

Project : BC-41  
Project Name: George Sim Community Center Expansion & Remodel (BC-41)  
Department: General Services  
Division: Facilities & Real Property Management

City of Sacramento

## DESIGN-BUILDER FEE WITH OPTION FOR A GUARANTEED MAXIMUM PRICE (GMP) CONTRACT

This **CONTRACT** is made at Sacramento, California as of \_\_\_\_\_, by and between the City of Sacramento, a municipal corporation ("CITY"), and:

**DESIGN-BUILDER:** Brown Construction, Inc.  
(Name and address) 1465 Enterprise Blvd.  
West Sacramento, CA 95691

**PROJECT:** George Sim Community Center Expansion & Remodel (BC41)  
6207 Logan Street  
Sacramento, California 95824

### 1.00 SEPARATION OF WORK INTO STAGES:

Design-Builder enters into this contract for the George Sim Community Center Expansion & Remodel Project (BC41) with the understanding that the Work shall be separated into two distinct stages.

**Stage 1** shall include all research, site investigation, programming, design, meetings, presentations, and work necessary to develop a facility design for all the scope described in the Contract Documents (Section 3.00), consistent with the Design Guidelines (Exhibit H) and culminating in a Guaranteed Maximum Price (GMP) for all the WORK. If necessary, the GMP will be divided into a base proposal and additive alternates acceptable to the City. The base proposal shall include all the utilities, site work and site infrastructure necessary for completion

of Phase I, II & III as described in the "Functional Space and Operations Programming" in the RFP issued on March 13, 2007, plus as much of Phase I, II & III as possible within the Contract Price (Section 5.01.B.3). Additive alternates shall be coordinated with the City. The City may elect to fund some or all of the Additive Alternates.

**Stage 2** shall include preparation of construction documents, securing all permits, completing all construction, systems commissioning, testing and obtaining all permits to provide the City with a fully operational facility consistent with the Contract Documents and requirements of this contract.

## **2.00 SCOPE OF WORK**

Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **3.00 CONTRACT DOCUMENTS**

A. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed below:

1. This contract for the George Sim Community Center Expansion & Remodel Project (BC41).
2. General Conditions (Exhibit A)
3. Special Conditions (Exhibit B)
4. Standard Specifications for Public Works Construction (June 1989), limited to off-site work and on-site primary utility infrastructure and applicable sections of the Standard Specifications as set forth in Exhibit J.
5. Construction Contract Requirements (Exhibit F)
6. Project Criteria as defined in the following RFP documents issued March 13, 2007 including Addenda #1:
  - a. Functional Space and Operations Programming
  - b. Relationship Matrix
  - c. Functional Flow Diagram
  - d. Bubble Diagrams
  - e. Pedestrian & Vehicular Circulation Patterns
  - f. Maintenance & Service Access Paths
  - g. Performance Specifications
  - h. Preliminary Title Reports
  - i. Life Cycle Cost Estimate
  - j. Anticipated Operation Schedules

- k. Toxic Investigation (Report dated January 12, 2007)
- l. Water Flow Test Results
- 7. RFP submittal from Design-Build team
- 8. Construction Drawings and Specifications
- 9. GMP Accepted by the City

Requirements established in item 6 above may be superseded or amended by designs, decisions or changes/modifications completed during work under items 7, 8 and/or 9 above, if both parties specifically acknowledge and mutually accept the itemized changes/modifications in writing. No requirements in item 1-This Contract, 2-General Conditions, 3-Special Conditions, 4- Standards Specifications, or 5-Construction Contract Requirements are subject to revision unless initiated and approved by CITY.

B. Terms, words and phrases used in the Contract Documents shall have the meanings given them in the Special Conditions (Exhibit B).

C. The Contract Documents form the entire contract between CITY and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents and this contract.

#### **4.00 OWNERSHIP OF WORK PRODUCT**

##### **4.01 Work Product**

CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Design-Builder pursuant to this Contract. In this Contract, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Design-Builder shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

##### **4.02 City's Right to "Information" at Termination**

City retains all rights to "Information". Should this contract be terminated the City retains the right to complete or execute the Work with designers, professionals, contractors, sub-contractors and others hired directly or indirectly by the Design-Builder to prepare the "information". Design-Builder agrees to encourage and facilitate the completion of the Work, and not prohibit or discourage designers, professionals, contractors, sub-contractors and other hired directly or indirectly by the Design-Builder from entering into contracts to complete the Work.

#### **4.03 Design-Builder Requirement to Use Licensed Professionals**

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Requirements. Licensed design consultants shall not include licensed contractors preparing designs for work they will install under the provisions of Division 3 of the Business and Professions Code by Section 5537.2 or 6737.3. Nothing in the Contract Requirements is intended or deemed to create any legal or contractual relationship between City and any design consultant employed by the Design-Builder.

### **5.00 CONTRACT PRICE**

#### **5.01 Contract Price**

A. City shall pay Design-Builder in accordance with the requirements set forth in this section. Compensation to the Design-Builder shall be separated into two stages of Work as described in Section 1.00 above. Stage 1 covers all work completed prior to City acceptance of a Guaranteed Maximum Price (GMP). Stage 2 covers all remaining work as outlined in this contract. Design-Builder acknowledges that City is not obligated to execute Stage 2 of the work with the Design-Builder.

B. City agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

1. Services and reimbursable expenses associated with Stage 1 activities for a total not to exceed Nine Hundred Forty Thousand Seven Hundred Seventy Five Dollars (\$ 940,775,00).
2. Services, reimbursable expenses, construction, materials and associated expenses for Stage 2 activities for a total not to exceed value to be determined upon acceptance of Guaranteed Maximum Price (GMP). (\$TBD).
3. Total compensation for Stage 1 & Stage 2 shall not exceed value to be determined upon acceptance of Guaranteed Maximum Price (GMP). (\$TBD).
4. Compensation for services and reimbursable expenses during Stage 1 shall not be subject to retention.
5. Compensation for design services, permits, design based reimbursable expenses and fees during Stage 2 shall not be subject to retention, but all other work related to the project shall be subject to retention. (Refer to Exhibit A – Section 2 – Progress Payments and Final Payment).
6. During Stage 2 Design-Builder shall submit separate invoices for design services, and expenses from construction related costs subject to retention.

#### **5.02 Cost of the Work**

The term "Cost of the Work" shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. "Cost of the Work" **shall not** include the following items paid

for by CITY. Where items are "excluded" below they become the Design-Builder's responsibility and part of the "Cost of the Work".

A. Cost for the City Building Department plancheck, permit and inspection, but excluding any overtime charges, special inspections outside normal working hours for the City and any penalties, reinspection fees or similar charges resulting from actions or inaction by Design-Builder;

B. Cost of freestanding furniture, delivery and installation excluding the following work to be completed by Design-Builder:

1. Basic furniture design, layout and coordination;
2. Coordination and installation of conduits, pull wires, junction boxes, distribution boxes and outlet covers for power, communication, data, security, surveillance cameras, and access controls;
3. Connection of line voltage power to all free standing furniture;
4. Connection of all low voltage wiring to free standing furniture;
5. Design and layout of all low-voltage and line-voltage outlets for furniture, equipment and all items necessary for a complete installation.

C. Cost of installing data and communication systems, but excluding installation of related conduits, cable trays, dedicated power, structural, seismic supports for all data and communications equipment, all power requirements, dedicated/isolated circuits and provision for 50% spare capacity in all conduit and cable tray runs.

D. Cost of Artwork related to the "Art-In-Public-Places" program and any directly related additional foundations, footings, roof reinforcement or engineering, but excluding wall reinforcement, backing and installation.

E. Cost of soils report.

F. Cost of hazardous materials investigation and abatement of existing materials, excluding abatement of lead base paint identified in the report prepared by Alpine Environmental Consulting, LLC dated January 12, 2007.

G. Cost of materials testing and inspection, but excluding the cost of retesting, overtime or return visits by testing personnel. Design-Builder shall be responsible for all LEED testing and commissioning costs and all Acceptance Testing and documentation required under Title 24.

### **5.03 The Guaranteed Maximum Price (GMP)**

A. GMP Established Upon completion of Stage 1 services:

1. Design-Builder guarantees that it shall not exceed the GMP prepared at the completion of Stage 1 services, accepted by the CITY's representative in writing. The GMP shall include the following:

- a. Design Development Drawings and specifications detailing the scope of the project work, including all building systems;

- b. Specifications detailing quality, installation and testing requirements;
- c. Calculations when necessary or required by City to validate compliance with the contract;
- d. A schedule of values, allowances and unit prices;
- e. A list of assumptions made by Design Builder;
- f. A list of subcontractors;
- g. A performance schedule
- h. All documentation required in Exhibits "F" and "G";
- i. A list of alternates for completion of all the work described in the Contract Documents if the entire project cannot be completed within \$4,785,000;
- j. All bonds and insurance necessary for completion of the Work.

Design-Builder does not guarantee the exact cost of any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP. Documents described above shall be used as the basis for the GMP and shall be identified in a supplemental document ("GMP Exhibit") prepared by Design-Builder.

2. The GMP shall include a Contingency which will be identified in the "GMP Exhibit". The Contingency is available for Design-Builder's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order completed during Stage 2 activities. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions and Subcontractor defaults. The Contingency is not available to CITY for any reason, including changes in scope, except where scope changes are necessary to meet the requirements in the Contract Documents. Contingency funds remaining at the end of the project shall be returned to the City.
  
3. Review and Adjustment to GMP Proposal: After submission of the GMP Proposal, Design-Builder and City shall meet to discuss and review the GMP Proposal. If CITY has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of City's notice, make appropriate adjustments to the GMP Proposal.
  
4. Failure to Accept the GMP Proposal: If City rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before 120 calendar days following City acknowledgement of receiving a complete GMP Proposal the GMP Proposal shall be deemed withdrawn and of no effect. In such event, City and Design-Builder shall meet and confer as to how the Project will proceed, with City having the following options:
  - a) City may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder the GMP Proposal

shall be deemed accepted and the parties shall proceed in accordance with the schedule set forth in the GMP; or

- b) City may negotiate modifications and/or supplemental services necessary to achieve an acceptable GMP; or
- c) City may terminate this Contract.
- d) If City fails to exercise any of the above options, Design-Builder not shall have the right to continue with the Work as if City had elected to proceed..

C. Savings

- 1. If the sum of the actual Cost of the Work is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall remain with City and the "Contract Price" shall be reduced by the same amount upon issuance of the final payment to the Design-Builder.

**6.00 TERM; SUSPENSION; TERMINATION.**

- A. This Contract shall become effective on the date that it is fully executed as, set forth in this Contract, and shall continue in effect until both parties have fully performed their respective obligations under this Contract, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend Design-Builder's performance hereunder, in whole or in part, by giving a written notice of suspension to Design-Builder. If CITY gives such notice of suspension, Design-Builder shall immediately suspend its activities under this Contract, as specified in such notice.
- C. CITY shall have the right to terminate this Contract at any time by giving a written notice of termination to Design-Builder. If CITY gives such notice of termination, Design-Builder shall immediately cease rendering Services pursuant to this Contract. If CITY terminates this Contract:
  - (1) Design-Builder shall, not later than five days after such notice of termination, deliver to CITY copies of all "information" prepared pursuant to this Contract.
  - (2) CITY shall pay Design-Builder the reasonable value of Services rendered by Design-Builder prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by Design-Builder had the Contract not been terminated or had Design-Builder completed the Services required by this Contract. In this regard, Design-Builder shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by Design-Builder. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

**7.00 REPRESENTATIVES OF THE PARTIES**

The CITY Representative for this Contract is:

*David L. Morgan, Project Manager  
City of Sacramento  
Department of General Services  
921 10<sup>th</sup> Street, 7<sup>th</sup> Floor, Sacramento, CA 95814  
Phone (916) 808-8425 / Fax (916) 808-8337 / E-mail dmorgan@cityofsacramento.org*

All Design-Builder questions pertaining to this Contract shall be referred to the CITY Representative or the Representative's designee.

The Design-Builder Representative for this Contract is:

*Mark Burgess, Project Manager  
Brown Construction, Inc.  
1465 Enterprise Blvd.  
West Sacramento, CA 95691  
Phone (916) 373-9300 ext. 139 / Fax: (916) 374-8616 / E-Mail: mburgess@brown-construction.com*

All CITY questions pertaining to this Contract shall be referred to the Design-Builder Representative. All correspondence to Design-Builder shall be addressed to the address set forth in Section 7.00 one of this Contract. Unless otherwise provided in this Contract, all correspondence to the CITY shall be addressed to the CITY Representative.

**8.00 GENERAL REQUIREMENTS:**

- A. **Facilities and Equipment.** Except as set forth in Exhibit C, Design-Builder shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Contract. CITY shall furnish to Design-Builder only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- B. **General Provisions.** The Design-Builder shall provide and maintain indemnity and insurance requirements set forth in the General Provisions (Exhibit D) during both Stage 1 and Stage 2 activities. In addition to the requirements set forth in the General Provisions the Design-Builder shall maintain the insurance and bonding requirements set forth in Exhibit F during Stage 2 activities.

In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by Design-Builder and made a part of this Contract, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

- C. **Non-Discrimination in Employee Benefits.** This Contract is subject to the provisions of Sacramento Municipal Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento Municipal Code Chapter 3.54 are summarized in Exhibit E. Design-Builder is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.

- D. **Authority.** The person signing this Contract for Design-Builder hereby represents and warrants that he/she is fully authorized to sign this Contract on behalf of Design-Builder and to bind Design-Builder to the performance of its obligations hereunder.
- E. **References.** Titles, headings and similar references contained herein are solely to facilitate reference to various provisions of the contract and in no way affect or limit the interpretations of the provisions to which they refer.
- F. **Attachments and Exhibits.** All attachments and exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

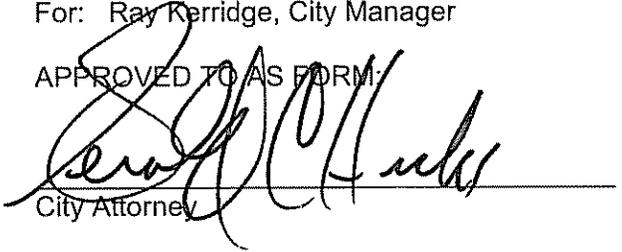
By: \_\_\_\_\_

Print name: \_\_\_\_\_

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

For: Ray Kerridge, City Manager

APPROVED TO AS FIRM:

  
\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Attachments

- Exhibit A - General Conditions
- Exhibit B - Special Conditions
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits
- Exhibit F - Construction Guidelines and Requirements
- Exhibit G - Design Guidelines
- Exhibit H - Hourly Professional Rates
- Exhibit I - ESBD Program Requirements
- Exhibit J - Standard Specifications for Public Works Construction
- Exhibit K - Guaranteed Maximum Price Form

**DESIGN-BUILDER:**

Brown Construction, Inc.  
NAME OF FIRM

95-2703832  
Federal I.D. No.

2799387-2  
State I.D. No.

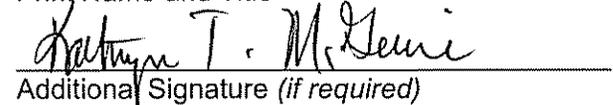
151035  
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- \_\_\_\_ Individual/Sole Proprietor
- \_\_\_\_ Partnership
- Corporation (**two signatures required**)
- \_\_\_\_ Limited Liability Company
- \_\_\_\_ Other (please specify: \_\_\_\_\_)

  
\_\_\_\_\_  
Signature of Authorized Person

Ron T. Brown, President/CEO  
Print Name and Title

  
\_\_\_\_\_  
Additional Signature (if required)

Kathryn T. McGuire, Treasurer  
Print Name and Title

## I. GENERAL CONDITIONS

### 1. PROGRESS PAYMENTS AND FINAL PAYMENT

Subject to the terms and conditions of the Contract, City shall cause payments to be made upon demand of Design-Builder as follows:

- (A) On the first of the month during Stage 1, the Design-Builder shall present to the City an itemized invoice showing the amount of labor, reimbursables, and materials incorporated in the work through the twentieth (20) calendar day of the preceding month; the City shall inspect the invoice and, if approved, the City shall process the invoice for payment.
- (B) On the first of the month during Stage 2, the Design-Builder shall present to the City two separate documents. The first document shall be an itemized invoice for design related services and related reimbursable expenses not subject to retention and conforming to 1.A above. The second document shall be a pay request and associated schedule of values showing the amount of labor and materials incorporated in the work through the twentieth (20) calendar day of the preceding month; the City shall inspect the pay request and associate schedule of values. Pay requests shall be accompanied by certified payroll and wage payment information in accordance with the City's Labor Compliance Program requirements. Such materials shall be submitted electronically if and as required by the City. If pay request, schedule of values, and Labor Compliance documents are approved, the City shall issue a certificate for ninety percent (90%) of the amount it shall find to be due. Refer to detailed documentation requirements in Exhibit F for construction related activities.
- (C) No inaccuracy or error in said monthly invoice(s) shall operate to release Design-Builder or Surety from damages arising from such work or from enforcement of each and every provision of the Contract Documents, and City shall have the right subsequently to correct any error made in any invoice for payment.
- (D) Design-Builder shall not be paid for any defective or improper work.
- (E) City shall pay the retention under this contract, if unencumbered, thirty-five (35) days after City files a Notice of Completion with the Sacramento County Recorder's Office. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against the City arising under the Contract Document.

**2. RETENTION OF SUMS CHARGED AGAINST DESIGN-BUILDER**

When, under the provisions of this contract, City shall charge any sum of money against Design-Builder, City shall deduct and retain the amount of such charge from the amount of the next succeeding progress payment(s), or from any other moneys due or that may become due Design-Builder from City. If, on completion/termination of the Contract, sums due Design-Builder are insufficient to pay City's charges against him, City shall have the right to recover the balance from Design-Builder or his sureties.

**3. COMMENCEMENT AND PROSECUTION OF WORK**

The CITY shall issue a separate Notice to Proceed for each stage of the work under this contract.

The Stage 1 Notice to Proceed shall not be issued until a fully executed contract has been issued by the CITY. Design-Builder shall commence the work for Stage 1 activities on or before five (5) calendar days from and after receipt of the written Notice to Proceed on Stage 1 activities from City.

The Stage 2 Notice to Proceed shall not be issued until the CITY has accepted the Guaranteed Maximum Price (GMP) and Design-Builder provides bonds and insurance certificates acceptable to the City. Design-Builder shall commence the work for Stage 2 activities on or before five (5) calendar days from and after receipt of the written Notice to Proceed on Stage 2 activities from City.

Design-Builder shall diligently prosecute the work to final completion of the appropriate stage. The phrase "commence the work" means to engage in design activities in Stage 1 or to engage in completion of the Construction Drawings and Specifications in Stage 2.

**4. TIME OF COMPLETION**

Stage 1 activities shall be brought to completion in the manner provided for in the Contract Documents on or before **140 CALENDAR DAYS** (hereinafter called the "Completion Date – Stage 1") from the date of the Notice to Proceed with Stage 1 activities unless extensions of time are granted in accordance with the Contract Documents.

Stage 2 activities shall be brought to completion in the manner provided for in the Contract Documents on or before **485 CALENDAR DAYS** (hereinafter called the "Completion Date – Stage 2") from the date of the Notice to Proceed with Stage 2 activities unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the work by the Completion Date for each stage of the Work and in the manner provided for by the Contract Documents shall subject Design-Builder to liquidated damages as hereinafter provided in this Contract. Time is and shall be of the essence in these Contract Documents.

The City may extend the contract time for the purposes of administrative management. Extensions in contract time shall not extend "Time of Completion" set forth above unless specifically mentioned as a modification in the "Time of Completion".

**5. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK**

The payment of any progress payment, or the acceptance thereof by Design-Builder, shall not constitute acceptance of the work or any portion thereof and shall in no way reduce the liability of Design-Builder to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made.

**6. ACCEPTANCE NOT RELEASE**

Design-Builder shall correct immediately any defective or imperfect work which may be discovered before final acceptance of the entire work. Any unsatisfactory materials shall be rejected, notwithstanding that they may have been overlooked by the inspector. The inspection of the work, or any part thereof, shall not relieve Design-Builder of any of his obligations to perform satisfactory work as herein prescribed.

Failure or neglect on the part of City or any of its authorized agents to condemn or reject bad or inferior work or materials shall not be construed to imply an acceptance of such work or materials if such becomes evident at any time prior to final acceptance of the entire work or all materials, nor shall such failure be construed as barring City at any subsequent time from recovering damages or of such a sum of money as may be required to build anew all portions of the work in which fraud was practiced or improper materials used whenever City may discover the same.

**7. RELEASE**

If requested to do so by City, at the time of final payment, as a condition precedent to final payment, Design-Builder and each assignee under any assignment in effect at the time of final payment shall execute and deliver a release in form and substance satisfactory to and containing such exemptions as may be found appropriate by City which shall discharge City, its officers, agents and employees of and from all liability, obligations and claims arising under this contract.

**8. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART**

The City of Sacramento shall have the right at any time to enter upon the work and perform work not covered by this Contract, or to occupy and use a portion of the work, prior to the date of the final acceptance of the work as a whole, without in any way relieving Design-Builder of any obligations under this Contract.

**9. NO WAIVER OF REMEDIES**

Neither the inspection by City or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the work by City, nor any extensions of time, nor any position taken by City or its agents shall operate as a waiver of any provision of this Contract or of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and City shall have any and all equitable and legal remedies which it would in any case have.

**10. GUARANTEE**

Except as otherwise expressly provided in the specifications, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Design-Builder guarantees all work executed by him and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire work by the City of Sacramento. Design-Builder shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to City.

In the event that the Design-Builder shall fail to comply with the conditions of the foregoing guarantee within five (5) days time after being notified of the defect in writing, City shall have the right, but shall not be obligated to repair, or obtain the repair of, the defect. If City elects to complete the repair Design-Builder shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Design-Builder shall pay to City on demand all costs

and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

**11. DETERMINATION OF DAMAGES**

The actual fact of the occurrence of damages and the actual amount of the damages which City would suffer if the work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration inspection, and supervision; and the loss suffered by the public within the City of Sacramento by reasons of the delay in the completion of the project to serve the public at the earliest possible time. Accordingly, the parties hereto agree, and by execution of this Contract Design-Builder acknowledges that he understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Design-Builder to complete the entire work within the times specified.

**12. LIQUIDATED DAMAGES**

The amount of the liquidated damages to be paid by Design-Builder to City for failure to complete the entire work by the Completion Date (as extended, if applicable) will be **One Thousand Forty Three dollars (\$1,043.00)** for each calendar day, continuing to the time at which the work is completed. Such amount is the actual cash value agreed upon as the loss to City resulting from Design-Builder's default.

**13. PAYMENT OF DAMAGES**

In the event Design-Builder shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments which would otherwise be or become due Design-Builder until the liability of Design-Builder under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due to become due to City. Any remaining balance of such payments shall be paid to Design-Builder only after discharge in full of all liability incurred by Design-Builder under this section or otherwise. If the sum so retained by City is not sufficient to discharge all such liabilities of Design-Builder, Design-Builder and his sureties shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as herein before specified shall in any manner be construed to

constitute a waiver of any right to liquidated damages or any right to any such sum.

**14. DESIGN-BUILDER SHALL ASSUME RISKS**

Until the completion and final acceptance by City of all work under this Contract, the work shall be under Design-Builder's responsible care and charge. Design-Builder shall rebuild, repair, restore and make good all injuries, damages, reerections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the work, except as otherwise stipulated.

**15. GENERAL LIABILITY OF DESIGN-BUILDER**

Except as otherwise herein expressly stipulated, Design-Builder shall perform all the work and furnish all the labor, materials, tools, power and light, and appliances, necessary or proper for performing and completing the work herein required in the manner within the time herein specified. The mention of any specific duty or liability of Design-Builder shall not be construed as limitation or restriction of any general liability or duty of Design-Builder and, any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

**16. INSURANCE**

Design-Builder shall maintain all insurance and bonds as set forth in Exhibit "D" for Stages 1 & 2 plus additional requirements as set forth in Exhibit "F" during Stage 2.

Design-Builder shall obtain and maintain Builder's Risk Insurance as described in Exhibit "D" until final payment has been made under this Contract.

**17. FAILURE TO MAINTAIN INSURANCE**

If, at any time during the performance of this Contract, Design-Builder fails to maintain any item of the required insurance in full force and effect, Design-Builder shall immediately discontinue all work under the Contract and City will withhold all Contract payments due or that become due until notice is received by City that such insurance has been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the Division of Risk Management.

Any failure to maintain any item of the require insurance will be sufficient cause for termination of the Contract.

**18. EXTENSIONS OF TIME**

In the event City deems it necessary, in its sole discretion, to extend the Time of Completion of the work to be done under this Contract beyond the required Completion Date herein specified, such extensions shall in no way release any guarantee given by Design-Builder pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the Bonds executed pursuant to said provisions. By executing such Bonds, the sureties shall be deemed to have expressly agreed to any extension of time and shall be limited to the period of excusable delay as defined herein giving rise to the same as determined by City Council of City.

**19. EXCUSABLE DELAYS**

For the purpose of these Contract Documents, the term "Excusable Delays" shall mean, and is limited to, delays caused directly by acts of God; acts of the public enemy; fires; inclement weather as determined by the City Representative; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; acts of governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by City insofar as they necessarily require additional time in which to complete the work; the prevention of City of Design-Builder from commencing or prosecuting the work because of the acts of others, excepting Design-Builder's subcontractors; or the prevention of Design-Builder from commencing or prosecuting the work because of a City-wide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Design-Builder; (ii) any delay in the prosecution of parts of the work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other part of the work, nor the completion of the whole work within the time specified; (iii) any reasonable delay resulting from time required by City for review of Plans and submittals required of Design-Builder and for the making of surveys, measurements and inspection;(iv) any delay arising from an interruption in the prosecution of the work on account of the reasonable interference from other contractor's employed by City which does not necessarily prevent the completion of the work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by City) but shall not under any circumstances increase the sum City is to pay Design-Builder as provided in these Contract Documents.

**20. DESIGN-BUILDER TO SERVE NOTICE OF DELAYS**

Whenever Design-Builder foresees any delay in the prosecution of the work, and in any event upon the occurrence of any delay which Design-Builder regards as an Excusable Delay, he shall notify the City Representative in writing immediately within ten (10) calendar days of the probability of such delay and its cause, in order that the City Representative may take immediate steps to prevent if possible the occurrence or continuance of the delay or if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the work are delayed thereby. Said notice shall constitute an application for an extension of time only if the notice requests such an extension and sets for the Design-Builder's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part of whole of the work, the City Representative, in estimating the amount due Design-Builder, will assume that any and all delays which may have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the City Representative at the time of their occurrence and determined by City Representative to have been excusable. Design-Builder shall make no claim that any delay, not called to the attention of the City Representative in writing at the time of its occurrence, has been an Excusable Delay.

**21. EXTENSION OF TIME**

Should any delays occur which the City may consider excusable, as herein defined, Design-Builder shall, pursuant to his application, be allowed an extension of time beyond the time herein set forth proportional to said delay or delays in which to complete this Contract; and, during an extension which may have been granted because of an excusable delay or delays, City shall not charge liquidated damages against Design-Builder for such delay. Only the City Representative may grant an extension of time on the Contract. Extensions of time shall only be valid if issued in writing as part of a Change Order and fully executed by the CITY.

**22. EXTENSION OF TIME DOES NOT WAIVE CITY'S RIGHT**

The granting of any extension of time on account of delays which in the judgment of the City Representative are excusable delays shall in no way operate as a waiver on the part of City of its rights under this Contract excepting only extension of the Completion Date.

**23. NO PAYMENT FOR DELAYS**

No damages or compensation of any kind shall be paid to Design-Builder or any subcontractor because of delays in the progress of the work whether such delays qualify for extension of time under this Contract or not, providing the elements precluding recovery of damages by Design-Builder in Section 7102 of the Public Contracts Code are met.

**24. CHANGES IN THE WORK**

Changes in the work made pursuant to changes issued in accordance with this contract and extensions of time of completion made necessary by reason thereof (beyond the Completion Date) shall not in any way release any guarantee given by Design-Builder pursuant to the provisions of the Contract Documents, or the Contract let hereunder, nor shall such changes in the work relieve or release the sureties on Bonds executed pursuant to the said provisions. By executing such Bonds, the sureties shall be deemed to have expressly agreed to any such change in work and to any extension of time made by reason thereof.

**25. TERMINATION AFTER COMPLETION DATE**

In addition to any other rights it may have, City may terminate this Contract at any time after the Completion Date as adjusted by any extensions of time for excusable delays that may have been granted. Upon such termination, Design-Builder shall not be entitled to receive any compensation for services rendered by him after such termination, and he shall be liable to City for liquidated damages for all periods of time beyond such termination date until the work is completed.

**26. DESIGN-BUILDER BANKRUPT**

If Design-Builder should commence any proceeding under the Bankruptcy Act, or if Design-Builder be adjudged a bankrupt, or if Design-Builder should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Design-Builder's insolvency, then the City Council may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Design-Builder and his surety. Design-Builder's Surety shall have the right to complete the work by commencing within thirty (30) calendar days; and, in the event Design-Builder's Surety fails to commence work within thirty (30) calendar days, City shall have the right to complete, or cause completion of the work.

## II. SPECIAL CONDITIONS

### 1.00 SPECIAL CONDITIONS

#### 1.01 Mutual Obligations

CITY and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### 1.02 Basic Definitions

- A. **Contract** shall mean the executed contract between CITY and Design-Builder .
- B. **Day or Days** shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- C. **Designer** shall mean a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.
- D. **Hazardous Materials** shall mean any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- E. **Special Conditions of Contract** shall mean Exhibit B to this contract.
- F. **Legal Requirements** shall mean all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- G. **CITY's Project Criteria** shall mean all criteria developed by or for CITY to describe CITY's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. CITY's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.
- H. **Site** shall mean the project as defined by the following assessors parcel number(s) 038-014-006,007,008,009,010,011 and 038-231-001,004,005,006,009.

I. **Subcontractor** shall mean any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

J. **Sub-Subcontractor** shall mean any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include material, men and suppliers.

K. **Work** shall mean all efforts associated with Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

L. **Substantially Complete** as applied to the Work shall mean that the City Representative has determined that all of the Work has been performed, but there are minor deficiencies, as determined by the City Representative, that do not prevent the Work from being fully functional nor pose any risk to the public health, safety or welfare or public or private property, as determined by the City Representative. The Work shall be considered substantially complete on the date that the City Representative accepts a final punchlist prepared by Design-Builder in writing and the CITY's Representative issues a Notice of Substantial Completion.

M. **LEED** shall mean "Leadership in Energy and Environmental Design" as established by the U.S. Green Building Council.

N. **Fully Executed** shall mean the final completion of any document requiring endorsements and signatures. A document is not fully executed until all required signatures have been secured and the document has been issued to the Design-Builder by CITY.

O. **Engineer** shall mean the CITY's designated representative.

P. **Testing Authority** shall mean the individual in charge of organizing, conducting, paying for all testing and documentation, administering tests, documenting all test results and compiling a formal Acceptance Testing Report required under Title 24. For the purposes of this contract the Design-Builder shall be the Testing Authority.

## 2.00 DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

### 2.01 General Services

A. Design-Builder's Representative shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with CITY and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of CITY and Design-Builder.

B. Design-Builder shall provide CITY with a monthly status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

C. Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.01.D hereof, a schedule for the execution of the Work for CITY's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when CITY information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. CITY's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

D. Within seven (7) days issuance of the Notice to Proceed with Stage 2 services the City and Design-Builder will meet to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

E. Design-Builder assumes responsibility for protection, security and control of all facilities, structures and equipment within the areas of construction, including but not limited to the community center building, adjacent concession building, storage containers, pool facility (including equipment and surrounding deck areas), site lighting and all landscaping impacted directly or indirectly by construction related activities for the full duration of the project.

F. Design-Builder assumes responsibility for transferring, maintaining and paying for all utility costs related to the execution of the Work through issuance of the final Notice of Substantial Completion.

**2.02 Design Professional Services**

Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Design-Builders, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any Design Design-Builder.

### **2.03 Standard of Care for Design Professional Services**

The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, such standards are to be set forth in an exhibit to the Contract entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

The scope of work for design related services shall at a minimum include the services outlined in Exhibit "G"

### **2.04 Design Development Services**

A. Design-Builder and CITY shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that CITY may wish to review, such interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the scheduled submissions, Design-Builder and CITY shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, CITY shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule, but no less than 5 calendar days for simple design reviews and no less than 10 calendar days for construction document reviews. Time limits established above shall not apply to regulatory or advisory reviews such as the Design Review Board, Community Reviews, Environmental Review, Planning, Building Department, Fire Department, Health Department or similar reviews.

B. Design-Builder shall submit to CITY Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and CITY shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.04.A above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit Construction Documents to CITY prior to commencement of construction in a format or formats acceptable to the City.

C. CITY's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither CITY's review nor

approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to CITY.

D. To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

**2.05 Legal Requirements**

A. Design-Builder shall perform the Work in accordance with all Legal Requirements presented in the General Conditions of the Contract and shall provide all notices applicable to the Work as required by the Legal Requirements.

B. The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Contract, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

**2.06 Government Approvals and Permits**

A. Except as noted in "Cost of the Work" Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

B. Design-Builder shall provide reasonable assistance to CITY in obtaining those permits, approvals and licenses that are CITY's responsibility.

**2.07 Design-Builder's Construction Phase Services**

A. Unless otherwise provided in the Contract Documents to be the responsibility of CITY or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

B. Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. CITY may reasonably object to Design-Builder's selection of any Subcontractor, provided that the

Contract Price and/or Contract Time(s) shall be adjusted to the extent that CITY's decision impacts Design-Builder's cost and/or time of performance.

D. Design-Builder assumes responsibility to CITY for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

E. Design-Builder shall coordinate the activities of all Subcontractors. If CITY performs other work on the Project or at the Site with separate contractors under CITY's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

F. Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit CITY to occupy the Project or a portion of the Project for its intended use.

## **2.08 Design-Builder's Responsibility for Project Safety**

A. Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

B. Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any CITY-specific safety requirements set forth in the Contract Documents, provided that such CITY-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to CITY's Representative and, to the extent mandated by Legal Requirements, to all government

or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

C. Design-Builder's responsibility for safety under this Section 2.08 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

### **2.09 Design-Builder's Warranty**

Design-Builder warrants to CITY that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides CITY with greater warranty rights than set forth in this Section 2.09 or the Contract Documents. Design-Builder will provide CITY with all manufacturers' warranties upon Substantial Completion.

## **3.00 CITY'S SERVICES AND RESPONSIBILITIES**

### **3.01 CITY's Separate Contractors**

CITY is responsible for all work performed on the Project or at the Site by separate contractors under CITY's control. CITY shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **4.00 HAZARDOUS CONDITIONS AND DIFFERING SITE CONDITIONS**

### **4.01 Hazardous Conditions**

A. Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will notify City and take steps necessary to protect the Work and continue working in unaffected areas of the project site. Design-Builder will be responsible for removal of all painted surfaces with lead as mentioned in this contract.

B. Upon receiving notice of the presence of suspected Hazardous Conditions, CITY shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include CITY retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the

remedial measures that CITY must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

C. Design-Builder shall be obligated to resume Work at the affected area of the Project only after CITY's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

D. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless Design-Builder, Design Design-Builders, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site provided the hazardous condition is not the result directly or indirectly of actions taken by the Design-Builder.

F. Notwithstanding the preceding provisions, CITY is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless CITY and CITY's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.02 Differing Site Conditions**

A. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions."

B. Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to CITY of such condition, which notice shall not be later than four (4) calendar days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

#### **5.00 TIME**

##### **5.01 Obligation to Achieve the Contract Times**

Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with the General Conditions presented in a previous section.

## **6.00 CHANGES TO THE CONTRACT PRICE AND TIME**

### **6.01 Change Orders**

A. A Change Order is a written instrument issued after execution of the Contract signed by CITY and Design-Builder, stating their agreement upon all of the following:

1. The scope of the change in the Work; and/or
2. The amount of the adjustment to the Contract Price; and/or
3. The extent of the adjustment to the Contract Time(s).

B. All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. CITY and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

C. If CITY requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall not be issued to reimburse Design-Builder for costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

D. Design-Builder shall not list Change Orders on invoices or pay requests until the Change Order is fully executed.

### **6.02 Work Change Directives**

A. A Work Change Directive is a written order prepared and signed by CITY, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

B. CITY and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

### **6.03 Minor Changes in the Work**

Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and that do not materially and adversely affect the Work in the judgment of the CITY. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform CITY in writing before any minor change is implemented, and receive written confirmation from the CITY accepting the minor change in the Work.

#### **6.04 Emergencies**

In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss, but shall take steps to immediately notify the City of the emergency and submit a written notification to the City within 24 hours of taking any emergency action.

### **7.00 CONTRACT ADJUSTMENTS AND DISPUTES**

#### **7.01 Duty to Continue Performance**

Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and CITY shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and CITY.

#### **7.02 Consequential Damages**

A. Notwithstanding anything herein to the contrary, neither Design-Builder nor CITY shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing, excluding Liquidated Damages established in this contract.

### **8.00 STOP WORK AND TERMINATION FOR CAUSE**

#### **8.01 CITY's Right to Perform and Terminate for Cause**

A. If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Design-Builders or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then CITY, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 8.01.B and 8.01.C below.

B. Upon the occurrence of an event set forth in Section 8.01.A above, CITY may provide written notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then CITY may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then CITY may declare the Contract terminated for default by providing written notice to Design-Builder of such declaration.

C. Upon declaring the Contract terminated pursuant to Section 8.01.B above, CITY may enter upon the premises and take possession, for the purpose of completing the

Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to CITY for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by CITY in completing the Work, such excess shall be paid by CITY to Design-Builder. Notwithstanding the preceding sentence, if the Contract establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If CITY's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to CITY. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by CITY in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 7.05 hereof.

D. No act by City before the work is finally accepted, including, but not limited to, exercise of other rights under the contract, action at law or in equity, extensions of time, payments, claims of liquidated damages, occupation or acceptance of any part of the work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach by Design-Builder shall be construed to be a waiver by, or to estop, City from acting pursuant to this paragraph upon any subsequent event, occurrence of failure by Design-Builder to fulfill the terms and conditions of the Contract. The rights of City pursuant to this paragraph are cumulative and in addition to all other rights of City pursuant to this Contract and at law or in equity.

### **8.02 Design-Builder's Right to Stop Work**

A. Design-Builder may not stop work unless directed to do so by City, or under "Emergency" conditions as set forth in this contract.

## **9.00 MISCELLANEOUS**

### **9.01 Assignment**

Neither Design-Builder nor CITY shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

### **9.02 Successorship**

Design-Builder and CITY intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**9.03 Governing Law**

The Contract and all Contract Documents shall be governed by the laws of the State of California, without giving effect to its conflict of law principles.

**9.04 Severability**

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**9.05 No Waiver**

The failure of either Design-Builder or CITY to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**9.06 Headings**

The headings used in these Special Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**9.07 Notice**

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**9.08 Amendments**

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY**

CITY shall not furnish any facilities or equipment for Stage 1 activities of this Contract, but the City will grant the Design-Builder access to George Sim Park and George Sim Community Center for the purpose of completing work in the approved Contract Documents during Stage 2 activities. Design-Builder must coordinate with the City to establish mutually acceptable access to the facilities listed above.

**GENERAL PROVISIONS**

**1. Independent Contractor.**

- A. It is understood and agreed that DESIGN-BUILDER (including DESIGN-BUILDER's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither DESIGN-BUILDER nor DESIGN-BUILDER's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to DESIGN-BUILDER under the provisions of this Contract, and DESIGN-BUILDER shall be issued a Form 1099 for its services hereunder. As an independent contractor, DESIGN-BUILDER hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of DESIGN-BUILDER's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance of any Services under this Contract. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Contract.)
- B. It is further understood and agreed by the parties hereto that DESIGN-BUILDER, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by DESIGN-BUILDER for accomplishing such results. To the extent that DESIGN-BUILDER obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Contract, this use shall be at the DESIGN-BUILDER's sole discretion based on the DESIGN-BUILDER's determination that such use will promote DESIGN-BUILDER's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the CITY does not require that DESIGN-BUILDER use CITY facilities, equipment or support services or work in CITY locations in the performance of this Contract.
- C. If, in the performance of this Contract, any third persons are employed by DESIGN-BUILDER, such persons shall be entirely and exclusively under the direction, supervision, and control of DESIGN-BUILDER. Except as may be specifically provided elsewhere in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by DESIGN-BUILDER. It is further understood and agreed that DESIGN-BUILDER shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of DESIGN-BUILDER's assigned personnel and subcontractors.

- D. The provisions of this Section 1 shall survive any expiration or termination of this Contract. Nothing in this Contract shall be construed to create an exclusive relationship between CITY and DESIGN-BUILDER. DESIGN-BUILDER may represent, perform services for, or be employed by such additional persons or companies as DESIGN-BUILDER sees fit provided that DESIGN-BUILDER does not violate the provisions of Section 5, below.
2. **Licenses; Permits, Etc.** DESIGN-BUILDER represents and warrants that DESIGN-BUILDER has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature legally required for DESIGN-BUILDER to practice its profession or provide any services under the Contract. DESIGN-BUILDER represents and warrants that DESIGN-BUILDER shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals that are legally required for DESIGN-BUILDER to practice its profession or provide such Services. Without limiting the generality of the foregoing, if DESIGN-BUILDER is an out-of-state corporation, DESIGN-BUILDER warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
  3. **Time.** DESIGN-BUILDER shall devote such time and effort to the performance of Services pursuant to this Contract as is necessary for the satisfactory and timely performance of DESIGN-BUILDER's obligations under this Contract. Neither party shall be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
  4. **DESIGN-BUILDER Not Agent.** Except as CITY may specify in writing, DESIGN-BUILDER and DESIGN-BUILDER's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. DESIGN-BUILDER and DESIGN-BUILDER's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
  5. **Conflicts of Interest.** DESIGN-BUILDER covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder DESIGN-BUILDER's performance of Services under this Contract. DESIGN-BUILDER further covenants that in the performance of this Contract, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. DESIGN-BUILDER agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Contract. If DESIGN-BUILDER is or employs a former officer or employee of the CITY, DESIGN-BUILDER and any such employee(s) shall comply with the provisions of Sacramento Municipal Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
  6. **Confidentiality of CITY Information.** During performance of this Contract, DESIGN-BUILDER may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities,

customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. DESIGN-BUILDER agrees to protect all City Information and treat it as strictly confidential, and further agrees that DESIGN-BUILDER shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, DESIGN-BUILDER shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by DESIGN-BUILDER of this Section 6 shall be a material violation of this Contract and shall justify legal and/or equitable relief.

**7. DESIGN-BUILDER Information**

- A. DESIGN-BUILDER shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by DESIGN-BUILDER pursuant to this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify DESIGN-BUILDER not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve DESIGN-BUILDER of its obligations hereunder, which shall survive any termination or expiration of this Contract.
- B. All proprietary and other information received from DESIGN-BUILDER by CITY, whether received in connection with DESIGN-BUILDER's proposal to CITY or in connection with any Services performed by DESIGN-BUILDER, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to DESIGN-BUILDER of any request for the disclosure of such information. The DESIGN-BUILDER shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The DESIGN-BUILDER shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- C. The parties understand and agree that any failure by DESIGN-BUILDER to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions above, shall constitute a complete waiver by DESIGN-BUILDER of any rights regarding the information designated "trade secret" by DESIGN-BUILDER, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

**8. Standard of Performance.** DESIGN-BUILDER shall perform all Services required pursuant to this Contract in the manner and according to the standards currently observed by a competent practitioner of DESIGN-BUILDER's profession in California.

All products of whatsoever nature that DESIGN-BUILDER delivers to CITY pursuant to this Contract shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in DESIGN-BUILDER's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. DESIGN-BUILDER shall assign only competent personnel to perform Services pursuant to this Contract. DESIGN-BUILDER shall notify CITY in writing of any changes in DESIGN-BUILDER's staff assigned to perform the Services required under this Contract, prior to any such performance. In the event that CITY, at any time during the term of this Contract, desires the removal of any person assigned by DESIGN-BUILDER to perform Services pursuant to this Contract, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, DESIGN-BUILDER shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

**9. Term; Suspension; Termination.**

Refer to Section 6.00 TERM; SUSPENSION; TERMINATION on page 7 of the contract.

**10. Indemnity.**

A. Indemnity: CONSULTANT shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate to any negligent act or omission, recklessness or willful misconduct of CONSULTANT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONSULTANT hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

C. Insurance Policies; Intellectual Property Claims: Except as may be expressly

provided in this Section 10, the existence or acceptance by CITY of any of the insurance policies or coverages described in this Contract shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of DESIGN-BUILDER hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Contract.

**11. Insurance Requirements.** During the entire term of this Contract, DESIGN-BUILDER shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that DESIGN-BUILDER is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by DESIGN-BUILDER under this Contract. No additional compensation will be provided for DESIGN-BUILDER's insurance premiums.

It is understood and agreed by the DESIGN-BUILDER that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the DESIGN-BUILDER in connection with this Contract.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the DESIGN-BUILDER.

No automobile liability insurance shall be required if DESIGN-BUILDER completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this contract." \_\_\_\_\_ (DESIGN-BUILDER initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the DESIGN-BUILDER.

No Workers' Compensation insurance shall be required if DESIGN-BUILDER completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." \_\_\_\_\_  
(DESIGN-BUILDER initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than two million (\$2,000,000) dollars if required by the CITY by selecting the option below:

Professional liability insurance is required and must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Contract.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of DESIGN-BUILDER, products and completed operations of DESIGN-BUILDER, and premises owned, leased or used by DESIGN-BUILDER. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, DESIGN-BUILDER's insurance coverage shall be primary insurance as respects CITY, its officials, employees and

volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of DESIGN-BUILDER's insurance and shall not contribute with it.

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that DESIGN-BUILDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Contract.

E. Verification of Coverage

- (1) DESIGN-BUILDER shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Contract. The CITY may withhold payments to DESIGN-BUILDER and/or cancel the Contract if the insurance is canceled or DESIGN-BUILDER otherwise ceases to be insured as required herein.

F. Subcontractors

DESIGN-BUILDER shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

G. Builders Risk Property Insurance

Design-Builder shall maintain Builder's Risk property insurance coverage in the amount of replacement value of the work. Such property insurance shall be maintained by Design-Builder until final payment has been made under this Contract. This insurance shall include the interests of the CITY, Design-Builder, their consultants, contractors, sub-contractors, vendors of every tier, as their interest may appear.

This property insurance shall be on an "all-risk" or equivalent policy form and shall include without limitation, insurance against the perils of fire, earthquake, and physical loss or damage including theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss. Design-Builder shall fund the deductible which shall not exceed \$10,000.

DESIGN-BUILDER shall provide the City with a certificate of insurance and loss payee endorsement showing proof of coverage prior to commencement of Stage 2 construction activities.

**12. Equal Employment Opportunity.** During the performance of this Contract, DESIGN-BUILDER, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: DESIGN-BUILDER shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: DESIGN-BUILDER, with regards to the work performed by it after award and prior to completion of the work pursuant to this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. DESIGN-BUILDER shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by DESIGN-BUILDER for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by DESIGN-BUILDER of DESIGN-BUILDER's obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: DESIGN-BUILDER shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of DESIGN-BUILDER is in the exclusive possession of another who fails or refuses to furnish this information, DESIGN-BUILDER shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of noncompliance by DESIGN-BUILDER with the nondiscrimination provisions of this Contract, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to DESIGN-BUILDER under this Contract until DESIGN-BUILDER complies;
  - (2) Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions: DESIGN-BUILDER shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. DESIGN-BUILDER shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event DESIGN-BUILDER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, DESIGN-BUILDER may request CITY to enter such litigation to protect the interests of CITY.

## **REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

### **APPLICATION**

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

### **DEFINITIONS**

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of

espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

***CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION***

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

**EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

## Attachment A



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2714

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
  - Reinstatement, injunctive relief, compensatory damages and punitive damages
  - Reasonable attorney's fees and costs

## Attachment B



### **YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

#### **You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Contract Services Unit  
915 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814-2714
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs

#### **Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

#### **You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance

Name of Design-Builder:

Brown Construction, Inc.

Address:

1465 Enterprise Blvd., Suite 100, West Sacramento, CA 95691

The above named Design-Builder ("Design-Builder") hereby declares and agrees as follows:

1. Design-Builder has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E
2. As a condition of receiving this Contract, Design-Builder agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Design-Builder understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

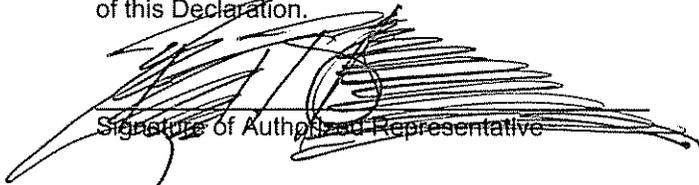
Design-Builder agrees that if Design-Builder offers any of the above-listed employee benefits, Design-Builder will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Design-Builder understands that Design-Builder will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
  - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Design-Builder will not be required to provide the benefit, nor shall it be deemed discriminatory, if Design-Builder requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse
  - b. If Design-Builder is unable to provide a certain benefit, despite taking reasonable measures to do so, if Design-Builder provides the employee with a cash equivalent Design-Builder will not be deemed to be discriminating in the application of that benefit
  - c. If Design-Builder provides employee benefits neither to employee's spouses nor to employee's domestic partners.
  - d. If Design-Builder provides employee benefits to employees on a basis unrelated to marital or domestic partner status.

- e. If Design-Builder submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Design-Builder understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
  - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
  - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
  - h. Design-Builder takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Design-Builder to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
  - i. In the event Design-Builder cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Design-Builder provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Design-Builder understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Design-Builder understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Design-Builder to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Design-Builder understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Design-Builder further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Design-Builder also agrees to prominently display a poster informing each employee of these rights.
7. Design-Builder understands that Design-Builder has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Design-Builder agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Design-Builder.

**Exhibit E**

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Design-Builder to the provisions of this Declaration.

A large, stylized handwritten signature in black ink, appearing to read 'Ron T. Brown', is written over the signature line.

Signature of Authorized Representative

July 17, 2007  
Date

Ron T. Brown

Print Name

President/CEO

**CONSTRUCTION GUIDELINES AND REQUIREMENTS**

- 1. Apprenticeship Standards**
- 2. Drug-Free Workplace**
- 3. Sub-Contractors Form (Stage 2)**
- 4. Performance Bond (Stage 2)**
- 5. Payment Bond (Stage 2)**
- 6. Worker's Compensation Certification**
- 7. Pay Request Application (Stage 2)**
- 8. Schedule of Values (Stage 2)**
- 9. Guarantee (Stage 2)**
- 10. Change Order Form (Stage 2)**

STATE OF CALIFORNIA – DEPARTMENT OF INDUSTRIAL RELATIONS-DIVISION  
OF APPRENTICESHIP STANDARDS

EXCERPTS FROM THE CALIFORNIA LABOR CODE RELATING TO  
APPRENTICES ON PUBLIC WORKS  
CHAPTER 1 OF DIVISION 2

APPRENTICES ON PUBLIC WORKS  
(NOTE: BOLDFACE TYPE DENOTES KEY POINTS.)

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**1771.** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**1775.** (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

**1776.** (a) Each contractor and subcontractor shall 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 public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for

unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) 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. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

**1777.5.** (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio

set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite.

Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury.

Notwithstanding Section 13340 of the Government Code, all money in the apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

**1813.** The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

**1815.** Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the

requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

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**DRUG-FREE WORKPLACE POLICY AND AFFIDAVIT**

**BID PROPOSAL MAY BE DECLARED NONRESPONSIVE IF THIS FORM (COMPLETED) IS NOT ATTACHED.**  
*Pursuant to City Council Resolution CC90-498 dated 6/26/90 the following is required.*

The undersigned contractor certifies that it and all subcontractors performing under this Agreement will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition
2. Establishing a Drug-Free Awareness Program to inform employees about:
  - a. The dangers of drug abuse in the workplace
  - b. The contractor's policy of maintaining a drug-free workplace
  - c. Any available drug counseling, rehabilitation, and employee assistance program.
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace
3. Notify employees that as a condition of employment under this Agreement, employees will be expected to:
  - a. Abide by the terms of the statement.
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace
4. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
  - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

\* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

**EXCEPTION:** \_\_\_\_\_  
Date Violation Type Place of Occurrence

If additional space is required use back of this form.

\* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

**IN THE EVENT THIS COMPANY, CORPORATION, OR BUSINESS IS AWARDED THIS CONSTRUCTION AGREEMENT, AS A RESULT OF THIS BID; THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.**

The Representations Made Herein On This Document Are Made Under Penalty Of Perjury.

CONTRACTOR'S NAME: Brown Construction, Inc.  
BY: Ron T. Brown  President/CEO Date: July 17, 2007  
Signature Title

Effects of violations: a. ~~s~~suspension of payments under the Agreement. b. Suspension or termination of the Agreement. c. Suspension or debarment of the contractor from receiving any Agreement from the City of Sacramento for a period not to exceed five years.

**WORKER'S COMPENSATION CERTIFICATION**

**GEORGE SIM COMMUNITY CENTER EXPANSION PROJECT (BC41)**

In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the below certificate must be signed and filed with the awarding body prior to performing any work under this contract. Labor Code Section 3700, inter alia, states the following:

"Every employer shall secure the payment of compensation in one or more of the following ways:

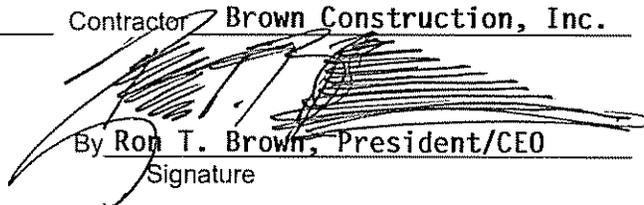
- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

To be signed by authorized corporate officer or partner or individual submitting the Proposal. If Bidder is: (example)

- 1. An individual using a firm name, sign: "John Doe, an individual doing business as Blank Company."
- 2. An individual doing business under his own name, Sign: your name only.
- 3. A co-partnership, sign: "John Doe and Richard Doe, co-partners doing business as Blank Company, by, John Doe, co-partner.
- 4. A corporation, sign: "Blank Company, by John Doe, Secretary." (or other title)

*I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.*

DATE: July 17, 2007 Contractor Brown Construction, Inc.

  
By Ron T. Brown, President/CEO  
Signature

## DESIGN GUIDELINES

### 4. DESIGN REQUIREMENTS

#### 4.1 Design Professional Services

4.1.1 Design-Builder shall provide the following professional services through completion of Stage 1 activities and preparation of the Guaranteed Maximum Price (GMP).

Design-Builder shall prepare and submit for review by the City and other designated groups, Design Development Documents consisting of:

Site and floor plans, elevations and other mutually acceptable drawings, and descriptive specifications to identify and illustrate the size, extent and character of the Work in its essentials as to materials, type of structure, mechanical, electrical and communication systems, data systems, landscaping, civil engineering, and other systems essential for the definition of the Work, including interface of systems. Documents shall as a minimum include:

- a. Building Code and Zoning Analysis describing all the basic design assumptions and criteria for project related decisions.
- b. Site Plan/Civil Engineering Plans - dimensioned, graded, showing Design Development Phase information, utility information, points of service, distribution and size of utility services, parking and landscape locations and connection to existing or new services. Confirmation of connection points with the appropriate utilities and agencies.
- c. Landscape Plan - showing size, type and location of materials and basic irrigation layout, controls location and irrigation coverage.
- d. Floor Plans - dimensioned, showing Design Development Phase information, all material and color selections, furniture, fixture and equipment layouts, and methods of compliance with the requirements of the Americans with Disabilities Act (ADA) and Title 24. Include wall thicknesses, exiting analysis, code analysis and all code required separations. Identify daylight zones plus anticipated lumen levels, including solar impacts at 9:00 am, 12:00 pm, 3:00 pm and 6:00 pm solar time.
- e. Reflected Ceiling Plan - sufficient detail to indicate all lighting decisions, exposed ceiling mounted equipment, maintenance clearance requirements and daylighting elements.
- f. Site lighting plans indicating the location, type, mounting height, lamp type, wattage, shielding and foot-candle levels
- g. Roof Plan - showing all roof mounted equipment, screening, vents, daylighting elements and roof/equipment access.
- h. Exterior Elevations - dimensioned, showing Design Development Phase information, with all material and color selections.

- i. Typical building sections and all interior elevations necessary to illustrate design decisions and system coordination including all material and color selections, daylighting, Title 24 energy compliance and LEED compliance (Refer to Section 4.1.3.d).
- j. Preliminary Structural Framing and Foundation Plans - sufficient detail to indicate all structural decisions, material selections, quality, size, spacing anchorage and reinforcing.
- k. HVAC System selection, location, size, coordination, and load calculations for each room, space and zone, control recommendations, and equipment specifications and manufacturers cut sheets.
- l. Identify energy conservation measures and renewable resources criteria that will be used and their impact on LEED compliance and Title 24 Energy Compliance. Prepare computer simulations using EnergyPro or similar CEC certified performance software documenting design decisions and the impacts on operating cost and Title 24 compliance. Design-Builder shall coordinate operational assumptions and schedules with City staff. Simulations shall include lifecycle cost analysis using local utility rates appropriate for the project. Design-Builder shall provide Preliminary Title 24 Performance Energy Calculations for both actual working hours and operating conditions and compliance conditions as set forth in Section 4.1.3.h, and provide LEED score sheets based on the requirements in Section 4.1.3.d.
- m. Electrical Design, layout drawings, load and lighting density calculations for each space and zone, control recommendations, energy saving options, and equipment specifications and manufacturers' cut sheets.
- n. Communications/Data design and location documents, telephone, alarm, data, fiber optics, surveillance cameras, access control systems, equipment specifications and manufacturer cut sheets.
- o. Preliminary Specifications - in CSI Division format with sufficient detail to indicate all decisions, including complete detail cut sheets of all specified equipment (with maintenance requirements) and materials.
- p. Drawings illustrating on-site and off-site development requirements.
- q. Design Development Phase binder indexing all manufacturer's cut sheets and maintenance requirements on all equipment and significant materials and finishes.
- r. Coordinate, support and incorporate the selected approach to Art-In-Public-Places into the overall project design.
- s. Design-Builder shall prepare alternatives with options and risk assessments for each alternative. Develop preliminary site development plans, floor plans and quality control standards for each alternative. Quantify energy conservation measures and renewable resources criteria that will be used in development of the design and their impact on LEED compliance and Title 24 Energy Compliance (Refer to Sections 4.1.3.d and 4.1.3.h).
- t. Prepare construction cost estimates and coordinate with the City's cost estimator to review intermediate and final cost estimates for the project. The City's cost estimator is not a substitute for the Design-Builders responsibilities, but serves as a reference for the City only.
- u. Submit one (1) reproducible set and five (5) copies of the above-mentioned Design Development Documents for review and approval.

- v. Meet with City staff during the Design Development Phase and/or review period to discuss staff comments and address potential problems or inconsistencies.
- w. Provide a detailed GMP breakdown itemizing cost and assumptions for the entire project with deductive alternates, if needed, to provide a project within the available project budget.
- x. Provide drawings and support documentation requested by City.
- y. Design, prepare, coordinate and secure approvals for a stormwater management plan.
- z. Telecommunications Plan (separate from the Power Plan) detailing the location of all outlets, conduits, racks, number of connections at each outlet, patch panel location and service entry.
- aa. Fire alarm and fire protection design and drawings indicating system type, point of service, main distribution lines, point of service, control panel locations and type, sprinkler head locations, smoke and heat detector locations, specifications and knox box location.

**4.1.2** Design-Builder shall provide the following professional services through completion of Stage 2 activities:

1. Prepare and submit for review by the City and other designated groups, Construction Documents consisting of:

Working Drawings and the Project Manuals setting forth in complete and coordinated detail requirements for the construction of the entire Project, Documents shall as a minimum include:

- a. Cover sheet with names and phone numbers of each consultant, sheet index, vicinity map, and building code criteria.
- b. Demolition / Site clearance plans with verified existing condition plans.
- c. Civil Engineering Drawings, Calculations and Specifications.
- d. Architectural Drawings, Calculations and Specifications.
- e. Exit path diagrams.
- f. Floor Plan with color coding to identify fire separation assemblies and fire protection ratings for all openings.
- e. Structural Engineering Drawings, Calculations and Specifications.
- f. Mechanical Engineering Drawings, Calculations and Specifications.
- g. Plumbing Engineering Drawings, Calculations and Specifications.
- h. Fire Sprinkler / Suppression / Alarm / Detection Drawings, Calculations and Specifications, including all manufacturers cut sheets to complete a full design for approval by the fire department. Deferred submittal is not allowed.
- i. Electrical Engineering Drawings, Calculations, load balancing calculations and Specifications.
- j. Furniture, Fixtures and Equipment (FF &E) Design Drawings, Calculations, Specifications, and preparation of separate bid and installation documents as coordinated with CITY.
- k. Food Service Equipment Design Drawings, Calculations and Specifications.
- l. Communications Engineering Drawings, Calculations and Specifications and preparation of separate bid documents.

- p. Landscape Drawings, Calculations and Specifications.
  - q. Carpet Seaming Plan and Tile Pattern Drawings and Specifications.
  - r. Title 24 Energy Compliance Documentation – Performance Calculations conforming to Section 4.1.3.h
  - s. Shop drawings coordinated with the remainder of the contract documents.
  - t. Art-In-Public-Places coordination documents with all necessary supporting documentation for engineering, plancheck, permit, construction and installation.
  - u. Project specifications divided into the CSI Division format, with list of required submittals and material testing. Provide a combined, single-document file of the text of all specification sections on computer-generated magnetic media in format acceptable to the City.
  - v. Provide a Project Binder to include all the detail cut-sheets (with maintenance requirements) of materials specified in construction documents broken down to conform to the CSI Division format for City use at final 100% construction document submittal.
  - w. Design-Builder shall prepare a list of all submittals required during construction. The list shall identify the sub-contractor, scope of work & documentation, and review schedule as depicted in the project schedule.
  - x. Provide a work plan and list of criteria for commissioning all building systems as part of the bid documents, including specific test requirements. Design-Builder shall be responsible for organizing and conducting all commissioning activities.
  - y. Design-Builder shall coordinate all testing and commissioning and prepare all LEED certification documentation as described in Sections 4.1.3.d, 4.1.3.h and 4.1.3.i
  - z. Design-Builder shall prepare an itemized directory of all Title 24 Acceptance Testing requirements. The directory shall clearly set forth all equipment, systems, conditions and materials that must be tested, the tests that must be performed, qualifications for the person(s) conducting the testing, documentation requirements, identify the person(s) responsible for conducting, documenting the test results, actions to take if an item fails a test, identify who must be present for the test, notification requirements for the test and all participants, qualifications for the "Testing Authority", responsibility for compiling, indexing and submitting acceptance test results to the building official. Responsibility for securing a permanent Occupancy Permit.
  - aa. Design-Builder shall update and secure all approvals for the stormwater management Plan.
  - bb. Design-Builder shall prepare an EIR mitigation plan to be used during construction.
  - cc. Telecommunications Plan (separate from the Power Plan) detailing the location of all outlets, conduits, racks, number of connections at each outlet, patch panel location and service entry.
2. Include all details, supports, engineering, structural, electrical, mechanical and plumbing drawings necessary to install, support and secure any and all artwork associated with the Art-In-Public-Places Program.

3. Meet with City staff during the Construction Document review period(s) to discuss comments and address potential problems or inconsistencies.
4. Provide additional clarification and/or coordination drawings when requested by City.

**4.1.3 Design-Builder shall provide the following professional services through completion of Stage 1 and Stage 2 services:**

**a. Public Information Meetings/Design Presentations/Public Meetings**  
Design-Builder shall prepare, coordinate, and participate in relevant informational meetings, presentations, coordination sessions, workshops, public meetings and similar activities for the project. Design-Builder shall be responsible for preparing meeting notes for all activities listed above and distributing copies of notes and a list of follow-up actions to all parties designated by the City.

**b. Public Information Releases**  
Design-Builder, and all associated firms and/or individuals, shall not release information concerning this Project for public relations or promotional purposes without the specific written authorization of the City. This limitation shall not prohibit the Design-Builder from referencing this Project in proposals developed by the Design-Builder to secure other contracts provided that the City is contacted in advance and approves such use and reference.

Upon request by the City, Design-Builder shall provide information necessary for the public information releases by the City.

**c. Supporting Information Services**  
Design-Builder agrees to work with the City and develop, prepare and provide information requested by regulatory agencies, reviews, environment assessments and similar activities necessary to obtain required consensus, reviews and approvals for the project and related activities.

**d. LEED Certification**  
Design-Builder shall secure the services of LEED certified professional's to assist the City and Design team in evaluating options and alternatives for LEED certification. This project must achieve LEED Silver Certification or higher.

The design team shall follow the guidelines below for all work related to LEED activities related to this project:

Design-Builder shall work with the City to ensure that the project achieves the USGBC Silver Certification version 2.2 rating. **A point “cushion” of at least 5 points is required when the project completes the GPM (Stage 1).** Design-Builder shall make no changes in the design or construction following City acceptance of the GMP that would prevent the project from qualifying for LEED Silver Certification once completed.

Design-Builder shall develop and document a “Basis of Design” (BOD). The BOD shall include a discussion of building usage, operating hours, anticipated occupant loads on weekdays and weekends, building program as it directly impacts LEED certification, a section describing how each discipline is meeting the building program, including LEED compliance and structural, mechanical, lighting and electrical design calculations and objectives. Provide updated electronic and hard copy at each phase of the project through project completion, commissioning and occupancy.

Design-Builder shall enroll this project under SMUD’s “Savings By Design” (SBD) program, and shall achieve a minimum energy savings of fifteen percent (15%) beyond what is required by 2005 Building Energy Efficiency Standards.

Design-Builder shall provide the City with an electronic and hard copy of all computer models and simulation reports.

Design-Builder shall provide guide specifications in order to achieve the City’s sustainability goals.

Specifications shall include, but not be limited to:  
Section 01350 - Special Environmental Requirements  
Section 01565 - Construction Waste Management Program  
Section 01810 - Commissioning

The City will hire a third party Commissioning Authority (CA) that shall be part of the design team from completion of the GMP through building occupancy. The CA’s scope with respect to the Design-Builder shall be as a reviewer. The CA should be invited to any appropriate design team meetings. Design-Builder shall schedule the CA’s participation through the Project Manager. The City will pay CA fees.

The Design-Builder is free to achieve LEED Silver version 2.2 certification level in the most cost effective manner available except, that the following are required (if applicable):

1. Achieve a minimum of 1 point under Sustainable Sites, Credit 6 (Storm Water Management).
2. Achieve a minimum of 2 points under the Water Efficiency category.

3. Achieve a minimum of 6 points under the following Energy and Environment Credits:
  - a. Credit 1 – Energy Efficiency, and
  - b. Credit 5 – Measurement and Verification.
4. Achieve Materials and Resources Credit 2 (minimum 50% C&D Waste Diversion).
5. Achieve a minimum of 5 points under the following Indoor Environmental Quality Credits:
  - a. Credit 3 – IAQ Management Plans, and
  - b. Credit 4 – Low Emitting Materials.
6. Achieve IEQ Credit 7.2 (Permanent Energy Monitoring System).
7. The City will pay the USGBC charges for LEED Registration, however the Design-Builder is fully responsible for conducting all tests, coordinating all commissioning, collecting all information, completing all commissioning, preparing all documentation and submitting materials to the USGBC.
8. Design-Builder will work with the USGBC to obtain the LEED Certification. The Design-Builder shall prepare all documentation associated with the LEED compliance process and provide an updated electronic copy of the score card and backup material to the Project Manager at the times noted below:
  - a. Design Development Review.
  - b. 100% Contract Document Review.
  - c. At any time a construction change might impact the level of LEED certification.
  - d. At the completion of commissioning.

**e. Separate City Consultants**

The City may secure the services of multiple separate consultants throughout the duration of the project and this contract. Design-Builder shall meet, coordinate, provide supporting information and generally support the work efforts of these consultants in a timely and expeditious manner at no additional cost to the project.

**f. Heating and Cooling Design Conditions**

Heating and cooling design for this facility shall be based on ASHRAE design procedures. Design-Builder shall research, document and develop recommendations for temperature, humidity and ventilation parameters based on recommendations from ASHRAE, and regulatory agencies. Design-Builder shall prepare heating and cooling load calculations based on ASHRAE recommendations and anticipated operating conditions. All calculations shall be documented and summarized in individual room and zone loads with all normal adjustment factors and submitted to the City for review and approval with Design-Builder's recommended HVAC equipment selection, distribution layout and specifications.

**g. Incentives, Rebates and Tax Benefits**

Design-Builder shall be responsible for reviewing the project scope and objectives with City staff and investigating the availability and impact of current or anticipated incentives and/or rebates for energy efficient design improvements available to the project. Design-Builder shall evaluate the operational and lifecycle impacts with City staff. Design-Builder shall prepare all documentation, calculations and supporting paperwork required to file for any incentives and/or rebates.

Rebates and incentives available to the owner or occupant shall remain the property of the City; however, incentives and tax benefits available to the design team shall remain the property of the design team in addition to compensation set forth in this contract. The design team is responsible for all documentation, testing, certification and similar actions necessary to document qualifications for incentives and/or tax benefits for the design team. The City assumes no responsibility for loss of incentives or tax benefits to the design team due to actions by the City or the contractor(s).

Design-Builder may benefit from tax deductions stemming from the Federal Energy Policy Act of 2005 if Federal energy efficiency targets are achieved. Tax benefits of up to \$1.80 per square foot may be available to qualified designers. See [http://www.energystar.gov/index.cfm?c=products.pr\\_tax\\_credits#8](http://www.energystar.gov/index.cfm?c=products.pr_tax_credits#8)

**h. Energy Efficient Design Requirements**

Design-Builder is encouraged to develop energy efficient design options and alternatives for the design of the building, site and systems and maximize energy efficiency throughout the facility by addressing building design, shading, daylighting, site design, insulation, glazing, orientation, systems and similar criteria.

Design-Builder shall use the Performance Compliance computer simulation program approved by the California Energy Commission for use on non-residential projects. The program used shall be the latest version approved by the California Energy Commission and the program shall be capable of producing Life-Cycle-Cost analysis based on actual anticipated operating conditions.

Design-Builder shall prepare the following computer simulations for each phase of the design and contract documents for review by the City:

1. Design-Builder shall prepare energy savings recommendations for consideration by the City based on **actual operating conditions** and Life-Cycle-Cost simulations based on actual operating schedules and anticipated occupant loads and equipment operation.
2. Design-Builder shall develop options for consideration by the City that achieve a minimum energy savings of fifteen percent (15%) beyond allowable energy budgets established under Title 24 – Part 6 for Non-Residential Buildings. Each simulation shall include the simultaneous

combined effects of the building envelope, indoor lighting, mechanical systems, and hot water systems.

3. Each option developed under h.2. above shall demonstrate that the envelope alone exceeds the allowable energy budget by at least 5%.
4. Design-Builder shall prepare separate Performance Compliance Calculations as described above during the design development, construction document and commissioning phases.

**i. System Commissioning**

Design-Builder shall coordinate with City staff, develop and prepare a facility-commissioning plan for the project to be included in the construction documents. The system-commissioning plan may include portions of the "2005 Title 24 Part 6 Acceptance Testing Requirements" but shall extend and incorporate all systems commissioning required for LEED Silver certification. Design-Builder shall prepare scope and scheduling for commissioning all systems designed by Design-Builder. Design-Builder shall be responsible for field investigation, testing and development of commissioning reports and results and provide City with recommendations. Design-Builder and City shall observe field tests necessary for system commissioning.

**j. Furniture, Fixtures, Systems, Equipment**

Design-Builder shall be responsible for design and specification of all equipment, systems and furniture related to the project, including items not permanently attached to the building. The contract documents shall provide details and specifications on all fixtures and furniture permanently attached to the building, including, but not limited to whiteboards, structural support for overhead projectors, cabinets, security systems, surveillance systems, etc. Contract documents shall include design, specification, bid documentation, coordination and support necessary for proper installation of all furniture, systems, and equipment.

**k. Art-in-Public-Places**

Design-Builder shall work with the Sacramento Metropolitan Arts Commission to incorporate and support integration of artwork within the project design.

**l. Building Interior, Exterior and Site Signage**

Design-Builder shall be responsible for design of all interior and exterior signage design, including specifications, and documentation. Signage shall include all directory signage, room signage, directional signage, building identification signage, signage lighting and design and installation of a 24"x30" solid bronze dedication plaque to be coordinated with the City.

**m. Building Maintenance, Operations, Servicing**

Design-Builder shall meet with representatives from the City to determine how systems, spaces and access in the building will be facilitated for servicing and maintenance.

- n. Additional Clarification and Documentation**  
Design-Builder shall provide additional details, isometrics, sections, calculations and similar information when requested by City to clarify design and installation requirements and coordination on the project as part of the basic services under this contract.
- o. As-Built Documents**  
Design-Builder shall maintain a set of "as-built" drawings on site and updated on a weekly basis, and available for the City to review. Design-Builder shall incorporate all construction changes in the final digital version of the drawings and specifications and provide the "As-Built" CAD drawings to the City at the completion of the work with all operations and maintenance manuals. The "As-Built" drawings shall be in AutoCAD format on electronic media as well as TIFF images of each drawing and specifications shall be provided in Microsoft Word format as well as Adobe Acrobat format.
- p. Information Format**  
Design-Builder shall provide all information developed for the project in an electronic format the City can readily use for reports, public notices, press releases, presentations and similar activities. The format shall be compatible with existing City software and resources.
- q. Code / Regulatory Interpretation or Conflict**  
Where an interpretation, regulation, law or code conflicts with other interpretations, regulations, law or codes the Design-Builder shall follow the most stringent requirement.
- r. Title 24 Access Conflicts with ADA**  
Where a conflict or apparent conflict occurs between Title 24 access requirements and requirements set forth under the Americans with Disabilities Act both requirements shall be met. Where the City agrees it is not necessary the design may include only the most restrictive requirement/interpretation.
- s. HERS Verified Duct Testing**  
Irrespective of any requirements in the Title 24 Energy Compliance Calculations, Design-Builder shall design and install all HVAC air distribution systems with a maximum air leakage of 6% of the total air flow. Design-Builder shall hire an independent HERS rater approved by the State of California to complete a 6% duct leakage test as outlined in the Non-Residential ACM. The HERS rater shall have completed at least 50 non-residential duct tests prior to conducting any tests on this project. All air distribution systems shall be tested, sampling shall not be allowed.
- t. Cool Roof Requirements**  
Irrespective of any requirements in the Title 24 Energy Compliance Calculations, Design-Builder shall design and install a "cool roof" as defined in 2005 Building Energy Efficiency Standards for Residential and Non-Residential Buildings for any roof area where the slope is 1:12 or less.

**U. Review and Coordination**

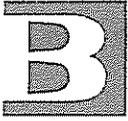
Design-Builder shall, organize and conduct reviews of design, details and assumptions with the City, Regulatory Authorities, Utilities and Art-In-Public-Places as needed for efficient execution of the work, and to insure the City is involved in the development of the design solution. On or about the time of the scheduled submissions, Design-Builder shall establish a preliminary list of meetings necessary for the efficient execution of the Work. The meetings, document preparation and submittal deadlines shall be incorporated into the project schedule.

Minutes of all meetings shall be prepared and maintained by Design-Builder and provided to all attendees for review within 5 calendar days of the meeting.

**4.1.4** City's review and approval of interim design submissions and Construction Documents is for the sole purpose of establishing a set of Contract Documents compatible with the requirements of the Work. Neither City's review nor approval of any interim design submissions or Construction Documents shall be deemed to transfer any design liability from Design-Builder to City. City's review and approval shall not release the Design-Builder from compliance with ALL requirements in the Contract Documents unless specific item(s) are identified for modification, addition or removal and approved in writing by both the City and Design-Builder.

**4.1.5** To the extent allowed by the Contract Documents and Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work. The Design-Builder is responsible for all documentation and coordination necessary to secure any partial permits, if allowed and available. Design Builder assumes all risk with early permits on work.

**PROFESSIONAL HOURLY RATES**  
**(FULLY BURDENED RATES)**



**BROWN**  
CONSTRUCTION  
INCORPORATED

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## Professional Hourly Rates (Fully Burdened)

### **PRE-CONSTRUCTION ADMINISTRATION AND DESIGN-ASSISTANCE**

#### **BILLING RATE SCHEDULE**

*(Rates effective through September 2007)*

Charges for basic or additional services shall be based on the following rates and are subject to revision annually.

Project Executive:	\$104.00 per hour
Senior Estimator:	\$84.00 per hour
Project Manager:	\$66.00 per hour
Junior Estimator:	\$38.00 per hour
Contract Administrator:	\$33.00 per hour

All other costs and reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made in the interest of the work being performed.

1465 Enterprise Boulevard  
West Sacramento, CA 95691

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license no. 396120

[brown-construction.com](http://brown-construction.com)

## FIELD PAOLI RATE SCHEDULE

*(Rates effective through 12/31/07)*

### I. CHARGES FOR SERVICES:

Charges for basic or additional services shall be based on the following rates and are subject to revision annually:

Principal:	\$210.00 per hour
Senior Project Manager/Senior Designer:	\$160.00 per hour
Project Manager/Designer:	\$135.00 per hour
Designer/Drafter III:	\$110.00 per hour
Designer/Drafter II:	\$90.00 per hour
Designer/Drafter I:	\$75.00 per hour
Junior Designer/Drafter:	\$70.00 per hour
Project Administrator:	\$70.00 per hour
Consultant's Time:	1.10 times consultant's charges
Automobile Travel:	Prevailing IRS allowance
Reimbursable Expenses & Reproduction Costs:	1.15 times charges
All Other Costs:	Direct reimbursement

### II. REIMBURSABLE EXPENSES:

Reimbursable Expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the Architect, its employees, or its professional consultants in the interest of the Project for the expenses listed in the following subparagraphs:

- A. Expense of transportation\* and living when traveling in connection with the Project; When travel time exceeds four hours in flight time, all travel will be business class; long distance calls, fax and telegrams; and fees paid for securing approval of authorities having jurisdiction over the project.
- B. Expense of reproductions including computer plotting, postage, overnight priority mail and handling of Drawings and Specifications.

## **ESBE PROGRAM REQUIREMENTS**

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. The ESBD program establishes an annual emerging and small business enterprise (ESBE) participation goal for the City's contracts, and authorizes City departments to require minimum ESBE participation levels in individual contracts so that the annual ESBE participation goal can be met. Under City Code Section 3.60.270, when the bid specifications for a City contract establishes a minimum participation level for ESBEs, **no bidder on the contract shall be considered a responsive bidder unless its bid meets the minimum ESBE participation level required by the bid specifications.** Design Build proposals shall include a statement of commitment to meet the minimum participation level for ESBEs on the construction portion of the project if the construction prime contractor and subcontractors are not determined at the time of proposal submission. Design Build projects that fail to meet the minimum participation level may be penalized up to the dollar value that the contractor fails to achieve the required ESBE participation level.

The City has established a minimum 20% participation level for ESBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered a responsive bidder unless its bid meets or exceeds this minimum participation level.

Bidders shall include copies of their Certification as a SBE or EBE and the SBE or EBE Certifications for each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted with the sealed proposal. **Failure to submit the required ESBE information by the close of business two days after bid opening will be grounds for finding the bid non-responsive.**

### **II. ESBE CERTIFICATION**

- A. A SBE designated in the bid must be certified as such by the State of California or by the City, as defined herein, prior to the time bids are received.
- B. An EBE designated in the bid must be certified as such by the City, as defined herein, prior to the time bids are received.

### **III. DETERMINATION OF ESBE PARTICIPATION LEVEL**

- A. The percent of ESBE participation shall be determined based on the dollar amount of the work to be performed by a certified ESBEs as that dollar amount is specifically stated on the **SUBCONTRACTOR and ESBE PARTICIPATION VERIFICATION FORM (FM 440)** in the bid package, relative to the total dollar amount of the bid, except as provided other wise below.
- B. To receive credit for participation, a ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry its responsibility by actually performing, managing, or supervising the work.
- C. Suppliers: Credit for supplies by ESBEs will be 100 percent.
- D. Truckers: Credit for trucking by ESBEs will be 100 percent.

#### IV. ESBE REQUIREMENTS OF SUCCESSFUL BID/PROPOSAL

- A. ESBE RECORDS - The Contractor shall maintain records of all subcontracts with certified ESBE subcontractors and records of materials purchased from certified ESBE vendors/suppliers for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each ESBE subcontractor or vendor/supplier and the total dollar amount actually paid each ESBE subcontractor or vendor/supplier.

Upon completion of the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide such other information, records, reports, certifications or other documents as may be required by City, to determine compliance with any provision of the ESBD program or these specifications.

- B. REPORTING REQUIREMENTS AND SANCTIONS - Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications shall be considered noncompliance with the contract. If the Contractor fails to correct a deficiency within fifteen (15) days after notification, a deduction may be made from the contract amount. The deduction shall be ten (10) percent of the estimated value of the work done during the month, not to be less than \$1,000 nor exceed \$10,000 and shall be deducted from the next progress payment.

- C. PERFORMANCE OF ESBE SUBCONTRACTORS AND SUPPLIERS - The ESBEs listed by the Contractor shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the material from other sources. Reasons for requesting such authorization would include:

- 1 The listed ESBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
- 2 The listed ESBE becomes bankrupt or insolvent.
- 3 The listed ESBE subcontractor fails to meet the bond requirements of the Contractor.
- 4 The work performed by the listed subcontractor is unsatisfactory and/or is not in accordance with the plans and specifications, or the subcontractor fails to perform his/her obligations under the subcontractor contract.
- 5 It would be in the best interest of the City. The Contractor shall not be entitled to any payment for such work or materials unless it is performed or supplied by the listed SBE or EBE or other forces (including those of the Contractor) authorized in writing, by the City.

- D. SUBCONTRACTOR SUBSTITUTION - No substitution of an ESBE subcontractor shall be made at any time without compliance with the Subcontracting Listing Law and the written consent of the City. If a ESBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original ESBE subcontractor with another certified ESBE subcontractor. The new

ESBE subcontractor must be certified at the time of substitution.

**V. DEFINITIONS**

**A. Emerging Business Enterprise (EBE)**

The City shall certify EBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources, that were in effect on December 1, 1998, provided that the size standard, industry by industry, shall be set at 50% of the State small business certification criteria and standards that were in effect on December 1, 1998.

**B. Small Business Enterprise (SBE)**

The City shall certify SBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources. The City will also accept State certified SBEs.

**C. CONTRACTOR**

The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the City of Sacramento.

**D. SUBCONTRACTOR**

The individual, partnership, corporation, or other legal entity entering into a contract with the prime contractor to perform a portion of the work.

**STANDARD SPECIFICATIONS**  
**FOR PUBLIC WORKS CONSTRUCTION**  
**(June 2007)**

The "Standard Specification for Public Works Construction (June 2007)" shall be limited to work located in the public right-of-way, and the construction of utility services through the property and connecting to any facilities located on the project site.

For the purposes of this contract the following definitions shall apply to the Standard Specifications:

1. Engineer shall mean City Representative.
2. Standard Specifications shall mean the Standard Specifications for Public Works Construction dated June 2007.

The following Sections of the Standard Specification shall apply to this project in addition to all other requirements in this contract:

1. Section 5 - Control of Work and Materials;
2. Section 6 - Legal Relations and Responsibilities to the Public;
3. Section 7 - Prosecution and Progress
4. Section 10 - Construction Materials (Excluding 10-39 through 10-58 inclusive);
5. Section 11 - Pre-Construction Photographs;
6. Section 12 - Clearing and Grubbing, Tree Removal;
7. Section 13 - Existing Facilities;
8. Section 14 - Earthwork, Excavation, Embankment and Sub-Grade;
9. Section 15 - Water Used In Construction;
10. Section 16 - Water Quality Control;
11. Section 17 - Laying Aggregate Base;
12. Section 18 - Headers;
13. Section 19 - Portland Cement Concrete Pavement, Joints and Curing;
14. Section 20 - Concrete Structures;
15. Section 21 - Placing Steel Reinforcement;
16. Section 22 - Asphaltic Concrete;
17. Section 23 - Bituminous Seal;
18. Section 24 - Curbs, Gutters, Sidewalks, Gutter Drains;
19. Section 25 - Sanitary Sewer and Drainage Manholes;
20. Section 26 - Laying Sewer and Drain Pipe;
21. Section 27 - Water Distribution Systems;
22. Section 28 - Driveway Culvert and Sidewalk French Drains;
23. Section 29 - Moving and Changing Utilities and Water Services;
24. Section 30 - Drain Inlets, Gutter Drains and Ditch Boxes;
25. Section 32 - Traffic Signs, Markings and Barricades;
26. Section 33 - Pneumatically Applied Mortar
27. Section 34 - Electrical;
28. Section 37 - Boring and Jacking;
29. Section 38 - Standard Drawings (including elimination of out dated rawings and replacement with latest drawings available).

**GUARANTEED MAXIMUM PRICE AND FEE**

1. **Guaranteed Maximum Price.** The **Guaranteed Maximum Price** as of the date of execution of the Contract is **WRITTEN AMOUNT** (\$ \_\_\_\_\_). The GMP is comprised of the following.

<b>Estimated Cost of the Work:</b>	\$ _____
<b>Design Related Services &amp; Expenses (Stage 1)</b>	\$ _____
<b>Design Related Services &amp; Expenses (Stage 2)</b>	\$ _____
<b>Bonds</b>	\$ _____
<b>Insurance</b>	\$ _____
<b>Design-Builder Fee</b>	\$ _____
<b>Sub-Total</b>	\$ _____
<b>Contingency (Subject to Savings)</b>	\$ _____
<b>TOTAL</b>	\$ _____

**Deductive Alternate # \_\_\_\_\_**

<b>Estimated Cost of the Work:</b>	\$ _____
<b>Design Related Services &amp; Expenses</b>	\$ _____
<b>Bond &amp; Insurance</b>	\$ _____
<b>Design-Builder Fee</b>	\$ _____
<b>Sub-Total</b>	\$ _____
<b>Contingency (Subject to Savings)</b>	\$ _____
<b>ALTERNATE TOTAL COST</b>	\$ _____
<b>Additional Calendar Days</b>	_____

**Deductive Alternate # \_\_\_\_\_**

<b>Estimated Cost of the Work:</b>	\$ _____
<b>Design Related Services &amp; Expenses</b>	\$ _____
<b>Bond &amp; Insurance</b>	\$ _____
<b>Design-Builder Fee</b>	\$ _____
<b>Sub-Total</b>	\$ _____
<b>Contingency (Subject to Savings)</b>	\$ _____
<b>ALTERNATE TOTAL COST</b>	\$ _____
<b>Additional Calendar Days</b>	_____

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PD  
BROWN-1

DATE (MM/DD/YYYY)  
07/20/07

**PRODUCER**  
InterWest Insurance Services  
Capitol Division  
P.O. Box 255188  
Sacramento CA 95865-5188  
Phone: 916-488-3100 Fax: 916-488-3492

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

**INSURED**  
  
Brown Construction, Inc.  
P.O. Box 980700  
West Sacramento CA 95798-0700

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Westchester Surplus Lines Ins	
INSURER B: Unigard Insurance Company	25747
INSURER C: American Guarantee & Liability	26247
INSURER D: American Home Assurance Co.	19380
INSURER E: Greenwich Insurance Co.	22322

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <b>Commercial</b> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ <input type="checkbox"/> LOC	G22039891001	01/01/07	04/01/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 BI/PD Ded 5,000
B X	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CM011877	04/01/07	04/01/08	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
C	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	AUC366965107	04/01/07	04/01/08	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 \$ \$ \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	3424477	04/01/07	04/01/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	<b>OTHER</b> Prof Liability Agg Ded \$35,000	PEC0023677	07/20/07	07/20/08	Occ 2,000,000 Agg 2,000,000

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

\*10 days notice applies if cancelled for non-payment of premium. The City, its official, employees and volunteers are named as additional insureds for General Liability per attached endorsement. General Liability is considered primary and non-contributory over any other insurance in force for this project. The City, its official, employees and volunteers are named

### CERTIFICATE HOLDER

CIT5731  
  
City of Sacramento  
Dept. General Svcs Facility  
Design & Construction  
5730 24th Street, Bldg 4  
Sacramento CA 95822

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL **30\*** DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE  
*Wohlf*

**NOTEPAD:**HOLDER CODE CIT5731  
INSURED'S NAME Brown Construction, Inc.BROWN-1  
OP ID PDPAGE 2  
DATE 07/20/07

as additional insureds on Automobile Liability and this insurance is primary and non-contributory per form 140365 to be issued by the carrier. A waiver of subrogation form WC000313 to be issued by the carrier applies for Workers' Compensation in favor of the City, its official, employees and volunteers.

(Replaces certificate issued on 5/23/07.)

Named Insured: Brown Construction, Inc.

Policy Number: G22039891001      Policy Period: 04/01/07 to 04/01/08

Effective Date of Endorsement: 04/01/07

Insured By: Westchester Surplus Lines Insurance Co

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
CAREFULLY.**

**CONDITION 4, OTHER INSURANCE,  
AMENDED NON CONTRIBUTORY**

Paragraph 4.c. is deleted in its entirety and replaced by the following:

- c. If all of the other insurance permits contribution by equal shares, we will follow this method unless the insured is required by contract to provide insurance that is primary and non-contributory, and the "Insured Contract" is executed prior to any loss. Where required by a contract, this insurance will be primary only when and to the extent as required by that contract. However, under the contributory approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**COMMERCIAL LIABILITY  
CGL - ENDORSEMENTS**

INSURED: Brown Construction, Inc.  
POLICY NUMBER: G22039891001

Westchester Fire Ins Company  
COMMERCIAL GENERAL LIABILITY

**This Endorsement changes the policy. Please read it carefully.**

**ADDITIONAL INSURED -- OWNERS, LESSEES OR  
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person or Organization**

The City, its official, employees and volunteers

(IF NO ENTRY APPEARS ABOVE, INFORMATION REQUIRED TO COMPLETE THIS ENDORSEMENT WILL BE SHOWN IN THE DECLARATIONS AS APPLICABLE TO THIS ENDORSEMENT.)

**WHO IS AN INSURED** (Section II) IS AMENDED TO INCLUDE AS AN INSURED THE PERSON OR ORGANIZATION SHOWN IN THE SCHEDULE. BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF "YOUR WORK" FOR THAT INSURED BY OR FOR YOU

CG 20 10 11 85

**Producer:** Craig M Houck

Unigard Insurance Company  
PO Box 90701, Bellevue, WA 98009-0701

Policy No.                    Commercial Multi-Line Policy  
CM011877                    Policy Change Endorsement

Page 1

Producer SAC 19568 INTERWEST INSURANCE SERVICES, INC, SACRAMENTO, CA  
Policy period                from 04-01-07    to    04-01-08  
Endorsement effective        05-22-07

BROWN CONSTRUCTION, INC.  
(SEE NAMED INSURED ENDORSEMENT)  
P.O. BOX 980700  
WEST SACRAMENTO, CA 95798

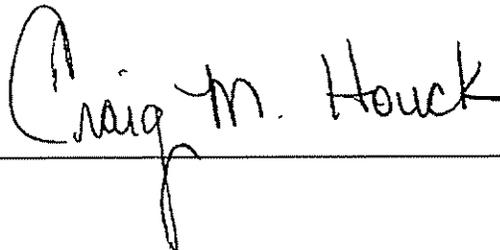
Account 561785  
Named  
Insured

This endorsement changes the policy on 05-22-07. Please read carefully.

**The City, its officials, employees and volunteers are named as additional insureds per form 140365**

No additional premium this endorsement

Countersigned by

  
\_\_\_\_\_

End-5

DB 05-29-07R

Unigard Insurance Company  
PO Box 90701, Bellevue, WA 98009-0701

Policy No.                    Commercial Multi-Line Policy  
CM011877                    Endorsement

Page 1

PRIMARY WORDING-CITY OF SACRAMENTO

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

BUSINESS AUTO COVERAGE FORM

NAME OF PERSON OR ORGANIZATION:

CITY OF SACRAMENTO  
DEPT. GENERAL SVCS FACILITY  
DESIGN & RECONSTRUCTION  
5730 24TH ST. BLDG 4  
SACRAMENTO, CA 95822

With respect only to the person or organization named above and on form CA2048 - DESIGNATED INSURED, THE BUSINESS AUTO CONDITIONS, FORM CA0001, SECTION IV.B.5. - OTHER INSURANCE - is replaced with the following:

5. The insurance afforded by this policy is primary insurance. Any other insurance maintained by, or available to the additional insured is non-contributory. This applies only if the additional insured is liable for the the conduct of an "insured" and only to the extent of that liability.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT--CALIFORNIA**

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 05/23/2007 forms a part of Policy No. WC 342-44-77

Issued to BROWN CONSTRUCTION, INC.

By AMERICAN HOME ASSURANCE COMPANY

Premium 250

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 5.0 % of the California workers' compensation premium otherwise due on such remuneration.

**Schedule**

<u>Person or Organization</u>	<u>Job Description</u>
CITY OF SACRAMENTO DEPT. GENERAL SERVICES FACILITY DESIGN AND CONSTRUCTION 5730 24TH STREET, BLDG 4 SACRAMENTO, CA 95822	CIT5731