 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 City. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

6. CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

6.1 Construction By City Or By Separate Contractor

- 6.1A City may perform with its own forces, construction or operations related to the Project. City 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. Contractor shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility owners and City (if City 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, and shall cooperate with them to facilitate the progress of the Work.

7. CITY REPRESENTATIVES AND AUTHORITIES

7.1 City Representative(s)

- 7.1A City representative(s) will have limited authority to act on behalf of City as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by City, City will

issue all communications to Contractor through City's representative, and Contractor shall issue all communications to City through City's representative in a written document delivered to City. Should any direct communications between Contractor and City's consultants, architects or engineers not identified in Article 2 of Document 00 52 00 (Contract Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to City.

7.2 Means And Methods Of Construction

7.2A Subject to those rights specifically reserved in the Contract Documents, City 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. City will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

8. CONTROL OF THE WORK

8.1 Observation of Work By City and/or its Engineer

- 8.1A Work shall be performed under City's general observation and administration. Contractor shall comply with City'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. City'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.
- 8.1B City may engage an independent consultant or engineer (collectively for purposes of this paragraph, "Engineer") to assist in administering the Work. If so engaged, Engineer will advise and consult with City, but will have authority to act on behalf of City only to extent provided in the Contract Documents or as set forth in writing by City. Engineer 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. Engineer 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.
- 8.1C Engineer 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.
- 8.1D Engineer 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, Engineer may recommend to City that it disapproves or rejects Work that Engineer 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. City will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.

- 8.1E Engineer may conduct inspections to recommend to City the dates that Contractor has achieved Substantial Completion and Final Acceptance, and will receive and forward to City for review written warranties and related documents required by Contract Documents.

8.2 Supervision of Work By Contractor

- 8.2A 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.

- 8.2B Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without City's express written consent. 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.

8.3 Access To Work

- 8.3A During performance of Work, City and its agents, officers, consultants, and employees 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 City's interests may require. Other contractors performing work for City 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.

8.4 Existing Utilities Shown Or Indicated In Contract Documents

- 8.4A Drawings or specifications may indicate above- and below-grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities, and additional information may

be on file at the regional notification center, "Underground Service Alert" ("USA"). Contractor shall locate these known existing installations before proceeding with trenching or other operations that may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum. Additional utilities whose locations are unknown to City are suspected to exist. Contractor shall be alert to their existence; if they are encountered, Contractor shall immediately report to City for disposition of the same. In addition to reporting if any utility is damaged, Contractor shall take appropriate action as provided in this Document. 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.

- 8.4B At no additional cost to City, Contractor shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, 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. Should City determine that Contractor has not responded in a timely manner or not diligently pursued completion of the Work, City may restore service and deduct the costs of such action by City from the amounts due under the Contract.
- 8.4C Consistent with Government Code Section 4215, as between City and Contractor, City 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. City 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.
- 8.4D Prior to performing Work at the Site, Contractor shall lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. At no additional cost to City, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that are to remain and that are subject to damage.
- 8.4E Nothing in this shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred by Contractor from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site.

Contractor shall immediately secure all available information and notify City and utility, in writing, of its discovery, while performing Work under the Contract Documents, of any utility facilities not identified in the Drawings and Specifications.

8.5 Protection Of Underground Facilities When Digging Trenches Or During Excavation

8.5A Before commencing work of digging trenches or excavation, Contractor shall review all information available regarding subsurface conditions, including but not limited to information supplied for bidding purposes, and subject to the terms and conditions of these documents. Contractor shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

“Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.

When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, as such date and time are authorized pursuant to paragraph (1) of subdivision (a) of Section 4216.2. The excavator and operator or its representative shall conduct an onsite meeting at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installations prior to start time.”

8.5B 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 City with copies of all USA records secured by Contractor. Contractor shall advise City of any conflict between information provided for bidding purposes, the Drawings and specifications, and that provided by USA records. Contractor’s excavation shall be subject to and comply with the Contract Documents.

8.5C 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, but not limited to, information made

available for bidding and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, 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.

- 8.5D If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by City for bidding or in information on file at USA or is otherwise reasonably available to Contractor, 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 as required by Article 13 of this Document), identify the owner of such Underground Facility and give written notice to that owner and to City. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 8.5E 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 City 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 Price 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.)
- 8.5F Contractor shall bear the risk that Underground Facilities not owned or built by City may differ in nature or locations shown in information made available by City 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, and Contractor is to apply its skill and industry to verify the information available.

9. WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.1 Warranty And Guaranty

- 9.1A **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 but not limited to 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.
- 9.1B **Extended Guaranties:** Any guaranty 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 City with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- 9.1C **Environmental and Toxics Warranty:** The covenants, warranties and representations contained in this paragraph 9.1C are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to City 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 City.
 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 City.

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 City with copies thereof.

9.2 Inspection Of Work

- 9.2A All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of the Contract Documents. 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 City, its agents, representatives or independent contractors retained by City 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, City 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.
- 9.2B Contractor shall give City 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.
- 9.2C 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 City with the required certificates of inspection, or approval. City 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.
- 9.2D If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of City, Contractor shall

uncover the Work at City's request. Contractor shall bear the expense of uncovering Work and replacing Work.

- 9.2E In any case where Contractor covers Work contrary to City's request, Contractor shall uncover Work for City's observation or inspection at City's request. Contractor shall bear the cost of uncovering Work.
- 9.2F Whenever required by City, 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, City, in manner herein prescribed for paying for alterations, modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- 9.2G As necessary, City shall select testing agencies for the Project. A list of required structural tests and inspections prepared by the Engineer shall be provided to the designated testing agency prior to the start of construction.
- 9.2H The testing agency shall forward the test results to the Engineer, Contractor and City within 14 Days of the date of the test.
- 9.2I Inspection of the Work by or on behalf of City, or City'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 City, to perform Work in conformance with the Contract Documents.
- 9.2J Any inspection, evaluation, or test performed by or on behalf of City relating to the Work is solely for the benefit of City, 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 City, 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.

9.3 Correction Of Defective Work

- 9.3A 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, City may order Contractor to replace any Defective Work, or stop any portion of Work to permit City (at Contractor's expense) to replace such Defective Work. These City rights are entirely discretionary on the part of the City, and shall not give rise to any duty on the part of City to exercise the rights for the benefit of Contractor or any other party.

- 9.3B City 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. 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, City may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Contractor, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with City's calculations, it may make a claim as provided in Article 12 of this Document. City's rights under this paragraph 9.3B shall be in addition to any other rights it may have under the Contract Documents or by law.
- 9.3C **Correction Period:** If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, whether a structure, equipment, machinery, facilities or otherwise, and whether completed or incomplete, is found to be Defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by City 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, City 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, City shall have all rights and remedies granted by law.
- 9.3D 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 or Certificate of Substantial Completion.
- 9.3E Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been removed and replaced under this provision 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 removal and replacement has been satisfactorily completed.
- 9.3F If defects requiring correction by Contractor are found in any equipment, machinery, or facilities furnished by Contractor, City shall have the right to

operate such defective equipment or facilities and make reasonable use thereof until the equipment, machinery, or facilities can be shut down for correction of defects without causing injury to City.

9.4 Acceptance And Correction Of Defective Work By City

9.4A City may accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to City's evaluation of and determination to accept such Defective Work. If City 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, City may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with City's calculations, Contractor may make a claim as provided in Article 12 of this Document. If City accepts any Defective Work after final payment, Contractor shall pay to City, an appropriate amount as determined by City.

9.4B City may correct and remedy deficiency if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with paragraph 9.3B of this Document; or provide a plan for correction of Defective Work acceptable to City; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, City 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 City has paid Contractor but which are stored elsewhere. Contractor shall allow City, its representatives, agents, employees, and other contractors and City's consultants access to the Site to enable City to exercise the rights and remedies under this paragraph 9.4B. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by City in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City may deduct from moneys due Contractor, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with City's calculations, Contractor may make a claim as provided in Article 12 of this Document.

9.5 Rights Upon Inspection, Correction or Acceptance

9.5A Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by City of its rights and remedies under this Article 9. Where City exercises its rights under this Article 9, it retains all other rights it has by law or under the

Contract Documents including, but not limited to, 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.

- 9.5B Inspection by City 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 or otherwise shall not operate to waive City's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless City agrees otherwise in writing.
- 9.5C Neither acceptance of the whole or any part of Work by City nor any verbal statements on behalf of City 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 City herein nor any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach.

9.6 Samples And Tests Of Materials And Work

- 9.6A 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 City. Contractor shall submit all Samples in ample time to enable City to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

9.7 Proof Of Compliance Of Contract Provisions

- 9.7A In order that City 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 City properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

10. CONTRACTOR'S ORGANIZATION AND EQUIPMENT

10.1 Contractor's Legal Address

- 10.1A 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 City, which in conspicuous language advises City of a change in legal address or facsimile number, and which City 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 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.

10.2 Contractor's Superintendents Or Forepersons

10.2A 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 City may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

10.3 Proficiency In English

10.3A 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.

10.4 Contractor's And Subcontractors' Employees

10.4A Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If City 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 City, or violates sanitary rules, or is otherwise unsatisfactory, and if City 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 City.

10.5 Contractor To Supply Sufficient Workers And Materials

10.5A Unless otherwise required by City 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.

- 10.5B 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 City may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as City may consider necessary, at no cost to City. If Contractor does not comply with the notice within three Business Days of date of service thereof, City 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 City may elect. City may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that City exercises this right. City 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. City 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 City from claims of others.
- 10.5C Exercise by City of the rights conferred upon City in paragraph 10.5B of this Document is entirely discretionary on the part of City. City shall have no duty or obligation to exercise the rights referred to in paragraph 10.5B of this Document and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of City's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon City under paragraph 10.5B of this Document are cumulative to City's other rights under any provision of the Contract Documents.

10.6 Contractor's Use Of The Site

- 10.6A 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 City and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy City-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior written approval from City.

10.7 Temporary Facilities

- 10.7A Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary electricity, water, telephone, sanitary facilities, barriers and enclosures, tree and plant protection, and any other necessary services required for construction, testing or completion of the Work and to assure non-interference with City operations, ingress or egress of the public to near the Site and public safety.

11. PROSECUTION AND PROGRESS OF THE WORK

11.1 Schedules And Examinations Of Contract Documents

- 11.1A Contractor shall submit schedules, reports, and Submittals in the appropriate quantity and within the required time, arrange conferences and meetings and proceed with the Work in accordance with Contract Documents, including Sections 01 31 19 (Project Meetings), 01 32 16 (Progress Schedules and Reports), and 01 33 00 (Submittal Procedures).
- 11.1B Contractor shall submit to City for review and discussion at the Preconstruction Conference described in Section 01 31 19 (Project Meetings):
1. Progress Schedules and Reports as required by Sections 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures).
 2. A preliminary schedule of Submittals that shall list each required Submittal and the times for submitting, reviewing and processing such Submittal. If no such schedule is agreed upon, then all Submittals shall be completed and submitted within 14 Days after the Notice of Award.
 3. A preliminary Schedule of Values for all the Work, which shall conform to Section 01 20 00 (Measurement and Payment).
- 11.1C Unless otherwise provided in the Contract Documents, at least 15 Days before submission of the first Application for Payment, a conference attended by Contractor, City, and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with paragraph 11.1B of this Document and first reviewed at the Preconstruction Conference. Contractor shall have an additional seven Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to City and/or Project Manager as meeting the requirements of the Contract Documents. City's acceptance of Contractor's schedules will not create any duty of care or impose on City any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility.

11.2 Cost Data

- 11.2A 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.
- 11.2B City shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to 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, City 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. City and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.2B at any time during the Project and for a period of five years following Final Completion. 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.

- 11.2C 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 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 City for reference. Upon completion of the Work, Contractor shall deliver to City, the Project Record Documents, Samples and Shop Drawings and as-built drawings..

12. CLAIMS BY CONTRACTOR

12.1 Obligation to File Claims for Disputed Work

- 12.1.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 clarification, determination, action or inaction by City or Engineer, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents in any way, 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 Contractor may be required to perform, time extensions, payment to 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, then Contractor shall first follow procedures set forth in the Contract (including, without limitation, other Articles of this Document and Section 01 26 00.)
- 12.1.B If a dispute remains, then Contractor shall give written notice to City that expressly invokes this Article 12. City shall decide the issue in writing within 15 Days; and City's written decision shall be final and conclusive.
- 12.1.C If Contractor disagrees with City's decision, or if Contractor contends that City failed to provide a decision timely, then Contractor's SOLE AND

EXCLUSIVE REMEDY is to promptly file a written claim setting forth Contractor's position as required herein.

12.2 Form and Contents of Claim

12.2.A Contractor's written claim must identify itself as a "claim" under this Article 12 and must include the following: (1) a narrative of pertinent events; (2) citation to contract provisions; (3) theory of entitlement; (4) complete pricing of all cost impacts; (5) a critical path analysis (or a Time Impact Evaluation if so specified in Section 01 32 00) of all time delays that shows actual time impact on the critical path; (6) documentation supporting items 1 through 5; and (6) a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to City within thirty (30) calendar Days of receiving City's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Section 01 26 00 herein, 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.

12.3 Administration During/After Claim Submission

12.3.A City 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 City to evaluate and decide Contractor's claim. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed Work to final completion in accordance with City's determination.

12.3.B Upon receipt of Contractor's formal claim including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, City or its designee will review the issue and render a final determination.

12.3.C Claims shall be calculated in the same manner as Change Orders per Section 01 26 00 (Contract Modification Procedures). Except where provided by law, or elsewhere in these contract documents (if applicable), city shall not be liable for special or consequential damages, and contractor shall not include them in its claims. Contractor shall be limited in its recovery on claims to the change order calculations set forth in Section 01 26 00.

12.3.D After their submission, claims less than \$375,000 shall also be subject to the Local Agency Disputes Act.

12.4 Compliance

- 12.4.A The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two step claim presentment procedure by agreement under Section 930.2 of the Government Code, and shall survive termination, breach or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 to file a Government Code Section 910 claim (step two) shall be reduced to 150 Days. Any Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under paragraph 12.B.3 above.
- 12.4.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 Section 910 claim, or legal action. City shall not be deemed to waive any provision under this Article 12, if at City's sole discretion, a claim is administered in a manner not in accord with this Article 12.

13. LEGAL AND MISCELLANEOUS

13.1 Laws And Regulations

- 13.1A Contractor shall keep fully informed of and shall comply with all laws, ordinances, municipal code, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify City 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, municipal code, 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, municipal code, regulations and orders.
- 13.1B Whenever Drawings and Specifications require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Drawings and Specifications shall govern. Whenever Drawings and Specifications require something that will violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.

13.2 Permits And Taxes

- 13.2A 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. City 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 City may have already obtained permits for the Work.

13.3 Responsibility Of Contractor And Indemnification

- 13.3A City and each of its officers, employees, consultants and agents including, but not limited to, the Board, City Engineer and each City 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.
- 13.3B To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, City and each of its officers, employees, consultants and agents, including but not limited to the Board, Engineer and each City representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to 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 which 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, regardless of whether it is caused in part by the negligence of City or by any person or entity required to be indemnified hereunder.
- 13.3C With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City and each of its officers, employees, consultants and agents including, but not limited to City, the Board, Engineer and each City representative.

- 13.3D 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.
- 13.3E To the furthest extent permitted by law (including, without limitation, Civil Code Section 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, negligence (active or passive), 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, City may in its discretion back charge Contractor for City's costs and damages resulting therefrom and withhold such sums from progress payments or other contract moneys which may become due.
- 13.F The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to City or other indemnified party to the extent of its active negligence.

13.4 Concealed Or Unknown Conditions

- 13.4A 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 City promptly before conditions are disturbed, except in an emergency as required by paragraph 16.4A of this Document, 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.
- 13.4B In response to Contractor's Notice of Differing Site Conditions under this paragraph 13.4B, City 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, City will negotiate an appropriate change order following the procedures set forth in the Contract Documents. If City 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, City will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document.)
- 13.4C 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.

13.5 Notice Of Hazardous Waste Or Materials Conditions

- 13.5A Contractor shall give a written Notice of Hazardous Materials Condition to City promptly, before any of the following conditions are disturbed (except in an emergency as required by paragraph 16.4 of this Document), 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 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”).
- 13.5B 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.
- 13.5C 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.
- 13.5D 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 time required by paragraph 13.5A of this Document.

- 13.5E If City determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, City will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If City determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, City will notify Contractor in writing, stating the reasons for its determination.
- 13.5F In addition to the parties' other rights under paragraph 13.5E of this Document, 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, City may order the disputed portion of Work deleted from the Work, or performed by others, or City 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.
- 13.5G If Contractor does not agree with any City determination of any adjustment in the Contract Sum or Contract Time under this paragraph 13.5, Contractor may make a claim as provided in Article 12 of this Document.

13.6 Suspension Of Work

- 13.6A City may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as City 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 26 00 (Contract 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.

13.7 Termination Of Contract For Cause

- 13.7A City may declare Contractor in default of the Contract Documents and City may terminate Contractor's right to proceed under the Contract Documents for cause, in whole or in part, should 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 City to 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 Contractor to avail itself of a time period in excess of 10 calendar Days, Contractor must provide City within the ten (10) Day period with a written plan acceptable to City 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.)
- 13.7B In the event of termination by City as provided above for cause, Contractor shall deliver to City possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all

types, Drawings 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. 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 which City may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, Contractor shall compensate City for all loss, cost, damage, expense, and/or liability suffered by City as a result of such termination and/or failure to comply with the Contract Documents.

- 13.7C 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 Contractor shall have the recovery rights specified in paragraph 13.8. Any Contractor claim arising out of a termination for cause, however, shall be made in accordance with Article 12 of this Document. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Contractor.

13.8 Termination Of Contract For Convenience

- 13.8A City 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 City shall determine that termination is in City's best interest. Termination shall be effected by City delivering to 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.
- 13.8B Contractor shall comply strictly with City'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.
- 13.8C 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, City shall retain all rights under the Contract Documents, including but not limited to claims, indemnities, or setoffs.
- 13.8D Under no circumstances may Contractor recover legal costs of any nature, nor may Contract recover costs incurred after the date of the termination.

13.9 Contingent Assignment Of Subcontracts

- 13.9A Contractor hereby assigns to City each Subcontract for a portion of the Work, provided that:
1. The assignment is effective only after City's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.7 or 13.8 of this Document.
 2. The assignment is effective only for the Subcontracts which City 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 61 13.13 (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), sign all instruments and take all actions reasonably requested by City to evidence and confirm the effectiveness of the assignment in City; and
 5. Nothing in this paragraph 13.9 shall modify or limit any of Contractor's obligations to City arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

13.10 Remedies And Contract Integration

- 13.10A 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 City 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 of California for the City of San Bruno. All City 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 City shall have any and all other equitable and legal rights and remedies which it would have according to law.
- 13.10B The Contract Documents, any Contract Modifications, and Change Orders shall represent the entire and integrated agreement between City 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. City 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 and the parties are not and will not rely on any other information.

- 13.10C In any proceeding to enforce the Contract Documents, Contractor and City agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.
- 13.10D 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.

13.11 Patents

- 13.11A 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 City and each of its officers, employees, consultants and agents, including, but not limited to, the Board, Engineer and each City 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, royalties, 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.

13.12 Substitution For Patented And Specified Articles

- 13.12A Except as noted specifically in Document 00 21 00 (Instructions to Bidders), 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" and 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 City, 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 43

25 (Substitution Request Form) as provided in Document 00 21 00. A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

13.13 Interest Of Public Officers

13.13A No representative, officer, or employee of City no member of the governing body of the locality in which the Project is situated, no member of the locality in which City 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.

13.14 Limit Of Liability

13.14a City, and each of its officers, board members, employees, consultants and agents including, but not limited to, city engineer and each other city 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. MODIFICATIONS OF CONTRACT DOCUMENTS

14.1 Alterations, Modifications And Force Account Work

14.1A No modification or deviation from the Drawings and Specifications will be permitted except by written addenda, written Change Order or written Supplemental Instruction. As appropriate, Change Orders are subject to approval by City.

14.1B City, before the date of completion of Work, may order changes in Work herein required, and may order extra materials and extra Work in connection with performance of Contract, and Contractor shall promptly comply with such orders. Any such orders shall be diligently carried out by Contractor in accordance with the Contract Documents. If changes ordered in design, workmanship or materials are 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 Contractor and City may agree upon as reasonable and proper allowance for increase or decrease in cost of Work, and absent such agreement, then as City may direct (with Contractor retaining its rights under Article 12 herein).

14.1C City may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease

the quantity of any item or portion of the Work; expand, contract 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, City 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 City-furnished labor, materials, and equipment.

- 14.1D Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order 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.
- 14.1E A Change Order will become effective when signed by City, notwithstanding that Contractor has not signed it.
- 14.1F Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 26 00 (Contract Modification Procedures). 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., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays.
- 14.1G A performance bond rider covering the changed Work must be executed and delivered to City before proceeding with the changed Work.

15. TIME ALLOWANCES

15.1 Entitlement To Change Of Contract Time

- 15.1A The Contract Time may only be changed by Change Order or by Contract Modification, and all time limits stated in the Contract Documents are of the essence of Contract Documents.
- 15.1B The Contract Time may be adjusted in an amount equal to the time lost due to:
1. Changes in the Work ordered by City;
 2. Acts or neglect by City, Engineer, any City representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this paragraph 15.1, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents.

- 15.1C The Contract Time shall not be extended for any cause identified in paragraph 15.1B above, however, unless:
1. Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 2. A claim for delay is made as provided herein; and
 3. Contractor submits a critical path analysis (or a Time Impact Evaluation if so specified in Section 01 32 00 that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

15.2 Weather Related Delays

- 15.2A Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the parameters listed or referenced in this paragraph. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters on a monthly basis and Contractor proves that adverse weather actually caused delays. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month Contractor starts and finishes Work:

January, [8]; February, [7]; March, [6]; April, [3]; May, [1]; June, [0]; July, [0]; August, [0]; September, [0]; October, [2]; November, [4]; and December, [7].

In order to qualify as an adverse weather delay with respect to the foregoing parameters, daily rainfall must exceed .1 of an inch or more at the San Francisco California WSO (San Francisco Airport), California station, as measured by the National Oceanic & Atmospheric Administration, and Contractor shall prove that the rain actually caused delay as set forth in paragraph 15.3 of this Document. Notwithstanding the foregoing allowances, Contractor shall at all times employ all available mitigation measures to enable Work to continue. Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the parameters listed in this paragraph 15.2A.

- 15.2B 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 City and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- 15.2C 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 City'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.

- 15.2D Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for City to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

15.3 Notice Of Delay

- 15.3A Within seven Days of the beginning of any delay, Contractor shall notify City in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of the delay event, and shall include a written schedule document that demonstrates delay to the critical path using a critical path analysis (or a Time Impact Evaluation if so specified in Section 01 32 00). City 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 paragraph.

15.4 Time Extensions And/Or Damages Entitlements For Delays

- 15.4A Contractor may receive a time extension and be compensated for delays caused directly and solely by City.
- 15.4.B Contractor may receive a time extension without compensation for delays resulting in whole or in part from causes beyond the reasonable control of Contractor and City including, without limitation, adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics, and acts of public utilities. In such cases, a time extension without compensation shall constitute Contractor's sole and exclusive remedy for such delays.
- 15.4.C Contractor shall not be entitled to any time extension or compensation including, but not limited to, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either City or others.
- 15.4.D Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:

1. City's right to sequence the Work in a manner which would avoid disruption to City's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; City's enforcement of any government act or regulation; or the provisions of the Contract Documents;
2. For changed Site conditions that are beyond the parties' contemplation, except that City may approve direct costs associated with unknown conditions (but not costs or damages which result from such delays); and
3. Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by City or its consultants in a reasonable time commensurate with Contract Documents requirements.

15.5 Liquidated Damages

15.5A Time is of the essence. Execution of Contract Documents by Contractor shall constitute acknowledgement by Contractor that Contractor understands, has ascertained and agrees that City will actually sustain damages 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 or extensions of time allowed pursuant to provisions hereof. Contractor and City agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by City as defined in Document 00 52 00 (Contract Agreement), and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

15.5B City 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. Should Contractor fall behind the approved Progress Schedule, City may deduct liquidated damages based on its estimated period of late completion. City need not wait until Final Completion to withhold liquidated damages from Contractor's progress payments. Should money due or to become due to Contractor be insufficient to cover aggregate liquidated damages due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to City.

16. WORKING CONDITIONS AND PREVAILING WAGES

16.1 Use Of Site/Sanitary Rules

16.1A 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 City's approval.

- 16.1B 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 City, 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 the owner or occupant thereof resulting from the performance of Work.
- 16.1C 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, surplus materials and SWPPP components. Contractor shall leave the premises clean and ready for occupancy by City at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- 16.1D 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.

16.2 Protection Of Work, Persons, Property and Operations

- 16.2A 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 City, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all theft or damage to Work, property or structures, all injuries to persons, and all damage and interruptions to City's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by City in writing, Contractor shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any facilities, operations, or real or personal property of City, its officers, employees, agents, invitees, licensees, lessees or contractors.

- 16.2B 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.
- 16.2C Contractor shall remedy all damage, injury, loss or interruption to any property or operations referred to in paragraph 16.2A of this Document, 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. City and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- 16.2D 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.
- 16.2E City may, at its option, retain such moneys due under the Contract Documents as City deems necessary until any and all suits or claims against Contractor for injury to persons, property or operations shall be settled and City receives satisfactory evidence to that effect.

16.3 Responsibility For Safety And Health

- 16.3A 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 City's safety regulations as amended from time to time. Contractor shall comply with all City directions regarding protective clothing and gear.
- 16.3B Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify City, 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.
- 16.3C 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, City-designated routes for ingress and egress thereto,

and any other City-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.

16.4 Emergencies

- 16.4A 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 City, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by City. Contractor shall give City prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If City 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.

16.5 Use Of Roadways And Walkways

- 16.5A 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 City'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.

16.6 Nondiscrimination

- 16.6A 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 Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

16.7 Prevailing Wages

- 16.7A 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 (1) work of a similar character in the locality in which the Work is performed and (2) 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 City 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.

- 16.7B Contractor shall forfeit, as a penalty to City, Fifty Dollars (\$50.00) for each laborer, workman, 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, workman 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 California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 16.7B 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 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 City. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- 16.7C 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.
- 16.7D Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Section 1813. Failure to so comply, including without limitation Labor Code Section 1776, shall constitute a default under this Contract.
- 16.7E Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776.
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 Contractor as required by Labor Code Section 1776.
 - (a) Contractor shall inform the City 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 Contractor or Subcontractor fails to comply with the ten-Day period, he or she shall, as a penalty to the City on whose behalf the contract is made or awarded, forfeit \$25.00 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. Contractor shall also deliver certified payrolls to City with each Application for Payment as described in Section 00 12 00 (Measurement and Payment).

16.7F No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

16.8 Environmental Controls

16.8A 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.

16.9 Shoring Safety Plan

16.9A Any conflict between this paragraph 16.9 and Division 2 of the Specifications shall be resolved in favor of the most stringent requirement.

16.9B At least five Days in advance of any excavation five feet or more in depth, Contractor shall submit to City 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

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excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in the State in which the Work is performed and retained by the Contractor shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.

- 16.9C 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. City's acceptance of any Drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this paragraph 16.9.
- 16.9D 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-