

**AGREEMENT FOR SERVICES**

THIS AGREEMENT ("AGREEMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the CITY OF MANTECA, a municipal corporation of the State of California (hereinafter referred to as "CITY"), and

Fusion Sign and Design, LLC  
Consultant

680 Columbia Ave	Riverside	CA	92507
MAILING ADDRESS	CITY	STATE	ZIP

A Delaware LLC hereinafter referred to as "CONSULTANT".

WITNESSETH:

A. WHEREAS, CITY desires to enter into this Agreement for services for the Development , Procurement, and Installation of an Archway Structure at Main Street and Wetmore Street CIP 25013 ("PROJECT").

B. WHEREAS, CITY desires to retain CONSULTANT to provide these services by reason of its qualifications, applicable license(s), and experience for performing such services, and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

**AGREEMENT**

**1. SCOPE OF SERVICES:**

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in **Exhibit "A"**. This AGREEMENT and its exhibits shall be known as the "Agreement Documents". Terms set forth in any Agreement Document shall be deemed to be incorporated in all Agreement Documents as if set forth in full herein. In the event of conflict between terms contained in these Agreement Documents, the more specific term shall govern. If any portion of the Agreement Documents is in conflict with any other portion or provisions contained in the AGREEMENT, the AGREEMENT shall govern over the conflicting provisions contained in the exhibits to the AGREEMENT. To eliminate doubt, in the case of conflict between Consultant's proposal or Consultant's attachments and the City's AGREEMENT and attachments, the City's AGREEMENT and attachments shall take precedence over Consultant's proposal and attachments.

B. Consultant enters into this AGREEMENT as an independent contractor and not as an employee of the City. The Consultant shall have no power or authority by this AGREEMENT to bind the City in any respect. Nothing in this AGREEMENT shall be construed to be inconsistent

with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this AGREEMENT.

C. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this AGREEMENT is based on such independent investigation and research.

**2. TERM OF AGREEMENT**

A. The services of Consultant are to commence upon execution of this Agreement and shall be completed and this AGREEMENT terminated on December 31, 2026, unless otherwise extended in writing by the mutual agreement of both parties.

B. The City Manager or designee may, by written instrument signed by the Parties, extend the duration of this AGREEMENT in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

C. The Agreement Deliverables are as follows:

<u>Deliverables</u>	<u>Due Date</u>
Conceptual Designs	Before November 30, 2025
Design Approval	Before December 31, 2025
Fabrication/Submittal Approval	Before January 31, 2026
Installation	Before February 28, 2026
Project Completion	Before March 31, 2026

Payment for services shall be made upon City's approval of deliverables.

**3. COMPENSATION:**

A. The Consultant shall be paid in accordance to the attached Fee Schedule in **Exhibit "C"**. Consultant charges separately for certain costs incurred in the representation, as well as for any disbursements to third parties made on City's behalf. Such costs and disbursements include, for example, the following: mileage (at the IRS rate in effect at the time the travel occurs), overnight delivery and messenger services. Consultant shall be reimbursed for expenses related to travel, for example (flights, hotels, meals). However, Consultant shall not make travel arrangements or incur costs on behalf of City without prior written authorization to incur said expenses and in no event shall total compensation under this AGREEMENT exceed FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000) without City's prior written approval. With written approval an additional SIXTY-EIGHT THOUSAND NINE HUNDRED FIFTY THREE DOLLARS (\$68,953) may be made available for architectural and site preparations.

B. Said amount shall be paid within 30 days after satisfactory PROJECT progress and approval of the monthly billings by the CITY. Consultant shall furnish City with invoices for all expenses as well as for all materials authorized by this AGREEMENT. The invoices shall be submitted with the monthly billings.

C. If the work is temporarily suspended at the request of the City, compensation shall be based upon the portion of work completed as of the date of the suspension , subject to Section 4.

**4. TERMINATION:**

A. This AGREEMENT may be terminated by either party, provided that the other party is given not less than thirty (30) calendar days' written notice (delivered by registered mail) of intent to terminate.

B. The City may temporarily suspend this AGREEMENT, at no additional cost to City, provided that the Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this AGREEMENT.

C. Notwithstanding any provisions of this AGREEMENT, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this AGREEMENT by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined.

D. In the event of termination, the Consultant shall be compensated as provided for in this AGREEMENT, except as provided in Section 4C. Upon termination, the City shall be entitled to all final work and draft work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 herein.

**5. AMENDMENTS, CHANGES OR MODIFICATIONS:**

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

**6. EXTENSIONS OF TIME:**

Consultant may, for good cause, request extensions of time to perform the services required herein. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this AGREEMENT in the manner provided in Section 5.

**7. PROPERTY OF CITY:**

A. It is mutually agreed that all draft and final materials prepared by the Consultant under this AGREEMENT shall become the property of the City, and the Consultant shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this AGREEMENT which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to the City which is in the Consultant's possession.

B. Additionally, it is agreed that the parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by Consultant herein (the "Work") to be a work made for hire. Consultant acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the City.

**8. COMPLIANCE WITH ALL LAWS:**

A. Consultant shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this AGREEMENT. It shall be City's responsibility to obtain all rights of way and easements to enable Consultant to perform its services herein. Consultant shall assist City in providing the same.

B. Consultant warrants to the City that it is licensed by all applicable governmental bodies to perform this AGREEMENT and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this AGREEMENT.

**9. WARRANTIES AND RESPONSIBILITIES - CONSULTANT:**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth in **Exhibit "A"** in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this AGREEMENT shall be in accordance with applicable federal, State and local law in accordance with Section 17A hereof.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this AGREEMENT. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City, is no longer employed by Consultant, or is replaced with the written approval of the City, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Consultant shall be liable for any expenses thereby incurred.

**10. SUBCONTRACTING:**

None of the services covered by this AGREEMENT shall be subcontracted without the prior written consent of the City., which will not be unreasonably withheld. Consultant shall be fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

**11. ASSIGNABILITY:**

Consultant shall not assign or transfer any interest in this AGREEMENT whether by assignment or novation, without the prior written consent of the City. However, claims for money due or to become due to Consultant from the City under this AGREEMENT may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

**12. INTEREST IN AGREEMENT:**

Consultant covenants that neither it, nor any of its employees, agents, contractors, subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the AGREEMENT, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City Manager determines in writing that Consultant's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this AGREEMENT, City determines and notifies Consultant in writing that Consultant's duties under this AGREEMENT warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

**13. MATERIALS CONFIDENTIAL:**

All of the materials prepared or assembled by Consultant pursuant to performance of this AGREEMENT are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

**14. LIABILITY OF CONSULTANT-NEGLIGENCE:**

Consultant shall be responsible for performing the work under this AGREEMENT in a manner which is consistent with the generally-accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

**15. INDEMNITY AND LITIGATION COSTS:**

To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising from Consultant's negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this AGREEMENT except such loss or damage caused solely by the active negligence, sole negligence, or willful misconduct of the City. The provisions of this paragraph shall survive termination or suspension of this AGREEMENT.

**16. CONSULTANT TO PROVIDE INSURANCE:**

## Agreement for Services

A. Consultant shall not commence any work before obtaining, and shall maintain in full force at all times during the duration and performance of this AGREEMENT, the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than "A" in Class VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

B. Prior to execution of this AGREEMENT and prior to commencement of any work, the Consultant shall furnish the City with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the AGREEMENT. The Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the AGREEMENT not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this AGREEMENT. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this AGREEMENT. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant.

1. Commercial General Liability Insurance.

a. Commercial General Liability Insurance with \$5,000,000 minimum limit for each occurrence and \$7,000,000 minimum limit for general aggregate.

b. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

c. Commercial General Liability Additional Insured Endorsement naming the following as insured on 2001 or earlier issued endorsement forms: "City of Manteca, its officers, officials, employees, agents, and volunteers".

2. Automobile Liability: If the vehicles are brought onto city facilities, covering any auto, or of Contractor has no owned autos, hired, and non-owned autos, the Contractor shall maintain automobile liability with limits no less than:

a. Automobile Liability Insurance with \$1,000,000 minimum limit per accident for bodily injury and property damage.

b. Automobile Liability Additional Insured Endorsement naming the following as additional insured: "City of Manteca, its officers, officials, employees, agents, and volunteers".

3. Workers' Compensation: As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

4. Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

Agreement for Services

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

a. The City of Manteca, its officers, officials, employees, agents and volunteers are to be covered as insured's as respect to: liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as CG 20 10 and CG 20 37 if completed operations coverage is required.

b. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers, shall be excess of the Consultant's insurance and shall not contribute with it.

c. The applicant'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.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Manteca.

6. Verification of Coverage: Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Manteca reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

8. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Manteca.

9. Waiver of Subrogation: Consultant hereby grants to The City of Manteca a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

10. Subcontractors: Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that The City of Manteca is an additional insured on insurance required from subcontractors.

11. SPECIAL RISKS OR CIRCUMSTANCES: The City of Manteca reserves the right to modify these requirements based on the nature of the risk, prior events, insurance coverage, or other special circumstances.

12. Consultant shall sign the Certificate of Compliance with labor Code 3700 (Exhibit B).

13. No other provision of this Agreement or any attachment thereto shall reduce the insurance or indemnity obligations imposed under this Section.

C. In addition to any other remedy the City may have, if Consultant fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage that is not being maintained, in the form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due to Consultant under this AGREEMENT.

D. No policy required by this AGREEMENT shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless written approval is obtained by Consultant from the City.

E. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.

F. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the AGREEMENT.

**17. MISCELLANEOUS PROVISIONS:**

A. Compliance with Laws. Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this AGREEMENT or the materials used or which in any way affect the conduct of the work.

B. Unlawful Acts. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

C. Record Retention. Consultant shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this AGREEMENT. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this AGREEMENT are made to the Consultant.

D. Notice. All notices that are required to be given by one party to the other under this AGREEMENT shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

Agreement for Services

City:

Somporn Boonsalat  
Deputy Director of Engineering  
City of Manteca  
1001 W. Center St.  
Manteca, CA 95337  
(209) 456-8115  
sboonsalat@manteca.gov

Consultant:

Brian Johnson  
Division Manager  
Fusion Sign and Design  
293 E Wetmore Street  
Manteca, CA 95337  
(209) 915-0439  
brian@fusionsign.com

E. Governing Law and Venue. This AGREEMENT shall be interpreted and governed by the laws of the State of California, and any legal action relating to this AGREEMENT shall take place in the Superior Court, County of San Joaquin.

F. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this AGREEMENT.

G. Severability. If any provision of this AGREEMENT is held to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this AGREEMENT shall continue in full force and effect.

H. Mediation. In the event of any controversy or claim arising out of or relating to this Agreement or the Services provided by Consultant (each referred to as a "Dispute" and all collectively referred to as the "Disputes"), the Parties shall try to resolve all Disputes through good faith, direct discussions involving the representatives of each Party who possess the necessary authority to resolve such Dispute. If direct discussions are unsuccessful in resolving a Dispute, the Parties shall endeavor to resolve the matter by mediation through and administered by JAMS or its successor in interest. JAMS shall provide the parties with the name of five (5) qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS, and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

I. Costs and Attorney' Fees. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

J. Entire Agreement. This AGREEMENT constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this AGREEMENT. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this AGREEMENT, except those contained in or referred to in writing.

K. Execution. This AGREEMENT may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

L. Authority to Enter Agreement Consultant warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this AGREEMENT. Each party warrants to the other that the signature to this AGREEMENT have the legal power, right, and authority to enter into this AGREEMENT and to bind each party.

M. California Prevailing Wage Requirement Pursuant to California Labor Code sections 1720 through 1861, the Consultant, its Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR), if applicable. This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including but not limited to all cleanup work at the jobsite. The most current prevailing wage determination can be found at <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

Agreement for Services

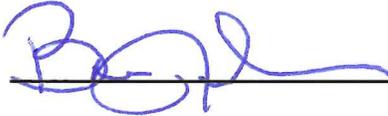
CITY OF MANTECA:

CONSULTANT:

\_\_\_\_\_  
Toni Lundgren  
City Manager

Fusion Sign and Design

ATTEST:

By:   
\_\_\_\_\_  
Brian Johnson Division Manager

\_\_\_\_\_  
Cassandra Candini-Tilton,  
Director of Legislative Services

COUNTERSIGNED:

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Matt Boring  
Interim Director of Finance

\_\_\_\_\_  
(Type name and title)

COUNTERSIGNED:

Address: Fusion Sign and Design, LLC  
293 E Wetmore Street  
Manteca, CA 95337

\_\_\_\_\_  
Stephanie Van Steyn,  
Director of Human Resources

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Riana Daniel, Interim City Attorney

EXHIBIT A

Consultant Proposal/Scope of Work

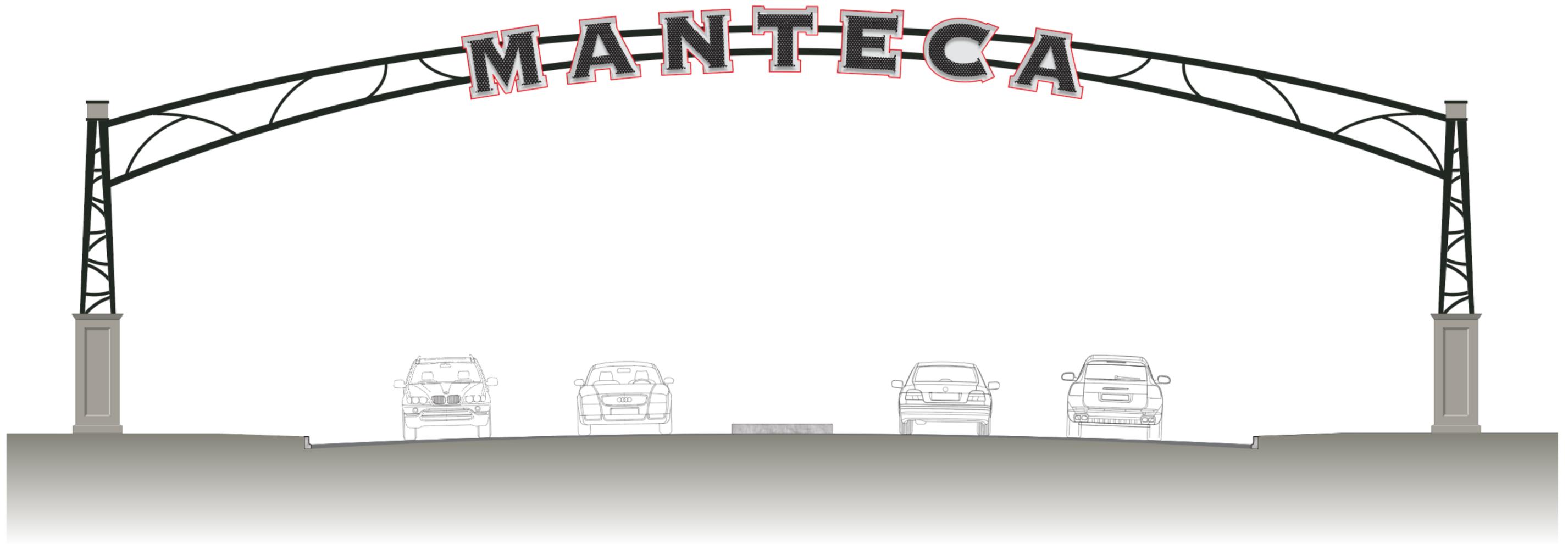
Concept 1



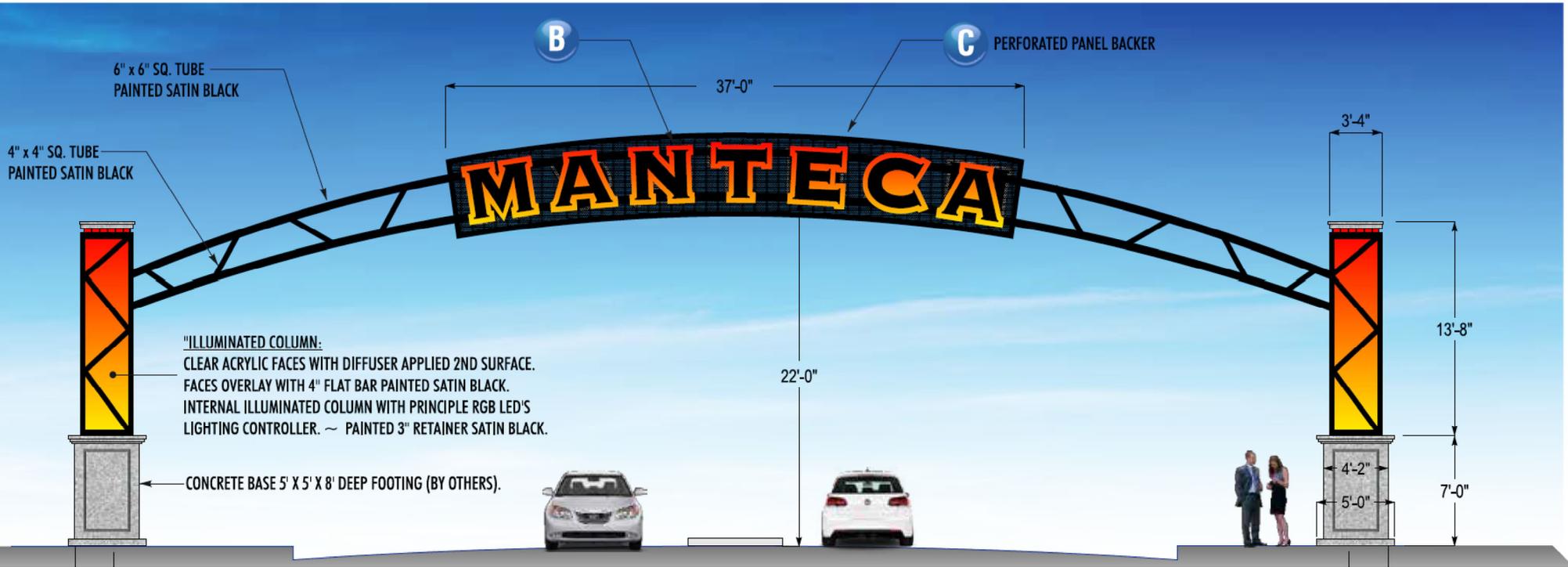
Concept 2



Concept 3



# Concept 4



**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT**

**CITY OF MANTECA**

These General Conditions are based in part on  
EJCDC C-700 (2002 Copyrighted Edition)

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## GENERAL CONDITIONS

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### ARTICLE 1. DEFINITIONS AND TERMINOLOGY

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#### Section 1.01 Defined Terms

- A. Wherever used in these General Conditions or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof. Said terms are generally capitalized or written in italics, but not always. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise.
1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*--The written instrument which is evidence of the agreement between City and Contractor covering the Work.
  3. *Application for Payment*--The form acceptable to the City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *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.
  5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*--The individual or entity who submits a Bid directly to CityCity.
  7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security, if any, and the Bid Form with any supplements.
  9. *Change Order*--A document recommended by Construction Manager which is signed by Contractor and City and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *City*--City of Manteca, San Joaquin County, California, including its agencies, departments or divisions whose conduct or action is related to the work.
  11. *Claim*--A demand or assertion by City or Contractor seeking an adjustment of Contract Price 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.
  12. *Construction Manager*--The individual or entity retained by the City to perform construction quality assurance and contract administration functions not involving reviews and interpretations with respect to design intent. The Construction Manager is a representative of the City, either an employee or consultant, employed to act as advisor to the City in construction matters related to the Contract.
  13. *Contract*--The entire and integrated written agreement between the City and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

14. *Contract Documents*-- Those items so designated in the Agreement. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
15. *Contract Price*--The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
16. *Contract Times*--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.
17. *Contractor*--The individual or entity with whom City has entered into the Agreement.
18. *Cost of the Work*--See Paragraph 11.01.A for definition.
19. *Day*-- 24 consecutive hours running from midnight to midnight; calendar day.
  - a. *business day*: Day on the calendar except a Saturday and a holiday.
  - b. *working day*: Time measure unit for work progress. A working day is any 24-consecutive-hour period. CityCity
20. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows, on paper, the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
21. *Delay*--Event that extends the completion of an activity.
  - a. *excusable delay*: Delay caused by the Department and not reasonably foreseeable when the work began, such as:
    - 1) Change in the work
    - 2) Department action that is not part of the Contract
    - 3) Presence of an underground utility main not described in the Contract or in a location substantially different from that specified
    - 4) Described facility rearrangement not rearranged as described, by the utility City by the date specified, unless the rearrangement is solely for the Contractor's convenience
    - 5) Department's failure to obtain timely access to the right-of-way
    - 6) Department's failure to review a submittal or provide notification in the time specified
  - b. *critical delay*: Excusable delay that extends the scheduled completion date.
  - c. *concurrent delay*: Occurrence of at least 2 of the following events in the same period of time, either partially or entirely:
    - 1) Critical delay
    - 2) Delay to a controlling activity caused by the Contractor
    - 3) Non-working day
22. *Department*--Engineering Department, City of Manteca, and its authorized representatives.
23. *Detour*--Temporary route for traffic around a closed road part. A passageway through a job site is not a detour.
24. *Director*--the Director of the Engineering Department, City of Manteca.
25. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective,

but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

26. *Engineer*--The individual or entity named as such in the Agreement.
27. *Field Directive*--A written order issued by the Construction Manager which requires Work to be completed but liability is either unclear or in dispute. Contractor is required to track the actual cost of labor, materials, and equipment to perform the Work for future liability discussions.
28. *Force Account Work also known as Time and Material*--Work ordered on a construction project without an existing agreement on its cost, and performed with the understanding that the contractor will bill the City according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit. (Refer to Section 12.01 of these General Conditions, and the California Department of Transportation Equipment Rental Rates and Labor Surcharge).
29. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
30. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
31. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
32. *Holiday*--Holiday shown in the following table:

<b>Holidays</b>	
Holiday	Date observed
Every Sunday	Every Sunday
New Year's Day	January 1st
Birthday of Martin Luther King, Jr.	3rd Monday in January
Lincoln's Birthday	February 12th
Washington's Birthday	3rd Monday in February
Cesar Chavez Day	March 31st
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving Day	Day after Thanksgiving Day
Christmas Day	December 25th

Additionally, the City does not work on Fridays. Special accommodations must be made by the Contractor for City staff to be available for any work to occur on these Fridays.

33. *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.
34. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
35. *Material shortage*--
  - a. *Shortage of raw or produced material that is area-wide and caused by an unusual market*

*condition except if any of the following occurs:*

- 1) Shortage relates to a produced, nonstandard material
  - 2) Supplier's and the Contractor's priority for filling an order differs
  - 3) Event outside the United States for a material produced outside the United States
  - 4) Unavailability of water that delays a controlling activity
36. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
  37. *Notice of Award*--The approval of the construction contract award by the Manteca City Council.CityCity
  38. *Notice to Proceed*--A written notice given by City to 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.
  39. *City*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
  40. *PCBs*--Polychlorinated biphenyls.
  41. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
  42. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
  43. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
  44. ~~*Project Documents*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Documents, which may be bound in one or more volumes, is contained in the table(s) of contents.~~
  45. *Quality Control Plan*--Contractor's plan to ensure QC.
  46. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  47. *Related Entity*--An officer, director, partner, employee, agent, consultant, or subcontractor.
  48. *Resident Project Representative*--The authorized representative of Construction Manager who may be assigned to the Site or any part thereof.
  49. *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.
  50. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
  51. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
  52. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which

are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

53. *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 City which are designated for the use of Contractor.
54. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
55. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
56. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the City, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be safely and conveniently utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
57. *Substantial Defects*--Defects plainly seen as damaged, displaced, or missing parts or improper functioning of materials, parts, equipment, or systems.
58. *Successful Bidder*--The Bidder submitting the lowest, responsive, and responsible Bid to whom City makes an award.
59. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.
60. *Supplier*--A manufacturer, fabricator, supplier, distributor, material man, 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.
61. *Traffic*--Pedestrians, bicyclists, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using any street, roadway or sidewalk for purposes of travel.
62. *Traffic lane*--Portion of traveled way used for the movement of a single line of vehicles.
63. *Traveled way*--Portion of the roadway for the movement of vehicles, exclusive of the shoulders, berms, sidewalks, and parking lanes.
64. *Unauthorized Work*: Work performed outside of the scope of the agreement or beyond the lines and grades described in the Contract or established by the Engineer or extra work performed without City authorization.
65. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, 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.
66. *Unit Price Work*--Work to be paid for on the basis of unit prices.
67. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

- ~~68. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by City and recommended by Construction Manager ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times. The signatory for the City may authorize a Work Change Directive for work on a Not to Exceed basis, where the Engineer's estimate for probable cost for said work is within the signatories authority and threshold in conformance of the City's purchasing policies.~~
69. *Withhold*--Money temporarily or permanently taken from a progress payment.
70. *Work*--Resources and activities required for Contract acceptance, including labor, materials, equipment, and the created product.
71. *Work Plan*--Detailed formulation of a program of action.
72. *Work Zone*--Area of a roadway or street with construction, maintenance, or utility work activities.

## Section 1.02 Terminology

- A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.
- B. Intent of Certain Terms or Adjectives
1. The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer or Construction Manager. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer or Construction Manager 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 or adjective is not intended to and shall not be effective to assign to Engineer or Construction Manager any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. ~~Day~~
- ~~1. The word "day" means a calendar day of twenty four (24) hours measured from midnight to the next midnight.~~
- D. Defective
1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
    - a. does not 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 recommendation of final payment (unless responsibility for the protection thereof has been assumed by City at Substantial Completion in

accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide, Supply

1. The word "Furnish" or the word "Install" or the word "Perform" or the word "Provide" or the word "Supply," or any combination or similar directive or usage thereof, shall mean FURNISHING AND INCORPORATING IN THE WORK including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context used.
2. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

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**ARTICLE 2. PRELIMINARY MATTERS**

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**Section 2.01 Delivery of Bonds and Evidence of Insurance**

- A. When Contractor delivers the executed counterparts of the Agreement to City, Contractor shall also deliver to City such bonds as Contractor may be required to furnish.
- B. Evidence of Insurance: Before any Work at the Site is started, Contractor and City shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and City respectively are required to purchase and maintain in accordance with Article 5.

**Section 2.02 Copies of Documents**

- A. City shall furnish to Contractor electronic PDF copies of the Drawings and Contract Documents.

**Section 2.03 Commencement of Contract Times; Notice to Proceed**

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

**Section 2.04 Starting the Work**

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

**Section 2.05 Before Starting Construction**

- A. Preliminary Schedules: Within ten (10) days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Construction Manager for timely review:
  1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  2. a preliminary Schedule of Submittals; and
  3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

**Section 2.06 Preconstruction Meeting**

- A. Before any Work at the Site is started, a meeting attended by City, Contractor, Construction Manager, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

### **Section 2.07 Initial Acceptance of Schedules**

- A. At least ten (10) days before submission of the first Application for Payment a conference attended by Contractor, Construction Manager, and others as appropriate will be held to review for acceptability to Construction Manager as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
- B. The Progress Schedule will be acceptable to City if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on City responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
- C. Contractor's Schedule of Submittals will be acceptable to Construction Manager and Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
- D. Contractor's Schedule of Values will be acceptable to Construction Manager as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work for each Bid Item as submitted on the Bid Sheet.

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## **ARTICLE 3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

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### **Section 3.01 Intent**

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to City.
- C. Clarifications and interpretations with respect to the design intent of the Contract Documents shall be issued by Engineer through the Construction Manager, and clarifications and interpretations with respect to administrative matters shall be issued by the Construction Manager as provided in Article 9.
- D. The Specifications may vary in form, format and style. Some specification sections are written in varying degrees of streamlined or declarative style and some sections may be relatively narrative by comparison. Omissions of such words and phrases as "the Contractor shall," "in conformity with," "as shown," or "as specified" are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making claims for extra Work.
- E. The cross referencing of specification sections under the subparagraph heading "Related Sections include but are not necessarily limited to:" and elsewhere within each specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross

referencing is complete.

### **Section 3.02 Reference Standards**

#### **A. Standards, Specifications, Codes, Laws, and Regulations**

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of City, Contractor, Engineer or Construction Manager, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City, Engineer or Construction Manager, or any of their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### **Section 3.03 Reporting and Resolving Discrepancies**

#### **A. Reporting Discrepancies**

1. **Contractor's Review of Contract Documents Before Starting Work:** Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Construction Manager any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer through Construction Manager before proceeding with any Work affected thereby.
2. **Contractor's Review of Contract Documents During Performance of Work:** If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Construction Manager in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

#### **B. City Resolving Discrepancies**

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of 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 violation of such Law or Regulation).

### **Section 3.04 Amending and Supplementing Contract Documents**

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a field Directive or Change Order.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
1. A Field Order
  2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
  3. Engineer's written interpretation or clarification of matters of design intent issued through the Construction Manager, and Construction Managers written interpretation or clarification of administrative matters.

### **Section 3.05 Reuse of Documents**

- A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:
1. have or acquire any title to or Cityship rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
  2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and Engineer and specific written verification or adoption by Engineer.
- B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### **Section 3.06 Electronic Data**

- A. Copies of data furnished by City or Engineer to Contractor or Contractor to City or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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## **ARTICLE 4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

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### **Section 4.01 Availability of Lands**

- A. City shall furnish the Site. City shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and City are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in City's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in

Paragraph 10.05.

1. Where easement lines are shown on the Contract Drawings they shall be considered as shown in their final location unless stipulated otherwise in the Supplementary Conditions.
- B. Upon reasonable written request, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and City's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

**Section 4.02 Subsurface and Physical Conditions**

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
  2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against City or Engineer, or any of their Related Entities with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

**Section 4.03 Differing Subsurface or Physical Conditions**

- A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
  1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
  2. is of such a nature as to require a change in the Contract Documents; or
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify City and Construction Manager in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Construction Manager's and Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Construction Manager will promptly review the pertinent condition with Engineer as appropriate, determine the necessity of City's obtaining additional exploration or tests with respect thereto, and advise City in writing (with a copy to Contractor and Engineer) of Construction Manager's findings and conclusions.
- C. Possible Price and Times Adjustments:
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
    - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
    - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
    - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
    - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
  3. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, City, Engineer and Construction Manager, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### **Section 4.04 Underground Facilities**

- A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the City of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
  2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
    - a. reviewing and checking all such information and data,
    - b. contacting and coordinating with underground service alert (USA) and locating all Underground Facilities within the construction area
    - c. coordination of the Work with the City of such Underground Facilities, including City, during construction, and

- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
  3. Pursuant to Government Code Section 4216-4216.9, the Contractor shall notify the appropriate regional notification center of all excavations as required under Government Code sections 4216 to 4216.9. The Contractor shall contact Underground Service Alert at [usanorth811.org](http://usanorth811.org) for the location of subsurface installations. Contractor shall furnish to the Construction Manager written documentation of its contact(s) with Underground Service Alert within two (2) days after such contact(s).
  4. At least two (2) days before performing any excavation work, the Contractor shall request the utility Citys to mark or otherwise indicate the location of their service. Contractor shall furnish to the Construction Manager written documentation of its contact(s) with utility Citys requesting them to mark or otherwise indicate the location of their respective facilities within three (3) days after such contact(s).
  5. 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 Citys and which Contractor believes may affect or be affected by Contractor's operations. If no pay item is provided in the Contract for this work, full compensation for such work shall be considered as included in the prices bid for other items of work.
- B. Not Shown or Indicated:
1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the City of such Underground Facility and give written notice to that City and to City and Construction Manager. Construction Manager will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
  2. If Construction Manager concludes that a change in the Contract Documents is required, a Field Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, City or Contractor may make a Claim therefor as provided in Paragraph 10.05. In accordance with Government Code Section 4215 the Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay is caused by the failure of the City or utility company to provide for the removal or relocation of facilities for which they are the responsible party.
  3. When the General Requirements, Specifications, or Construction Drawings indicate 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.
  4. Temporary or permanent service, 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.

5. Except where the City of a damaged utility has advised that it intends to repair the damage through its own forces or forces that it will retain or has retained, Contractor shall, within 24 hours of receipt from the City of notice to commence correction of damage, notify the Construction Manager in writing if Contractor intends to repair the damage. During nights and weekends when work is not in progress, City may give such notice by telephone or by facsimile transmission to the Contractor's facsimile number and such notice will be immediately effective. The Contractor's failure to provide timely written notification that it intends to repair the damage shall be deemed its agreement that the City may repair the damage at Contractor's expense without further notice and without prejudice to any other remedy available to City. In such event, the Contractor may observe the Work if this can be done without in any way delaying the progress thereof, but may not contest any element of the expense of repair or the lack of further notice. This provision is in addition to any other remedy, including the remedy provided in 13.09, City May Correct Defective Work.

#### **Section 4.05 Reference Points**

- A. City shall specify the nearest monument location to establish reference points for construction to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of City. Contractor shall report to Construction Manager whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by licensed land surveyor registered in the state of California.

#### **Section 4.06 Hazardous Environmental Condition at Site**

- A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against City or Engineer, or any of their Related Entities with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify City and

Construction Manager (and promptly thereafter confirm such notice in writing). City shall promptly consult with Construction Manager concerning the necessity for City to retain a qualified expert to evaluate such condition or take corrective action, if any.

1. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- E. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. City may have such deleted portion of the Work performed by City's own forces or others in accordance with Article 7.
- F. To the fullest extent permitted by Laws and Regulations, City shall indemnify and hold harmless Contractor, Subcontractors, Engineer and Construction Manager, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.F shall obligate City to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Engineer and Construction Manager, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
1. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

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## ARTICLE 5. BONDS AND INSURANCE

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### Section 5.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also

furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify City and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### **Section 5.02 Licensed Sureties and Insurers**

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by City or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### **Section 5.03 Certificates of Insurance**

- A. Contractor shall deliver to City, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by City or any other additional insured) which Contractor is required to purchase and maintain.
- B. City shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which City is required to purchase and maintain.

#### **Section 5.04 Contractor's Liability Insurance**

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible

property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the Cityship, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) City, Engineer and Construction Manager, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  2. include at least the specific coverages and be written for not less than the limits of liability provided in the Contract Documents or required by Laws or Regulations, whichever is greater;
  3. include completed operations insurance;
  4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to City and Contractor and to each other additional insured identified in the Supplementary Conditions (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
  7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.
    - a. Contractor shall furnish City and each other additional insured identified in the Supplementary Conditions evidence satisfactory to City and any such additional insured of continuation of such insurance at final payment and one year thereafter.
  8. With respect to all insurance required by this paragraph 5.04., Contractor agrees to waive all rights of subrogation against City, Engineer and Construction Manager, and each additional insured identified in the Supplemental Conditions.

#### **Section 5.05 City's Liability Insurance**

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, City, at City's option, may purchase and maintain at City's expense City's own liability insurance as will protect City against claims which may arise from operations under the Contract Documents.

#### **Section 5.06 Property Insurance**

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the interests of City, Contractor, Subcontractors, Engineer and Construction Manager, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, collapse, explosion, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by City prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by City;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by City, Contractor, Engineer and Construction Manager with thirty (30) days written notice to each other additional insured.
- B. Contractor shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of City, Contractor, Subcontractors, Engineer and Construction Manager, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty (30) days prior written notice has been given to City and Contractor and to each other additional insured and will contain waiver provisions in accordance with Paragraph 5.07.
- D. City shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, City shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, City shall in writing advise Contractor whether or not such other insurance has been procured by City.

#### **Section 5.07 Waiver of Rights**

- A. City and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect City, Contractor, Subcontractors, Engineer and Construction Manager, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional

insureds thereunder. City and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer and Construction Manager, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by City as trustee or otherwise payable under any policy so issued.

- B. City waives all rights against Contractor, Subcontractors, Engineer and Construction Manager, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to City's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by City; and
  2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by City during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by City covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, Engineer or Construction Manager, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

#### **Section 5.08 Receipt and Application of Insurance Proceeds**

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with City and made payable to City as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. City shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. City as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to City's exercise of this power. If such objection be made, City as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, City as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, City as fiduciary shall give bond for the proper performance of such duties.

#### **Section 5.09 Acceptance of Bonds and Insurance; Option to Replace**

- A. If either City or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. City and Contractor shall each provide to the other such additional information in

respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### **Section 5.10 Partial Utilization, Acknowledgment of Property Insurer**

- A. If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.
1. All insurance required by the Contract Documents, or by laws or regulations shall remain in full force and effect on all phases of the Work, whether or not the Work is occupied or utilized by City, until all Work included in the agreement has been completed and final payment has been made.
  2. Nothing contained in the insurance requirements shall be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from Contractor's, subcontractors' or suppliers' operations under the Contract. Contractor agrees that Contractor alone shall be completely responsible for procuring and maintaining full insurance coverage as provided herein or as may be otherwise required by the Contract Documents. Any approval by City or Construction Manager shall not operate to the contrary.

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### **ARTICLE 6. CONTRACTOR'S RESPONSIBILITIES**

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#### **Section 6.01 Supervision and Superintendence**

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of City or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. Means or methods of work suggested by the City, the Construction Manager, or the Engineer to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor. The City, Construction Manager, or the Engineer assume no responsibility therefor, and in no way will be held liable for any defects in the Work which may result from or be caused by use of such plan or method of Work.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to City and Construction Manager except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### **Section 6.02 Labor; Working Hours**

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good

discipline and order at the Site.

- B. In the absence of any Federal, state or local laws, regulations or covenants, the Contractor may conduct its performance of the Work at the Contractor's sole discretion, except that the cost of any overtime pay or other expense incurred by the City for Resident Project Representative, City's Representative and construction observation services, occasioned by the conduct of Work on Saturday, Sunday, any legal holiday, or as overtime on any regular work day, shall be reimbursed to the City by the Contractor. Contractor shall provide to Construction Manager 72-hour written notice of intent to work outside of regular working hours.
- C. Prevailing Wage:
1. Pursuant to SB 854 and SB 96 and to provisions of the Labor Code Section 1770, et. seq., of the State of California, the Director of the Department of Industrial Relations has ascertained the prevailing rate of wages of the locality in which the Work is to be performed and applicable to the work to be done. Prevailing wage for each job category shall be as published by Department of Industrial Relations at the time of project work.
  2. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
  3. No Contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5
  4. Contractor shall post job site notices prescribed by regulation.
  5. For each worker paid less than the stipulated rate in the execution of the Contract by the Contractor, or any subcontractor under it, in violation of the provisions of the Labor Code, and in particular, Section 1770 to Section 1780, inclusive, the Contractor shall be subject to the provisions and penalties of Section 1775 of the Labor Code. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amounts paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing rate shall be paid to each worker by the Contractor.
  6. The wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum set forth.
  7. No extra compensation whatever shall be allowed by the City due to the inability of the Contractor to hire labor at the minimum rate nor for any necessity for payment by the Contractor for subsistence, travel time, overtime, or other added compensation, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.
  8. If it becomes necessary to employ a craft other than those listed in the prevailing rates, the Contractor shall notify the City immediately and the City will obtain the additional prevailing rate from the Director of the Department of Industrial Relations and the rate thus determined shall be applicable as a minimum at the time of initial employment.
  9. The Contractor shall pay travel and subsistence payments to workers needed to execute the work as such travel and subsistence payments are defined in the applicable collective bargaining agreement filed with the Department of Industrial Relations pursuant to Labor Code Section 1773.8.
  10. City and Contractor stipulate that Labor Code Section 1775 will be complied with.
  11. The City will consider the type of work performed by classification traditionally employed to perform said work in San Joaquin County when determining appropriate craft, classification or type of worker under Section 1733.2 of the California Labor Code.
  12. Not Used.

13. Certified Payrolls - In accordance with Section 1776 of the Labor Code, each Contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor or the subcontractor in connection with the project. Pursuant to SB 854 and SB 96, All Contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).
14. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or its authorized representative on request.
  - b. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - c. A certified copy of all payroll records shall be made available upon request by the public in accordance with Section 1776 of the Labor Code.
15. The Contractor is responsible for its and its subcontractors' compliance with the provisions of Section 1776 of the Labor Code.
16. Overtime Requirements - The Contractor shall forfeit, as a penalty to the City, the penalty as provided in Section 1813 of the Labor Code for each worker employed in the execution of the Contract by the Contractor, or any subcontractor under the Contractor, for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any one week, in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractors in excess of eight (8) hours a day and forty (40) hours during one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, at not less than one and a half (1.5) times the basic rate of pay as provided for in Section 1815 of the Labor Code.
17. Apprentice and Trainee - Attention is directed to the provisions in Section 1777.5 of the Labor Code and in accordance with the regulations of the California Apprenticeship Council concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor.
18. Section 1777.5 requires the Contractor or subcontractors employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the project that administers the apprenticeship program in that trade for a certificate of approval. The Contractor and subcontractors are required to submit contract award information to the applicable joint apprenticeship committee. As provided for in Section 1777.5 of the Labor Code, the Contractor is required to make contributions to funds established for the administration of apprenticeship programs.
19. It shall be the responsibility of the Contractor to abide by the provisions of Section 1777.5 of the Labor Code and to require all subcontractors employed by or contracting with the Contractor to abide by said provisions. The Contractor shall furnish the City any and all evidence of compliance with this code section when requested by the City.
20. For failure to comply with Section 1777.5 of the Labor Code, the Contractor shall be subject to the penalties in Section 1777.7 of the Labor Code. The provisions of this paragraph apply only to the extent not preempted by Federal law.
21. Workers' Compensation Insurance - The Contractor is required to secure the payment of compensation to its employees in accordance with the provisions of Sections 1860 and 3700 of the

Labor Code and Paragraph 00820-2.40, Workers' Compensation Insurance.

### **Section 6.03 Services, Materials, and Equipment**

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
  - 1. Where the Work requires equipment be furnished, due to the lack of standardization of equipment as produced by the various manufacturers, it may become necessary to make minor modifications in the structures, buildings, piping, mechanical work, electrical work, accessories, controls, or other work, to accommodate the particular equipment offered. Contractor's bid price for any equipment offered shall include the cost of making any necessary changes subject to the approval of Construction Manager.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by Engineer or Construction Manager, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
  - 1. Materials and equipment, if furnished by the City, will be made available as designated in the General Requirements. The cost of unloading, hauling and handling, and placing City-furnished materials and equipment shall be considered as included in the price bid for the Contract item involving such City-furnished material.
  - 2. Contractor shall inspect and assure itself of the amount and soundness of such materials and equipment.
  - 3. The Contractor will be held responsible for all materials and equipment furnished to it and received by it, and shall pay all demurrage and storage charges. City-furnished materials and equipment lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor will be liable to the City for the cost of replacing City-furnished material and equipment and such costs may be deducted from any moneys due or to become due the Contractor.
- D. All items of standard equipment shall be the latest model at the time of bid, unless otherwise specified.

### **Section 6.04 Progress Schedule**

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Construction Manager for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

### **Section 6.05 Substitutes and "Or-Equals"**

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. “Or-Equal” Items: If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  - a. in the exercise of reasonable judgment Engineer determines that:
    - i) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - ii) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; it has a proven record of performance and availability of responsive service; and

Contractor certifies that, if approved and incorporated into the Work:

- iii) there will be no increase in cost to the City or increase in Contract Times, and
    - iv) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. Substitute Items
  - a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
  - b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Construction Manager from anyone other than Contractor.
  - c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
  - d. Contractor shall make written application to Construction Manager for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
    - i) shall certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design,
      - 2) be similar in substance to that specified, and
      - 3) be suited to the same use as that specified;
    - ii) will state:

- 1) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;
  - 2) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
  - 3) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- iii) will identify:
- 1) all variations of the proposed substitute item from that specified; and
  - 2) available engineering, sales, maintenance, repair, and replacement services.
- iv) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. **Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse City for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### **Section 6.06 Concerning Subcontractors, Suppliers, and Others**

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to City as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to City in advance for acceptance by City by a specified date prior

to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, City's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by City of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of City or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to City, Engineer, and Construction Manager for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City, Engineer or Construction Manager and any such Subcontractor, Supplier or other individual or entity, nor
  - 2. shall create any obligation on the part of City or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Construction Manager and Engineer through Contractor.
- F. The divisions and sections of the Specifications and the 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.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of City, Construction Manager and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against City, Contractor, Construction Manager and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### **Section 6.07 Patent Fees and Royalties**

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of City or Engineer its use is subject to patent rights or copyrights calling

for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Construction Manager and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### **Section 6.08 Permits**

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. City shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. City shall pay all charges of utility Citys for connections for providing permanent service to the Work.

#### **Section 6.09 Laws and Regulations**

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither City, Construction Manager nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### **Section 6.10 Taxes**

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### **Section 6.11 Use of Site and Other Areas**

- A. Limitation on Use of Site and Other Areas
  - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof, or of any adjacent land or areas resulting from the performance of the

Work.

2. Should any claim be made by any such City or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
  3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Construction Manager and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such City or occupant against City, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### **Section 6.12 Record Documents**

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Directives, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Construction Manager for reference, and shall be current at the time of Contractor's submission of Application for Payment as a condition precedent for Construction Manager's recommendation of payment. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Construction Manager for City. Contractor shall include accurate locations for buried and imbedded items.

#### **Section 6.13 Safety and Protection**

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and

maintain all necessary safeguards for such safety and protection. Contractor shall notify Citys of adjacent property and of Underground Facilities and other utility Citys when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

1. At least three (3) business days before performing any excavation work or other work that could damage existing improvements within, or adjacent to, the Work area, the Contractor shall notify the Citys of properties adjacent to the Work area of intended commencement of such Work and request that such Citys mark or otherwise indicate the location of underground improvements of which they are aware or other improvements not readily apparent from visual inspection of the adjacent property, such as survey points and utility service installations not owned by the appropriate utility. The Contractor shall also give three (3) business days notice to occupants or Citys of adjacent property to permit them to salvage or relocate plants, trees, fences, sprinklers, and other improvements within the right-of-way that are designated for removal or would be destroyed because of the Work. Contractor shall furnish to the Construction Manager written documentation of its contact(s) with property Citys (1) requesting them to mark or otherwise indicate the location of their respective facilities, and (2) notifying them to salvage or relocate landscaping or improvements within or adjacent to the Work area within two (2) days after such contact(s).
  2. It shall be the Contractor's responsibility to determine the exact location (including depth for underground improvements) and to document the existing condition of all existing improvements which are not designated for removal (e.g., curbs, sidewalks, survey points, fences, walls, signs, utility installations, pavements, structures, etc.) which the Contractor believes may affect or be affected by Contractor's operations.
  3. In the event that existing improvements are found that have not been identified in the Contract Documents or indicated by the respective property City, or are found to exist in a substantially different location than so indicated, the Contractor shall (1) immediately notify the Construction Manager thereof in writing, and (2) take steps to avoid damaging such improvements, including ascertaining their exact location if not yet known.
- C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City, Construction Manager or Engineer, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
1. The Contractor shall immediately notify the Construction Manager and the property City of any damage to any existing improvements that have not been designated to be removed. The Contractor shall be responsible for the cost of repairing or restoring all existing improvements which are not designated for removal (e.g., curbs, sidewalks, survey points, fences, walls, signs, utility installations, pavements, structures, etc.) and are damaged or removed as a result of its operations. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.
  2. The Contractor shall protect from damage all landscaping (e.g., trees, lawns, shrubbery, etc.) adjacent to the Work area or within the Work area that have not been designated to be removed. The Contractor shall immediately notify the Construction Manager and the property City of any damage to any such landscaping which is not designated for removal. The Contractor shall be responsible for the cost of restoring or replacing such landscaping in as nearly the original conditions and location as it is reasonably possible. Lawns shall be re-seeded and covered with suitable mulch.

3. Except where an City of damaged improvements or landscaping has advised that he or she intends to repair the damage himself or through forces that he or she will retain or has retained, Contractor shall, within 24 hours of receipt from the City of notice to commence correction of damage, notify the Construction Manager in writing if Contractor intends to repair the damage. During nights and weekends when work is not in progress, City may give such notice by telephone or by facsimile transmission to the Contractor's facsimile number designated and such notice will be immediately effective. The Contractor's failure to provide timely written notification that it intends to repair the damage shall be deemed its agreement that the City may repair the damage at Contractor's expense without further notice and without prejudice to any other remedy available to City. In such event, the Contractor may observe the Work if this can be done without in any way delaying the progress thereof, but may not contest any element of the expense of repair or the lack of further notice. This provision is in addition to any other remedy, including the remedy provided in 13.09, City May Correct Defective Work.
- D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Construction Manager has issued a notice to City and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- E. The Contractor shall establish, implement, and maintain a Written injury prevention program as required by Labor Code Section 6401.7. This written program shall be submitted to the Construction Manager within five (5) days of Notice to Proceed. The Contractor's injury prevention program will not be reviewed for approval. Before proceeding with any construction work, the Contractor shall take the necessary action to comply with all provisions for safety and accident prevention. The Contractor shall develop and maintain for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. 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, as a part of its safety program, shall maintain at its office or other well-known place at the Site, safety equipment applicable to the Work as prescribed by the aforementioned authorities, all items necessary for giving first aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons who may be injured on the jobsite.
  1. In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation 5 feet or more in depth, detailed plans showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazard of caving ground during such excavation. If such plans vary from the shoring system standards set forth in the Construction Safety Orders in Title 8, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer. Shoring, bracing, sloping, or other protective system shall not be less effective than required by the California Construction Safety orders. The Contractor shall designate in writing to the Construction Manager the "competent person" with the authority and responsibilities designated in the Construction Safety Orders.
  2. If death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the City. In addition, the Contractor must promptly report in writing to the Construction Manager all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to, the Site, giving full details and statements of witnesses. 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.
  3. 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.

**Section 6.14 Safety Representative**

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### **Section 6.15 Hazard Communication Programs**

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### **Section 6.16 Emergencies**

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Construction Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Field Directive or Change Order will be issued.
- B. If Contractor fails to take appropriate action in an emergency, the City also reserves the right to perform any portion of the work that threatens the safety or health of the public or City, and the safety of the work or any property or equipment. In the event the City performs work in an emergency, an appropriate Change Order shall be issued unilaterally deducting from the payments then or thereafter due the Contractor the cost for performing such Work, including compensation for the Engineer's, the Construction Manager's, and City's additional services made necessary by such emergency.

#### **Section 6.17 Shop Drawings and Samples**

- A. Contractor shall submit required Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
  - 1. Shop Drawings:
    - a. Submit number of copies specified in the General Requirements.
      - i) Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
      - ii) Shop Drawings submitted as herein provided by Contractor and reviewed by Engineer for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
      - iii) When Shop Drawings are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the drawings and Specifications.
      - iv) For-Information-Only submittals upon which the Engineer is not expected to conduct review or take responsive action may be so identified in the Contract Documents.
    - 2. *Samples*: Contractor shall also submit required Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.
      - a. Submit number of Samples specified in the Specifications.
      - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the

use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
    - a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
    - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
    - d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
  2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
  3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation; otherwise Contractor will not be relieved of the responsibility of executing the Work in accordance with the Contract Documents, even though such Shop Drawings or Samples have been otherwise reviewed.
    - a. If a Shop Drawing or Sample, as submitted, indicates a variation from the Contract Requirements as set forth in the Contract Documents and Engineer finds same to be in the interest of City and to be so minor as not to involve a change in the Contract Price or time for performance, Engineer may approve the Shop Drawings or Samples; provided however, such departure is slight in nature and does not affect the design concept of the Work.
  4. Contractor shall submit all Shop Drawings and Samples sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking and to avoid any delay in progress of the Work.
  5. Shop Drawings and Sample submittals not conforming to requirements of this paragraph 6.17D and Section 01340 will be returned to Contractor without action for resubmittal and the resulting delay shall be entirely the responsibility of Contractor.
- D. *Engineer's Review*
1. Engineer will provide timely review of required Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
  2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or

procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.
4. Engineer's check and review of Shop Drawings and Samples, Standard Specifications and descriptive literature submitted by Contractor will be only for general conformance with design concept, except as otherwise provided, and shall not be construed as:
  - a. permitting any departure from the Contract Requirements;
  - b. relieving Contractor of the responsibility for any error in details, dimensions or otherwise that may exist in such submittals;
  - c. constituting a blanket approval of dimensions, quantities, or details of the material or equipment shown; or
  - d. approving departures from additional details or instructions previously furnished by Engineer. Such check or review shall not relieve Contractor of the full responsibility of meeting all of the requirements of the Contract Documents.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

**Section 6.18 Continuing the Work**

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as City and Contractor may otherwise agree in writing.

**Section 6.19 Contractor's General Warranty and Guarantee**

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. Construction Manager and Engineer, and their Related Entities, shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Construction Manager and Engineer;
2. recommendation by Construction Manager or payment by City of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Construction Manager or any payment related thereto by City;
4. use or occupancy of the Work or any part thereof by City;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by the Construction Manager, Engineer or others; or
7. any correction of defective Work by City.

#### **Section 6.20 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, Construction Manager and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against City or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Construction Manager and Engineer and their respective officers, directors, partners, employees, agents, consultants and subcontractors arising out of:
  1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### **Section 6.21 Delegation of Professional Design Services**

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the permanent Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to permanent systems, materials or equipment incorporated into the Work are specifically required of Contractor by the Contract Documents, City and Engineer will specify all performance and design criteria that such services must

satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. City and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

#### **Section 6.22 Waste Disposal Services**

- A. Contractor shall use City garbage services for the disposal of construction waste. Contractor shall recycle waste as appropriate. Contractor shall provide a monthly update to the City of the quantity of waste recycled and general waste.

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### **ARTICLE 7. OTHER WORK AT THE SITE**

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#### **Section 7.01 Related Work at Site**

- A. City may perform other work related to the Project at the Site with City's employees, or via other direct contracts therefor, or have other work performed by utility Cities. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if City and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility City and City, if City is performing other work with City's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Construction Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility Cities and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between City and such utility Cities and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Construction Manager in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent

defects and deficiencies in such other work.

**Section 7.02 Coordination**

- A. If City intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have sole authority and responsibility for such coordination.

**Section 7.03 Legal Relationships**

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of City.
- B. Each other direct contract of City under Paragraph 7.01.A shall provide that the other contractor is liable to City and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.
- C. Contractor shall be liable to City and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

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**ARTICLE 8. CITY'S RESPONSIBILITIES**

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**Section 8.01 Communications to Contractor**

- A. Except as otherwise provided in these General Conditions, City shall issue all communications to Contractor through Construction Manager.

**Section 8.02 Replacement of Construction Manager or Engineer**

- A. In case of termination of the employment of either Construction Manager or Engineer, City shall appoint a Construction Manager or engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Construction Manager or Engineer.

**Section 8.03 Furnish Data**

- A. City shall promptly furnish the data required of City under the Contract Documents.

**Section 8.04 Pay When Due**

- A. City shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

**Section 8.05 Lands and Easements; Reports and Tests**

- A. City's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to City's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

**Section 8.06 Insurance**

- A. City's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

**Section 8.07 Change Orders**

- A. City is obligated to execute Change Orders as indicated in Paragraph 10.03.

**Section 8.08 Inspections, Tests, and Approvals**

- A. City's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

**Section 8.09 Limitations on City's Responsibilities**

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

**Section 8.10 Undisclosed Hazardous Environmental Condition**

- A. City's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

**Section 8.11 Evidence of Financial Arrangements**

- A. If and to the extent City has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy City's obligations under the Contract Documents, City's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

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**ARTICLE 9. CONSTRUCTION MANAGER'S AND ENGINEER'S STATUS DURING CONSTRUCTION**

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**Section 9.01 City's Representative**

- A. Construction Manager and Engineer will be City's representatives during the construction period. The duties and responsibilities and the limitations of authority of Construction Manager and Engineer as City's representatives during construction are set forth in the Contract Documents and will not be changed without written consent of City, Construction Manager and Engineer.

**Section 9.02 Visits to Site**

- A. Engineer may make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of City, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for City a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will endeavor to guard City against defective Work.
- B. Construction Manager will make visits to the Site at intervals appropriate to the various stages of construction as Construction Manager deems necessary in order to observe the progress that has been made and

the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Construction Manager, for the benefit of City, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Construction Manager will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Construction Manager's efforts will be directed toward providing for City a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Construction Manager will keep City informed of the progress of the Work, and will endeavor to guard City against defective Work.

- C. Engineer's and Construction Manager's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

### **Section 9.03 Construction Manager's Project Representative**

- A. If City and Construction Manager agree, Construction Manager will furnish a Resident Project Representative to assist Construction Manager in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If City designates another representative or agent to represent City at the Site who is not Construction Manager's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.
- B. Construction Manager's Resident Project Representative shall not authorize any deviation from the Contract Documents or substitutions of materials or equipment.

### **Section 9.04 Authorized Variations in Work**

- A. Construction Manager or Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on City and also on Contractor, who shall perform the Work involved promptly. If City or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

### **Section 9.05 Rejecting Defective Work**

- A. Construction Manager will have authority to reject Work which Construction Manager or Engineer believes to be defective, or that Construction Manager or Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Construction Manager will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.
- B. The acceptance at any time of materials or equipment by or on behalf of City shall not be a bar to future rejection if they are subsequently found to be defective, inferior in quality, or not equal to the material or equipment specified, or are not as represented to Construction Manager, Engineer or City.

### **Section 9.06 Shop Drawings, Change Orders and Payments**

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Construction Manager's authority as to Applications for Payment, see Article 14.

**Section 9.07 Determinations for Unit Price Work**

- A. Construction Manager will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Construction Manager will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Construction Manager's written decision thereon will be final and binding (except as modified by Construction Manager to reflect changed factual conditions or more accurate data) upon City and Contractor, subject to the provisions of Paragraph 10.05.

**Section 9.08 Decisions on Requirements of Contract Documents and Acceptability of Work**

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents with respect to matters of design intent. Construction Manager will be the initial interpreter of the requirements of the Contract Documents with respect to administrative matters and judge of the acceptability of the Work thereunder. All matters in question and other matters between City and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Construction Manager in writing within 30 days of the event giving rise to the question.
- B. Construction Manager or Engineer through Construction Manager will, with reasonable promptness, render a written decision on the issue referred. If City or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Construction Manager's or Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Construction Manager's or Engineer's written decision on the issue referred will be final and binding on City and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Construction Manager and Engineer will not show partiality to City or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**Section 9.09 Limitations on Construction Manager's and Engineer's Authority and Responsibilities**

- A. Neither Construction Manager's and Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Construction Manager or Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Construction Manager or Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Construction Manager or Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Construction Manager and Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Construction Manager and Engineer will not

- be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Construction Manager and Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
  - D. Construction Manager's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.
  - E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

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## ARTICLE 10. CHANGES IN THE WORK; CLAIMS

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### Section 10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order or a Field Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
  - 1. *Potential Change Order:*
    - a. When City requests Contractor to present a proposal to accomplish a change in the Work, the request will be made in the form of a Potential Change Order (PCO) prepared by Construction Manager. The PCO will describe the change and request Contractor to propose a cost and Contract Price and/or Contract Time change. Contractor will propose cost and/or time changes, if any, and shall provide an itemized breakdown of the cost of the change. Construction Manager will make recommendations to City concerning acceptance. If the PCO is approved by City, the PCO will be grouped into a future Change Order.
    - b. When the Contractor desires to propose changes to the Work, it may initiate a PCO in the same form as provided in Paragraph 10.01A.1.a. and submit the PCO to the Construction Manager for the Engineer's review and recommendation.
  - 2. *Field Directive:*
    - a. The City may issue a field directive as an order to perform additional work that is deemed necessary if the City and Contractor cannot agree upon a cost or schedule for proposed additional work or when they agree that delays could cause damage such that work must proceed immediately. Field directives are valid if signed by a signatory approved by City. The City's signatory may authorize a field directive for work on a Not-to-Exceed basis, where the Engineer's estimate for probable cost for said work is within the signatory's authority and threshold in conformance of the City's purchasing policies. Upon issuance of a valid Field Directive, Contractor shall proceed with work. A field directive shall be followed by a valid change order for an agreed upon or force account adjustment to Contract payment or schedule for the additional work, as provided in Section 12.01.
  - 3. *Force Account:*
    - a. Work paid for by force account may be authorized by City under a valid field directive. For work paid by force account, the Construction Manager compares the City's records to Contractor's daily force-account work report. When the Contractor and the City agree on the contents of the daily

force-account work reports, the City accepts the report and the City pays for the work. If the records differ, the City pays for the work based only on the information shown on the City's records. If a subcontractor performs work at force account, the markups specified for labor, materials, and equipment include compensation for all delay costs, overhead costs, and profit. If an item's unit price is adjusted for work-character changes, the City excludes Contractor's cost of determining the adjustment. Payment for City-operated labor and equipment is made at the market-priced invoice submitted.

- B. If the City chooses to pay for change order work based on an agreed price, but Contractor and the City cannot agree on the price, the City may choose to pay by force account. If a portion of extra work is covered by bid items, the City pays for this work as changed quantities in those items. The City pays for the remaining portion of the extra work by force account or agreed price.
- C. Not Used.
- D. If City and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Field Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### **Section 10.02 Unauthorized Changes in the Work**

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

#### **Section 10.03 Execution of Change Orders**

- A. It is at the sole discretion of the City Council, or a delegate explicitly authorized by City Council, to execute Change Orders. The City and the Construction Manager will review all change orders, and, if the changes are deemed reasonable and appropriate by the City, the City will proceed to execute the appropriate change orders accordingly. Change orders recommended by the Construction Manager to the City shall consist of:
  - 1. changes in the Work which are: (i) ordered by City pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or City's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Field Directive; and
  - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Construction Manager or by Engineer through Construction Manager pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

#### **Section 10.04 Notification to Surety**

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

#### **Section 10.05 Claims**

- A. *Construction Manager's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Construction Manager for decision. A decision by Construction Manager shall be required as a condition precedent to any exercise by City or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Construction Manager and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Construction Manager and the other party to the Contract within 60 days after the start of such event (unless Construction Manager allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Construction Manager and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless Construction Manager allows additional time).
- C. *Construction Manager's Action:* Construction Manager will review each Claim and, within thirty (30) days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
  - 1. deny the Claim in whole or in part,
  - 2. recommend approval of the Claim to the City, or
  - 3. notify the parties that the Construction Manager is unable to resolve the Claim if, in the Construction Manager's sole discretion, it would be inappropriate for the Construction Manager to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Construction Manager does not take action on a Claim within said thirty (30) days, the Claim shall be deemed denied.
- E. Construction Manager's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon City and Contractor, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within thirty (30) days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

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## ARTICLE 11. COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

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### Section 11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work, or the reasonable cost that would have been incurred in the case of deleted Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, training, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above. For Change Order pricing, the Labor Surcharge (social security contributions, unemployment excise, and payroll taxes) shall be twenty-seven (27) percent of the sum of the wages, vacation, and fringe benefits (workers' compensation, training, health and retirement benefits, sick leave, bonuses, and holiday pay).
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless City deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City and Contractor and shall deliver such bids to City, who will then determine, with the advice of Construction Manager, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City with the advice of Construction Manager, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by

insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of City. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain. For Change Order pricing, bonds and insurance shall be 1 percent of the Change Order value for both additive and credit changes that are above the original Contract value and 0 percent of the Change Order value for both additive and credit changes that are below the original Contract value.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
  - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Construction Manager an itemized cost breakdown together with supporting data.

## **Section 11.02 Allowances**

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or

entities as may be acceptable to City and Construction Manager.

- B. Not Used.
- C. Contingency Allowance
  - 1. Contractor agrees that a contingency allowance, if any, is for the sole use of City to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Construction Manager to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### **Section 11.03 Unit Price Work**

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Construction Manager subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to unit price work listed and the cost of incidental work included as a part of the unit price.
- D. City or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the total cost of a particular item of Unit Price Work amounts to ten percent (10%) or more of the Contract Price at time of Notice of Award and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than twenty-five percent (25%) from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or City believes that City is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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## **ARTICLE 12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

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### **Section 12.01 Change of Contract Price**

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Construction Manager and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by applica-

- tion of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum including overhead and profit not necessarily in accordance with Paragraph 12.01.C.2, and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of extra Work; or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (either by estimate before the work is performed or force account) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be fifteen percent (15%);
    - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent (5%);
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of fifteen percent (15%) of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor;
    - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
    - e. the amount of credit to be allowed by Contractor to City for any change which results in a net decrease in cost will be the amount of the reasonable cost that would have been incurred to perform the Work plus a deduction in Contractor's fee by an amount equal to five percent (5%) of such net decrease; and
    - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.
    - g. costs and mark up percentages for force account work shall conform to this Agreement, including the articles of these general conditions.

## **Section 12.02 Change of Contract Times**

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Construction Manager and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.
- C. No extension of the Contract Time will be allowed for additional Work or for claimed delay unless the additional Work contemplated or claimed delay is shown to be on the critical path of the Project's schedule of construction or Contractor can show by Critical Path Method analysis how the additional Work or claimed delay adversely affects the critical path.

### **Section 12.03 Delays**

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A, without additional increase in the project costs. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by City, acts or neglect of utility Citys or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If City, Construction Manager, Engineer, or other contractors or utility performing other work for City as contemplated by Article 7, or anyone for whom City is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility not under the control of City, or other causes not the fault of and beyond control of City and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be in accordance with Paragraph 12.02 C, and shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. City, Construction Manager, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor, or for concurrent delays. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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## **ARTICLE 13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

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### **Section 13.01 Notice of Defects**

- A. Prompt notice of all defective Work of which City or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### **Section 13.02 Access to Work**

- A. City, Construction Manager, Engineer, their consultants and other representatives and personnel of City, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

### **Section 13.03 Tests and Inspections**

- A. Contractor shall give Construction Manager timely notice of readiness of the Work in accordance with the Contract Documents for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. City shall employ and pay for the first testing services for Quality Assurance inspections, tests, or

approvals on behalf of the City as specified under the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
  3. as otherwise specifically provided in the Contract Documents.
- C. Where the contractor fails to meet quality assurance requirements, and additional inspection, testing or approvals are necessary to provide the required quality assurance as specified in the Contract Documents, the contractor shall bear the cost for said additional inspection, testing or approvals.
- D. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- E. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City's and Construction Manager's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City and Construction Manager.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Construction Manager, it must, if requested by Construction Manager, be uncovered for observation.
- G. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Construction Manager timely notice of Contractor's intention to cover the same and Construction Manager has not acted with reasonable promptness in response to such notice.

#### **Section 13.04 Uncovering Work**

- A. If any Work is covered prior to the specified inspection, testing or approvals required in the Contract Documents or contrary to the written request of Construction Manager, it must, if requested by Construction Manager, be uncovered for Construction Manager's observation and replaced at Contractor's expense.
- B. If Construction Manager considers it necessary or advisable that covered Work be observed by Construction Manager or inspected or tested by others, Contractor, at Construction Manager's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Construction Manager may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); or City shall be entitled to accept defective Work in accordance paragraph 13.08 in which case Contractor shall still be responsible for all costs associated with exposing, observing, and testing the defective Work. If the parties are unable to agree as to the amount thereof, City may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work, which had previously been inspected, tested or approved by the as specified and

was deemed by the Engineer and Construction Manager to conform with the requirements set forth in the Contract Documents, is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### **Section 13.05 City May Stop the Work**

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### **Section 13.06 Correction or Removal of Defective Work**

- A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Construction Manager or Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.

### **Section 13.07 Correction Period**

- A. If within one year after the date of Notice of Completion of the Work by City (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by City or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by City, remove it from the Project and replace it with Work that is not defective,
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom, and
  - 5. Contractor shall provide a Warranty Form to the City with all appropriate Contractor contact information for the City's Staff to contact the Contractor in relation to warranty items.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of

work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

### **Section 13.08 Acceptance of Defective Work**

- A. If (prior to Construction Manager's recommendation of final payment), instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work (such costs to be approved by Construction Manager as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Construction Manager's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, City may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to City.

### **Section 13.09 City May Correct Defective Work**

- A. If Contractor fails within a reasonable time after written notice from Construction Manager to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, City may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, City shall proceed expeditiously. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, City's other contractors, Construction Manager and Engineer and Engineer's consultants access to the Site to enable City to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, City may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but

not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.09.

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## ARTICLE 14. PAYMENTS TO CONTRACTOR AND COMPLETION

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### Section 14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Construction Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

### Section 14.02 Progress Payments

- A. Applications for Payments
1. At least twenty (20) days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Construction Manager for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
  2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  3. *Retention* - The City will deduct from each progress payment and retain as part security, five percent (5%) of the amount earned until the final payment.
  4. Pursuant to Public Contract Code Section 22300, for moneys earned by the Contractor and withheld by the City to ensure the performance of the Contract.CityCity
  5. Not Used.
  6. Not Used.
  7. Materials, as used herein, shall be considered to be those items that are fabricated and manufactured goods and equipment. Only those materials for which the Contractor can demonstrate are properly stored and secured in conformance with the Contract documents, and can transfer clear title to the City will be qualified for partial payment. The Contractor may request payment of seventy-five percent (75%) of the actual net cost of these materials, not to exceed fifty percent (50%) of the total line item extension as found in the bid schedule.
  8. To receive partial payment for materials and equipment delivered to the Site, but not incorporated in the Work, it shall be necessary for the Contractor to submit to the Construction Manager a list of such materials, at least seven (7) business days prior to submitting the monthly estimate of amount earned for work completed. At the Construction Manager's sole discretion, the Construction Manager will

approve items for which partial payment is to be made subject to the following:

- a. Only equipment or materials that have received favorable review of shop drawings will qualify.
  - b. Eligible equipment or materials must be delivered and properly stored, protected, and maintained in a manner favorably reviewed by the Construction Manager, at the job site or at a bonded warehouse.
  - c. The Contractor's actual net cost for the materials must be supported by invoices of suppliers, or other documentation requested by the Construction Manager.
  - d. Materials or equipment delivered to the Site less than thirty (30) days prior to their scheduled incorporation in the Work shall not qualify.
  - e. Final payment shall be made only for materials actually incorporated in the Work. Upon acceptance of the Work, all materials remaining for which advance payments had been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the Work.
  - f. Partial payments for materials and equipment on hand shall not be deemed to be final payment for the material nor relieve the Contractor of its obligations under the Contract.
  - g. Partial payments for materials and equipment on hand shall be subject to retention in accordance with the Contract Documents.
9. After receipt of the last progress payment, but prior to acceptance of the Work by the City, the Contractor shall send a letter to the Construction Manager. The letter, pursuant to California Public Contract Code Section 7100, shall state that acceptance of the final payment described below shall operate as and shall be, a release to the City, the Construction Manager, the Designer, and their duly authorized agents, from all claim of and/or liability to the Contract arising by virtue of the Contract related to those amounts. Disputed Contract claims in stated amounts previously filed as provided in Paragraph 00700-7.03b, Claims, may be specifically excluded by the Contractor from the operation of the release.

B. Review of Applications

1. Construction Manager will, within ten (10) business days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to City or return the Application to Contractor indicating in writing City's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Construction Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Construction Manager to City, based on Construction Manager's observations on the Site of the executed Work as an experienced and qualified design professional and on Construction Manager's review of the Application for Payment and the accompanying data and schedules, that to the best of Construction Manager's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager's responsibility to observe the Work.
3. By recommending any such payment Construction Manager will not thereby be deemed to have

represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Construction Manager in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor.
4. Neither Construction Manager's review of Contractor's Work for the purposes of recommending payments nor Construction Manager's recommendation of any payment, including final payment, will impose responsibility on Construction Manager:
- a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to City free and clear of any Liens.
5. Construction Manager may refuse to recommend the whole or any part of any payment if, in Construction Manager's opinion, it would be incorrect to make the representations to City stated in Paragraph 14.02.B.2. Construction Manager may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Construction Manager's opinion to protect City from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. City has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Construction Manager has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Forty-five (45) days after presentation of the Application for Payment to City with Construction Manager's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by City to Contractor. Payment will be made by the City to the Contractor in accordance with City's normal accounts payable procedure.

D. Reduction in Payment

1. City may refuse to make payment of the full amount recommended by Construction Manager because:
  - a. claims have been made against City on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;

- c. there are other items entitling City to a set-off against the amount recommended; or
  - d. City has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If City refuses to make payment of the full amount recommended by Construction Manager, City will give Contractor written notice (with a copy to Construction Manager) within (10) days after receipt of each Application for Payment stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, when Contractor corrects to City's satisfaction the reasons for such action.
  3. If it is subsequently determined that City's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

#### **Section 14.03 Contractor's Warranty of Title**

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

#### **Section 14.04 Substantial Completion**

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify City and Construction Manager in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Construction Manager issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, City, Contractor, and Construction Manager shall make an inspection of the Work to determine the status of completion. If Construction Manager does not consider the Work substantially complete, Construction Manager will notify Contractor in writing giving the reasons therefor.
- C. If Construction Manager considers the Work substantially complete, Construction Manager will deliver to City a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. City shall have seven (7) days after receipt of the tentative certificate during which to make written objection to Construction Manager as to any provisions of the certificate or attached list. If, after considering such objections, Construction Manager concludes that the Work is not substantially complete, Construction Manager will within fourteen (14) days after submission of the tentative certificate to City notify Contractor in writing, stating the reasons therefor. If, after consideration of City's objections, Construction Manager considers the Work substantially complete, Construction Manager will within said fourteen (14) days execute and deliver to City and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Construction Manager believes justified after consideration of any objections from City.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Construction Manager will deliver to City and Contractor a written recommendation as to division of responsibilities pending final payment between City and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless City and Contractor agree otherwise in writing and so inform Construction Manager in writing prior to Construction Manager's issuing the definitive certificate of Substantial Completion, Construction Manager's aforesaid recommendation will be binding on City and Contractor until final payment.
- E. City shall have the right to exclude Contractor from the Site after the date of Substantial Completion

subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

#### **Section 14.05 Partial Utilization**

- A. Prior to Substantial Completion of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.
1. City at any time may request Contractor in writing to permit City to use or occupy any such part of the Work which City believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to City and Engineer that such part of the Work is substantially complete and request Construction Manager to issue a certificate of Substantial Completion for that part of the Work.
  2. Contractor at any time may notify City and Construction Manager in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Construction Manager to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, City, Contractor, and Construction Manager shall make an inspection of that part of the Work to determine its status of completion. If Construction Manager does not consider that part of the Work to be substantially complete, Construction Manager will notify City and Contractor in writing giving the reasons therefor. If Construction Manager considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### **Section 14.06 Final Inspection**

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Construction Manager will promptly make a final inspection with City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### **Section 14.07 Final Payment**

- A. Application for Final Payment
1. After Contractor has, in the opinion of Construction Manager, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
  2. The final Application for Payment shall be accompanied (except as previously delivered) by:
    - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
    - b. consent of the surety, if any, to final payment;
    - c. a list of all Claims against City that Contractor believes are unsettled; and

- d. complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of or Liens filed in connection with the Work.
  3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by City, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which City or City's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to City to indemnify City against any Lien.
- B. Construction Manager's Review of Application and Acceptance
1. If, on the basis of Construction Manager's observation of the Work during construction and final inspection, and Construction Manager's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Construction Manager is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Construction Manager will, within ten (10) days after receipt of the final Application for Payment, indicate in writing Construction Manager's recommendation of payment and present the Application for Payment to City for payment. At the same time Construction Manager will also give written notice to City and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Construction Manager will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. Payment Becomes Due
1. Forty-five (45) days after Notice of Completion by City Council and within sixty (60) days after the presentation to City of the Application for Payment and accompanying documentation, the amount recommended by Construction Manager, less any sum City is entitled to set off against Construction Manager's recommendation, including but not limited to liquidated damages, will become due and will be paid by City to Contractor. In the case of a disputed claim, the City may withhold a portion of final payment in an amount not to exceed 150 percent of any amount disputed in accordance with California Public Contracts Code Section 7107 (c).

#### **Section 14.08 Final Completion Delayed**

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Construction Manager so confirms, City shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Construction Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Construction Manager with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### **Section 14.09 Waiver of Claims**

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by City against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from

- Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

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## ARTICLE 15. SUSPENSION OF WORK AND TERMINATION

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### Section 15.01 City May Suspend Work

- A. At any time and without cause, City may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

### Section 15.02 City May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
  1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's disregard of the authority of Construction Manager or Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02A. occur, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. Conference shall be held not later than fifteen (15) days, after receipt of notice.
  1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Construction Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor Default and formally terminate the Contractor's right to complete the Contract. Contractor Default shall not be declared earlier than twenty (20) days after the Contractor and Surety have received notice of conference to address Contractor's failure to perform the Work.
  2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within fifteen (15) consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
  3. If City completes the Work, City may exclude Contractor and Surety from the site and take possession of the Work and of all tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor and Surety (without liability to Contractor and Surety for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor or Surety but which are stored elsewhere, and finish the Work as City may deem expedient.
  4. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by City arising out of or resulting from completing the Work, such excess will be paid to Contractor. If such claims, costs, losses and damages exceed such unpaid

balance, Contractor shall pay the difference to City. Such claims, costs, losses and damages incurred by City will be reviewed by Engineer as to their reasonableness and when so approved by Engineer incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph, City shall not be required to obtain the lowest price for the Work performed.

5. Neither City, Engineer, nor any of their respective consultants, agents, officers, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
  6. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim for damages on account of the method used by City in completing the Contract.
  7. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise prescribed by law.
- C. If City proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by City arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph City shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven (7) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.
- E. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

### **Section 15.03 City May Terminate For Convenience**

- A. Upon seven (7) days written notice to Contractor, Construction Manager and Engineer, City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### **Section 15.04 Contractor May Stop Work or Terminate**

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than ninety (90) consecutive days by City or under an order of court or other public authority, or (ii) Construction Manager fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) City fails for thirty (30) days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) days written notice to City and Construction Manager, and provided City or Construction Manager do not remedy such suspension or failure within that time, terminate the Contract and recover from City payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Construction Manager has failed to act on an Application for Payment within thirty (30) days after it is submitted, or City has failed for thirty (30) days to pay Contractor any sum finally determined to be due, Contractor may, seven (7) days after written notice to City and Construction Manager, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

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### **ARTICLE 16. DISPUTE RESOLUTION**

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#### **Section 16.01 Methods and Procedures**

- A. The process for resolving claims shall comply with the California Public Contracts Code as amended by Section 9204 et. seq.. The Contractor shall furnish sufficient documentation, as determined by the Construction Manager, to support any claim.
- B. Either City or Contractor may request mediation of any Claim submitted to Construction Manager for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- C. Upon receipt of a claim pursuant, the City shall conduct a reasonable review of the claim and, within a period not to exceed forty-five (45) days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the City and Contractor may, by mutual agreement, extend the time period provided in this subdivision.
- D. If the City needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to fourteen (14) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- E. The City shall pay any undisputed portion of the claim. Payment shall be processed and made within sixty

(60) days after the City issues its written statement.

- F. If the City fails to issue a written statement, the claim shall be deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- G. If the Contractor disputes the City's written response, or if the City fails to respond to a claim issued within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- H. Within ten (10) business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within sixty (60) days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.
- I. Amounts not paid in a timely manner as required by this section shall bear interest at 2 percent per annum.
- J. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, Contractor may present to the City a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim. Within forty-five (45) days of receipt of this written request, Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.
- K. City and Contractor shall participate in the mediation process in good faith. The process shall be concluded within the timeline as stipulated under the California Public Contracts Code. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- L. If the Claim is not resolved by mediation, City's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding thirty (30) days after termination of the mediation unless, within that time period, City or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process, or
  - 3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

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**ARTICLE 17. MISCELLANEOUS**

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**Section 17.01 Giving Notice**

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

**Section 17.02 Computation of Times**

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

**Section 17.03 Cumulative Remedies**

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.
- B. No action or failure to act by the City, the 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.

**Section 17.04 Survival of Obligations**

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

**Section 17.05 Controlling Law**

- A. This Contract is to be governed by the law of the state of California, the county of San Joaquin, and city of Manteca.

**Section 17.06 Headings**

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**Section 17.07 Penalty for Collusion**

- A. 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

SECTION 00700  
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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thereby, and the City may advertise for new bids for said Work.

**\*\*END OF SECTION\*\***

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SECTION 00800

**SUPPLEMENTARY GENERAL CONDITIONS**

**1.0 MODIFICATIONS TO THE GENERAL CONDITIONS**

These Supplementary General Conditions amend and supplement Section 00700, GENERAL CONDITIONS, and other provisions of the contract documents as indicated below. All provisions of the General Conditions that are amended or supplemented remain in full force and effect as so amended or supplemented. All provisions of the General Conditions which are not so amended or supplemented remain in full force and effect.

**1.1 Time Allowed for Completion**

In accordance with the provisions of Section 00700, **Contract Time**, substantial completion of this project shall be completed within ONE HUNDRED FOURTY-SIX CALENDAR DAYS (146 CALENDAR DAYS) consecutive days from the date established in the Notice to Proceed for the commencement of Contract Time. In addition, the following milestone item(s) shall be substantially completed within the time period defined below.

<u>Milestone</u>	<u>Calendar Days from NTP</u>
<i>Preconstruction Phase</i>	
Conceptual Designs	25
Design Approval	56
Fabrication/Submittal Approval	87
<i>Construction Phase</i>	
Installation	115
Project Completion	146

**1.2 Damages for Delays**

In accordance with the provisions of Section 00700, **Liquidated Damages**, for the period of time that any portion of the work remains unfinished after the time fixed for an interim milestone and/or Substantial Completion in Section 00800-1.1, **Time Allowed for Completion**, as modified by extensions of time granted by the City, it is understood and agreed that the Contractor shall pay the City the damages listed below.

<u>Milestone</u>	<u>Liquidated Damages Amount</u>
Project Completion	\$1,000

**1.3 Weather Days**

In accordance with the provisions of Paragraph 00700-6.4.2.C, Weather Delays, the following allowance(s) for weather caused delay have been included in the time allowed for completion. For the Construction Schedule defined in Section 01310-4.0, **WEATHER CONDITIONS AND WEATHER DAY ALLOWANCE**, the weather days shall be allocated as listed below:

<u>Milestone</u>	<u>Weather Day Allowance (Calendar Days)</u>
<i>Preconstruction Phase</i>	
Conceptual Designs	0
Design Approval	0
Fabrication/Submittal Approval	0
<i>Construction Phase</i>	
Installation	0
Project Completion	0

This allowance represents the City's assessment of potential lost working days. This allowance includes both weather days due to inclement weather conditions and the conditions resulting from weather in accordance with Paragraph 00700, Weather Delays. These weather days shall be included in the Contractor's schedule as specified in Section 01310, WEATHER CONDITIONS. This allowance is not a warranty as to the extent that weather may or may not impact the Work. The Contractor shall make its own independent assessment of potential impacts to the Work due to weather based on the Project location, the Work required, the Contract Period, the schedule, and the Contractor's planned means, methods and appliances, and the Contractor shall take such factors into consideration in its Bid and planning of the Work. The Contractor is responsible for determining the means, methods and appliances for prosecuting the Work as defined in Section 00700, Means, Methods and Appliances.

## 5.0 SUBSTANTIAL COMPLETION

Substantial completion of the Project as required by Section 00700, **Substantial Completion**, requires that the following portions of the Work must be operational and ready for the City's continuous use as intended:

The following items of work must be fully tested and functional for Project Substantial Completion to be attained:

Completion of the Corrective Work Item(s)

All health and safety systems are complete, fully tested and operational.

All mechanical (including HVAC), electrical (including lighting), control, and instrumentation equipment is installed, fully tested and operational in normal and automatic modes.

All civil, structural, demolition, and architectural elements identified in the Contract Documents are completed.

Training has been completed for all electrical, mechanical and instrumentation systems.

Approved final copies of the Project's Operation and Maintenance Manuals as specified in the Contract Documents and as required in Sections 01010 and 01730.

All instruments, local and remote, are fully tested and functional. All interlocked functions between equipment items are tested and documented.

Portions of the Work not essential to the system operation, which can be completed without interruption of

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system operations, may be completed after the Work is accepted as substantially complete, and may include the following items:

Final Site Clean-Up

Final Building Clean-Up

Completion of the Final Punch List prepared by the Construction Manager.

**A. Paragraph 00700-3.03.B.2:**

Add the following paragraph:

Where conflicts exist among the Contract Documents and/or any reference specifications, such conflicts shall be clarified according to the following order, the first ranked taking precedence over the lower ranked:

1. Amendments, Change Orders or other modifications to the Contract Documents, as executed by the City in accordance with the requirements of the Contract Documents.
2. Agreement
3. Supplementary Conditions
4. Contract Payment Bond
5. Performance Bond
6. Warranty Bond (if required)
7. Any provisions required by law or valid regulations to be inserted in this contract, whether actually inserted or not
8. Appendices (photographs, data contained in reports, and other information).

Additional rules of interpretation:

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale drawings over small-scale drawings.
4. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete the Work required by Contract Documents, will be resolved in favor of the actual quantities, date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.

**B. Paragraph 00700-5.04B:**

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

Construction Manager: TBD

The insured and the additional insured shall be listed in the insurance coverage by specific name and not by genre.

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**C. Paragraph 00700-6.11.A.4:**

Add the following paragraph:

All Contractor activities including site ingress/egress shall be coordinated with the City of Manteca. Site access shall be secured by Contractor personnel after typical hours of City operation, **6:30 a.m. to 4:00 p.m., Monday through Friday**, unless scheduled Two weeks in advance with the Construction Manager.

**D. Paragraph 00700-12.01.D:**

Add the following paragraphs:

The Contractor shall be responsible to reimburse the City for any unforeseen costs incurred, including labor and materials, relating to any disruption of City operations or services due to Contractor's activities or negligence. Unforeseen City costs may include, but are not limited to:

1. Labor, materials, and administrative civil liabilities associated with sanitary sewer overflows/regulatory violations due to Contractor activities or negligence.
2. Labor, including overtime hours, and materials associated with City forces preparing for a scheduled outage that is canceled subsequently by the Contractor.
3. Labor, including overtime hours, and materials associated with City activities necessitated by outages extending beyond the scheduled duration caused by the Contractor.

Reimbursement to the City shall be accomplished through a 'back-charge' and a resultant reduction in contract price. Documentation of City costs will be furnished to the Contractor.

**E. Paragraph 00700-12.03F:**

Time extensions will not be granted for rain, wind, flood, or other natural phenomena of normal intensity for the locality where Work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the month involved with the average of the preceding 10-year climatic range during the same month based on U.S. Weather Bureau statistics for the locality where the Work is performed.

**\*\*END OF SECTION\*\***

EXHIBIT B

CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700  
[Labor Code § 1861]

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

CONSULTANTS

By:

A handwritten signature in blue ink, appearing to be "B. J. [unclear]", written over a horizontal line.

Manager Fusion Sign and Design

EXHIBIT C  
Fee Schedule



680 Columbia Ave.  
Riverside, CA 92507

# Proposal

Date	Contract #
10/23/2025	106943

<b>Customer</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Ship To</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Project</b>	<b>Terms</b>	<b>Rep</b>
Manteca Archway	30/30/40	BJ

Description	Qty	Rate	Total
1. Design & Engineering: -Architectural/ Graphic Design, Structural Engineering, Permit Drawings, Structural Analysis (Wind/ Seismic), Site Surveys	1	36,110.00	36,110.00T
2. Site Prep & Foundations: -Soil Testing, Excavation, Formwork, Concrete Footings, Anchorage, Utility Coordination.  -Materials: \$33101.20 -Labor: \$27082.80	1	60,184.00	60,184.00
3. Structural Steel/ Frame: -Steel Beams, Columns, Bracing, Connections, Coatings Welding, Fabrication  -Materials: \$116808.23 -Labor: \$62896.74	1	179,704.97	179,704.97T
4. Exterior Finish/ Cladding: -Decorative Finishes, Facades, Paneling, Masonry Veneer, Metalwork, Architectural Skin Treatments  -Materials: \$64998.00 -Labor: \$43332.00	1	108,330.00	108,330.00T

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Total</b>
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<b>Phone #</b>	<b>Fax #</b>	CA 894662 NV 0015149
951-682-9660	951-682-9665	



680 Columbia Ave.  
Riverside, CA 92507

# Proposal

Date	Contract #
10/23/2025	106943

<b>Customer</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Ship To</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Project</b>	<b>Terms</b>	<b>Rep</b>
Manteca Archway	30/30/40	BJ

Description	Qty	Rate	Total
5. Signage Elements & Graphics: -Logos, Lettering, Backlit Panels, Cutouts, Acrylics, Faces, Fabrication of Sign Elements  -Materials: \$31295.55 -Labor: \$16851.45	1	48,147.00	48,147.00T
6. Electrical & Illumination: -Wiring, LED Modules, Lighting Fixtures, Control Systems, Conduit, Junctions  -Materials: \$23170.40 -Labor: \$18957.60	1	42,128.00	42,128.00T
7. Installation/ Erection/ Labor: -Crane Work, Rigging, Erection Labor, Specialty Installers, Safety, Scaffolding	1	78,240.00	78,240.00
8. Permits, Approvals, Inspections: -Permit Fees, Building Department Reviews, Structural Reviews, Inspections	1	18,055.00	18,055.00
BID GOOD FOR 30 DAYS WITHOUT TARIFF UPCHARGES		0.00	0.00T

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Total</b>
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<b>Phone #</b>	<b>Fax #</b>	CA 894662 NV 0015149
951-682-9660	951-682-9665	



680 Columbia Ave.  
Riverside, CA 92507

# Proposal

Date	Contract #
10/23/2025	106943

<b>Customer</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Ship To</b>
City of Manteca 1001 W. Center ST. Suite#E Manteca, CA 95337

<b>Project</b>	<b>Terms</b>	<b>Rep</b>
Manteca Archway	30/30/40	BJ

Description	Qty	Rate	Total
<p><b>GENERAL TERMS AND CONDITIONS:</b>            A. Prices good for 7 days contingent upon specific terms and conditions attached; 10% deposit required unless otherwise specified.            B. Payment Net 30 upon invoice, unless otherwise specified.</p> <p><b>QUOTE DOES NOT INCLUDE THE FOLLOWING ITEMS UNLESS LISTED SPECIFICALLY ON QUOTE:</b>            A. Removal of other signs or spread footers.            B. Engineering fees unless specifically included.            C. Costs associated with rock being excessive, unlevel or unforeseen.            D. Any additional items not specifically listed by this proposal are at additional cost.            E. Trip charges and Fuel Surcharges</p> <p><b>PRICING ASSUMES THE FOLLOWING:</b>            A. Free and clear access to property and back side of walls for channel letters.            B. Level grade.            C. Power to be within 5 ft. of tie in.            D. Installation during normal business hours.            E. One mobilization included.            F. Standard One Year Warranty unless otherwise specified.            G. 4-8 week production lead time unless otherwise specified.            Sales Tax, City of Manteca</p>		0.00	0.00T
		9.00%	37,297.80

Consultant has agreed to an amount not-to-exceed of \$550,000 for the archway structure, additional cost for architectural and site preparation to be negotiated.

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Price good for 30 days from contract date. All materials and goods guaranteed per specifications.

<b>Total</b>	\$608,196.77
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<b>Phone #</b>	<b>Fax #</b>	CA 894662 NV 0015149
951-682-9660	951-682-9665	