Title: Contract: McKinley Water Vault [Published for 10-day Review 04/11/2019]

Location: District 3

Recommendation: Adopt a Resolution: 1) approving the construction plans and specifications for the McKinley Water Vault Project; 2) awarding the contract to W.M. Lyles Co. for a guaranteed maximum price of $24,945,000; 3) authorizing the removal of five trees in McKinley Park, to be replaced with 63 trees; and 4) authorizing related budget transfers.

Contact: James Yorita, Project Manager (916) 808-1911; Brett Grant, Supervising Engineer (916) 808-1413; Dan Sherry, Engineering & Water Resources Division Manager, (916) 808-1419; Department of Utilities

Presenter: None

Attachments:
1-Description/Analysis
2-Contract
3-Justification for City Tree Removal
4-Resolution
Description/Analysis

Issue Detail: Staff recommends Council award a construction contract to W.M. Lyles Co. to construct a below ground concrete vault for temporary storage of combined wastewater and rainfall runoff. Included with this project is a below ground odor control structure, pump station, public restroom, and multiple enhancements in McKinley Park. Diversion pipeline work will be constructed in 33rd Street between McKinley Blvd and H Street. The project will reduce surface flooding in the Combined Sewer System (CSS) during heavy storm events by diverting surcharge flows into the storage structure. The storage structure will drain back into the CSS pipes as the system flows recede.

Policy Considerations: City Council approval is required to award construction contracts of $100,000 or more. The action requested conforms with City Code Chapter 3.60, Article I, III, and IV, which provides for award when an alternative competitive process is used. Adding offline storage in the CSS is consistent with the criteria set forth in the Department of Utilities' Combined System Long Term Control Plan to ensure a reliable and safe CSS.

The Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements and all agreements greater than $1,000,000 shall be made available to the public at least ten (10) days prior to council action.

Economic Impacts: This project is expected to create 99.78 total jobs (57.37 direct jobs and 42.41 jobs through indirect and induced activities) and create $15,401,916 in total economic output ($9,707,945 of direct output and another $5,693,971 of output through indirect and induced activities).

*The indicated economic impacts are estimates calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). CSER utilized the IMPLAN input-output model (2009 coefficients) to quantify the economic impacts of a hypothetical $1 million of spending in various construction categories within the City of Sacramento in an average one-year period. Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.*

Environmental Considerations: On October 9, 2018, the City Council certified (Resolution No. 2018-0401) the Environmental Impact Report (EIR) and adopted the Mitigation Monitoring Program (MMP) that evaluated the physical effects on the environment from development of the McKinley Water Vault project. The EIR and MMP were prepared and acted upon in compliance with the California Environmental Quality Act (CEQA). The current action would
approve a contract that would implement the development of the project and would not create or cause effects not included in the EIR. None of the circumstances set forth in CEQA Guidelines Section 15162 are present and the EIR and MMP are adequate to identify potential effects and mitigation measures for the project. No further environmental review is necessary.

**Sustainability:** The proposed project is consistent with the 2035 General Plan as it improves infrastructure reliability and supports the City’s Long-Term Control Plan to rehabilitate the CSS to reduce flooding and outflows.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** On August 28, 2018, Council approved the suspension of competitive bidding for the McKinley Water Vault project in favor of an alternative procurement process, as it is in the City’s best interest to select a contractor based on qualifications, performance-based criteria, customer/public care and pricing. A best value competitive process was used to select a contractor for the McKinley Water Vault project. A Request for Qualifications (RFQ) was advertised on September 7, 2018. Submittal of Qualifications packages were received from eight contractors. Six of the eight were pre-qualified to receive the Request for Bid Proposal (RFBP). Five contractors, W.M. Lyles Co., Flatiron, Kiewit Infrastructure West Co., C. Overaa & Co., and Gateway Pacific Contractors, Inc., submitted bid proposals, in response to the RFBP on February 14, 2019. The proposals were reviewed and scored, and two contractors were interviewed. The contractor with the highest score was W.M. Lyles Co.

W.M. Lyles Co. submitted a guaranteed maximum price of $24,945,000. The Engineer’s construction cost estimate was $28,000,000.

**Financial Considerations:** The total estimated cost for the project including planning, design, and construction is $32 million. Currently, $13.8 million has been allocated to the project. Staff estimates an additional $18.2 million is needed to complete the project which is funded from the CSS Program (X14010000).

Reallocation of existing resources will be required to encumber this contract and to provide the additional funding needed to complete the project. The 2019 Wastewater Bonds are scheduled to be issued on April 10, 2019, prior to the award of this agreement on April 23, 2019. Bonds are being issued in the amount of $27.1 million with an anticipated premium of $4.9 million for a total of $32 million in project funding. The bond funding will be allocated to projects in the Wastewater CIP, replacing budget and reimbursing expenses in the Wastewater Fund (Fund 6006), per Resolution 2016-0307. Staff is recommending the following budget transfers in the amount of $18,196,540 to provide sufficient funding for this project.
Local Business Enterprise (LBE): W.M. Lyles Co. is not an LBE but has partnered with eight LBEs for this project to exceed the minimum LBE participation requirement. Brightview Landscape Development Inc. will provide landscaping services, Cemex will furnish cast-in-place concrete, Fox Loomis Inc. will provide dewatering services, DK Enterprises Inc. will provide waterproofing services, Pace Supply Corp. will furnish piping materials, Forterra Inc. will furnish RCP pipe, Teichert Aggregates will furnish aggregates, and Sac Valley Electric Inc. will provide electrical and instrumentation services.

The agreement requires compliance with the recently approved Community Workforce and Training Agreement (CWTA) which will require local hiring and allow for targeted employment opportunities for Sacramento residents.

Background: The CSS collects and conveys both sanitary sewer and storm drain flows in a single system. It serves 7,500 acres of the City including the Downtown, East Sacramento, River Park, Land Park, Curtis Park, and Oak Park neighborhoods.

CSS flows during storms can exceed system capacity. When this happens, outflows can result where mixed stormwater and untreated wastewater leave the underground system and surface onto nearby low-lying streets or onto other properties.

In June 1990, the Regional Water Quality Control Board (RWQCB) issued a Cease and Desist Order (CDO) requiring the City to eliminate CSS outflows and untreated discharges to the
Sacramento River. After numerous studies and benefit/cost analyses, the City Council adopted the 1995 Combined Sewer System Improvement Plan (CSSIP) that met the requirements of the CDO, the EPA’s Combined Sewer Overflow Control Policy, and the City’s adopted goals for the CSS. That same year, the RWQCB approved the Improvement Plan, rescinded the CDO, and issued an NPDES permit that mandated implementation of the Improvement Plan.

The 1995 CSSIP anticipated increasing the pumping capacities of Sumps 1/1A and 2/2A; converting Pioneer Reservoir to a primary treatment facility; installing a relief sewer system in the downtown area; and constructing local or regional underground storage facilities.

Many of the initial 1995 planned improvements have been completed, others are in design or under study as part of an on-going process to improve the CSS. The recently updated CSSIP identifies 28 projects throughout the service area that include a mix of large regional storage vaults and large diameter inline storage/conveyance pipes, including the McKinley Water Vault.
McKINLEY WATER VAULT PROJECT

City Project No. X14010104

VOLUME 2 OF 4

Agreement

DECEMBER 2018
FEBRUARY 4, 2019
BID SET
AGREEMENT FOR THE CONSTRUCTION OF
McKinley Water Vault Project
Project No. X14010104

THIS AGREEMENT, made and concluded, in duplicate, on __________, 2019, by and between the CITY OF SACRAMENTO, a municipal corporation and located in Sacramento County, CA (hereinafter referred to as "City"), and W.M. Lyles Co. (CSLB License # 422390 A, B), doing business as a Corporation hereinafter referred to as "Contractor".

RECITALS

WHEREAS, the City gave published NOTICE TO CONTRACTORS requesting Statements of Pre-Qualifications ("SOPQ") to be submitted by October 11, 2018 for consideration by the City to become a Pre-Qualified Contractor approved by the City to submit a Bid Proposal for the construction of the McKinley Water Vault Project, Project No. X14010104; and

WHEREAS, Contractor, pursuant to the provisions of the notice requesting Statements of Pre-Qualifications, submitted an SOPQ to the City and such SOPQ in its entirety is included in this Agreement and made a part hereof as Exhibit A; and

WHEREAS, the City, based on the representations and statements made by Contractor in its SOPQ, approved the Contractor as a Pre-Qualified Contractor which allowed Contractor to submit a Bid Proposal for the construction of the McKinley Water Vault Project, Project No. X14010104; and

WHEREAS, the City issued Request for Bid Proposals ("RFBP") to the approved list of Pre-Qualified Contractors to be submitted by February 14, 2019 with an award of Contract, if made, based on the best value ranking of all accepted Bid Proposals using all technical information, required forms, cost information provided by Proposers in the Bid Proposals, and other investigations by City; and

WHEREAS, the Contractor, pursuant to the requirements of the City's RFBP submitted a Bid Proposal for the construction of the McKinley Water Vault Project, Project No. X14010104 and such Bid Proposal in its entirety is included in this Agreement and part hereof as Exhibit B; and

WHEREAS, the City, after an evaluation of all opened Bid Proposals, rated the Contractor's Bid Proposal as the highest ranked and best value Bid Proposal, and after final negotiations with Contractor, issued a written notice of Contract award to the Contractor on March 12, 2019 for the construction of the McKinley Water Vault Project, Project No. X14010104; and

WHEREAS, at a regular meeting of the City Council held on the ___ day of __________, 2019 by Resolution 201___ the Council found and declared the Bid Proposal of Contractor to be the highest ranked best value Bid Proposal and thereupon awarded a Contract to Contractor for the construction of the McKinley Water Vault Project, Project No. X14010104; and

WHEREAS, the Contractor is ready, willing and able to perform the aforementioned services required in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, the City and Contractor agree as follows:
ARTICLE 1

DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS

Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine and feminine of the words and terms.

The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect to authorize an exercise of professional judgment by the City, Construction Manager or Design Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect are used to describe an action or determination of the City, Construction Manager or Design Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term is not intended to and shall not be effective to assign to City, Construction Manager or Design Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority contrary to the provisions of the Contract Documents.

Specification Section Paragraphs entitled "Section Includes" summarize briefly what is generally included in the section. Requirements of Contract Documents are not limited by "Section Includes" paragraphs. Specifications have been partially streamlined by intentionally omitting words and phrases, such as "the Contractor shall," "in conformity therewith," "shall be" following "as indicated," "a," "an," "the" and all." Phrase "by Engineer" or "by Design Engineer" or "by Construction Manager" modifies words such as "accepted," "directed," "selected," "inspected," and "permitted," when they are unmodified.

Phrase "to Engineer" or "to Design Engineer" or "by Construction Manager" modifies words such as "submit," "report," and "satisfactory," when they are unmodified.

Words "Contractor shall" are implied when direction is stated.

Colons (:) are used to introduce a list of particulars, an amplification, or an illustrative quotation:

1. When used after designation of product, colons are used in place of words "shall be."

Whether the term or phrase is capitalized or in all capitals (for example, Contractor or Contractor) in the Contract Documents shall be deemed to be the same for purposes of the Definitions of Language Used, Words and Terms.

Acceptance, Final Acceptance. Formal action of the Engineer in determining that the
Contractor's work has been completed in accordance with the Contract Documents and in notifying the Contractor in writing of the acceptability of the Work.

**Allowance.** “Allowance” shall mean an amount of money set aside under the Contract for a special purpose identified and defined in the Contract Documents. See Exhibit D, ALLOWANCES AND ALLOWANCE AMOUNTS.

**Applicable Laws.** All laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work.

**Application for Payment.** A document prepared by Contractor and submitted to the City showing Contractor’s entitlement to payments, the requirements of which are more fully described in Article 12.3, Application for Payment.

**Asbestos.** Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

**Bid Proposal (RFBD).** The offer of a Proposer to perform the Work pursuant to completed prescribed Bid Proposal requirements and forms, properly executed and guaranteed, and timely submitted.

**Change Order.** A document which is signed as recommended by the Construction Manager, accepted by the Contractor, and accepted by an authorized representative of the City, which authorizes an addition, deletion, or revision in the Work or an adjustment in the GMP or the Contract Time, issued on or after the Effective Date of the Agreement. City. The word “City” refers to the City of Sacramento, the governing body of which is termed the “City Council”. The City may sometimes be referred to as “Owner”.

**Claim.** A demand or assertion by the Contractor seeking an adjustment of the GMP or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

**Construction Change Directive (CCD).** A CCD is a written order prepared by the Construction Manager and signed by the City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract GMP amount or Contract Time.

**Construction Manager.** The person designated, in writing, by the City to act as its representative at the construction site and to perform administrative functions relating to this Contract. The Construction Manager may also furnish inspection services as provided by the Contract. All contact by the Contractor with the City shall be through the Construction Manager. Only the City may modify the Contract.

**Contract or Agreement.** This Agreement for construction of the McKinley Water Vault Project, Project No. X14010104, its exhibits, all documents incorporated therein, and all amendments and/or modifications hereto executed by the parties concerning the performance of the Work and the furnishing of labor, equipment, materials and incidentals in the construction of the Work. The Contract supersedes all prior negotiations.
representations, and/or agreements, whether written or oral.

**Contract Documents.** The "Contract Documents" shall consist of the following documents and all documents incorporated therein:

- Contract (including exhibits A-N attached thereto);
- General Requirements (Division 1);
- Technical Specifications (Divisions 2 through 46);
- City Standard Specifications
- Appendices included with Technical Specifications;
- Contract Drawings, prepared by Design Engineer;
- Addenda issued during the RFBP period; and
- Permits from other agencies specifically required for the performance of the Work as may be required by law.

Exhibits to this Agreement (enumerated as follows):

- Exhibit A- Contractor's SOPQ dated October 4, 2018;
- Exhibit B- Contractor's GMP Bid Proposal dated February 14, 2019;
- Exhibit C- Guaranteed Maximum Price, Cost of Work and Fees;
- Exhibit D- Allowances and Allowance Amounts;
- Exhibit E- Designation of Subcontractors;
- Exhibit F- Completion Times and Liquidated Damages;
- Exhibit G- Performance Bond;
- Exhibit H- Payment Bond;
- Exhibit I- Certificate of Corporation;
- Exhibit J- Escrow Agreement For Security Deposits In Lieu of Retention;
- Exhibit K- Notice Regarding Assembly Bill 626;
- Exhibit L- Workers' Compensation Insurance Certification;
- Exhibit M- Contractor's Insurance Certificates;
- Exhibit N- Blank;
- Exhibit O- Ban-the-Box Requirements;
- Exhibit P- Community Workforce Training Agreement Requirements

The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- Notice to Proceed;
- Field Directive(s);
- Change Order(s);
- Construction Change Directive;
- Field Order(s).

There shall be no Contract Documents other than those listed above.
The Contract Documents are complementary; what is called for by one is as binding as if called for by all. It is the intent of the Drawings and Specifications to describe the Work to be constructed in accordance with the requirements of the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract will be furnished and performed whether or not specifically called for. When words or phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. The intent of the Drawings specifically includes the intent to depict construction that complies with all applicable laws, codes and standards. Subject to applicable law, including but not limited to California Public Contract Code Section 4100 et seq., and the terms of this Contract governing subcontracting, the Divisions and Sections of the Specifications and identifications of any Drawings shall not control Contractor in dividing the Work among subcontractors or suppliers or delineating the work to be performed by any specific trade.

Reasonably implied parts of the Work shall be performed as “incidental work” even though absent from the Drawings and Specifications. “Incidental” work shall be performed by Contractor and included in the Cost of the Work without an increase in the Guaranteed Maximum Price (GMP). Incidental work includes any work not shown on Drawings nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Drawings or described in the Specifications. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the GMP. Incidental work includes, but is not limited to, tasks required to be performed under Division 1, GENERAL REQUIREMENTS of the Specifications.

The technical specifications are presented in paragraphs for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All paragraphs of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Specifications and all notes on the Drawings are directed to the Contractor and all work shall be performed by the Contractor even though phrases such as "the Contractor shall" or "shall be done by the Contractor" are omitted. Where terms such as "approved," "acceptable," "favorably reviewed," "review," "selected," "directed," "equivalent," "equal," or "satisfactory" are used, it shall mean by or to the Construction Manager, Engineer, or Design Engineer.

In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies specifically required for the performance of the Work as may be required by law;
2. Supplemental Agreements and Change Orders, the one dated later having the precedence over another dated earlier;
3. Agreement;
4. Contractor's accepted GMP Bid Proposal (Exhibit "B" to the Agreement);

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ADDENDUM #5

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(5) General Requirements (Division 1);
(6) Contract Drawings;
(7) Technical Specifications (Division 2 though Division 48);
(8) City of Sacramento Standard Specifications (CSSS);

With reference to the Project Plans, the order of precedence is as follows:

(1) Enumerated dimensions govern over scaled dimensions;
(2) Detail drawings govern over general drawings;
(3) Addenda/Change Order drawings govern over any other drawings;

The provisions of the Contract Documents shall take precedence over any Laws or Regulations applicable to the performance of the work unless such an interpretation of the provisions of the Contract Documents would result in a violation of such Law or Regulation.

Contract Time. The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Construction Manager's written recommendation of final payment. See Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

Contractor. The individual partnership, corporation, or combination thereof including joint venturers who enter into the Contract for the performance of the Work. The term "Contractor" means the Contractor or his authorized representative. The term "Contractor" also may include subcontractors, sub-tier subcontractors, consultants, equipment and material suppliers, and their employees.

Contractor's Plant and Equipment. The equipment, material, supplies and all other items, except labor, brought onto the site by the Contractor to carry out the Work, but not to be incorporated in the Work.

Cost of the Work. Consists of those items of Work, which are paid for by City to Contractor, and consist of those categories of costs set forth as allowable on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE. The "Actual Total Cost of the Work" is the aggregate amount of costs and fee actually chargeable to City under the provisions of Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, up to the GMP.

City. Refers to the City of Sacramento where the Project is located and governed by.

CPM. A critical path method schedule in the form of precedents, networks, and time sequences.

Days. The word "Days" shall mean calendar days, including legal holidays, Saturdays and Sundays, unless specifically noted otherwise. The day shall be 24 hours measured...
from midnight to the next midnight.

**Defective Work.** Defective Work refers to Work that is does not meet the requirements of the Contract Documents and has been identified to the Contractor by the Construction Manager in writing because the Work:

A. Does not meet the requirements of or conform to the Contract Documents; or

B. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

C. Has been damaged prior to Construction Manager's or Design Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by City as of the Substantial Completion date in accordance with the Contract Documents).

Punch list or other minor corrective items of work that are not in compliance with the Contract Documents do not meet to the definition of “Defective Work” as used in these Contract Documents. For work to be deemed “Defective Work,” the Construction Manager must have notified the Contractor in writing of a defective item of the Work.

**Design Engineer.** The engineer, architect or specialty design consultant designated by the Owner to have design control over the Work or a specified portion of the Work, acting either directly or through duly authorized representatives. Such representatives shall act within the scope of the particular duties delegated to them. The Design Engineer may also furnish inspection services as provided by the Contract. The Design Engineer may be also be referred to as "Engineer" if the definition is used in a Design Engineer role and capacity. For the purposes of this Contract, the Design Engineer is Stantec Consulting Services, Inc.

**Direct.** Action of the City or Construction Manager by which the Contractor is ordered to perform or refrain from performing work under the Contract.

**Drawings.** Also referred to as “Plans.” That part of the Contract Documents consisting of the graphical and technical requirements of the Contract as included on the plan sheets, included in a response to Request for Information or any revisions issued by Design Engineer. Drawings, or reproductions thereof, show the location, character, dimensions and details of the Work to be done. Shop drawings and other Contractor submittals are not Drawings as so defined.

**Engineer.** The Engineer shall mean the Director of the City’s Department of Utilities as well as the Director’s subordinates and other City representatives who have been duly authorized to exercise control and supervision of the Work. The Engineer generally will be either a professional engineer, , but the Engineer is not required to be a professional engineer.

**Equipment.** (Construction): All machinery and equipment, together with the necessary
supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated. (Installation): All material or articles used in equipping a facility or apparatus required to fulfill a functional design.

Execution. Field or site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the site.

Extra Work. New or unforeseen work, or added work of a different character or function; or that involves revisions of the details of the Work on which Contractor based its GMP Proposal. If the extra work increases the Contractor’s Cost of the Work and/or time to perform the Work, and is approved by the City via a written Change Order, the GMP and Contract Times shall be adjusted as provided in the Contract Documents Extra Work shall not include Work which is shown, detailed or specified in the Contract Documents or which constitutes “Incidental Work” as defined in the Contract Documents found in ARTICLE 1, DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS.

Fee. As applicable, means the fee payable to Contractor pursuant to this Contract and as part of the GMP, as shown on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE.

Field Directive. A change in the scope of the Contract that does not cause an increase in the Cost of the Work, an adjustment to the GMP or the Contract Time. Also referred to as a “Directive”.

Field Order. A written instruction given to the Contractor by Construction Manager authorizing work that is a change to the scope of work to be performed on a time and material basis or a lump sum cost agreed to between City and the Contractor.

Final Acceptance. Formal action taken by the Engineer in determining that the Contractor’s work has been completed, or as delegated pursuant to a City Council resolution, accepting the Work as fully completed.

Final Completion. The date when the Work is 100% complete, including completion and acceptance of all punch list corrections, as built submittal, operation and maintenance manuals, warranty checklist, and plant establishment, as certified by the Construction Manager.

Force Majeure. Force Majeure includes industry wide or nationwide labor dispute (excluding labor shortage), fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Contractor has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than Contractor or Subcontractors), material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the reasonable control of and without the fault or negligence of Contractor. It is expressly agreed that the following matters shall not constitute Force Majeure:

- lack of or inability to use funds for any reason;

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• any occurrence which results from the wrongful act, or wrongful omission, of the affected party, or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
• any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
• an event or circumstance, where the event or circumstance, or its effects on the affected party, or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person;
• breakdown of Contractor's Equipment;
• strike or industrial action of Contractor's employees or those of Subcontractors; or
• adverse weather conditions including, without limitation, wet weather, unless the weather is unusually severe for the location of the place of the Work.

Furnish. The word "furnish" when used in connection with services, materials, or equipment, shall mean to supply and deliver specified services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

Guaranteed Maximum Price or "GMP". The amount set forth on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, hereto, which may be increased or decreased in accordance with the provisions of the Contract Documents.

General Requirements. Division 1, GENERAL REQUIREMENTS, which forms the part of the Contract Documents establishing special conditions or requirements peculiar to the Work.

Hazardous Waste. The term Hazardous Waste shall include the meaning provided in Section 100 of the Solid Waste Disposal Act (42 USC Section 6903 and/or Section 25117 of the California Health and Safety Code) as amended from time to time, or any other material with Hazardous Waste requirements under federal law or the law of the State of California.

Herein. Refers to information presented in the Contract Documents.

Hold Harmless. An agreement by one party to indemnify and defend a second party when the second party is sued by a third party as a result of the first party's actions or inactions.


Inspector. Inspector shall mean the person(s), firm(s), or agency(ies) employed by the City to perform inspection during construction of the Work, under the direction of the
Construction Manager. It shall also mean any representative of the City who will perform inspections of the Work for code compliance and quality assurance reporting in addition to those inspections performed by the Engineer. The inspector may be the Construction Manager or may be another representative of the City.

Install. The word "install" when used in connection with services, materials, or equipment, shall mean to put into use or place in final position the services, materials, or equipment, complete and ready for intended use.

Laws and Regulations; Laws or Regulations. Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or the Work.

Liens. Charges, security interests, or encumbrances upon Project funds, or personal property.

Liquidated Damages. The amount of dollars assessed for each and every calendar day required to complete the contract in excess of the contract time. See Exhibit D, COMPLETION TIMES AND LIQUIDATED DAMAGES.

Local Business Enterprise. A "Qualified LBE" means a business entity that has a legitimate business presence in the City or unincorporated county of Sacramento.

May. "May," wherever or in whatever manner used, refers to permissive actions.

Milestone. An event specified in the Contract Documents relating to an intermediate completion date or time prior to Completion of all the work.

Notice of Completion. After acceptance of the Work by the Engineer, the form that is signed by the City and filed with the County Recorder.

Notice to Proceed. A written notice given by the City to the Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

Or Equal. Any product, equipment, material, thing, service, mean/method or service which is proposed by the Contractor for use in the Work, which is equal to or better than, and is as suitable as the product, equipment, material, thing, service, mean/method or service specified in the Contract Documents as to function, performance, reliability, quality, schedule and general configuration. Any "or equal" substitutions must be approved by the City prior to the start of work.

Paragraph. For reference or citation purposes, a paragraph shall refer to the paragraph, or paragraphs, called out by paragraph number and alphanumeric designator.

Party. The City or the Contractor individually, and "Parties" shall mean the City and the Contractor collectively.
Payment and Performance Bonds. The payment (labor and material) bond and performance bond issued by an admitted Surety covering the performance and completion of the Work, including payment for all materials and labor furnished or supplied in connection with the Work, by Contractor. The payment bond shall be in amount equal to one hundred percent (100%) of the GMP and shall be for payment of just claims for materials, equipment, labor and subcontractors employed by the Contractor thereon. See Exhibit G, PERFORMANCE BOND and Exhibit H, PAYMENT BOND.

The performance bond shall be in an amount equal to one hundred percent (100%) of the GMP and shall be for the performance of the Contract, and for the fulfillment of such other requirements as may be provided by Law.

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and it waives the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by the City or its authorized agents under the terms of this Contract; and failure to so notify the aforesaid surety companies of changes shall not relieve the surety companies of their obligations under this Contract.

Perform. Refer to "Provide."

Person. The term, person, includes firms, companies, corporations, partnerships, and joint ventures.

Plans. See "Drawings."

Product Data. Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts, and other information assembled by or for the Contractor and submitted by the Contractor to illustrate materials or equipment for some portion of the Work.

Products. Materials, equipment, systems, shop fabrications, mixtures, and source controls.

Progress Schedule. A schedule, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

Project. The construction of the McKinley Water Vault Project, Project No. X14010104, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as required thereby or reasonably inferred therefrom.

Proposer. Any individual, firm, partnership, corporation, or combination thereof, submitting a Bid Proposal for the Work contemplated, acting directly or through a duly authorized representative.

MCKINLEY WATER VAULT PROJECT

ADDENDUM #5
Provide. The words “provide” or “perform,” when used in connection with services, materials, or equipment, shall mean to furnish and install the services, materials, or equipment complete and ready for intended use. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in context clearly requiring an obligation of Contractor, “provide” is implied.

Punch List. Those minor items of work to be completed after Substantial Completion and prior to Final Completion, which do not prevent others from taking over defined areas of the Work to complete Phase Two Expansion Project.

Reference Specifications. Those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the contract documents.

Request for Information. Also referred to as “Request for Clarification”. A Request for Information (RFI) is issued by the Contractor to the Construction Manager requesting additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems which have arisen under field conditions. A RFI is not to be used to request materials/equipment substitutions or value engineering/cost reduction incentive proposals.

Request for Proposal. A request for a proposed cost made to the Contractor by the City to add, delete or change the Work. RFP’s shall not be deemed to be directions to proceed with any addition, deletion or change to the Work. RFP’s may also be referred to as “Request for Quotation.”

Samples. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Separate Contractors. Those individuals or entities (including, but not limited to, concessionaires) who have entered into arrangements with City for the provision of labor, materials or other services in connection with the Project.

Shall or Will. Refers to actions entered into by the Contractor or the City as a covenant with the other party to do or to perform the action.

Shop Drawings (Submittals). Shop drawings (submittals) are drawings, diagrams, illustrations, schedules, performance charts, instructions, brochures, and other data which are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Work.

Shown. Refers to information presented on the drawings, with or without reference to the drawings.

Site. Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for
access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

**Specifications.** That part of the Contract Documents consisting of written descriptions of the technical features of materials, equipment, constructions systems, standards, and workmanship.

**Specify.** Refers to information described, shown, noted or presented in any manner in any part of the contract.

**State.** State of California.


**Subcontractor.** An individual or entity who has entered into an agreement with Contractor or another Subcontractor for the provision of labor, materials or other services required to be performed by Contractor under the Contract Documents. The term subcontractor does not include any separate contractor or any separate contractor’s subcontractors.

**Submittals.** The information which is specified for submission to the Construction Manager in accordance with the Contract Documents.

**Substantially complete.** shall mean that the Engineer has determined that all of the Work has been performed, but there are minor deficiencies, as determined by the Engineer, 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 Engineer. The Work shall be considered substantially complete on the date that the Engineer issues a punchlist.

**Sub-subcontractor.** A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work associated with the Project. The term sub-subcontractor means a sub-subcontractor or an authorized representative thereof, also referred to as sub-tier-subcontractor.

**Supplier.** A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

**Surety.** One or more issuers of the Payment and Performance Bonds, each of which shall be admitted and licensed to do business in the State of California.

**Surveyor.** A land surveyor licensed in the State of California.

**Typical Details.** Details of standard structures, devices or instructions referred to on the Plans and Specifications by title or number and developed by the Design Engineer.
Underground Facilities. All underground pipelines, including but not limited to, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electrical, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

Unit Price Work. Work to be paid for on the basis of unit prices.

Utility. Public or private fixed works for, including but not limited to, the transportation of fluids, gasses, power, signals, or communications.

Work Day. A working day is defined as any day, except Saturdays, Sundays and City's Legal Holidays.

Work Site. Any areas where work is to be performed by Contractor as required in the Contract Documents with particular emphasis of work performed at or adjacent to the City's McKinley Park located at McKinley Boulevard and 33rd Street in Sacramento, CA 95386.

ARTICLE 2

SCOPE OF WORK AND FACILITY PERFORMANCE REQUIREMENTS

2.1 Scope of Work- Summary. The Work shall include, but is not limited to, the following, as set forth in the Contract Documents and approved submittals:

The work includes but is not limited to construction of a cast-in-place, concrete, 6 million gallon, underground, off-line, wastewater storage facility with an effluent return pump station, odor control structure, valve vault, and diversion structure pipelines; installation of a prefabricated public restroom that will house the electrical gear and water pressure boosting equipment; removal of existing and installation of new park amenities and landscaping within the construction site; and jogging path improvements around the park.

ARTICLE 3

CITY'S ENGINEER AND CITY'S CONSULTANTS

3.1 Engineer. The City's Director of Utilities has designated James Yorita to act as the City's Engineer. The City may change the individual acting as City's Engineer, or delegate one or more specific functions to one or more specific City's Engineers at any time with notice and without liability to Contractor. Each City's Engineer is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

3.2 Design Engineer. The City has designated Stantec Consulting Services, Inc. to act as Design Engineer.
3.3 **Construction Manager.** The City will designate to act as Construction Manager. The City may assign all or part of the City’s Representative's duties, rights and responsibilities to the Construction Manager. The Construction Manager is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

3.4 **Construction Consultant.** The City may retain a Construction Consultant as it deems necessary to assist/advise the Engineer and other City Consultants during the progress of the Work. Any Construction Consultant retained by City for this Project will not have any formal Contract Administration responsibilities.

**ARTICLE 4**

**CONTRACTOR’S REPRESENTATIONS**

4.1 **Representations and Warranties.** In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

A. Contractor has visited the Site, has observed, familiarized itself with and understands the nature and extent of the Contract Documents, Work, Site, locality, actual conditions apparent upon reasonable observation, visible as-built conditions, and local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

B. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents in its capacity as a contractor and not as an architect or engineer.

C. Contractor has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and record drawings and actual conditions in its capacity as a contractor and not as an architect or engineer.

D. Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California, including, but not limited to, maintaining in good standing its Contractor’s license issued by the State of California.

E. Contractor has represented to the City that it has significant knowledge and experience and the requisite expertise, skills, labor, equipment, capabilities and all other necessary resources required to perform the Work.

F. Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be
performed herein. The Contract Documents do not violate or create a 
default under any instrument, agreement, order or decree binding on 
Contractor.

The failure or neglect of Contractor to receive or examine any of the Contract Documents 
shall in no way relieve it from any obligation with respect to the Contract, and no claim for 
additional compensation or time will be allowed which is based upon a lack of knowledge 
of any Contract Documents.

Moreover, the Contractor acknowledges that its observation of the Site prior to the 
execution of the Agreement has provided information related to existing conditions, as 
described in A, above, which may affect cost, progress or performance of the Work. 
Contractor further acknowledges and agrees that, in executing the Agreement, it is relying 
on its own observation of (1) the site of the Work, (2) access to the Site, (3) all other data 
and matters requisite to the fulfillment of the Work and on its own knowledge of existing 
facilities on and in the vicinity of the site of the Work to be constructed under the Contract, 
(4) the conditions to be encountered, (5) the character, quality and scope of the proposed 
Work, (6) the quality and quantity of the materials to be furnished, and (7) the 
requirements of the Contract, the plans, the specifications, and other related information 
made available to Contractor by the City.

4.2 Supplementary Information. The Contractor hereby acknowledges that, prior to 
the execution of the Agreement, City has furnished the following Supplementary 
Information. These Supplementary Information documents are not part of the Contract 
Documents.

The geotechnical investigation is being provided to the Contractor for information only. It 
is the Contractor's sole responsibility to perform all necessary geotechnical investigations, 
at Contractors expense, to assure himself/herself of existing subsurface conditions for the 
preparation of his/hers price proposal for the project. The City will, upon request, issue 
to the Contractor an encroachment permit to allow geotechnical investigations.

The As Builts being provided to the contractor are for informational purposes' only and the 
City cannot guarantee the information, accuracy, and layout is correct. It is the 
Contractor's sole responsibility to perform all necessary investigations, at Contractors 
expense, to assure himself/herself of existing conditions for the preparation of his/hers 
price proposal for the project.

1) McKinley Vault, CSS Storage Facility Geotechnical Data Report by Stantec, dated 
June 7, 2018

2) As-Built Information
ARTICLE 5

CONTRACT ADMINISTRATION

5.1 Administration of the Contract

The Engineer and the Construction Manager will provide administration of the Contract as hereinafter described. If the status of any of the above parties should change, the City will provide written notice to the Contractor of such change.

5.2 Engineer

5.2.1 General – The Engineer has the authority to act on behalf of the City on change orders, field orders, progress payments, Contract decisions, acceptability of the Contractor’s work, and early possession.

5.2.2 Change Orders – The Engineer has the authority to accept or reject change orders and cost proposals submitted by the Contractor or as recommended by the Construction Manager.

5.2.3 Progress Payments – The Engineer has the authority to accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Construction Manager.

5.2.4 Contract Decisions – Should the Contractor disagree with the Construction Manager’s decision with respect to the Contract, the Contractor may appeal to the Engineer in accordance with the provisions of the Contract.

5.2.5 Acceptability of Work – The Engineer has the authority to make the final determination of the acceptability of the Work.

5.3 Construction Manager

5.3.1 General - The Construction Manager is a representative of the City employed to act as advisor and consultant to the City in construction matters related to the Contract. The term Construction Manager may include more than one individual to perform contract administration and construction observation. Hereinafter, the term Construction Manager includes any and all representatives working under the direction of the Construction Manager.

All instructions to the Contractor and all communications from the Contractor to the City or the Engineer shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the City only to the extent provided in the Contract Documents. The City has delegated its authority to the Construction Manager to make initial decisions regarding questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work under the Contract. The Construction Manager shall interpret the intent and meaning of the Contract and shall make initial
decisions with respect to the Contractor's fulfillment of the Contract and the Contractor's entitlement to compensation. The Contractor shall look initially to the Construction Manager in matters relating to the Contract.

The Construction Manager's authority to act under ARTICLE 5, CONTRACT ADMINISTRATION, herein, and any decision made by it in good faith either to exercise or not to exercise such authority, shall not be interpreted or construed as control of or responsibility for any of the work performed under this Contract.

5.3.2 On-Site Representative - The Construction Manager will observe the progress, quality, and quantity of the Work to determine, in general, if the Work is proceeding in accordance with the provisions of the Contract Documents. The Construction Manager shall not be responsible for the superintendence of the construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor's personnel; or for safety practices or unsafe practices, precautions, and programs in connection with the Work.

In accordance with the provisions detailed elsewhere in these General Conditions, the Construction Manager will make decisions relative to all matters of interpretation or execution of the Contract Documents.

5.3.3 Observation and Inspections of Construction - The Construction Manager shall observe the construction and shall have the authority to reject work and materials which do not conform to the Contract Documents, and to require special inspection or testing. Observation and inspection by the Construction Manager or an inspector is not an authorization to revoke, alter, or waive any requirements of the Specifications. Observation and inspection is the authorization to call the attention of the Contractor to any failure of the Work, materials or workmanship to conform to the Contract Documents. The Construction Manager shall have this authority including the ability to reject materials or, in any emergency, suspend the Work. The Contractor may appeal any such issue which it disagrees with to the Construction Manager for decision. If the decision of the Construction Manager is not satisfactory to the Contractor, the Contractor may appeal such decision to the Engineer.

5.3.4 Acceptability of the Work - The Construction Manager has the authority to make a recommendation as to the acceptability of the Work.

5.3.5 Change Orders - The Construction Manager has the authority to initiate change orders; to reject change orders proposed by the Contractor; to negotiate and recommend acceptance of change orders to the City; or to order minor changes in the Work at no cost to the City.

5.3.6 Construction Schedule - The Construction Manager has the authority to review and recommend acceptance of the progress schedule submitted by the Contractor at the start of the Work and subsequent significant revisions for conformance to the specified sequence of work and logic.

5.3.7 Progress Payments - The Construction Manager has the authority to
recommend acceptance or rejection of requests for progress payments which have been submitted by the Contractor.

5.3.8 Final Payment – The Construction Manager, with the assistance of the Engineer and City’s Design Engineer, will conduct inspections to determine the dates of substantial completion of the Work and final completion of the Work, and will receive and forward to the City, for the City’s review, written warranties, and related documents required by the Contract and assembled by the Contractor.

5.3.9 Contract Interpretation by the Construction Manager – Notwithstanding any omission from these Specifications or the Drawings, it shall be the duty of the Contractor to call the Construction Manager’s attention to apparent errors or omissions upon discovery by the Contractor and request instructions in writing before proceeding with the work. The Contractor shall not unreasonably take advantage of any errors or omissions found by Contractor. If the Contractor discovers any errors or omissions that it believes affect the time or cost of performing the Work, it shall be entitled to request a Change Order. Contractor shall promptly notify the Construction Manager in writing of any design, materials, or specified method that the Contractor identifies as defective or insufficient, provided, however, that in doing so Contractor will be acting in its capacity as a contractor and not an architect or engineer, and that this section does not affect City’s responsibility with regard to the Contract Documents. The Construction Manager may, by appropriate written instructions, correct errors and supply omitted information, which instructions shall be as binding upon the Contractor as though contained in the original Specifications or Drawings when incorporated into Change Orders. Such instructions shall be incorporated into the Contract in accordance with the Change Order provisions of the Contract.

Any discrepancies discovered by the Contractor between the Contract Documents and Project site conditions or any inconsistencies or ambiguities in the Contract Documents shall be promptly reported, in writing, to the Construction Manager. Questions regarding the meaning and intent of the Contract Documents shall be referred in writing by the Contractor to the Construction Manager with a Request for Information (RFI). RFI procedures are further described in Section 01335, REQUESTS FOR INFORMATION AND CLARIFICATIONS.

Work done by the Contractor after its discovery of such errors, omissions, discrepancies, inconsistencies or ambiguities without such notice and prior to response from the Construction Manager shall be done at the Contractor’s risk and shall not be reimbursed as a Cost of the Work nor be a basis for an increase in the GMP.

5.4 Design Engineer

5.4.1 General – The Design Engineer will have the authority to act on behalf of the City only to the extent provided in the Contract Documents. The Design Engineer shall not be responsible or have authority for the superintendence of construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor’s personnel; or for safety practices or unsafe practices; precautions and programs in connection with the Work; or for any failure
of the Contractor to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the Contractor furnishing and performing the Work.

5.4.2 Interpretations - The Design Engineer has the authority to be the initial interpreter of the technical requirements of the Contract Documents. Either party to the Contract may make written request to the Construction Manager for interpretations necessary for the proper execution or progress of the Work. The Construction Manager shall refer such written requests to the Design Engineer, who will render such interpretations. Where the Contractor has requested an interpretation from the Construction Manager, or been notified by the Construction Manager that such interpretation has been requested by the City, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Construction Manager without additional expense to City and shall not be reimbursed as a Cost of the Work or be a basis for an increase in the GMP.

5.4.3 Acceptability of the Work – The Design Engineer has the authority to make a recommendation as to the acceptability of the Work. The Design Engineer has the authority to recommend acceptance regarding the remediation or retention of Defective Work.

5.4.4 Submittal – The Design Engineer shall receive, through the Construction Manager, shop drawings, product data and samples for review in accordance with Section 01330, CONTRACTOR SUBMITTALS. The Design Engineer has the authority to review and take other appropriate action upon the Contractor's submittal such as shop drawings, product data and samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents.

ARTICLE 6

CITY

6.1 General

The City, acting through the Engineer or the Construction Manager, shall have the authority to act as the sole judge of the Work and materials with respect to both quantity and quality as set forth in the Contract except as delegated to the Construction Manager in these Contract Documents.

6.2 Attention to Work

The City's Engineer, Construction Management Firm and Design Engineer Firm are designated in ARTICLE 3 herein. The Construction Manager's representative will normally be available at the Project Site of the Work. An alternate Construction Manager representative will be designated when the designated Construction Manager's representative is not available at the Project Site of the Work. The Design Engineer may assign a representative to be available at the Project Site of the Work.
6.3 Observation and Inspection

In addition to the Construction Manager’s designated representative, the City shall provide one or more inspectors to the Construction Manager to observe the Work and with the same authority as provided for in Article 5.3.3, Observation and Inspections of Construction.

Separate and independent from the observations and inspections above, the Work may be inspected by Building Officials or Fire Officials for code compliance. Such inspectors shall have the authority provided to them by local jurisdiction. Any design deficiencies or additional work required by Building Officials or Fire Officials not required by the Contract Documents may be incorporated into the Work in accordance with the Change Order provisions of the Contract. Any work required by Building Officials or Fire Officials that Contractor is required to perform that is not required by the Contract Documents shall be Extra Work.

6.4 City’s Right to Use or Occupy

The City reserves the right, prior to Substantial Completion, to occupy, or use, any completed part or parts of the Work, providing these areas have been approved for occupancy by the City. The exercise of this right shall in no way constitute an acceptance of such parts, or any part of the Work, nor shall it in anyway affect the dates and times when progress payments shall become due from the City to the Contractor or in any way prejudice the City’s rights in the Contract, or any bonds guaranteeing the same. The Contract shall be deemed completed only when all the Work contracted has been duly and properly performed and accepted by the City.

Prior to such occupancy or use, the City and Contractor shall agree in writing regarding the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. This agreement shall be agreed upon 10 working days prior to the start of work.

In exercising the right to occupy or use completed parts of the Work prior to the Substantial Completion thereof, the City shall not make any use which will materially increase the cost to the Contractor, without increasing the GMP, nor materially delay the completion of the Contract, without extending the time for completion.

The part or parts of the Work, if any, which the City anticipates the use or occupancy of prior to Substantial Completion are noted in Section 01140, WORK RESTRICTIONS. Failure to include a part of the Work in the above referenced Section, shall not limit the City’s right to use or occupy parts of the Work not listed.

6.5 City’s Right to Carry Out the Work

If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents or fail to perform any provision of the Contract, and fails within seven days after receipt of written notice from the City to commence and continue correction of such
neglect or deficiency with diligence and promptness, the City may, and without prejudice to any other remedy, make good such default, neglect or failure. A Change Order shall be issued unilaterally deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies and for performing such work, including compensation for the Design Engineer's, the Construction Manager's, and City's additional services made necessary by such default, neglect or failure.

The City also reserves the right to perform and suspend any portion of the work due to an emergency threatening the safety of the Work, public, City, and any property or equipment. No deductive Change Order shall be issued for an emergency not caused by Contractor.

6.6 **City's Right to Perform Work and to Award Separate Contracts**

The City reserves the right to perform work related to the Project with the City's own forces, and to award separate contracts in connection with the Project or other work on the Project Site. If the Contractor claims that delay, damage, or additional cost is involved because of such action by the City, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

When separate contracts are awarded for different portions of the Project or other work on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Agreement.

The City will provide for the coordination of the work of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Article 7.10, **Cooperation with Other Contractors of this agreement**.

6.7 **Non-Responsibility of the City**

The City shall not be held responsible for the care or protection of any material or parts of the Work prior to the final acceptance, except as expressly provided in the Contract Documents.

**ARTICLE 7**

**CONTRACTOR**

7.1 **Status of Contractor and Subcontractors**

7.1.1 **Contractor** – It is stipulated and agreed that the Contractor shall be an independent contractor in the performance of this Contract and shall have complete charge of persons engaged in performance of the Work. The Contractor shall perform the Work in accordance with its own means, methods, and appliances subject to compliance with the requirements of the Contract.

7.1.2 **Subcontractors** – If any part of the work to be done under this Contract is subcontracted, the subcontract shall be in writing and shall provide that all work to be
performed thereunder shall be performed in accordance with the terms of the Contract Documents. The subcontracting of any or all of the work to be done will in no way relieve the Contractor of any part of its responsibility under the Contract. Subcontractors will not be recognized as having a direct relationship with the City. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the Contract. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the City or the Construction Manager shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

The Contractor shall only employ subcontractors that are properly licensed in accordance with State law and are registered with the California Department of Industrial Relations (DIR).

Prior to commencement of any work by a subcontractor, the Contractor shall submit to the Construction Manager:

- a) Verification that the subcontractor is properly licensed for the work it will perform.
- b) Upon City’s request, copies of subcontract agreements.
- c) Copies of subcontractor’s insurance certificates and endorsements.

7.2 **Contractor’s Representative**

The Contractor shall confirm in writing, before starting work, the authorized representative who shall be competent and qualified for the duties required and have complete authority to represent and to act for the Contractor. Said authorized representative has the authority to act in matters relating to the Contract, and shall be personally present at the Project site at all times while work is actually in progress on the Contract. During periods when the Work is suspended, arrangements acceptable to the Construction Manager shall be made for any emergency work that may be required. The Contractor’s authorized representative shall be fluent and proficient in the English language in order to understand, receive, and carry out oral and written communications or instructions relating to all job functions and responsibilities. All communications to and from the Contractor’s authorized representative shall be binding as if given to or by the Contractor.

Contractor shall provide its authorized representative’s contact information which shall include the representative’s name, office street address, office telephone number, mobile phone number, home phone number, email address and the office mailing address if different from the street address.

The Contractor’s authorized representative shall give its personal attention to and shall supervise the Work to the end that it shall at all reasonable times be prosecuted faithfully; and when the authorized representative is not personally present on the Work, the representative shall at all reasonable times be represented by a competent designated alternate, superintendent or foreman who shall receive and obey all instructions or orders given under this Contract, and who shall have full authority to supply materials, tools,
labor without delay, and who shall be the legally appointed representative of the Contractor. The Contractor shall be liable for the faithful observation of any instructions delivered to the Contractor or to its authorized representative.

The Contractor's authorized representative shall not be replaced by a person to whom City has a reasonable objection. Furthermore, the City shall have the authority to remove the Contractor's authorized representative from the Project for reasons found in Article 8.3, **Character of Workers of this agreement**.

7.3 **Use and Protection of City's Site and Adjacent Property**

7.3.1 With the approval of the Construction Manager, the Contractor may use portions of the City's site for storage of construction equipment, materials and field offices provided the Contractor does not interfere with City's operations. The Contractor will not be allowed to unreasonably encumber the Site or adjacent areas with its materials or equipment. The City will not accept any responsibility for damage to or loss of the Contractor's equipment or materials stored on any Project related site caused by vandalism, nature, or otherwise, suffered by the Contractor. Protection of all construction equipment, stores, and supplies shall be the sole responsibility of the Contractor, and Contractor is responsible to repair damages at its own cost. Where additional work space is desired by the Contractor or where the City cannot provide the space to the Contractor, it shall be the Contractor's sole responsibility and expense to obtain such a space for its use.

7.3.2 All workers or representatives of the Contractor, subcontractors or suppliers are admitted to the Site only of the proper execution of the Work and have no tenancy without the express written permission of the City. Furthermore, no persons may occupy property owned by the City outside the limit of the Work, as indicated on the drawings, without the express written permission of the City.

7.3.3 The Contractor shall enforce any instructions from the City or Construction Manager regarding combustible materials, placement of signs, danger signals, barricades, radios, noise, dust, and smoking. Upon completion of the Work, the Contractor shall remove all temporary barricades, signs and related materials.

7.3.4 The Contractor shall determine safe loading capacities and shall not overload any structure, building, pipe or other existing facility beyond its safe capacity during construction. In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin and protect as may be necessary all foundations and other parts of all existing structures, facilities and improvements on the Site or adjacent to the Site which are in any way affected by the Contractor's excavations or other operations connected with the Work. Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Contractor shall notify the Construction Manager to discuss responsibilities for properly notifying the owners/occupants of adjacent land and the protective measures taken by the Contractor. Upon request of the Construction Manager, the Contractor shall meet with the recipient of any notice, attend local public meetings as appropriate, or assist with public outreach.
on local impacts caused by contractor's operations of Work.

7.3.5 The Contractor shall take all necessary precautions to protect existing facilities on which Contractor is performing work against the effects of weather and environmental elements.

7.3.6 All existing improvements and facilities shall be protected from any damage resulting from the operations, equipment or workers of the Contractor during the entire Contract Time.

7.3.7 The Contractor shall take all steps necessary to protect all structures, buildings, land and other facilities from fires and sparks originating from the Work. The Contractor shall comply with all laws and regulations regarding fire protection and shall comply with all instructions given by the fire department with jurisdiction.

7.3.8 Any damage to existing conditions, or to any other improvement or property above or below the ground surface, whether public or private on or adjacent to the Work site or truck route, arising from the Contractor's operations or performance of the Work shall be repaired within 48 hours by the Contractor without expense to the City, unless disruption of the City's operations or creation of a safety hazard has occurred, in which case damage will be repaired immediately. The 48 hour non-emergency repair response time may be extended only if agreed to in writing by the Owner and/or private property owner. Any delays to the project completion times caused by such repairs shall be considered non-compensable and no further extension of the Contract Time will be granted therefor. Should the Contractor not be timely in repairing damage caused by its operations or performance, the City shall take steps to protect against loss of property and life, in its sole discretion, and deduct entire cost of such work from the next payment due the Contractor. No prior notice to the Contractor shall be necessary for the City to take such action.

7.3.9 The Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform construction services efficiently, safely and without interfering with the use of adjacent land areas, and as further stipulated in the Contract Documents. The Contractor shall remove all debris and trash on a daily basis. When the Work is Substantially Complete, or a portion of the Work has been completed, Contractor 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. Contractor shall provide a finished cleaning of all areas acceptable to the City before releasing any area to the City for occupancy.

7.4 **Fees and Permits**

The requirements for fees and permits are specified in the Contract Documents.

7.5 **Compliance with Laws**

The City is a municipal corporation in the State of California and is subject to the applicable provisions of law relating to public contracts as regards to a Charter City. It is
agreed that all provisions of law applicable to public contracts are a part of these Contract Documents to the same extent as though set forth herein and will be complied with by Contractor.

The Contractor, shall at its own cost and expense, observe and keep itself and its subcontractors fully informed of all existing and future legislated State and Federal Laws and City and County ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials and equipment used in the Work, or which in any way affect the conduct of the Work, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or in any other part of this Contract, in relation to any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Construction Manager in writing. The Contractor shall at all times observe and comply with all existing laws, ordinances, regulations, orders and decrees; and shall protect, indemnify, and defend the City, the Construction Manager, the Design Engineer, and all of their officers, officials, employees, agents, volunteers, and servants against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor itself, employees, or its subcontractors.

Attention is directed to the following specific regulations and requirements that are included in the Contract Documents. This list of regulations is not warranted to be complete and the burden of ascertaining legal requirements that must be satisfied shall rest solely with the Contractor.

7.5.1 Prevailing Wage Rates – This Contract is subject to prevailing wage requirements pursuant to Section 3.60.180 of the Sacramento City Code. Accordingly, Contractor shall comply with all applicable laws and regulations related to payment of prevailing wages and Contractor shall ensure that every lower-tier subcontractor complies with all applicable laws and regulations related to payment of prevailing wages. The provisions of Sacramento City Code section 3.60.180 require, among other things, that Contractor and every lower-tier subcontractor pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. Contractor and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by City. Contractor is responsible for compliance with Sacramento City Code section 3.60.180, and shall include these requirements in every subcontract. This Contract is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

7.5.2 DIR Registration- California Labor Code section 1725.5 requires the Contractor and all lower-tier subcontractors performing public works services to be currently registered with the California Department of Industrial Relations (DIR), as specified in California Labor Code section 1725.5. California Labor Code section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract
Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. The Contractor shall list the Contractor’s current DIR registration number, and the current DIR registration number of all subcontractors, as part of its Bid Proposal.

Further information can be found on DIR’s website at http://www.dir.ca.gov/Public-Works/Contractors.html. The above summary is provided solely for informational purposes, and does not in any way affect the Contractor’s and subcontractors’ obligation to comply in all respects with all other applicable laws and regulations. The Contractor shall disseminate these provisions to every lower-tier subcontractor.

7.5.3 Apprentices on Public Work Projects- The Contractor and any subcontractor or subconsultant shall comply with Sacramento City Code section 3.60.190, California Labor Code section 1777.5 et seq., and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7. Please refer to Exhibits and Attachments of the Contact Documents for more information, and refer to the link below for guidance in meeting your obligation to satisfy the apprentice requirements for this project: https://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm

7.5.4 Contractor Agrees to the Following:

7.5.4.1 The Contractor and subcontractors shall pay all mechanics and laborers employed directly on the site of the Work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics.

7.5.4.2 The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the Work.

7.5.4.3 There may be withheld from the Contractor so much of accrued payments as the City considers necessary to pay to laborers and mechanics employed by Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to Contractor or subcontractors or their agents.

7.5.4.4 The City of Sacramento has an approved Labor Compliance Program. CONTRACTOR and every lower-tier subcontractor is required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the CITY.

7.5.4.5 Electronic submittal will be performed through a web-based
system. The Contractor and each subcontractor will be given a Log On identification and password to access the City of Sacramento Reporting system. Use of the system may entail additional data entry of weekly payroll information including employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, etc. The Contractor's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

7.5.4.6 These requirements flow down to every lower-tier subcontractor and vendor required to provide labor compliance documentation.

7.5.4.7 All questions regarding the Labor Compliance Program should be directed to the CITY's Labor Compliance Section at (916) 808-1923.

7.5.5 Travel and Subsistence Payments – Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Section 1773.1 of the California Labor Code.

7.5.6 Workday – In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code, State of California, and in particular Sections 1810 to 1815 inclusive, thereof, eight (8) hours labor shall constitute a days' work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the Work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week unless compensated at not less than time and a half as set forth in California Labor Code Section 1815. However, if the prevailing wage determination requires a higher rate of pay for overtime than is required under said Section 1815, then the overtime rate must be paid, as specified in California Code of Regulation Title 8, Group 3, Section 16200(a)(3)(F). The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the work contemplated by this Contract, which record shall be open at all reasonable hours for the inspection of the City or its officers or agents and by the Division of Labor Standards Enforcement of the Department of Industrial Relations, their deputies or agents; and it is hereby further agreed that said Contractor shall forfeit as a penalty to the City, the sum of the greater of (i) $25.00 or (ii) the maximum penalty allowable by statute for each laborer, worker or mechanic employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight hours in any one calendar day and forty hours in one calendar week in violation of these provisions.

7.5.7 Certified Electricians – Workers performing work for an electrical contractor installing, constructing, or maintaining any electrical system covered by the National Electrical Code shall be certified as a General Electrician per California Labor Code Section 3099.
7.5.8 Receipt of Workers' Wages, Fee for Registering or Placing Persons In Public Works – Attention is directed to the provisions of sections 1778 and 1779 of the California Labor Code, which read as follows:

"Section 1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony."

"Section 1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor."

7.5.9 Non-Discrimination.

A. Non-Discrimination. Contractor agrees that it shall not discriminate against any person on account of their sex, race, color, religious creed, ancestry, national origin, disability, medical condition, marital status, age, gender, military or veteran status, genetic information, or sexual orientation in violation of the Fair Employment and Housing Act or the Unruh Civil Rights Act. Upon a final determination by a court of competent jurisdiction that the Grantee has violated either of these Acts, the City may, at its option, (1) withhold payments to Contractor under this Contract until Contractor complies; or (2) suspend or terminate this Contract. Contractor shall include the provisions of this paragraph in every subcontract, including procurement of materials and lease of equipment, unless specifically exempted by the City.

B. Non-Discrimination in Employee Benefits. This Contract is subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors (also referred to as the "Equal Benefits Ordinance"). A summary of the requirements of Sacramento City Code Chapter 3.54, entitled "Requirements of the Non-Discrimination in Employee Benefits Code" can be viewed at:

http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements. By signing this Contract, Contractor acknowledges and represents that Contractor has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento.
City Code Chapter 3.54. If requested by City, Contractor agrees to promptly provide such documents and information as may be required by City to verify Contractor’s compliance. Any violation by Contractor of Sacramento City Code Chapter 3.54 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

7.5.10 Workers’ Compensation Insurance – The provisions of Article 13.1.2, Workers’ Compensation Insurance, shall be considered as repeated herein.

7.5.11 Not Used. Local Hire And Community Workforce Training Requirements – Contractor shall comply with the requirements of the City’s Local Hire and Community Workforce Training Program and shall execute an agreement to be bound to the terms and conditions of the Community Workforce Training Agreement with the Sacramento Building and Construction Trades Council, AFL-CIO Council, approved by the City Council on August 21, 2018 (“CWTA”). A summary of the CWTA requirements, entitled “Community Workforce Training Agreement Requirements” and a complete copy of the CWTA are attached hereto as Exhibit P.

Contractor shall provide the required Agreement to be Bound (Exhibit A to the CWTA) to the City before the Notice to Proceed will be issued. Contractor agrees to require subcontractors for Work covered by the CWTA to fully comply with all applicable requirements of the CWTA and will include these requirements in all subcontracts for Work covered by the CWTA. No subcontractor for covered Work shall perform such Work prior to executing an Agreement to be Bound and providing it to the City.

7.5.12 Safety Standards – The Contractor shall comply with all applicable provisions of the Safety and Health Regulations of Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 327 et. seq.) as set forth in Title 29, C.F.R., CAL/OSHA, and the regulations issued thereunder. Compliance shall be the Contractor’s sole responsibility, and neither the City, the Construction Manager nor the Design Engineer shall have any liability for non-compliance. See Article 7.7, Safety, for additional safety requirements.

7.5.13 Asbestos Related Work – All work involving asbestos containing material must be performed in accordance with California Labor Code, Sections 6501.5 through 6510, inclusive, and California Administrative Code, Title 8, Section 5208 and all other pertinent laws, rules, regulations, codes, ordinances, decrees and orders.

7.5.14 Public Records Act –

(a) Ownership and Disclosure

Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of City’s business, including information submitted by the Contractor (“Records”), shall become the exclusive property of City and shall be

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AGREEMENT

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deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code § 6250 et seq.). The City’s use and disclosure of its records are governed by this Act. The City will use its best efforts to inform the Contractor of any request for any financial records or documents marked “Trade Secret,” “Confidential” or “Proprietary” provided by the Contractor to City. The City will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

(b) Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, City’s sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold City harmless from all costs and expenses including attorney’s fees in connection with any such action.

7.6 Compliance with Environmental Laws

During construction, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to, the Federal Clean Air Act, State and local air pollution and noise ordinances, construction site erosion control regulations. Specific requirements are further specified in the Contract Documents.

7.7 Safety

7.7.1 Contractor’s Safety Responsibility – The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the California Occupational Safety and Health Act (CalOSHA), and all other applicable Federal, State, County, and local laws, ordinances, codes, including but not limited to the requirements set forth below, and any regulations that may be detailed in other parts of these Contract Documents. In the event of conflicting requirements, the most stringent requirement as it pertains to the Contractor’s safety responsibility, shall be followed by the Contractor.

No provision of the Contract Documents shall act to make the City, the Construction Manager, Design Engineer or any other party than the Contractor responsible for safety. Neither the City nor the Construction Manager, Design Engineer or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for having hazards corrected and/or removed at the location(s) where the work is to be performed. The Contractor agrees that neither the City nor the Construction Manager, Design Engineer or their respective officers, officials, employees, agents or
volunteers or other authorized representatives will be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees that with respect to the work to be performed under this contract and the location(s) where such work is to be performed, the Contractor will be responsible for not creating hazards, and for having hazards corrected and/or removed. The Contractor agrees that through the safety obligations contained in this contract and the Contractor's own inspection of the site(s) where the contract work is to be performed, the Contractor is aware and has been notified of the hazards to which the Contractor's employees may be exposed in the performance of contract work. The Contractor has taken and/or will take appropriate, feasible steps to protect the Contractor's employees from such hazards, and has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers. The Contractor agrees that neither the City nor the Construction Manager, Design Engineer or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or Subcontractors or Material Suppliers acting pursuant to this contract.

The Contractor shall indemnify, defend and hold City and Construction Manager, Design Engineer and their respective officers, officials, employees, agents and volunteers or other authorized representatives harmless to the full extent permitted by law concerning liability related to the Contractor's safety obligations in accordance with Article 13.2, General Indemnification Obligations.

If death or serious injuries or serious damages occur, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the City. In addition, the Contractor shall furnish the Construction Manager with a copy of the Employer's Report of Injury immediately following any incident requiring the filing of said report during the prosecution of the Work under this Contract. The Contractor shall also furnish the Construction Manager with a copy of the Employer's Report of Injury involving any subcontractors on this Project. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the Work being performed under this Contract.

If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Construction Manager, giving full details of the claim.

7.7.2 Safety Program – The Contractor shall establish, implement, and maintain a written injury prevention program as required by Labor Code Section 6401.7. Before beginning the Work, the Contractor shall file with the Construction Manager a written Contractor Safety Program that provides for the implementation of all of the Contractor's safety responsibilities in connection with the Work at the Project site and the coordination of that program and its associated procedures and precautions with safety programs, precautions and procedures of each of its subcontractors and other Contractors performing work at the Project site. The Contractor shall be solely responsible for
initiating, maintaining, monitoring, coordinating, and supervising all safety programs, precautions, and procedures in connection with the Work and for coordinating its programs, precautions, and procedures of the other contractors and subcontractors performing the Work at the Project site. The Safety Program should contain all the necessary elements for the Contractor to administer its program on the Project site. At a minimum, this written Safety Program shall address the elements required by Labor Code Section 6401.7.

The Contractor’s compliance with requirements for safety and/or the Construction Manager’s acceptance for filing of the Contractor’s Safety Program shall not relieve or decrease the liability of the Contractor for safety. The Construction Manager’s review of the Contractor’s Safety Program is only to determine if the above listed elements are included in the program.

7.7.3 Safety Supervisor – The Contractor shall appoint an employee as safety supervisor who is qualified and authorized to supervise and enforce compliance with the Safety Program. The Contractor shall notify the Construction Manager in writing prior to the commencement of work of the name of the person who will act as the Contractor’s safety supervisor and furnish the safety supervisor’s resume to the Construction Manager.

The Contractor will, through and with its Safety Supervisor, ensure that all of its employees and its subcontractors of any tier, fully comply with the Project Safety Policies. The Safety Supervisor shall be a full-time employee of the Contractor whose responsibility shall be for supervising compliance with applicable safety requirements on the Project site and for developing and implementing safety training classes for all job personnel. The City shall have the authority to require removal of the Contractor’s Safety Supervisor if the representative is judged to be improperly or inadequately performing the duties; however, this authority shall not in any way affect the Contractor’s sole responsibility for performing this work safely, nor shall it impose any obligation upon the City to ensure the Contractor performs its work safely.

7.7.4 Safety and Protection – The Contractor shall take all necessary precautions to prevent damage, injury, and loss to:

A. All employees on the Project, employees of all subcontractors, and other persons and organizations who may be affected thereby;

B. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, wetlands, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage,
injury or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities and utility districts when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

7.7.5 Excavation Safety – In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation of any trench or trenches five feet or more in depth, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plans vary from the shoring system standards set forth in the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the work as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose a tort liability on the City, the Design Engineer, the Construction Manager, nor any of their officers, officials, employees, agents, consultants or volunteers. The City’s review of the Contractor’s excavation plan is only for general conformance to the Construction Safety Orders.

Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

7.7.6 Safety Emergencies – In emergencies affecting the safety or protection of persons or the Work or property at the Project site or adjacent thereto, the Contractor, without special instruction or authorization from the Construction Manager, will take reasonable action to prevent threatened damage, injury or loss. The Contractor shall give the Construction Manager prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

7.7.7 Safety Violations – Should the Contractor fail to correct an unsafe condition, the City shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the work in question can be stopped in accordance with Article 9.6, City Suspension of Work, until the condition is corrected to the satisfaction of the City. No extension of time or additional compensation will be granted as a result of any stop order so issued. The notification and suspension of such work or the failure to provide such notification and suspension by the City shall not relieve the Contractor of its sole responsibility and liability for safety and the correction of any unsafe conditions.
The City shall have the authority to require the removal from the project of any worker and the foreman and/or superintendent in responsible charge of the work where safety violations occur.

7.7.8 **Equipment Safety Provisions** – The completed Work shall include the specified permanent safety devices, such as machinery guards and similar safety items, required by the State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work, including City-selected equipment, subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. All equipment furnished shall be grounded and provided guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by safety codes, this shall be provided. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. The Contractor shall notify all equipment suppliers and subcontractors of the provisions of this paragraph.

7.7.9 **Confined Spaces** – The Project requires work in confined spaces and requires compliance with CAL/OSHA and Federal OSHA requirements. Confined spaces for the purposes of this Section shall be as defined by the Division of Industrial Safety. Work within confined spaces of this project is subject to the definitions and applicable provisions of Section 5156 et seq., Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 108 of California Code of Regulations, and Title 29 Part 1926 of the Code of Federal Regulations.

In addition the City classifies the following existing facilities as confined space: the interior of pipelines, vaults, manholes, reservoirs and any other such structure or space which is similarly surrounded by confining surfaces as to permit the accumulation of dangerous gases or vapors. The confined spaces are "permit" confined spaces as defined by OSHA and CAL/OSHA and therefore entry is allowed only through compliance with a confined space entry permit program by the Contractor that meets the requirements of 8 C.C.R. Section 5157. While the above mentioned locations have been identified as permit confined spaces, other permit confined spaces may exist. It shall be the responsibility of the Contractor to identify and classify these confined spaces.

It is anticipated that the Contractor may encounter hazardous conditions within these permit confined spaces which include, but are not limited to the following:

A. Exposure to hydrogen sulfide, methane, carbon dioxide and other gases and vapors commonly found in municipal sewers which could have or has the potential of having Immediate Danger to Life or Health Conditions (IDLH).

B. Exposure to atmosphere containing insufficient oxygen to support human life.

C. Exposure to combustible, flammable and/or explosive atmosphere.

D. Exposure to sewage which may contain bacteriological, chemical and other constituents harmful to humans.
E. Work in conditions where engulfment or entrapment may occur.

F. Work in environments which may be slippery and/or have uneven work surfaces.

G. Work in structures where workers may trip, slip and/or fall several feet.

H. Exposure to an oxygen enriched environment.

7.7.10 Public Safety and Convenience — The Contractor shall conduct its work so as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Construction Manager and the written approval by the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

7.8 Provisions for Handling Emergencies

It is possible that emergencies may arise during the progress of the Work, which may require special treatment or make advisable extra shifts of labor forces to continue the Work for 24 hours per day. These emergencies may be caused by damage or possible damage to nearby existing structures or property by reason of the work under construction, or by storm, accidents, or leakage. The Contractor shall be prepared in case of such emergencies to make all necessary repairs and shall promptly execute such work when required; such emergency work will be reimbursed as a Cost of the Work and the GMP increased accordingly.

Upon start of the Work, Contractor shall provide means for immediate emergency notification of Contractor’s designated representative and designated emergency alternates.

7.9 Nonstandard Working Hours

The Contractor may be required to prosecute the Work at night or outside of the normal working hours defined in Section 01 10 50 1.7 EMPLOYEE ID’S AND WORKING HOURS. Such work may be required due to project or operational constraints as defined in Division 1, or if emergencies arise as provided for in Article 7.8, Provisions for Handling Emergencies. When required, ordered, or permitted to work at night, the Contractor shall provide sufficient and satisfactory lighting and other facilities therefore. Except as provided in 7.8, above, for work outside of the normal working hours, the Contractor shall receive no extra payment, but compensation shall be considered as having been included in the price stipulated for the Work, except for authorized work performed outside of the Contract requirements.

7.10 Cooperation with Other Contractors
This paragraph shall serve as notice to the Contractor that the City may let other contracts for other work at or near the site of this work. The Contractor shall afford other contractors reasonable opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

Should construction be under way by other forces or by other contractors within or adjacent to the limits of the work or in the vicinity of the work to be done under this Contract, the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such other forces or contractors.

Any difference or conflicts which may arise between the Contractor and any other forces or contractors, creating delays or hindrance to each other, shall be adjusted as determined by the Construction Manager.

Division 1, indicates anticipated other construction activities within or adjacent to work to performed in this Contract. City shall require contractors performing Work by Others to cooperate with Contractor and not unduly interfere with Contractor's performance of the Work.

ARTICLE 8
CONTROL OF WORK AND MATERIAL

8.1 Means, Methods and Appliances

The means, methods, and appliances adopted by the Contractor shall be planned and executed to produce the highest grade quality of work and will enable the Contractor to complete the Work in the time agreed upon. The City and Construction Manager shall not supervise, direct, or have control over, or be responsible for, Contractor's means, methods, and appliances of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work.

8.2 Contractor's Responsibility for Work

Unless specified otherwise in the Contract Documents, until the formal acceptance of the Work by the City, the Contractor shall have the charge and care and shall bear the risk of damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or non-execution of the Work.

The Contractor shall rebuild, repair, restore, and make good all damages to any portion of the Work occasioned by any of the above causes before final acceptance and shall bear the expense, except such damages occasioned by the acts of the Federal government or acts of war.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for the Work as previously specified and shall also be responsible for all materials delivered to the Work. Where necessary to protect the Work from damage, the
Contractor shall, at its own expense, provide suitable drainage of the worksite and erect such temporary structures as necessary to protect the Work from damage during any period of suspension of work.

The Contractor shall provide 24 hour emergency service for all maintenance and operations of the Work specified and shall supply the City with the name and phone number of the responsible person. Contractor will respond to requests for emergency service for the Work promptly upon notification. If the Contractor fails to provide this service after notice from City, City may perform such emergency service and the cost thereof shall be deducted from the next Progress Pay Estimate due the Contractor.
8.3 **Character of Workers**

None but competent superintendents, forepersons and workers shall be employed on the Work by the Contractor and its Subcontractors at all tier levels. The Contractor shall remove from the Work any person who commits trespass, possesses firearms or other weaponry, is under the influence or is in the possession of alcohol or other illegal drugs/controlled substance, or is, in the opinion of the City or Construction Manager, disorderly or profane, dangerous, abusive, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not be the basis of any claim for compensation or damages against the City, its officers, officials, employees, agents, and volunteers, the Design Engineer, the Construction Manager, and their partners, officers, employees, agents or any of its officers or representatives.

8.4 **Supply of Sufficient Workers**

The Contractor shall at all times employ qualified workers sufficient to prosecute the Work at a rate and in a sequence and manner necessary to complete the Work within the Contract Time(s). This obligation shall remain in full force and effect notwithstanding disputes or claims of any type. At any time during the progress of Work, should Contractor directly or indirectly (through subcontractors), refuse, neglect, or be unable to employ a sufficient number of qualified workers to prosecute the Work as required, then the City may require the Contractor to accelerate the Work and/or furnish additional qualified workers as City may consider necessary, at no cost to City.

If Contractor does not comply with the notice within seven days of date of service thereof, City shall have the right (but not a duty) to provide qualified workers to finish the Work or any affected portion of Work, as City may elect. City may at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that City exercises this right. City will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons doing Work. City will deduct from funds or appropriations set aside for purposes of Contract Documents, the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of City from claims of others.

Exercise by the City of the rights conferred upon the City in this Agreement is entirely discretionary on the part of the City. The City shall have no duty or obligation to exercise the rights referred to in Article 8.4, **Supply of Sufficient Workers**, and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of City’s right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon City under Article 8.4, **Supply of Sufficient Workers**, are cumulative to City’s other rights under any provision of the Contract Documents.
8.5 **Materials and Workmanship**

Unless otherwise indicated in the Contract Documents or favorably reviewed by the Design Engineer, materials and equipment for the construction work shall be the best grade in quality of a manufacturer regularly engaged in the production of such materials and equipment or materials and equipment of comparable character. All materials must be of the specified quality and equal to approved samples, if samples have been submitted. All work shall be done and completed in the best workmanlike manner, obtainable in the local market. All permanent materials and equipment shall be new unless otherwise specified.

Construction Manager will notify Contractor of Defective Work promptly upon identifying the work at issue. All Defective Work or materials shall be promptly removed from the premises by the Contractor, whether in place or not, and shall be replaced or renewed with Work that meets the requirements of the Contract Documents. All materials and workmanship of whatever description shall be subjected to the inspection of, and rejection by, the Construction Manager if not in conformance with the Contract Documents.

Defective Work shall be modified, replaced, repaired or redone by the Contractor at no change in GMP (nor will any of the costs to correct Defective Work be reimbursable as a Cost of the Work) or Contract Time. Acceptance of Defective Work, without specific written acknowledgement and approval of City, shall not relieve the Contractor of the obligation to correct such Work. Should City determine that it is not feasible or in City’s interest to require Defective Work to be repaired or replaced, an equitable credit shall be made to the Costs of Work owed to Contractor and a corresponding reduction in the GMP shall be made by agreement between City and Contractor. (If Contractor has been paid in full for its Work, Contractor agrees to pay City the amount of the amount of the equitable credit mutually agreed to leave in place the Defective Work.) If an equitable amount cannot be agreed upon, a Change Order will be issued and the amount in dispute resolved in accordance with the Contract Documents. City and City’s consultants disclaim any and all responsibility for Work that is not in conformance with the Contract Documents. Contractor shall have full responsibility for all direct consequences resulting from Defective Work, including without limitation all delays (pursuant to the Contract Documents), extra inspection and correction costs, consultant and attorneys’ fees costs by Contractor and re-Work.

City agrees that after providing Contractor with written notice of works that it deems to be Defective Work, City shall allow Contractor 15 days to investigate the Defective Work in order for the Contractor to determine whether it agrees that the work is Defective Work and if so, submit to City for its approval a proposed remedy for the Defective Work, before City shall charge Contractor for any reasonable extra inspection, consultant and attorneys’ fees costs associated with the Defective Work. If it is determined by a court or arbitrator, or the City otherwise agrees, that the work was not Defective Work, City shall bear all inspection, consultant and attorneys’ fees costs incurred by City or Contractor as a result of the alleged Defective Work.

In addition to the Contractor’s obligations under the Contract Documents, if, within one
year after City's notice of completion of the Work or designated portion thereof or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so. The City shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City, the City may correct it in accordance with this section. This provision shall have no impact on Contractor's liability for patent and latent defects under California law. Failure to inspect work shall not relieve the Contractor from any obligation to perform work in accordance with the Contract Documents.

8.6 Use of Materials Found on the Project Site

The City does not warrant the suitability of any native material on the Project Site for use in the Project. The Contractor, with the approval of the Design Engineer, may use in the proposed construction such stone, gravel, sand or other material as may be found on the Project Site and deemed suitable in the opinion of the Design Engineer. The Contractor shall replace at its own expense all of that portion of the material so removed and used with other suitable material. No charge for native materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from any roadway location that is not within the excavation, as indicated by the slope and grade lines shown on the Contract Drawings, without written authorization from the Design Engineer.

8.7 Existing Utilities

8.7.1 General — The location of known existing utilities and pipelines are shown on the Drawings in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the Project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the Project.

The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities to the extent required by law.

8.7.2 Utility Location — It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation or time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

Pursuant to Government Code Section 4216.2 the Contractor shall contact the
appropriate regional notification center at least two working days, but not more than fourteen calendar days, before performing any excavation. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service.

After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit. The Construction Manager shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities which are to remain in service for any period subsequent to the construction of the run of pipe involved.

8.7.3 Utility Relocation and Repair – If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Construction Manager in writing. The Construction Manager will supply a method for correcting said interferences in accordance with the responsibilities of this Article and Government Code Section 4215.

The City shall compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunkline utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 10.1, Change Orders. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Section 01 32 26, PROGRESS SCHEDULES AND REPORTS.

The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

When the Contract indicates that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract.

Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.
8.8 Surface Restoration

Surface restoration shall be defined as that work necessary to restore the excavated area above backfill and the scarred surrounding work areas to a condition equivalent to or better than existed prior to the construction. This may include pavement replacement, seeding, shrub and plant replacement, and restoration of ditches and drainage areas.

The replacement of grass and/or plants shall be accomplished by seeding. The kind and type of seed is to be determined by the City. Replacement of plants and shrubs shall be required where the easement travels through a developed parcel. In this case the City and Contractor shall agree before proceeding as to which plants and shrubs shall be saved or replaced.

The restoration of trench surfaces or excavated areas shall include measures to prevent surface erosion of the trench or excavated areas. This shall include seeding, cutoff walls, surface header boards, water bars, interceptor dikes, gravel filter dikes, or rip rap energy dissipaters. These measures shall be used as required to prevent surface erosion.

8.9 Disposal of Materials

Unless otherwise specified in the Contract Documents, the Contractor shall make arrangements for disposing of materials. Excess excavated material not required for backfill shall be disposed of legally by the Contractor.

When any materials, including excess of unsuitable excavated earth or other roadway materials are to be disposed of outside the right-of-way, the Contractor shall first obtain a written permit from the property owner on whose property the disposal is to be made and shall file the permit or certified copy together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on the property. Before any material is disposed of on the property, the Contractor shall obtain permission from the Engineer to dispose of the material at the location designated in the permit.

Unless otherwise provided in the Contract Documents, full compensation for all cost involved in disposing of materials as above specified, including all costs of overhaul, shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be made.

ARTICLE 9

PROGRESS OF THE WORK

9.1 Commencement of Work

Within ten calendar days after receipt of the required bonds and evidences of insurance and the executed Agreement from the Contractor, written Notice to Proceed will be issued by the City to Contractor. Notwithstanding other provisions of the Contract, the Contractor shall not be obligated to perform the Work, and the City shall not be obligated to accept
or pay for such Work performed by the Contractor, prior to City’s issuance of the Notice to Proceed. The Contractor shall provide the required Contract bonds and evidences of insurance prior to the City’s issuance of the Notice to Proceed and Contractor’s commencement of Work at the site.

The Contractor shall commence execution of the Work within ten days after the date established in the Notice to Proceed for the commencement of Contract Time.

The Contractor shall give the Construction Manager written notice not less than two working days in advance of the actual date on which the Work will be started. The Contractor shall be entirely responsible for any delay in the Work which may be caused by its failure to give such notice.

9.2 Contract Time

All time limits for Substantial Completion, and Final Completion as stated in the Contract Documents are of the essence of the Contract. The counting of Working Days shall begin from the date the Notice to Proceed is issued. The Contractor shall prosecute the Work so that the various portions of the Work shall be complete and ready for use within the times specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES. It is expressly understood and agreed by and between the Contractor and the City that the Contract Time for Substantial Completion of the Work and for Final Completion are reasonable times taking into consideration the average climatic and economic conditions and other factors prevailing in the locality and the nature of the Work known as of the date this Agreement is entered into.

9.3 Delays

9.3.1 Notice of Delays - When the Contractor foresees a delay in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay to its Work, the Contractor shall notify the Construction Manager in writing of the occurrence of delay, providing the estimated extent of the delay and its cause. The Contractor shall take immediate steps to prevent or mitigate, if possible the occurrence or continuance of the delay.

The Contractor agrees that no claim shall be made for any occurrence of delay that is not the subject of a written notice and that is not submitted to the attention of the Construction Manager within 15 calendar days of its occurrence.

9.3.2 Non-Excusable Delays – Non-excusable delays in the prosecution of the Work are delays which were caused by the Contractor, or by its subcontractors and suppliers, at any tier level, or delays which could have been avoided by the exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. The Contractor shall receive no compensation or time extension for such delay.

9.3.3 Excusable Delays - Excusable Delays in the prosecution or completion of the Work are delays which are not caused by or within the control of Contractor and which
could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. In addition, before a delay will be deemed an "Excusable Delay," the delay must prevent the Contractor from proceeding with at least 75% percent of the normal labor and equipment force for at least five hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule submitted by Contractor in accordance with the Contract Documents. The Contractor shall receive no compensation for such delay unless such delay also qualifies as a Compensable Delay, as described below. The following are examples of Excusable Delays:

A. Abnormal Delays - Delays caused by fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials shall be considered as Excusable Delays insofar as they prevent the Contractor from proceeding with at least 75% percent of the normal labor and equipment force for at least five hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule.

B. Weather Delays – Delays caused by inclement weather conditions or the conditions resulting from inclement weather shall be considered as "Excusable Delays" if they prevent the Contractor from proceeding with 75% percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof.

C. Material Shortages - Upon the Contractor's submission of satisfactory proof to the Construction Manager, shortages of material may be considered an "Excusable Delay" upon the satisfaction of the conditions set forth herein. The Contractor must demonstrate that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the proposed Work. Only the physical shortage of material, caused by unusual and unforeseeable circumstances, will be considered as eligible for an "Excusable Delay," and no consideration will be given to any claim that the material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Construction Manager that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the Contractor's or its Subcontractor's or Supplier's mishandling of the procurement for such material. The above provisions apply equally to equipment to be installed in the Work. Nothing herein is intended to affect the Contractor also needing to demonstrate that the delay must prevent the Contractor from proceeding with at least 75% percent of the normal labor and equipment force for at least five hours per day toward completion of the current critical activity item(s) on the latest favorably
reviewed progress schedule.

9.3.4 Compensable Delays — Compensable Delays in the prosecution or completion of the Work are delays which meet each of the following three elements: (1) delays which result from causes beyond the control of the Contractor and which could not have been avoided by the reasonable exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level; (2) delays that prevent the Contractor from proceeding with at least 75% percent of the normal labor and equipment force for at least five hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule; and (3) delays that are caused by one of the following three causes:

A. Delays due to the actions and/or inactions of the City, Construction Manager, Design Engineer or any of their agents or employees.

B. Delays due to differing site conditions as defined in Article 10.2, Differing Site Conditions of this agreement.

C. Delays due to other contractors employed by the City who interfere with the Contractor’s prosecution of the Work as defined above.

9.3.5 Concurrent Delays — Concurrent delays are those delay periods when the prosecution of the Work is delayed during the same period of time due to causes from a combination of the delays defined in Article 9.3.2, Non-Excusable Delays, Article 9.3.3, Excusable Delays, or Article 9.3.4, Compensable Delays. During such concurrent delay periods, time extensions will be granted in accordance with Article 9.4, Time Extensions; however, the Contractor will be granted a non-compensable time extension, and the City shall not assess its actual costs as defined in Article 9.4.1, Non-Excusable Delays, nor will the City assess Liquidated Damages.

9.4 Time Extensions

9.4.1 Non-Excusable Delays — The Contractor shall receive no compensation or time extension for Non-Excusable Delays.

9.4.2 Excusable or Compensable Delays — If the Contractor is delayed in the performance of its Work as defined in Article 9.3.3, Excusable Delays, or Article 9.3.4, Compensable Delays, then the Contract Time will be extended by the City for such time that, Contractor shows, and City agrees (which agreement will not be unreasonably withheld), the Project’s critical path completion dates will be delayed, provided that the Contractor strictly fulfills the following:

A. The Contractor shall have provided written notification, in accordance with Article 9.3.1, Notice of Delays;

B. The Contractor shall have submitted in writing a request for an extension of time to the Construction Manager stating at a minimum the cause of the delay and the estimated number of days being requested. Such request for an
extension of time shall be submitted in accordance with the requirements of Section 01 32 26, PROGRESS SCHEDULES AND REPORTS. As provided therein, Contractor's request for a time extension shall be submitted within 15 days of Contractor furnishing its written notice pursuant to Article 9.3.1, Notice of Delays. In the case of an Excusable Delay or Compensable Delay that allegedly is impacting Contractor's operations for a period longer than 15 days, Contractor shall update its request for a time extension, including updating its time impact analysis, every 30 days until the delay is no longer allegedly impacting Contractor's operations.

C. If Contractor maintains that the delay at issue is a Compensable Delay, Contractor shall submit an estimate of the additional compensation for Field Overhead and Indirect Home Office Overhead that it is seeking in regards to the alleged delay. This estimate shall be included with the Contractor's request for time extension that is described in Section E, above. In the case of a Compensable Delay that allegedly is impacting Contractor's operations for a period longer than 15 days, Contractor shall update its estimate of additional compensation every 30 days until the delay is no longer allegedly impacting Contractor's operations.

D. If requested by the Construction Manager within 15 days of receipt of the Contractor's written request for a time extension, the Contractor shall provide sufficient information to the Construction Manager to assess the cause or effect of the alleged delay (as well as additional compensation in the case of Compensable Delay), or to determine if other concurrent delays affected the Work. Such additional information shall be furnished within 15 days of Construction Manager's request for additional information.

E. Time extensions due to Excusable or Compensable Delays will be granted only if such delays involve controlling critical path operations which would prevent completion of the whole Work within the specified Contract Time(s), as described in the above conditions for determination of "Excusable Delay" or "Compensable Delay."

F. Force Majeure. Force Majeure events shall be considered Excusable Delays. Any claim by Contractor to classify a Force Majeure event as a Compensable Delay shall be handled pursuant to Article 11.1, Resolution of Disputes of this agreement. See definition of Force Majeure in Article 1, DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS.

The Contractor agrees that no claim shall be made for any time extension or compensation associated with a delay that is not the subject of a written notice and that is not submitted to the attention of the Construction Manager within fifteen calendar days of its occurrence.

Construction Manager will, in writing, approve or reject the Contractor's request for a time extension within 15 days of the latter of (i) the Construction Manager's receipt of the
Contractor's complete request for a time extension; or (ii) the Construction Manager's receipt of the additional information referenced in subsection (C), above. Should Construction Manager not provide a written response within such 15 day time period, the Contractor's request shall be deemed denied by the City.

If the Construction Manager determines that the Contractor is entitled to a time extension, during such approved extension of time, neither extra compensation for engineering, inspection and administration nor damages for delay will be charged to the Contractor.

For Weather Delays, the Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to Article 9.3.3.B, Weather Delays, over and above an allowance as provided for in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

Should the Contractor fail to complete the Work within the time specified in the Contract, as extended in accordance with this clause if appropriate, the Contractor shall pay to the City liquidated damages in accordance with Article 9.5, Liquidated Damages.

9.4.3 Field Overhead and Indirect Home Office Overhead for Compensable Delays

The Contractor shall be compensated for field overhead and indirect home office overhead expenses due to Compensable Delays for periods of time when the Work is delayed as defined in Article 9.3.4, Compensable Delays. However, no payment shall be made for compensable delays which occur during a concurrent delay as defined in Article 9.3.5, Concurrent Delays. As a condition precedent to payment for field overhead and indirect home office overhead, the Contractor must fulfill all conditions as provided in Article 9.4.2, Excusable or Compensable Delays. Compensation will be calculated in accordance with 9.4.3.1 and 9.4.3.2, below. No additional markup for overhead or profit shall be provided for such field overhead and indirect home office overhead expenses.

Payment to the Contractor for indirect overhead expenses will be made only if the extended Contract period granted for the compensable delay(s) is required to complete the work following the depletion of the original Contract period and any time extensions granted other than compensable time extensions. Payment for field overhead and indirect home office overhead shall be calculated as follows:

9.4.3.1 Field Overhead – For those allowable delay periods as described in Article 9.4.3, Field Overhead and Indirect Home Office Overhead for Compensable Delays, the Contractor shall be reimbursed for its field overhead based on:

A. Actual invoice costs for on-site field offices and temporary utilities as described in the Contract Documents

B. Actual labor costs as shown in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, for field office staff.

C. Fair rental values acceptable to the Construction Manager as
described in Section 01 26 00-3.2, COST DETERMINATION, for construction equipment idled due to the delay.

D. Actual Errors and Omissions insurance costs attributable to delay periods.

9.4.3.2 Indirect Home Office Overhead – For those allowable delay periods as described in Article 9.4.3, Field Overhead and Indirect Home Office Overhead, the Contractor shall be reimbursed for its indirect home office overhead based on the following formula:

Guaranteed Maximum Price ($)

\[24,945,000 \times 0.035 = \text{Daily Indirect Home Office Overhead ($/Day) Contract Period (Calendar Days)}\]

As it is impractical to determine the actual home office overhead, such reimbursement shall encompass full payment for any and all indirect home office overhead expenses for such periods of time for the Contractor and all subcontractors. Distribution of the markup amount among the Contractor and all subcontractors and suppliers is the responsibility of the Contractor.

9.5 Liquidated Damages

9.5.1 City and the Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, plus any extensions thereof allowed in accordance with Article 9.4, Time Extensions. It is hereby understood and agreed that it is and will be difficult or impossible to determine the actual damage which the City will sustain by reason of the Contractor's failure to fully perform the Work or to fully perform all of its contract obligations that have accrued by the times for completion as specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

9.5.2 It is, therefore, agreed in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the amount set forth in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, per day for each and every calendar day that expires after the times for completion specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, or as specified for completion of any scheduled operations or works described in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, except as otherwise provided by extension of time pursuant to Article 9.4, Time Extensions. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this Contract was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.
9.5.3 Liquidated damages will continue to accrue at the stated rate until the completion of any defined completion Milestone(s) and final completion of total project, all as set forth in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES. Accrued liquidated damages may be deducted by the City from amounts due or that become due to the Contractor for performance of the Work. Liquidated damages may not be waived or reduced by the City unless expressly waived or reduced in writing by the City.

9.6 City Suspension of Work

9.6.1 If the Contractor fails to correct Defective Work as required by Article 8.5, Materials and Workmanship, or fails to carry out the Work in accordance with the Contract Documents or any other applicable rules and regulations, or otherwise breaches a material provision of the Contract, and fails to respond to the City’s written Notice of the alleged default within ten days, the City, by a written order of the Engineer or signed personally by an agent specifically so empowered by the City, in writing, may order the Contractor to stop the Work, in its entirety or any portion thereof. In the event of a suspension of only a portion of the Work, the Contractor is obligated to perform the portion of the Work not suspended. The Suspension of Work shall remain in effect until the condition or cause for such order has been eliminated. The City’s concurrence that the condition or cause has been eliminated will be provided to the Contractor in writing. This right of the City to stop and suspend the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. All delays in the Work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the Work or serve to extend the time for its completion. Any and all work necessary to correct Defective Work in order to comply with the Contract Documents shall be performed at no cost to the City.

9.6.2 In the event that a suspension of Work is ordered as provided for in paragraph 9.6.1, the Contractor, at its expense (i.e., without reimbursement as a Cost of Work or an increase in the GMP), shall perform all Work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public, pedestrian, and vehicular traffic, during the period of such use by suspension. Should the Contractor fail to perform the work as specified, the City may perform such Work and the cost thereof may be deducted from partial payments and/or final payment due the Contractor under the Contract. The City is also entitled to withhold any costs, expenses and/or damages incurred, in proportion to the Contractor’s proportion of responsibility for the suspension, including consultants’ costs and fees, due to the suspension of Work if the suspension was due to Contractor’s fault. Contractor shall not be entitled to any relief pursuant to an Excusable Delay or Compensable Delay for the Work impacted by any suspension hereunder.

9.6.3 The City shall also have authority to suspend the Work wholly or in part, for such period as the City may deem necessary, due to convenience to the City, unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work. Such temporary suspension of the Work, if for City’s convenience and reasons unrelated to deficiencies in Contractor’s performance, shall be
a Compensable Delay in accordance with paragraph 9.3.4 and justification for time extension pursuant to the provisions set forth in Section 9.4 of the Contract.

9.6.4 The Contractor as directed by the City shall comply with the provisions in Article 9.6, City Suspension of Work, above. Such additional work shall be compensated as provided for in ARTICLE 10, CHANGES IN THE WORK, unless the City's suspension of the Work is caused by the Contractor's failure to prosecute the Work in accordance with the Contract Documents.

9.7 City's Right to Terminate Contract

9.7.1 Termination for Default – If the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the Contract Time specified herein, or any authorized extension thereof, or fails to perform the Work in a manner required by the Contract Documents, or fails to complete such Work within such time as required under the Contract Documents or, if the Contractor should be adjudged as bankrupt, or is otherwise deemed insolvent by the City based on good cause and is unable to proceed with the Work, or if the Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor files a petition to take advantage of any debtor's act, or if the Contractor should persistently or repeatedly refuse or fail, except in cases for which an authorized extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified, or if the Contractor should fail to make prompt payment to Subcontractors of undisputed amounts due for material or labor, or if the Contractor should persistently disregard laws, or instructions given by City, or if the Contractor otherwise substantially fails to fulfill its obligations under the Contract Documents the City may, without prejudice to any other right or remedy, serve written notice upon the Contractor and Sureties of the City's intention to terminate the Contractor's performance under the Contract. Said notice shall contain the reasons for such intention to terminate the Contractor's performance under the Contract, and unless, within seven days after the service of such notice, such alleged violations cease and satisfactory arrangements for the corrections thereof have been made, the City may terminate Contractor's performance under the Contract and the Contractor shall not be entitled to receive any further payment until the Work is finished.

In the event of any such termination, the City shall serve written notice thereof upon the Surety and Contractor, and the Surety shall have the right to take over and perform the Contract. However, if the Surety, within ten days after the service of a notice of termination, does not give the City written notice of its intention to take over and perform the Contract, or if it serves such notice of its intent to take over and perform the Contract and does not begin performance thereof within fifteen days from the date of serving said notice, the City may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the Contractor, and the Sureties and Contractor shall be liable to the City for any excess cost or other damage incurred by the City thereby. In such an event, the City may without liability for so doing, take possession of and utilize such materials, supplies and other property belonging to the Contractor and assume assignment of any and all subcontracts.
for Subcontractors and/or Suppliers that may be on the worksite and be necessary to complete the Work. For any portion of such Work that City elects to complete by furnishing its own employees, materials, tools, and equipment, the City shall be compensated in accordance with the schedule of compensation for force account work as stated in Section 01250, Contract MODIFICATIONS PROCEDURES.

If the Surety assumes the Contractor's terminated Work, it shall take the Contractor's place in all respects for that part and shall be paid by City for all Work performed by it in accordance with the terms of the Contract Documents, less any amounts City is entitled to withhold pursuant to the Contract Documents. If the Surety assumes the entire Contract, all money due the Contractor at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Contract.

In the event of a termination based on Contractor's default, the Contractor will be paid the actual amount due in accordance with the Contract Documents less damages caused to the City arising from the termination, including but not limited to, consultants' costs, attorneys' fees and all costs to the City to complete the Work including all costs generated to insure or bond the work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to the Contractor. If City's costs to complete the Work, including the aforementioned costs exceed the unpaid balance, the Contractor shall pay the difference to the City promptly upon demand. On failure of the Contractor to pay, the Surety shall pay on demand by City. Any portion of such difference not paid by the Contractor or Surety within 30 days following the mailing of a demand for such costs shall earn interest at the maximum rate authorized by California law.

The Contractor and the City agree that nothing in this section is intended to create a right to recover attorney fees as prevailing party in any lawsuit on this Contract.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies under law or in equity available to City.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as, by way of example and not limitation, a fire, flood, or other event which was not the fault of or was beyond the control of the Contractor, the City may allow the Contractor to continue Work on a mutually agreeable schedule, or treat the termination as a termination for convenience, and the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City. Also, in the event that it is determined by a third party, including a judge, jury or arbitrator, that the Contractor should not have been terminated for fault, then Contractor agrees that the termination will be deemed to be a termination for convenience under Paragraph 9.7.2.

9.7.2 Termination for Convenience – The City, by written notice to the Contractor from the Engineer, may terminate the Contractor's performance under the Contract, either in whole or in part, at its own discretion or when conditions encountered during the Work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Contract by act of God, by law, or by official action of a public
authority, or upon a determination that such termination is in the best interest and convenience of the City, or whenever the City is prohibited from completing the Work for any reason. The City shall provide no less than seven days written notice of its intent to terminate the Contract for convenience, and shall provide the Contractor with consultation with the City prior to termination.

A. Upon receipt of such written notice of termination, the Contractor shall:

1. Stop Work as specified in the written notice;
2. Terminate all orders and Subcontractors except as necessary to complete Work which is not terminated;
3. If directed in writing by the City to do so, assign all right, title and interest in materials in progress, in which case the City will have the right at its discretion to settle, or pay any or all Claims arising out of the termination of such materials contracts, but in no event shall recovery by any Contractor include lost profits for uncompleted portions of Work;
4. Deliver or otherwise make available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and material as may have been accumulated by the Contractor in performing this Contract whether completed or in process;
5. Settle outstanding liabilities and Claims with the approval of City;
6. Complete performance of such part of the Work as has not been terminated; and
7. Take such other actions as may be necessary, or as may be directed by the City for the protection and preservation of the Project and/or property related to the Contract.

B. Upon receipt of City's written notice of termination for convenience, and within a period of 30 to 60 days, as determined by the City at the time of termination, the Contractor shall submit to the Construction Manager a Termination Proposal which shall include, but is not limited to, the Contractor's estimate of costs to be incurred by the Contractor as a result of the termination for convenience, and as allowed by the Contract Documents, including documentation reasonably necessary to support such costs; the status of the Work at time of termination; the status of termination of the Contractor's Subcontractor(s) and Supplier(s) agreement(s) including the amount of each agreement, amount paid under each agreement up to the date of termination, and the amount that currently remains due and owing under each agreement for Work completed as of the date of termination, if any; a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Construction Manager; and any other information and/or documentation as required by
City. Within 30 days of receipt of Contractor's Termination Proposal, City shall provide to Contractor written acceptance of Contractor's Termination Proposal or exceptions to items within the Termination Proposal which must be modified in order to gain City's acceptance of the Termination Proposal.

Upon receipt of City's written acceptance of, or exceptions to, Contractor's Termination Proposal, the Contractor shall submit to the Construction Manager a request for final payment (or the undisputed portion of the Termination Proposal) pursuant to the contract document requirements. Such request shall be submitted promptly, but no later than 15 days from the effective date of receipt of City's written acceptance of, or exceptions to, Contractor's Termination Proposal.

C. Contractor shall not be entitled to recover any lost profits, fee or any other cost or expense on portion of the Work terminated. The final payment to the Contractor after termination for convenience shall not exceed the amounts due and owing under the Contract at time of termination, including the following:

1. Any actual costs incurred by the Contractor for restocking charges or other costs reasonably incurred in negotiating termination of subcontracts and/or supply contracts;

2. The Cost of the Work for protecting the Work in any manner, if any, as directed by the City; and

3. The cost of settling and paying Claims arising out of the termination of the Work under subcontract agreements or orders with the City's approval, as specified above, exclusive of the of the amounts paid or payable on account of goods delivered or Work furnished by Subcontractor prior to the effective date of the termination; and

4. The Cost of the Work and Fee allocable to the portion of the Work properly performed or goods supplied by the Contractor as of the date of termination, as determined in accordance with the Contract Documents, reduced by any sums previously paid to the Contractor.

D. The City's right to withhold under Section 12.9 shall apply to payments made under this section.

ARTICLE 10

CHANGES IN THE WORK

10.1 Change Orders

10.1.1 Without invalidating the Contract and without notice to sureties or insurers, the City through the Construction Manager, may at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Directive, Field Order or Change Order. A Change Order will not be issued for a Field Directive

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ADDENDUM #5

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unless the Construction Manager agrees that such Field Directive is a change in the scope of the Contract that causes an increase in the Cost of the Work or an adjustment to the GMP or the Contract Time. The Contractor shall comply promptly with the requirements for all Change Orders, Field Orders or Field Directives. The work involved in Change Orders and Field Orders shall be executed under the applicable conditions and requirements of the Contract Documents. By signing a Change Order, the Contractor waives any claim for additional time, not included in the Change Order, for the work covered by that Change Order. Additional or extra work performed by the Contractor without written authorization of a Change Order or Field Order will not entitle the Contractor to an increase in the GMP or an extension of the Contract Time.

10.1.2 Extra Work is defined in Contract Documents found in ARTICLE 1, DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS. Such work shall be governed by all applicable provisions of the Contract Documents. In giving instructions, the Construction Manager shall have authority to make minor changes in the Work in writing by way of a Field Directive, not involving extra cost, and not inconsistent with the purposes of the Work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the City through the Construction Manager, and no claim for an addition to the GMP and/or Contract Time shall be valid unless so ordered.

10.1.3 In case any authorized change increases or decreases the Work shown in a Change Order, the Contractor shall be paid for the work actually done at a mutually agreed upon adjustment to the GMP, in accordance with the provisions of Section 01.26.00, CONTRACT MODIFICATION PROCEDURES.

10.1.4 If the Contractor refuses to accept a proposed Change Order, the City may issue it unilaterally with a Construction Change Directive in accordance with the provisions of Section 01.26.00, CONTRACT MODIFICATION PROCEDURES. The Contractor shall comply with the requirements of the Construction Change Directive. The City shall provide for an equitable adjustment, if any, to the GMP and/or Contract Time, and compensate the Contractor accordingly. If the Contractor does not agree that the adjustment or refusal to adjust is equitable, it may submit a claim in accordance with the contract documents.

10.2 Differing Site Conditions

Pursuant to Public Contract Code Section 7104, the Contractor shall promptly, and before such conditions are disturbed, notify the Construction Manager, in writing, of any:

A. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

B. Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the
deadline for submitting bids.

C. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The Contractor’s written notice must be furnished to Construction Manager within ten calendar days of Contractor discovering the alleged differing site condition. The Contractor agrees that no claim shall be made for any differing site conditions that is not the subject of a written notice submitted to the attention of the Construction Manager within 15 calendar days of their occurrence.

The City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor’s cost of, or the time required for, performance of any part of the Work, the City shall cause to be issued a Change Order under the procedures provided in Article 10.1, Change Orders.

In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor’s cost of, or time required for, performance of any part of the work the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties, of the contract documents.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required.

10.3 Taxes. A Change Order shall be executed due to any new or increased taxes arising after the date of this Agreement (other than taxes assessed based on the income of Contractor). The Change Order shall consist of the incremental amount of such new or increased taxes only. With respect to reductions in taxes arising after the date of this Agreement (other than taxes assessed based on the income of Contractor), the Change Order shall consist of the incremental amount of such reduced taxes only.

10.4 Permit Fees. With respect to increases or decreases in fees for permits or other governmental certificates or instruments arising after the effective date of this Agreement, a Change Order will be prepared and proposed to Contractor that shall consist of the incremental amount of such increases or decreases. To the extent this Agreement states that a permit or certificate is not required and Contractor is later required to procure such permit or certificate, all out-of-pocket costs reasonably associated therewith shall be included in the Change Order. The fees for permits and related costs associated with permits that was included in the original GMP is listed in the Contractor’s Accepted Bid Proposal. See Exhibit B.
ARTICLE 11

DISPUTES

11.1. Duty to Continue Performance.

Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work and City shall continue to satisfy its payment obligations to Contractor, pending the final resolution of any dispute or disagreement between Contractor and City pursuant to the procedures set forth in the Contract Documents and CSSS.

ARTICLE 12

PAYMENT AND COMPLETION

12.1 Guaranteed Maximum Price (GMP). The City shall pay for Contractor's performance under this Agreement the Cost of the Work and Fee (as defined in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, hereto), provided, however, that the sum of the Cost of the Work and Fee shall not exceed the GMP, as adjusted by Change Order or Field Order in accordance with the Contract Documents.

12.2 Schedule of Values. Not applicable.

12.3 Applications for Payment. Within five business days following execution of this Agreement, the City and Contractor shall meet to discuss the format, cost breakdown and level of detail required in each Contractor Payment Application. The cost breakdown shall be generally in the same format as typical CSI Document Divisions and Subdivisions, with major items of work listed individually. The cost breakdown shall be by structure, civil, landscaping, or other logical divisions of work. The cost breakdown for architectural, structural, mechanical, and electrical work shall include separate items for identifiable portions of the structures. The cost breakdown shall include separate items for all testing and startup work required. The cost breakdown shall also have separate items for all mobilization costs, direct job overhead costs, bonds, builder's risk insurance, supervision, subcontractors, special services and major suppliers.

The Contractor's cost breakdown and accounting system to produce the Contractor's Application for Payment must provide the City the means to efficiently substantiate the Cost of the Work completed each month and to date for the timely processing for payment to the Contractor.

Contractor shall deliver to City not more than once each month an Application for Payment covering the Cost of Work and Fee applicable to the Work performed during the immediately preceding month. With each Application for Payment Contractor shall submit a line item detailed billing to demonstrate costs incurred on account of Cost of the Work.
during such month.

Each progress payment request and the final payment request shall be deemed "proper" only if it is submitted on the form approved by the City, with all of the requested information completely and accurately provided by the Contractor and such completed progress payment request form or final payment request form is accompanied by: (i) certified payrolls of the Contractor and all subcontractors, of any tier, for laborers performing any portion of the Work for which a progress payment or final payment is requested; (ii) duly completed and executed Conditional Waiver and Release Upon Progress Payment or Final Payment forms in accordance with California Civil Code §§ 8132 and 8136 for all subcontractors of any tier, and material suppliers covering the progress payment or final payment requested; (iii) duly completed and executed Unconditional Waiver and Release Upon Progress Payment forms in accordance with California Civil Code §§ 8134 and 8138 for all subcontractors of any tier, and material suppliers covering the progress payment received by the Contractor under the prior progress payment request.

City may reject requests for payment, or portions thereof, for Work, or portions thereof, not performed or completed.

12.4 Amount of Progress Payments. City shall pay Contractor the actual Cost of the Work and Fee through the period covered by the Application for Payment, less Retention as set forth in Article 12.5 below. City may additionally withhold from progress payments such amounts pursuant to stop notice claims as required by law and pursuant to Article 12.9.

12.5 Effect of Payment. Payment will be made by City based on the Construction Manager's observations at the site and the data comprising the progress payment request. Payment will not be a representation that the City has:

A. made exhaustive or continuous on-site inspections to check the quality or quantity of Work;

B. reviewed construction means, methods, techniques, sequences or procedures;

C. reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by City to substantiate Contractor's right to payment;

D. made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum; or

E. accepted all or part of the Work.

12.6 Retention; Escrow Agreement; Final Payment. Five percent Retention shall be withheld from each progress payment until the expiration of 60 days following City's acceptance of the Project or as required in California Public Contract Code Section 7107, whichever is earlier; provided, however, City shall continue to retain such amount as
required by law and City’s right to withhold in accordance with Article 12.9, Withholding of Payment, herein.

For any retention of amount earned by the Contractor as provided for in this Article, the Contractor may substitute securities as provided in Section 22300 of the Public Contract Code, as amended, which states in part as follows:

"Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay those monies to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor."

"Alternatively, the contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this Article for securities deposited by the Contractor. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City, pursuant to the terms of this Article. The Contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the Contractor."

"The Contractor shall be the beneficial City of any securities substituted for money withheld and shall receive any interest thereon."

Securities eligible for investment under Section 22300 shall be limited to those listed in Section 16430 of the Government Code and to bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.

The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the form in Exhibit J, ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION. Release of Retention monies shall constitute the Final Payment.

12.7 Payment for On-Site and Off-Site Stored Materials. [reserved]

12.8 Title to Construction Work. Title to all Construction Work covered by an
Application for Payment shall pass to City no later than the time of payment. Upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from City shall, to the best of Contractor’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers, or other persons or entities, except work, labor, materials or services that are the subject of a Claim.

No material, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by the Contractor, to the City free from any third party claims, liens, security interests, or charges.

Nothing contained in this paragraph, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City.

12.9 Withholding of Payment. City may withhold payment on account of an Application for Payment if required or authorized by any Applicable Law, or to the extent necessary to protect City from loss because of the following:

A. Defective Work not remedied, irrespective of when any such work be found to be defective.

B. Not Used.

C. Damage to another contractor or third party, or to property that Contractor has failed to resolve within 30 days after receiving written notice of the damage.

D. A reasonable amount for failure of the Contractor to maintain Record Documents current as required in SECTION 01 26 00 – CONTRACT MODIFICATION PROCEDURES.

E. Cost of insurance arranged by the City due to cancellation or reduction of the Contractor’s insurance.

F. Failure to submit, revise, resubmit or otherwise conform to the requirements herein for preparing and maintaining a construction schedule as required in SECTION 01 32 26 – PROGRESS SCHEDULES AND REPORTS.

G. Failure to provide the required payment documentation, including required waivers and releases.
H. Payments due the City from the Contractor as provided for in the Contract Documents.

I. Failure to comply with environmental and other regulatory requirements that Contractor has failed to resolve within 30 days after receiving written notice of the noncompliance.

J. Provisions of law that enable or require the City to withhold such payments in whole or in part.

K. Stop Payment Notice claims filed by Contractor's subcontractors of any tier, or its material suppliers.

L. Contractor's failure to timely complete its Work, including Punch List items in the time required.

M. Any other breach of a material provision of this Contract if Contractor has failed to respond to the City's written Notice of the alleged breach within 10 days.

When the above reasons for withheld amounts are removed, payment will be made to the Contractor for amount withheld because of them.

12.10 Failure of Payment. In accordance with Public Contract Code § 20104.50, City shall pay Contractor interest on any progress payment, which is made by City more than 30 days after City receives an undisputed and properly submitted written payment request. Any written request for a progress payment which City determines not to be a proper payment request suitable for payment shall be returned to the Contractor within seven days after receipt by City, along with a written statement of the reason or reasons why such request is not proper.

12.11 Occupancy by City Prior to Acceptance. The City reserves the right to beneficial occupancy without charge by Contractor. In those areas of the Work that are completed, City may store materials, equipment, and supplies, and may perform partial operation.

12.12 Substantial Completion. When Contractor considers the entire Work is complete and ready for its intended use, Contractor shall certify in writing to City that the entire Work is substantially complete and provide City with a Certificate of Substantial Completion. Within a reasonable time thereafter, City and Contractor shall make an inspection of the Work to determine the status of substantial completion. Substantial Completion shall be defined as within this agreement. The Contractor shall submit to the City the warranty expiration check list and O&M Manuals concurrently with substantial completion.

12.13 If City does not consider the Work substantially complete, City will notify Contractor in writing identifying the parts of the Work City contends are not substantially complete. If City considers the Work substantially complete, City will accept a corresponding partial Certificate of Substantial Completion. There shall be attached to
the Certificate a punch list of items to be completed or corrected before Final Acceptance and Final Payment.

12.14 Upon verification that the Work is substantially complete the Construction Manager shall prepare a Certificate of Substantial Completion and the Punch List (see Form NOTICE OF SUBSTANTIAL COMPLETION found in the contract documents). The Certificate shall establish the date of Substantial Completion and the responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, commencement of warranties required by the Contract Documents, and shall fix the time, not to exceed 30 days, within which the Contractor shall finish all items on the Punch List or remaining work or administrative requirements accompanying the Certificate. When the preceding provisions have been approved by both the City and the Contractor, they shall sign the Certificate to acknowledge their written acceptance of the responsibilities assigned to them in such Certificate.

12.15 Final Completion. When the Work is fully completed, Contractor shall provide City with a Certificate of Final Completion and shall request final inspection in writing. Additionally, Contractor shall provide legally effective releases or waivers satisfactory to City of all stop payment notice and payment bond claim rights in connection with the Work. Within ten calendar days of receipt of such completed request form, City shall make final inspection. If following final inspection, City determines that the Work (including all punch list items) has been fully completed and performed in accordance with the Contract Documents, the warranty expiration checklist is completed and accepted, the O&M Manuals are completed and accepted, and plant establishment is accepted, the Engineer will accept the Work as complete. If Engineer determines that the Work is not complete after receipt of certification, Contractor shall be notified in writing of deficiencies. After the deficiencies have been corrected, the procedure for final inspection as set forth above shall again be initiated by Contractor.

12.15.1 Waiver of Claims at Final Payment. Acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor, except those previously made in writing and identified as unsettled at the time of final payment or those related to final payment or items of Work that are incomplete at the time of Final Acceptance.

12.16 Audits and Access to Records. The Contractor must maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work in accordance with generally accepted accounting principles and practices. The Contractor must also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's estimate, any Change Order, Dispute, Claim, Pay Application, or other request for equitable adjustment. City and its representatives will have access upon five business days advanced written notice, during normal business hours, to all Contractor's books, summary reports, records, accounts, estimates, documents, detailed financial information, certified payroll records, and all other information and documentation relevant to the Work for the purposes of inspection, audit, and copying. The Contractor will, at no cost to City, provide reasonable facilities for such access, and inspection purposes. City will arrange for and pay all costs of copying.
Contractor agrees to include and make the requirements of Article 12.14, \textit{Audits and Access to Records}, applicable to all Subcontractors Participation Form in Exhibit E, \textbf{DESIGNATION OF SUBCONTRACTORS}.

Audits conducted pursuant to Article 12.14, \textit{Audits and Access to Records}, will be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

The Contractor agrees to provide requested information and reports resulting from access to records to City, subject to execution of an appropriate confidentiality order if requested.

Records must be maintained and made available during the performance of the Work and for four years after Final Payment, and until final settlement of all Disputes or Claims, whichever occurs later.

The right of access provisions of Article 12.14, \textit{Audits and Access to Records}, applies to all financial records pertaining to the Contract:

1. to the extent the records pertain directly to Contract performance;

2. to the extent required for verification of the costs incurred where such costs are the basis for billings pursuant to the Contract including Change Orders;

3. to the extent there is credible evidence that Contractor has violated the federal False Claims Act and the California False Claims Act or that fraud, gross abuse, or corrupt practices may be involved;

4. if the Contract is terminated for default or convenience.

Access to records is not limited to the required retention periods. City's Authorized Representative or designee must be granted access to records at any reasonable time for as long as the records are maintained.

In the event that City's audit determines that Contractor has billed for any costs that are ineligible for reimbursement or for any reason should not have been paid, or the Contractor's fee has been improperly applied or calculated, Contractor shall promptly refund all improper payments following receipt of City's written notice and explanation of the alleged overpayments or improper fee and shall be responsible to pay City for the City's reasonable costs to perform the audit unless the Contractor establishes that the overpayment or improper fee was the result of an unintentional, inadvertent clerical error.

\textbf{12.17 Cash Flow Projection}. A cash flow projection covering the entire construction period shall be prepared by Contractor and submitted to Construction Manager prior to commencement of the Work. Additional cash flow projections shall be submitted upon request by Construction Manager if there is a material change in the scope of the work or a material change in the duration of the work or if the Construction Manager reasonably believes that Contractor's financial status has materially changed.
12.18 **False Claims Act.** All claims for payment from the Contractor to the City shall in all respects be a true and correct representation of services rendered and/or materials delivered to the City pursuant to the California False Claims Act. The penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other remedies which the City may have either under contract or law.

12.19 **Shared Savings.** Contractor shall be compensated for actual work completed based on the Cost of Work and Fee up to the amount of the GMP. If Contractor's actual total Cost of the Work and Fee is less than the GMP upon Final Completion, the Contractor shall receive ten percent (10%) of the GMP Savings. "GMP Savings" shall mean the positive difference, if any, when the Actual Total Cost of the Work is subtracted from the GMP; provided, however, that unused Allowance monies, if any, shall not be subject to shared savings.

12.20 **Warranties and Bonds.** The Contractor hereby agrees to make, at its sole expense, all repairs or replacements necessitated by defects in materials or workmanship, supplied under terms of the Contract Documents, and pay for any damage to other works resulting from such defects, which becomes evident within one (1) year after the date of acceptance of the Project as evidenced by the Notice of Completion recorded by Owner (or, in the absence of a proper Notice of Completion, within one (1) year of acceptance by Owner). Unless otherwise provided in Contract Documents, the one (1) year warranty period is the shortest duration and such duration may be a longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components. The Contractor also agrees to indemnify, defend, and hold the Owner harmless from liability of any kind arising from damage due to said defects.

The Contractor shall execute and submit a completed Warranty Form provide by the City for the Work, and any portion of the Work possessed in accordance with Article 6.4, **City's Right to Use or Occupy.** The Warranty Form shall be submitted prior to the Substantial Completion date or the final acceptance of the project or within five (5) days of the occupancy or use of a portion of the Work, whichever is applicable.

The Contractor shall, upon the receipt of notice in writing from the Owner, promptly make all repairs arising out of defective materials, workmanship, or equipment. The Owner is hereby authorized to make such repairs, and the Contractor and its Surety shall be liable for the cost thereof, if ten (10) days after the Owner giving of such notice to the Contractor, the Contractor has failed to make or undertake the repairs with due diligence. In case of emergency, where in the opinion of the Owner delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection therewith shall be charged to the Contractor, and/or its Surety shall be liable for the cost thereof.

Prior to the expiration of the warranty period, the Owner reserves the right to hold a
meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds and maintenance requirements and determine required repair or replacement of defective items. For the purpose of this paragraph, acceptance of the Work or a portion of the Work by the Owner, shall not extinguish any covenant or agreement on the part of the Contractor to be performed or fulfilled under this Contract which has not, in fact, been performed or fulfilled at the time of such acceptance. All covenants and agreements shall continue to be binding on the Contractor until they have been fulfilled.

The Owner and the Contractor agree that warranty on the parts of the Work possessed and used by the Owner in accordance with Article 6.4, City's Right to Use or Occupy, shall commence on the date that the Owner takes possession of such work and so notifies the Contractor in writing. The Owner and Contractor further agree that such possession, and use of the work shall not be deemed as Substantial Completion or acceptance of any other part of the Work.

If, after installation, the operation or use of the materials or equipment furnished under the Contract Documents proves to be unsatisfactory to the Construction Manager or Owner, the Owner shall have the right to operate and use such materials or equipment until it can, without damage to the Owner, be taken out of service for correction or replacement. Such period of use of the defective materials or equipment pending correction or replacement shall in no way decrease the warranty period. Warranty Period for equipment shall be extended by the number of days from the date the equipment is found by the Owner to be non-functional or defective to the date the Contractor repairs and makes fully operational the same equipment.

Nothing in the Contract Documents shall be construed to limit, relieve or release the Contractor's, subcontractor's and/or equipment supplier's liability to the Owner for damages sustained as the result of latent defects in the equipment furnished or work performed. Further, nothing in the Contract Documents shall be deemed to be a waiver by the Owner of any rights or remedies, or time limits in which to enforce such rights or remedies, that it may have against the Contractor, subcontractors, suppliers of the equipment and work performed under the Contract Documents.

ARTICLE 13

INSURANCE AND INDEMNIFICATION

13.1 Insurance Requirements

During the entire term of this Agreement, Contractor shall maintain in full force and effect the insurance coverage described herein.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Agreement. No additional compensation will be
provided for Contractor's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to City.

It is understood and agreed by the Contractor 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 Contractor in connection with this Agreement.

13.1.1 Minimum Scope and 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 and advertising injury, arising out of activities performed by or on behalf of CONTRACTOR and its subcontractors, products and completed operations of CONTRACTOR and its subcontractors, with limits of not less than ten million dollars ($10,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. 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 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars ($2,000,000) per accident. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

(3) **Excess Insurance**: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.

(4) **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 in favor of the CITY.

(5) **Professional Liability Insurance** if required, shall be provided on a claims-made basis for errors, omissions, or malpractice with limits of not less than two million ($2,000,000) dollars. Professional Liability (Errors and Omissions) insurance:
Is X Is not (check one) required for this Agreement.

If required, such insurance must be continued for at least 3 year(s) following completion of all Services and Additional Services under this Agreement. The retroactive date must be prior to the date this Agreement is approved or any Services are performed.

6) Pollution Liability

a) CONTRACTOR shall obtain Pollution Liability insurance. This insurance shall be written in comprehensive form either as a separate policy or as an endorsement to CONTRACTOR's general liability coverage and shall cover liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of any Work to be performed under the Agreement, including liability for and defense of lawsuits and regulatory actions. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Coverage shall apply to sudden as well as gradual pollution conditions, including without limitation conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. The liability limits shall be not less than:

1. Combined Single Limit for each occurrence: $2,000,000.
2. General Aggregate: $2,000,000.

b) If the coverage required is written on a claims-made coverage form:
1. The retroactive date must be shown, and this date must be before the award date of the Agreement.
2. Insurance must be maintained, and evidence of insurance must be provided for at least five years after final payment.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract award date, the CONTRACTOR must purchase extended reporting period coverage for a minimum of five years after final payment.
4. A copy of the claims reporting requirements must be submitted to the CITY for review.
5. If the Work involves lead-based paint or asbestos identification/remediation, the CONTRACTOR's Pollution liability policy shall not contain lead-based paint or asbestos exclusions. If the Work involves mold identification/remediation, the CONTRACTOR's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

7) Property Insurance
CONTRACTOR shall maintain Builder's Risk property insurance coverage in the amount of replacement value of the work and no coinsurance penalty provisions. Such property insurance shall be maintained by CONTRACTOR until final payment has been made under this Agreement. This insurance shall include the interests of the CITY, CONTRACTOR, their contractors, and sub-contractors as their interest may appear.

This property insurance shall be on an "All-Risk" (Special Perils) coverage form and shall include without limitation, insurance against the perils of fire, and physical loss (excluding earthquake), or damage including theft, vandalism, malicious mischief, collapse, flood, windstorm, false work, 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. CONTRACTOR shall fund the deductible which shall not exceed ten thousand dollars ($10,000) one hundred thousand dollars ($100,000.00).

CONTRACTOR shall provide the City with a certificate of insurance and loss payee endorsement showing proof of coverage prior to commencement of construction activities.

13.1.2 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 CONTRACTOR and its subcontractors; products and completed operations of CONTRACTOR and its subcontractors; and premises owned, leased or used by CONTRACTOR and its subcontractors.

(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.

13.1.3 Other Insurance Provisions.
The policies are to contain, or be endorsed to contain, the following provisions:

(1) CONTRACTOR's insurance coverage, including excess insurance, 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 CONTRACTOR'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 CONTRACTOR'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.

13.1.4 Acceptability of Insurance.
Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit M must be declared to and approved by the CITY in writing prior to execution of this Agreement.

13.1.5 Verification of Coverage.

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. 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) For all insurance policy renewals during the term of this Agreement, CONTRACTOR shall send insurance certificates reflecting the policy renewals directly to:

   City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668
Insurance certificates also may be faxed to (888) 355-3599, or e-mailed to: certificates-sacramento@riskworks.com

(3) The CITY may withdraw its offer or cancel the Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement as set forth below. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

13.1.6 Subcontractors. Contractor shall require and verify that all subcontractors maintain commercial general liability, automobile liability, and workers' compensation coverage that meets the minimum scope in this Exhibit M. Commercial general liability and automobile liability insurance shall have limits of not less than $1,000,000.

13.2 General Indemnification Obligations

A. Contractor shall indemnify, defend with counsel acceptable to City, and hold
harmless to the full extent permitted by law, at Contractor's expense, City and its directors, elected officials, officers, officials, employees, agents, consultants, engineers, and each of them (collectively the "Indemnified Parties"), from and against any and all liability, loss, damage, claims, actions, causes of action, expenses and costs (including, without limitation, reasonable City staff attorney fees and outside attorney fees, and costs and fees of litigation) (collectively, "Liability") of every nature to the extent caused by Contractor's negligent performance of the Work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except that such obligation to defend and indemnify does not apply to the extent such Liability was caused by the active negligence, sole negligence or willful misconduct of the Indemnified Parties. Such indemnification by the Contractor shall include, but not be limited to, the following:

1. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Contractor, its subcontractors, employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Contractor, its employees, or agents;

2. Liability or claims arising directly or indirectly from Contractor's negligent acts that cause bodily injury, occupational sickness or disease, or death of the Contractor's, or Supplier's own employees, or agents engaged in the Work resulting in actions brought against the Indemnified Parties;

3. Liability or claims arising directly or indirectly from or based on the violation of any Laws or Regulations, whether by the Contractor, its subcontractors, employees, or agents;

4. Liability or claims arising directly or indirectly from the negligent or legally unauthorized use or manufacture by the Contractor, its subcontractors, employees, or agents in the performance of this Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specified stipulated in this Agreement.

5. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the City or any other parties by the Contractor, its subcontractors, employees, or agents;

6. Liability or claims arising directly or indirectly from the wilful misconduct of the Contractor, its subcontractors, employees, or agents;

7. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the Contractor;

8. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the Contractor, Subcontractors, Suppliers, or any of their employees or agents due to Contractor's negligence or breach
of any obligation in this Agreement, and;

9. Liability or claims arising directly, or indirectly, or consequentially out of any action, legal or equitable, brought against the Indemnified Parties, their consultants, subconsultants, and the directors, officers, elected officials, employees, agents and volunteers of each or any of them, to the extent caused by the Contractor's negligent or improper use of any premises acquired by permits, rights of way, or easements, the Site, or any land or area contiguous hereto or its performance of the Work thereon.

10. Liability arising directly or indirectly from exposure to hazards in violation of the California Labor Code that may be asserted by any person or entity, including, but not limited to, the Contractor, arising out of or in connection with the negligent activities of the Contractor, its agents, employees or privileges pursuant to this Contract, whether or not there is concurrent negligence on the part of the Indemnified Parties.

11. Liability or claims arising directly or indirectly from the failure of Contractor to comply with the B. Mitigation, Monitoring and Reporting Program and permit requirements, Section 011050, GENERAL INFORMATION AND REQUIREMENTS, or Section 01140, WORK RESTRICTIONS.

12. Liability or claims arising out of Contractor's performance of its Work.

B. The Contractor shall reimburse the Indemnified Parties for all costs and expenses, (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other consultants and professionals and court costs of appeal) incurred by said Indemnified Parties arising out of or in enforcing the provisions of this Paragraph.

C. The indemnification obligation under this Article 13.2 shall not be limited in any way by any limitation on the amount or type of insurance carried by Contractor or by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

D. Pursuant to California Public Contract Code Section 9201, City shall timely notify Contractor of receipt of any third-party claim relating to this Agreement.

E. The Contractor's obligations pursuant to this provision will survive the expiration or earlier termination of this Contract.

F. The Contractor hereby agrees at its expense promptly to assume the defense of and to defend, with counsel acceptable to the City, against any indemnified Claim, suit or other proceeding brought thereon, and promptly to pay any and all costs, charges, attorney's fees, and other expenses and any and all judgments that may be incurred against the City, and each elected officials, officers, representatives, agents, consultants, engineers or employees, or any of them to the extent arising from any
negligent act, error, or omission, or from any willful misconduct of the Contractor in the performance of the Contractor's obligations under this Agreement.

G. The only limitations on this provision shall be those imposed by Civil Code section 2782.

13.3 Hazardous Substance Indemnifications Obligations

Neither Contractor nor its subcontractors or suppliers shall use, generate, manufacture, store or dispose of on, under or about the Project Site, or transport to, from, along or across the Project Site, any flammable, explosive radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter "Hazardous Substance").

A. Without limiting any remedies City may have, in the event any disposal, release, discharge or spill of a Hazardous Substance or other contamination occurs within the Project Site at any time during, or as a result of, Contractor's use of the Project Site, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of the City, its contractors, officers, representatives, agents, consultants, engineers or employees, the Contractor shall immediately notify City and take all action to mitigate the effects of such disposal, release, discharge, spill or contamination. The Contractor shall at Contractor's own expense, unless otherwise directed by City, remediate such disposal, release, discharge of spill or contamination in compliance with all applicable laws, rules and regulations. City shall have the option to perform the remediation itself or through any contractor if Contractor fails to do so. Contractor shall cooperate with City to complete the remediation and shall reimburse City for all costs and expenses incurred in connection with the remediation.

B. In the event Contractor observes any material Contractor believes or has reason to believe may be a Hazardous Substance or encounters any unknown physical condition of any unusual nature within the Project Site, other than disposals, releases, discharges, spills or contamination covered in (A), Contractor shall, without disturbing the condition, immediately cease all use of the Project Site and notify City. The City shall investigate the condition and take any clean-up or other remedial action City deems necessary in its sole discretion.

C. In the event the City or its contractor elects to perform remediation work, Contractor shall upon notice from City, cease use of the Project Site as directed in the notice. The City will notify Contractor when the condition has been resolved, at which time, but not before, Contractor may resume its use of the Project Site.

D. The Contractor agrees to assume liability for and to defend and hold harmless the Indemnified Parties from and against all injuries or death to any person and damage to any property, and all related expense, including without limitation attorneys' fees, investigators' fees, administrative charges, litigation expenses and any judgments,
fines, penalties or other charges assessed against Indemnified Parties, resulting from Contractor's failure to comply with this Article and any laws, rules or regulations concerning the subject matter hereof. The provisions of this Article shall survive the expiration and termination of this Agreement.

The obligations and liabilities arising under Article 13.4, **Hazardous Substance Indemnifications Obligations**, shall be in addition to and independent of those obligations and/or liabilities arising under the other provisions of this Agreement and shall in no way limit, alter, reduce or eliminate the effect of such other provisions.

**ARTICLE 14**

**MISCELLANEOUS PROVISIONS**

14.1 **Governing Law.** This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Sacramento, State of California, and governed by California law (excluding choice of law rules).

14.2 **Assignment.** The Contractor will not assign any rights or delegate duties under this Agreement without the written consent of the City, which consent will not unreasonably be withheld, including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. City has consented to Contractor's use of subcontractors listed in Exhibit E, **DESIGNATION OF SUBCONTRACTORS**.

14.3 **Severability.** If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

14.4 **Contractor Licensing.** For the duration of the Contract, the Contractor shall possess a valid State of California Class A- General Engineering Contractor's License.

14.5 **Permits and Licenses.** For the duration of the Contract, the Contractor shall have a local business license for the work contemplated. All subcontractors will be required to secure the appropriate local business license before they commence work on the Project. The Contractor shall have all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature legally required for Contractor to practice its profession or provide any Work or services under the Contract. Contractor
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 Contractor to practice its profession or provide such Work or services.

14.6 **Whole Agreement.** This Agreement, the Exhibits hereeto and the Contract Documents, specifications and Drawings represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

14.7 **Conflict of Interest.** Contractor 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 Contractor’s performance of Work under this Contract. Contractor 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. Contractor 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 Contractor is or employs a former officer or employee of the City, Contractor and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any City department, board, commission or committee.

14.8 **Contractor Not Agent.** Except as City may specify in writing, Contractor and Contractor’s personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor’s personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

14.9 **No Waiver.** Neither the inspection by City or its agents, nor any order or certificate for payment of money, nor 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 agreement or of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach.

14.10 **Contractor Shall Assume Risks.** Until the Final Completion or acceptance by City of all Work under this contract, the Work shall be under Contractor’s responsible care and charge. Contractor shall rebuild, repair, restore and make good all injuries, damages, corrections, and repairs occasioned or rendered necessary by accidental causes of any nature except earthquake or flood, to all or any portions of the Work, except as otherwise stipulated and/or as compensated by insurance.

14.11 **General Liability of Contractor.** Except as otherwise herein expressly stipulated, Contractor 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
14.12 Not Used.

14.13 Penalty for Collusion. If, at any time, it is found that the person, firm, or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract shall be null and void, and the Contractor and its sureties shall be liable for loss or damage which the City may suffer thereby.

14.14 Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

No action or failure to act by the City, the Design Engineer, or the Construction Manager shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

14.15 Rights of Action. No right of action shall accrue upon or by reason of this Agreement to or for the use or benefit of anyone other than the parties to this Agreement, except where a third party is identified as an express intended beneficiary of the Contractor’s obligations owed to City, including, but not limited to, the indemnification and additional insured requirements contained in the Contract Documents. The parties to this Agreement are the Contractor and the City.

14.16 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement or the Contract Documents shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

A. personal delivery, in which case notice is effective upon delivery;
B. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
C. nationally recognized overnight courier, with charges prepaid or charged to the sender’s account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
D. facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by
facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a non-business day.

14.17 **Priority Local Hire.** Contractor shall work towards the goal that a minimum of 5% of Contractor’s total labor hours for on-site Project construction work performed by workers who are California residents ("Labor Hours"), including work performed by apprentices, journeymen, and administrative support staff, be completed by “Priority Workers.” A “Priority Worker” is a resident who resides within the SHRA Promise Zone Boundary or one of the following economically disadvantaged zip code areas: 95811, 95814, 95815, 95817, 95820, 95823, 95824, 95832, and 95838 (refer to map in Exhibit N). To demonstrate achievement of this 5% goal, Contractor and all subcontractors must provide monthly workforce reports to City by the 5th calendar day of each month, with the following information from the previous month:

1. Total Labor Hours for the month.
2. Number of Labor Hours worked by Priority Workers for the month.
3. Percentage of Labor Hours worked by Priority Workers for the month.
4. Addresses of the Priority Workers who performed Labor Hours for that month.
5. Payroll records verifying time worked by Priority Workers and rate of pay.

14.18 **Considering Criminal Conviction Information in the Employment Application Process.** This Contract is subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process (also referred to as the “Ban-the-Box” Ordinance). A summary of the requirements of Sacramento City Code Chapter 3.62, entitled "Ban-The-Box Requirements," can be viewed at: http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements. By signing this Contract, Contractor acknowledges and represents that Contractor has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by City, Contractor agrees to promptly provide such documents and information as may be required by City to verify Contractor’s compliance. Any violation by Contractor of Sacramento City Code Chapter 3.62 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies. Contractor agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.
IN WITNESS WHEREOF, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE March 22, 2019

BY

Joseph B. Lawrence
Print Name

Asst. Vice President
Title

BY

Ruben Moreno, Jr.
Print Name

Secretary
Title

10000001448
DIR Registration #
77-0004110
Federal ID#
309-6519-8
State ID#
1038749

City of Sacramento Business Operation Tax Certificate No. (City will not award contract until Certificate Number is obtained)

Type of Business Entity (check one):

_____ Individual/Sole Proprietor

_____ Partnership

x Corporation

_____ Limited Liability Company

_____ Other (please specify:____________________)

If Contractor is an out-of-state corporation, Contractor 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.

MCKINLEY WATER VAULT PROJECT

ADDENDUM #5

AGREEMENT
CITY OF SACRAMENTO
a municipal corporation

DATE ________________________

BY ________________________
For: Howard Chan, Interim City Manager

Original Approved As To Form:

Attest:

City Attorney ________________________

city Clerk ________________________

Notices to the Parties shall be given at the following addresses:

City:

City Clerk of City of Sacramento
City Hall
915 I Street, 5th Floor, Public Counter
Sacramento, California 95814

Contractor:
W. M. Lyles Co.
1210 W. Olive Avenue
Fresno, CA 93728
CERTIFICATION

This is to certify that I, Ruben Moreno, Jr., am the Secretary of W. M. Lyles Co., that W. M. Lyles Co. (formerly known as Pac-Nine Construction), is a California Corporation incorporated May 6, 1982, and that the attached Sections 7, 8, 9, and 10 from Article IV of the Bylaws are true and accurate copies, and that said Bylaws were duly adopted by the Board of Directors of the Corporation at its meeting on December 14, 1983, and Sections 7, 8, 9, and 10 of Article IV have not been amended to this date.

I further certify that at various duly called meetings of the Board of Directors of W. M. Lyles Co. held on October 4, 2010, October 11, 2012, June 17, 2013, October 1, 2013, May 19, 2017, March 29, 2018, and October 1, 2018, the following officers were elected:

Stanley H. Simmons – President/CEO/Treasurer (CFO)
Kenneth D. Strosnider – Executive Vice President
Robert P. Saleen – Senior Vice President
David H. O’Deard – Assistant Vice President/Assistant Secretary
Joseph B. Lawrence – Assistant Vice President
Kevin R. Shigematsu – Assistant Vice President
Anthony M. Mueller – Assistant Vice President
Ruben Moreno, Jr. – Secretary
Scott R. Fults – Assistant Secretary
Chanel L. Prince – Assistant Secretary

I also certify as of the date of this certification no changes have occurred.

DATED: March 22, 2019

Ruben Moreno, Jr.
Secretary
all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

ARTICLE IV

OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a Chief Executive Officer, a President, a Secretary and a Chief Financial Officer. The corporation may also have, at the discretion of the Board of Directors, a Chairman of the Board, one or more vice presidents, and one or more assistant secretaries or treasurers and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article. Officers other than the Chairman of the Board need not be directors. One person may hold two or more offices.

Section 2. ELECTION. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article, shall be chosen annually by the Board of Directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified. Officers need not be shareholders of the corporation.

Section 3. SUBORDINATE OFFICERS, ETC. The Board of Directors may appoint such other officers as the business of the corporation may require, each of whom shall hold office for such periods, have such authority and perform such duties as are provided in the By-laws or as the Board of Directors may from time to time determine.

Section 4. REMOVAL AND RESIGNATION. Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board or by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the Chief Executive Officer or to the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
Section 5. VACANCIES. A vacancy in any office because of death, removal, resignation, disqualification or any other cause shall be filled in the manner prescribed in the By-laws for regular appointments to such office.

Section 6. CHAIRMAN OF THE BOARD. The Chairman of the Board, if there shall be such an officer, shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the By-laws.

Section 7. CHIEF EXECUTIVE OFFICER. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. He shall preside at all meetings of the shareholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall be ex officio a member of all the standing committees, including the Executive Committee, if any, and shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or the By-laws.

Section 8. PRESIDENT. In the absence or disability of the Chief Executive Officer, the President shall perform all of the duties of the Chief Executive Officer and when so acting shall have all of the powers of and be subject to all of the restrictions on the Chief Executive Officer. The President shall have such other powers and perform such other duties as from time to time may be prescribed by the Chief Executive Officer, the Board of Directors or the By-Laws.

Section 9. VICE PRESIDENT. In the absence or disability of the President, the vice presidents in order of their rank as fixed by the Board of Directors or, if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors or the By-laws.

Section 10. SECRETARY. The Secretary shall keep, or cause to be kept, a book of minutes at the principal
office or such other place as the Board of Directors may order of all meetings of directors and shareholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office or at the office of the corporation's transfer agent a share register or a duplicate share register showing the names of the shareholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors required by law or by the By-laws to be given, and he shall keep the seal of the corporation in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the By-laws.

Section 11. CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and shares. Any surplus, including earned surplus, paid-in surplus and surplus arising from a reduction of stated capital, shall be classified according to source and shown in a separate account. The books of account shall at all times be open to inspection by any director.

The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the Chief Executive Officer and directors, whenever they request it, an account of all of his transactions as Chief Financial Officer and of the financial condition of the corporation and have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the By-laws.
EXHIBIT I

CERTIFICATE OF CORPORATION

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

I HEREBY CERTIFY that at a meeting of the Board of Directors of the ____________________________ Inc., a corporation existing under the laws of the State of ____________________, held on ______________, 2019, the following resolution duly passed and adopted:

"RESOLVED, that ____________________________, as ____________________________, of the Corporation, be and is hereby authorized to execute the Agreement for Construction of the McKinley Water Vault Project dated ______________, 2019, to the City of Sacramento this Corporation and that his/her execution thereof, attested by the Secretary of the Corporation, and with the Corporate seal fixed, shall be the official act and deed of this Corporation."

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Corporation this __________ day of __________, 2019.

(seal)

______________________________
Secretary

______________________________
Corporate Officer

Company Address:

______________________________, Inc.

______________________________

***END OF EXHIBIT I***

EXHIBIT I
CERTIFICATE OF CORPORATION
WORKER'S COMPENSATION INSURANCE CERTIFICATION

TO THE CITY OF SACRAMENTO:

The undersigned does hereby certify that he is aware of the provisions of Section 3700 et seq. of the Labor Code which require every employer to be insured against liability for worker's compensation claims or to undertake self-insurance in accordance with the provisions of said Code, and that he/she will comply with such provisions before commencing the performance of the work on this contract.

__________________________  
W. M. Lyles Co.  
Bidder

BY: ____________________________  

Title: Joseph B. Lawrence, Asst. Vice President

Address: 1210 W. Olive Avenue, Fresno, CA 93728

_____________________________________
Date: March 22, 2019

PLEASE READ CAREFULLY BEFORE SIGNING

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

1. An individual using a firm name, sign: "John Doe, and 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)
MEMORANDUM

DATE: March 8, 2019

TO: Shannon Brown, Director of Youth, Parks, & Community Enrichment

CC: Kevin Hocker, City Urban Forester

FROM: James Yorita, P.E., Associate Engineer

SUBJECT: Justification for City Tree-Removal – McKinley Water Vault Project

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**Purpose of Memorandum**

The purpose of this memorandum is to provide justification to the Director of Youth, Parks, & Community Enrichment or their Designee for the removal of five (5) trees, all with DSH (Diameter at standard height) of four inches or more, as part of the public project known as the McKinley Water Vault Project in compliance with Section 12.56.040 of the City tree ordinance, Ordinance No. 2016-0026, adopted on August 4, 2016.

**Background**

The Department of Utilities is seeking approval to award a construction contract to build the McKinley Water Vault project. McKinley Park is a 28-acre neighborhood park located at 601 Alhambra Blvd in Council District 3. The McKinley Water Vault project will reduce combined sewer system outflows and flooding in the combined sewer system. The project will consist of construction fencing, demolition, clearing and grubbing, excavation, below ground offline storage facility, below ground odor control structure, sump station, grading, drainage, concrete flatwork, shade structures, picnic tables, barbeque grills, benches, trash receptacles, drinking fountain, new restroom building with (4) handicap accessible restrooms, irrigation upgrades, jogging path improvements, turf removal, replacement with low water use planting and trees, and appurtenant facilities. The project also includes the removal of one (1) 5" Valley Oak, one (1) 6" Elm, one (1) 7" Sawleaf Zelkova, one (1) 10" London Planetree, and one (1) 13" CA Coast Redwood. These five existing trees are recommended to be removed to provide ingress/egress to the site and to provide sufficient space for project improvements. The five removed trees will be replaced with sixty-three (63) trees around the proposed soccer field and remodeled corporate picnic area. Tree removal has been reviewed and approved by Urban Forestry Pursuant to City Code Chapter 12.56.040. City Council approval is needed to remove the trees for construction of the project.
Justification

To complete the Project, staff proposes to remove five (5) trees with a total DSH of 41" from the site. This tree removal is necessary to facilitate the construction of the Project. As a public project this action does not require the development of a tree replacement plan under the new City tree ordinance, however, it is the department’s intent to meet the replacement guidelines in the tree ordinance as much as is feasible given project site constraints. To this end the five (5) removed trees will be replaced with fifty-six (56) 24" box trees and seven (7) 36" box trees. With a total DSH of 133", the new trees will exceed the highest replacement standard in the new City tree ordinance.

Please approve the removal of the subject five (5) trees as proposed.

Written Justification Submitted by:

[Signature]

James Yorita, P.E., Associate Engineer

List of Exhibits
Exhibit A – Project Plans
Department of Youth, Parks, & Community Enrichment

The City intends to remove five (5) City trees from City owned property located at 601 Alhambra Blvd as part of the McKinley Water Vault project.

I have reviewed the project, and find the following:

1. The five (5) trees proposed for removal meet the definition of City trees by virtue of being located on a City owned parcel of land.
2. The five (5) trees proposed for removal are clearly identified on all current plans and documents that will be reviewed by City Council.
3. The proposed tree removal work will require council approval to be in compliance with City Ordinance No. 2016-0026; regarding Sacramento City Code 12.56.040.
4. The five (5) trees proposed for removal will be replaced at a rate exceeding one inch of trunk diameter for each inch of trunk diameter removed.
5. The proposed tree removal work is required to construct the McKinley Water Vault project and will result in an overall improvement to the existing condition of the park.
6. The proposed tree removal and replacement has been reviewed by the City Urban Forester, who approved of the project and the replacement plan.

Based on these findings, the Director of Youth, Parks, & Community Enrichment is in agreement with the staff justification to remove five (5) trees. Staff may proceed to place a Council Report on the City Council Agenda, containing the Director of Youth, Parks, & Community Enrichment recommendation to approve removal of five (5) city trees located within the project site for the McKinley Water Vault project, in accordance with City Ordinance 2016-0026, regarding Sacramento City Code 12.56.040.

Shannon Brown, Director of Youth, Parks, & Community Enrichment

3/14/19
Date
RESOLUTION NO. 2019-

Adopted by the Sacramento City Council

April 23, 2019

AWARDING CONSTRUCTION CONTRACT FOR THE MCKINLEY WATER VAULT PROJECT, APPROVING REMOVAL OF FIVE TREES AND APPROVING RELATED BUDGET TRANSFER

BACKGROUND

A. The Combined Sewer System (CSS) collects and conveys both sanitary sewer and storm drain flows in a single system. It serves 7,500 acres of the City including the Downtown, East Sacramento, River Park, Land Park, Curtis Park, and Oak Park neighborhoods. CSS flows during storms can exceed system capacity. When this happens, outflows, where mixed stormwater and untreated wastewater leave the underground system and surface onto nearby low-lying streets or onto other properties, can result. When CSS flows are discharged into the Sacramento River, they are termed Combined Sewer Overflows (CSOs).

B. In June 1990, the Regional Water Quality Control Board (RWQCB) issued a Cease and Desist Order (CDO) requiring the City to eliminate CSS outflows and CSOs. After numerous studies and benefit/cost analyses, the City Council adopted the 1995 Combined Sewer System Improvement Plan (CSSIP) that met the requirements of the CDO, the Environmental Protection Agency’s Combined Sewer Overflow Control Policy, and the City’s adopted goals for the storm drainage system. That same year, the RWQCB approved the Improvement Plan, rescinded the CDO, and issued a National Pollutant Discharge Elimination System permit that mandated implementation of the Improvement Plan.

C. The 1995 CSSIP anticipated increasing the pumping capacities of Sumps 1/1A and 2/2A; converting Pioneer Reservoir to a primary treatment facility; installing a relief sewer system in the downtown area; and constructing local or regional underground storage facilities. Many of the initial 1995 planned improvements have been completed, others are in design or under study as part of an on-going process to improve the CSS. The recently updated CSSIP identifies 28 projects throughout the service area that include a mix of large regional storage vaults and large diameter inline storage/conveyance pipes, including the McKinley Park CSS Storage Facility.

D. On October 9, 2018, the City Council certified the environmental impact report and approved the preliminary design plans for the McKinley Water Vault Project. That action allowed staff to proceed with the preparation of the Project’s final plans and
E. On December 21, 2018 a Request for Bid Proposals (RFBP) for Construction Services for the McKinley Water Vault Construction Project was advertised on PlanetBids (#B19141321008) inviting interested contractors to submit proposals to construct the McKinley Water Vault Project. On February 14, 2019, bid proposals were received, from five firms; W.M. Lyles Co., Flatiron, Kiewit Infrastructure West Co., C. Overaa & Co., and Gateway Pacific Contractors Inc. The Department of Utilities created an evaluation team which included city staff and an outside agency engineer to evaluate the proposals. After the proposal review was completed, the evaluation team interviewed two of the contractors. Based on the combined interview and bid proposal scores, the selection committee chose W.M. Lyles Co. as the top-ranked firm for this project.

F. A budget transfer of $18,196,540 is required to provide sufficient funds to complete the project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The construction plans and specifications for the McKinley Water Vault Project in the Combined Sewer System Capital Program (X14010100) are approved.

Section 2. The City Manager or the City Manager’s designee is authorized to execute an agreement with W.M. Lyles Co. to provide construction services for the McKinley Water Vault Project for an amount not-to-exceed $24,945,000.

Section 3. Removal of five trees in McKinley Park for the McKinley Water Vault project is approved, to be replaced with sixty-three trees.
Section 4. The following budget transfers are approved:

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<th>Program No.</th>
<th>Fund</th>
<th>Project Name</th>
<th>Amount</th>
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<tr>
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<td>X14000500</td>
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<td>Base CIP Program</td>
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<td>Pocket AD 2 Sewer Improvements</td>
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<td>Combined Sewer System Program</td>
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Adopted by the City of Sacramento City Council on April 23, 2019, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest:

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*