

Request for Proposals (RFP)
for
Design-Build Entities
For
Norman Y. Mineta San José International Airport
1701 Airport Boulevard, San José, CA
Interim Facility – Four Gates (Project)
City of San José, CPMS No. 8895

May 3, 2018

The City of San José (City) invites interested Design-Build Entities to submit a Proposals for Design-Build Project Delivery Services to include design, construction, and commissioning of an Interim Facility consisting of four (4) gates and connector bridge and walkway (Project) at the Norman Y. Mineta San José International Airport.

RFP Issue Date:	May 3, 2018
Submittal Deadline:	June 1, 2018, 3:00pm
Contact Information:	City of San José Department of Public Works 200 East Santa Clara Street, 5th Floor San José, CA 95112 Attn: David French, CIP Procurement Manager
Deadline for Questions:	May 15, 2018, 5:00pm

This Request for Proposals (RFP) is intended to encourage participation of qualified Design-Build entities to provide services deemed necessary by the City.

This RFP is posted for advertisement in the San Jose Post Record and at BidSync (www.bidsync.com), a third party online platform for the advertisement of government quotes, bids and proposals, and also at www.flysanjose.com (see “Business” page for link). It is the responsibility of interested Proposers to comply with the Proposal submittal requirements presented in this RFP in order to be considered for these services.

City of San José
Norman Y. Mineta San José International Airport

REQUEST FOR PROPOSALS (RFP) for
Design-Build Project Delivery Services
Interim Facility – Four Gates

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Notice to Design-Build Entities

The City of San José (CITY) intends to solicit Proposals from Design-Build (DB) Entities to design, construct, and commission for the Mineta San José International Airport Interim Facility -- Four Gates (4) (Project). The City's intent is to award a single contract to a selected DB Entity to deliver the Project. Ancillary work may be requested as the Project proceeds to address relocation of airlines due to the Project and to assist in the facilitation of passengers through the terminals resulting from the current terminal constraints.

Notice is hereby given that the City is soliciting Proposals for the Project from DB Entities (together with the team members specified within).

The City intends to use the progressive DB method to deliver this Project, meaning that the City will select the DB Entity primarily on qualification prior to any substantial design of the project. The DB Entity will be selected through this RFP as described in Section 1.

Following the receipt and evaluation of the RFP's, the City may shortlist three and up to four DB Entities to be invited in for interviews and will score and rank the proposals based on best value, qualifications, and other factors that will be set forth in this RFP.

After ranking the Proposals, City staff intends to negotiate a DB contract with the highest ranked DB Entity. If an agreement cannot be reached, the City will negotiate with the next highest-ranked DB Entity. Once a DB contract has been negotiated, City Staff will recommend that the City Council award the DB contract. It is anticipated, that once selected and contracted, the City and the DB Entity will advance the design, incorporating the details desired by the City, and providing the City with cost input regarding options the City is considering.

A. Obtaining the Request for Proposals

The City is using BidSync to facilitate the solicitation of the RFP. BidSync is an online bid solicitation website. DB Entities must register with BidSync to participate in this procurement. There is no cost associated with registering.

To register, DB Entities must go online to www.bidsync.com. The Request for Proposals package and RFP forms can be found under the following BidSync classifications:

- 906-25 Design Build Services
- 914-27 Carpentry
- 914-30 Concrete
- 914-38 Electrical
- 914-47 Glass and Glazing
- 914-50 Heating, Ventilating and Air Conditioning
- 914-58 Metal Works
- 914-61 Painting and Wallpapering
- 914-64 Plastering
- 914-68 Plumbing
- 914-73 Roofing and Siding
- 914-80 Stucco
- 914-84 Trade Services, Construction
- 914-85 Welding

B. Presubmittal Conference:

A non-mandatory pre-submittal meeting will be held on May 7, 2018 at 9:00am to 11:00am at Mineta San José International Airport, 1701 Airport Blvd, Suite B-1130, San José, CA 95110.

C. Submittal Location and Deadline

DB Entities must provide the requested number of copies of the fully completed Proposals in a package to:

City of San José, Department of Public Works
200 East Santa Clara Street, 5th Floor
San José, CA 95113
Attn: David French, CIP Procurement Manager

DB Entities must submit the Proposal on or before the Submittal Deadline set forth on the cover of this RFP. Failure to provide a responsive Proposal at the specified location and by the specified time will preclude the DB Entity from subsequent participation in the RFP for the Project.

D. Notice of Determination

The City will issue a "Notice of Final Ranking" on BidSync based on the rankings of this RFP as described in section 5.6 of this RFP.

City of San José
Norman Y. Mineta San José International Airport

**REQUEST FOR PROPOSALS (RFP) for
Design-Build Project Delivery Services
Interim Facility – Four Gates**

TIMELINE

▪ Issue RFP	May 3, 2018
▪ Pre-Submittal Conference and Site Visit:	May 7, 2018
▪ Deadline to Submit Questions or Objections:	May 15, 2018
▪ RFP Addendum/Final Answers Posted:	May 18, 2018
▪ Submittal Deadline:	June 1, 2018, 3:00pm
▪ Notice of Interim Ranking and Shortlisted DB Entities invited to interviews:	June 7, 2018
▪ Deadline to Submit Appeal or Protest:	Five Business Days from the date posted in bidsync and/or of date of City's Notice of Final Ranking
▪ Interviews and Issuance of Final Ranking:	June 13, 2018

1.0 OVERVIEW

The City of San José “City”, is soliciting Proposals from qualified firms, teams, joint ventures or LLCs to provide Design Build services for the Interim Facility – Four Gates (the “Project”) at Mineta San José International Airport (“Airport”).

- 1.1 As used in this Request for Proposal (“RFP”) the term “Proposer” refers to any entity submitting a response to this RFP. The “Proposer’s” Team is comprised of any combination of a Proposer, Lead Design Firm, Architect(s), Engineer(s), joint venture, subconsultants or Design-Build Entities, and Key Personnel. Unless expressly stated otherwise, experience and qualifications shall be evaluated based upon the combined experience and qualifications of the Proposer’s Team. The term “Design-Build Entity” in this RFP refers to the successful Proposer.
- 1.2 This Project will utilize the progressive Design Build project delivery.
- 1.3 Proposer with previous relevant experience and qualifications for the Scope of Services set forth in Section 4.0 are encouraged to submit a Proposal in accordance with the requirements set forth in this RFP, including format and content guidelines in Section 6.0 through 10.0 of this RFP.
- 1.4 Proposers, as part of the requirements of this RFP, shall submit a report for labor peace for how the Proposer will assure that no labor dispute or unrest will occur during the term of the Design-Build Contract. This requirement is in recognition that avoiding labor disputes and disruptions is a significant factor in achieving the objective of efficiently delivering the Project. The contract terms and conditions will incorporate the details and requirements of the successful Proposer’s report for labor peace. The Design-Build Entity may elect to enter into a Project Labor Agreement to address labor peace on this project.
- 1.5 Proposers are notified that from the date this RFP is issued until the date the competitive process of this RFP is complete, either by cancellation or by final action of the City, Proposers and potential Proposers, and/or their representatives or interested parties, shall communicate per Section 11.0 of this RFP.
- 1.6 Proposers are cautioned that the conflict of interest prohibition pertaining to public officials and government employees had been interpreted to prohibit some independent Design-Build Entities from being financially interested in any contract that they create. It is the Proposer’s responsibility to recognize when such conflict of interest exists. See Section 14.4 – 14.6 for further requirements.
- 1.7 Certain Project documents are being made available for reference in preparing Proposals. The City is providing these documents only for the purpose of obtaining Proposals for the Project and does not confer a license or grant for any other use. The extent to which the Design-Build Entity may rely on such background documents is set forth in Exhibit A of this RFP.

2.0 NON-MANDATORY PRE-PROPOSAL CONFERENCE AND SITE VISIT

A non-mandatory Pre-Proposal Conference and Site Visit is scheduled for the date set forth in the Timeline at the Airport Administrative Offices located at 1701 Airport Blvd., Suite B-1130, San José, CA. The Conference will start promptly at 9:00am and is anticipated to last approximately one hour. It will be followed by a tour of the site, which is expected to take approximately one hour.

The City will provide an overview of the RFP requirements, process, and timeline. An escorted site visit will immediately follow the conference. The purpose of the conference will be to discuss the

requirements and objectives of this RFP. All questions will be directed to be published on BidSync. A sign-in sheet will record attendance.

3.0 GENERAL CONTRACT TERMS AND CONDITIONS/NEGOTIATIONS

3.1 The Design-Build Exemplar Standard Contract the City intends to use for the Project is located in Exhibit B. The Design-Build Exemplar Standard Contract is based on contracts used for similar design-build projects.

Each Proposer must carefully review the Design-Build Exemplar Standard Contract located in Exhibit B. The Proposer must include the following information in its Proposal with regard to each provision, if any, of the Design-Build Exemplar Standard Contract that is unacceptable to the Proposer:

- Identify the specific provisions or portion of a provision that is unacceptable; and
- Provide a short, clear explanation as to why the provision or portion of provision is unacceptable; and
- Provide proposed alternative language that would be acceptable to the Proposer.

Provisions of the Design-Build Exemplar Standard Contract to which the Proposer set forth no objection in its Proposal are deemed to be acceptable to the Proposer. Importantly, the City will evaluate and rank a Proposer in part, based on the number, substance and significance of unacceptable provisions or portions identified in the Proposer's Proposal.

The City anticipates that **none** of the work performed under the Design-Build Exemplar Standard Contract will be paid for with funds from the Federal Aviation Administration Airport Improvement Program.

3.2 After City Council approval of the final ranking of the Proposers and City Council approval to begin negotiations, the successful Proposer shall be prepared to enter into time limited negotiations immediately with the City on terms of the Design-Build Standard Exemplar Contract consistent with the requirements of this Section, the Proposal of the Proposer, and other requirements of this RFP. Significantly, given the aggressive schedule for completing this Project, there is only a limited time to engage in negotiations.

3.3 Proposers will be ranked on factors other than costs. With regard to negotiations, if the Proposer's Price Proposal is consistent with industry standards in consideration of national economic conditions, the City may elect to negotiate with the highest ranked Proposer and use the terms in the Price Proposal as a starting point for negotiations. If the costs are significantly higher than industry standards in consideration of national economic conditions, City may elect to move to the second ranked Proposer and so forth through the list of ranked Proposals.

3.4 During the negotiation phase, the successful Proposer shall negotiate with the City on the Programmatic Phase and Design Fee, preferably on a lump sum basis. The successful Proposer shall agree, subject to negotiation, to a price not to exceed a specific amount for the various elements during the design of each task of the scope of services. These not to exceed fees would become part of the Design-Build Contract terms. It is anticipated that the Design Fees may be categorized into the following: Programmatic Phase, 30% Design, 60% Design, and 100% Design.

3.5 At the appropriate point in the Design Build Contract duration as determined by the City and the successful Proposer, a Guaranteed Maximum Price (GMP) for the total Project shall be negotiated and reflected in the Design Build Contract. The City also reserves the right to negotiate either a Lump Sum (LS) pricing or GMP pricing for each project element.

3.6 The City and successful Proposer shall negotiate the formula(s) for sharing any savings resulting from actual cost less than established Lump Sum Pricing or GMP. In addition, the City and successful

Proposer may negotiate Incentive Payments as an Inducement to the Proposer to achieve Project completion on or before the Project completion deadline.

- 3.7 The City reserves the right to negotiate combined packages in lieu of individual packages.
- 3.8 During the negotiation phase, the successful Proposer will be expected to work with the City in an effort to outreach to local and small businesses. At a minimum, the Proposer will be expected to host outreach workshop where opportunities are made known to local and small businesses.

4.0 PROJECT SCOPE OF SERVICES

4.1 Project Overview

The proposed Interim Facility would be a remote holdroom south of Terminal B with connector bridges and a walkway to Terminal B to allow passengers to move between Terminal B and the Interim Facility. The facility would include a holdroom serving four (4) aircraft gates for a total of approximately 8,200 square feet. The Interim holdroom facility will have four (4) ground loading passenger boarding bridges, code required and ADA accessible public restrooms, and a “grab and go” style food and beverage concession.

Access from the existing Terminal B includes one fully enclosed cool and heating conditioned corridor of approximately 10,500 square feet (approximately 15 feet wide and 700 feet long), fully ramped to meet ADA requirements, and with up to four (4) “flat” people mover walkways in the corridor. This corridor will connect to Terminal B at departure gate level alongside the Gates 29 and 30 corridor. In addition, an at-grade covered and partially enclosed walkway of approximately 6,200 square feet (approximately 8 feet wide and 775 feet long) is included for arrivals. In this arrivals walkway, there will be a need for a secured transition from the secured airside to landside near the holdroom facility to this at-grade walkway. The walkway extends to the Terminal B baggage claim. All construction will be Type 1-A. See Exhibit A for Concept Drawing of Interim Facility – Four Gates, Known Utilities in Vicinity, and Concept Opinion of Costs.

There may be additional building modifications, equipment, landside modifications, furniture and technology requirements, including but not limited to biometric implementation, necessary in Terminal A, Terminal B, and the International Facility. This is to accommodate relocation of airlines, technology improvements, including but not limited to biometric implementation, to all terminal facilities, and other improvements to address passenger facilitation and capacity challenges. The extent of the equipment acquisition, installation, and commissioning, building modifications, landside modifications, furniture requirements and technology improvements (including but not limited to biometric implementation) are unknown at this time. The scope of services related to these efforts will be a separate negotiated GMP(s) from the initial holdroom and the corridors stated above and have its own cost and schedule.

The City Council of the City of San Jose has authorized the Airport to Sole Source certain products and services as part of any future capital improvement project at the Airport that expands certain existing systems based on a finding that sole sourcing is needed to match products already in use. Resolution 78012 in Exhibit C identifies those products and services along with the listing of contacts for each of those products and services. Accordingly, Proposers should prepare their respective proposals based on the “sole sourcing” of the above items.

Programming Phase

The Programming phase commences with the date of the Notice to Proceed (NTP) for Programming. The Design Build Entities’ Project Manager will jointly refine the Project’s goals, requirements, costs, and schedule. The Programming efforts will result in an approved Basis of Design (BOD) as described

below. Design-Build Entity shall review the Projects cost estimate and prepare an updated Project schedule and cost estimate.

Design-Build Entity is expected to meet with each Stakeholder as identified by the City's Project Manager, individually or in teams throughout the Programming phase, and shall define the programmatic requirements for each of the key areas and systems collaboratively with the Project Team. Meeting attendees and frequencies shall be determined at the beginning of the Programming Phase.

Basis of Design Document

The Design-Build Entity shall work collaboratively with the Project Team and provide a comprehensive Basis of Design Document (BOD) for the Project, outlining the Project requirements. The BOD shall be created using input from the Stakeholders meetings. Under the direction of the City Project Manager, the Basis of Design Document may be altered in consideration of the accelerated schedule from the identified list below. The BOD shall, at a minimum, include the following:

1. Executive Summary for the Project
2. Narrative describing the Project's goals, qualitative criteria, programmatic assumptions, minimum performance criteria and standards, sustainability goals, furniture requirements, wayfinding and signage criteria, preferred systems and product manufacturers, and other information necessary and as listed below to define the program.
 - a. Stakeholder meetings and Partnering records including:
 - i. Customer Service
 - ii. Facilities and Engineering
 - iii. Operations and Security
 - iv. Technology
 - v. Properties
 - vi. Planning and Development
 - vii. Public Works
 - viii. Public Art
 - ix. Airlines
 - x. Concessionaires
 - xi. City of San Jose Fire, Public Works and Planning Departments
 - xii. Federal Aviation Administration
 - xiii. Transportation Security Administration
 - xiv. Customs and Border Protection
 - b. Site Investigation
 - c. Field verification of Utilities and Site Elements
 - d. Phasing Plans
 - e. Coordination with adjacent ongoing or future construction projects
 - f. Environmental considerations and coordination
 - g. Fire and Life Safety Analysis and Design
 - h. Required Alternate Materials and Methods of Construction and Variances per San José Fire Department
 - i. FAA Obstruction and Surfaces analysis
 - j. Verification and integration of new systems to existing building systems
 - k. New, additional, and expanded technology system implementation and activation
 - l. Landside Parking analysis
 - m. Lighting study and improvements
 - n. Coordination with utility agencies
 - o. Outline of Specifications

- p. Cost Controls and Scheduling
- q. Occupancy Plan
 - i. Emergency Egress pathway and required signage
 - ii. Address ADA Accessibility
 - iii. Normal and emergency lighting
 - iv. Heating, Ventilation, and Air Conditioning. Mechanical Systems serving the points of service and discharge.
 - v. Access to and within the occupied area, separate from the construction
- r. Project Program and Reporting Structure
- s. Transportation Security Administration Security Plan

Design Phases

The Design Phases commence on the date of the Notice to Proceed upon approval of the Basis of Design Document. Throughout all design phases, Design-Build Entity shall collaborate with the City's Project Team and shall update all submitted plans, schedules, updated estimates, and reports as directed by the City's Project Manager.

Partnering and Stakeholder Engagement will actively continue through the Design Phases with the following, but not limited to the following stakeholder groups:

- 1. Design
 - a. Stakeholder Engagement Coordination
 - i. Customer Service
 - ii. Facilities and Engineering
 - iii. Operations and Security
 - iv. Technology
 - v. Properties
 - vi. Planning and Development
 - vii. Public Works
 - viii. Public Art
 - ix. Airlines
 - x. Concessionaires
 - xi. City of San Jose Fire, Public Works and Planning Departments
 - xii. Federal Aviation Administration
 - xiii. Transportation and Security Administration
 - xiv. Customs and Border Protection

Based on the approved BOD, Design-Build Entity shall commence on the design phase drawings and Specifications, which at a minimum, the design elements shall include:

- b. Building Systems including but not limited to:
 - i. Structural and Foundation Systems
 - ii. Exterior and Interior Wall Assemblies
 - iii. Building Envelope
 - iv. Site Design
 - v. Access Control
 - vi. Security Infrastructure
 - vii. Technology and Data
 - viii. Fire Suppression and Alarm
 - ix. Signage and Wayfinding
 - x. Mechanical

- xi. Electrical Power and Lighting
- xii. Plumbing
- xiii. Finishes
- xiv. Door and Window Assemblies
- xv. Millwork
- xvi. Furniture
- xvii. Paging
- xviii. Building Management System
- c. Gate Layout Plan
 - i. Ground Support Equipment (GSE) Access Routes
 - ii. Aircraft Envelopes
 - iii. Aircraft and Tug Spacing
 - iv. Airside Vehicle Access Routes
 - v. Other Aircraft Support Equipment for Flight Operations

Based on the approved BOD, Design-Build Entity shall develop Schematic Design Documents for City's approval, which shall initiate the design elements above and proceed with the Schematic Design Phase. Under the direction of the City Project Manager, the phases of Design Development may be altered in consideration of the accelerated schedule from the identified list below. At a minimum, the Schematic Design Phase shall include:

- d. Schematic Design
 - i. Rendering Design and Development
 - ii. Utility Points of Connection
 - iii. Design Deliverable Schedule
 - iv. Preliminary Site Plan, Floor Plan and Elevations
 - v. Prepare initial subcontractor packages
 - vi. Constructability Review
 - vii. Construction Phasing Plan and Occupancy Phasing Plan
Presentation to Stakeholders and Airport Senior Staff

Based on the approved Schematic Design Phase, the Design Development shall fully integrate all required design elements to provide sufficient information to develop the Construction Documents for the Subcontractors. The Design-Build Entity shall document the constructability review in the Schematic Phase, including an evaluation of the design documents to identify value engineering opportunities, identify long lead times, availability of labor and other factors that may impact the design phase. The Design-Build Entity will prepare a Design Phase report after each design milestone to document and summarize the Design Development phase decisions, cost estimates, and deviations from the BOD that are approved by the Stakeholder groups and the City's Airport Senior Team. Under the direction of the City's Project Manager, the phases of Design Development may be altered in consideration of the accelerated schedule from the identified list below.

- e. Design Development
 - i. 30% Construction Documents
 - ii. 60% Construction Documents
 - iii. Rendering at 60% Construction Documents
 - iv. Incentive Opportunities
 - v. 90% Construction Documents
 - vi. Presentation to Stakeholder groups and Airport Senior Staff for approval
 - vii. GMP

The Design-Build Entity shall document all required approvals for the Construction documents from the City for the Project. The Design-Build Entity shall prepare a Construction Phase report to document and summarize the construction document phase decisions, including any deviations from the BOD that are approved by the Stakeholder groups and the Airport Senior Team. In addition, any incentive opportunities and the outcome shall be documented. The construction documents shall include but are not limited to the items below:

- f. Construction Documents
 - i. Permit Set
 - ii. Conformed Drawing Set
 - iii. Project Schedule
 - iv. Obtain Building Permit and Required Clearances

Construction Phase

Construction work activities will be authorized by the City's Project Manager upon Design-Build Entity receiving Building Permit and required clearances. Design-Build Entity shall perform all Work and construction administration services necessary to achieve the Programming and BOD requirements with approved deviations, construct the Project in accordance with the Design-Build delivery method, and render the Project with all its components operational, functional, and usable.

Design-Build Entity shall plan for use of Airport premises to allow for use and access to site by other Design-Build Entities, utilities, City employees, and other authorities with jurisdiction to inspect Work as required. City Project Manager has final authority over coordination, use of premises and access to site.

Design-Build Entity shall provide qualified staff to manage construction as required. Design-Build Entities shall perform Work in phases, as necessary, to accommodate airport operational requirements and to achieve the Project schedule.

Design-Build Entity shall provide services and maintain all construction equipment in accordance with manufacturer's instructions and warranties until such time as the airport receives and takes over the equipment in the activation phase.

Design-Build Entity shall ensure the safety of airport operations and landside operations is maintained at all times. Design-Build Entity shall work continuously with the City's Project Manager and Airport stakeholders to ensure that the construction phasing is clearly communicated and that safety and security is maintained at all times. Project Partnering and Stakeholder engagement shall continue throughout the construction phases. Under the direction of the City's Project Manager, the construction elements below may be altered in consideration of the accelerated schedule from the identified list below. Construction elements include but are not limited to:

- 1. Construction
 - a. Preconstruction Activities
 - i. Preconstruction Meeting
 - ii. Security Plan
 - iii. Construction Management Plan
 - iv. Construction Safety and Phasing Plan
 - v. Utility Location Verification
 - vi. Site Layout and Surveying
 - vii. AOA Modification and TSA Coordination
 - viii. Temporary Utilities and Services
 - ix. Delivery and Haul Routes
 - x. Employee Parking and Access Plans

- xi. Construction Laydown Areas
 - xii. Temporary and Permanent Fencing Plans
 - xiii. Vehicle and Gate Dimensions and Placement
- b. General Construction Services
- i. Mobilization
 - ii. Construction Administration and Observation
 - iii. Construction Inspections
 - iv. Special Inspections
 - v. Weekly Construction Meetings
 - vi. Project Program Updates
 - vii. Daily Cleanup
 - viii. Foreign Object Debris (FOD) Prevention
- c. Construction Services
- i. Demolition
 - ii. Excavation and Hauling
 - iii. Below Grade Utility Installation
 - iv. Subgrade Preparation
 - v. Foundations
 - vi. Structural System Installation
 - vii. Exterior and Interior Framing Systems
 - viii. Waterproofing
 - ix. Exterior and Interior Finishes
 - x. Egress Systems (Stairways)
 - xi. Roofing Systems
 - xii. Mechanical Systems
 - xiii. Electrical Power and Lighting Systems
 - xiv. Data Systems
 - xv. Networking Systems
 - xvi. Wireless Internet Systems (i.e. Access Points)
 - xvii. High Mast Light Systems
 - xviii. Plumbing Systems
 - xix. Technology Systems
 - xx. Access Control Systems
 - xxi. Security Camera Systems
 - xxii. Paging Systems
 - xxiii. Speaker Systems
 - xxiv. Audio/Visual Systems
 - xxv. Special Construction
 - xxvi. Conveying Systems
 - xxvii. Wayfinding and Signage Systems
 - xxviii. Food/Beverage Storage and Preparation Systems
 - xxix. Furniture Systems
 - xxx. Passenger Boarding Bridges
 - xxxi. Moving Walkways
 - xxxii. Door and Window Systems
 - xxxiii. Site and Flatwork Systems
 - xxxiv. Site Markings
 - xxxv. Building Protection Systems

- xxxvi. Ground Service Equipment (GSE) charging facilities
- xxxvii. Safety Equipment Systems
- xxxviii. System Integration Services
- xxxix. Fire Suppression Systems
 - xl. Fire Alarm Systems
 - xli. Airport Operations Area (AOA) Access Gates
 - xl. Millwork and Gate Podiums
 - xl. Gate Podium Equipment
 - xliv. Plumbing Fixtures and Toilet Accessories
 - xl. Toilet Partitions
 - xlvi. Site Improvements

Activation/Commissioning/Operational Readiness

The Design-Build Entity shall prepare an Activation Plan, including schedule, activation checklist template, summary level report, and activation team organization chart. Design-Build Entity shall coordinate with City stakeholders in the commissioning, activation, and operational readiness (Activation) during each phase of the Project. Design-Build Entity shall provide personnel resources needed and implement the Activation process. Design-Build Entity shall participate in coordination meetings as directed by the City's Project Manager and shall be required to participate, coordinate, and schedule the Activation activities. Design-Build Entity shall correct any issues identified with their components, equipment, or portions of a system that are impacting the performance of the overall system.

Prior to Substantial Completion, Design-Build Entity shall submit all Equipment Inventory Sheets. New equipment information shall be submitted in an electronic format that can be upload into the Airport's Infor Computerized Maintenance Management System. Design-Build Entity shall coordinate Training Sessions for all Airport staff identified by the City's Project Manager. Design-Build Entity shall provide multiple sessions for shift workers, if required.

Prior to completion, Design-Build Entity shall resolve all outstanding Activation punch list items as identified in the Activation process. Prior to final completion, Design-Build Entity shall provide the completed Activation checklist with a summary level report to document the completion of the Activation activities.

Project Partnering and Stakeholder engagement shall continue throughout the Activation phase. Under the direction of the City's Project Manager, the Activation elements below may be altered in consideration of the accelerated schedule from the identified list below. Activation elements include but are not limited to:

1. Activation/Commissioning/Operational Readiness
 - a. Mechanical System Balancing
 - b. Building Management System Programming and Integration
 - c. Fire Suppression System
 - d. Fire Alarm System
 - e. Network System
 - f. Access Control System
 - g. Security Camera System
 - h. Passenger Boarding Bridge Systems
 - i. Moving Walkway Systems
 - j. Gate Podium Equipment Systems
 - k. Paging Systems
 - l. Speaker System
 - m. Technology Systems and Implementation

- n. Plumbing Systems
- o. ADA Verification and Inspection
- p. High Mast Lighting Systems
- q. GSE charging stations
- r. Electric Power Systems
- s. Lighting Systems and Programming
- t. Coordination on Tenant Improvements for “Grab and Go” Concession

Substantial Completion/Final Completion

Design-Build Entity shall obtain the Temporary Certificate of Occupancy in advance of Substantial Completion. Design-Build Entity shall complete all equipment, hardware, and software training for Airport staff in a 24 hour operational facility. Design-Build Entity shall provide multiple sessions for shift workers, if required. Design-Build Entity shall demobilize from the site. Design-Build Entity shall submit all Equipment Inventory Sheets.

Design-Build Entity shall complete all site work in advance of Final Completion. Design-Build Entity shall obtain the Final Certificate of Occupancy.

Under the direction of the City Project Manager, the Closeout and Acceptance elements below may be altered in consideration of the accelerated schedule from the identified list below. Closeout and Acceptance elements include but are not limited to:

1. Closeout and Acceptance
 - a. Record Drawings (CAD and PDF deliverable)
 - b. Punchlist Inspections
 - c. Warranty Documents
 - d. Operation and Maintenance Documents
 - e. Systems Training (Video Recorded)
 - f. Recommended Maintenance Schedule and BMPs
 - g. Complete Construction Administration Documents
 - h. Final Engineer’s Report
 - i. Inspection Logs and Final Inspection Documents
 - j. Superintendent Dailies
 - k. Project Photos and Construction Progress Documentation
 - l. Specified Attic Stock of Materials Used
 - m. Warranty and Guarantee Requests
 - n. Final Acceptance by City of San Jose Fire, Public Works and Planning Departments and other Authorities Having Jurisdiction at the Airport
 - o. Final Payment

4.2 Project Schedule

Time is of the essence in completing the Project. The Project must be complete and ready for flight operations by June 15, 2019. The Project will be accomplished in the various phases below as set forth in Section 4.1 above.

1. Programming
2. Design
3. Construction
4. Activation/Commissioning/Operational Readiness
5. Substantial Completion/Final Completion

Upon the issuance of the Notice to Proceed, the Design-Build Entity will be tasked with preparing a Project schedule in coordination with the City Team. If required to meet the Certificate of Occupancy date of June 15, 2019 for the Project, and if budget allows, shift work, multiple crews, overtime, and other schedule acceleration methods may need to be deployed.

4.3 Project Costs

- A. The anticipated budget for the Interim Facility – Four Gates portion of the Project is approximately \$37 million inclusive of all costs including Programming, Design Fees, Construction Cost, Construction Contingency, General Conditions, Design-Build Entities Fee, Bonds, Insurance, Contract Overhead, and all other applicable costs. See Exhibit A Conceptual Opinion of Cost. This does not include additional Tasks that may be requested as noted in Section 4.1.

4.4 Applicable Codes and Standards

The following applicable codes and standards are not intended to be a complete list and the use is as applicable. Codes and Standards include:

- FAA Advisory Circulars
- Airport Cooperative Research Program Airport Terminal Planning and Design, Volume 1 & Volume 2, Report 25 and documents in the Airport Passenger Terminal Design Library
- International Air Transport Association Airport Development Reference Manual
- City of San José Standard Specifications dated July 1992 and applicable subsequent amendments (attached to Exemplar Contract)
- City of San José Special Provisions (attached to Exemplar Contract)
- FAA General Provisions
- NFPA 415

The following parts of 2016 California Code of Regulations (CCR) Title 24 apply to this Project:

- California Building Standards Administrative Code
- California Building Code
- California Electric Code
- California Mechanical Code
- California Plumbing Code
- California Energy Code
- California Fire Code
- California Green Building Standards Code
- California Reference Standard Code

Federal Standards include:

- American with Disabilities Act Standards

5.0 EVALUATING PROPOSALS

5.1 Responsiveness of Submission

A Proposal that is not current, accurate and/or completed in accordance with the requirements of this RFP is non-responsive and will be eliminated by the City from further consideration. Notwithstanding the foregoing, the City reserves the right to waive minor irregularities in a Proposal.

5.2 Supplemental Information

The City reserves the right to require any or all Proposers to provide supplemental information clarifying the submitted materials.

5.3 Consideration of Information outside the Submission

The City has the right to conduct a further and independent investigation of the information provided in Proposal. This includes contacting and speaking with references. The evaluation panel may use any relevant information gathered by such investigation - and any other relevant information that comes to the attention of the City - to evaluate a Proposal.

5.4 Evaluation Panel

The City will establish an evaluation panel of four (4) or more evaluators to review submitted Proposals that have met the Minimum Qualifications. Using the Evaluation Criteria, each member of the evaluation panel will independently evaluate each submission and will score the Proposals according to the Evaluation Criteria. A Proposer's numerical score will be the average of the numerical scores given by the members of the evaluation panel for that Proposer. The Proposals will be ranked from highest to lowest based on their respective numerical scores.

5.5 Evaluation Process

Step 1

City staff will review the submittal to ensure that the Proposers have included the required documents, met the Minimum Qualifications, and are responsive. If a Proposal is determined to be non-responsive or if the City determines that the Proposer does not meet the Minimum Qualifications, the remainder of the submission package will not be reviewed, and the non-responsive Proposers and Proposers determined not to meet the minimum required qualifications, if any, will be notified in writing. A Proposer that submits a proposal deemed non-responsive by City or a Proposer that the City determines does not meet the Minimum Qualifications may submit a protest of the responsiveness or Minimum Qualifications determination, as applicable, in accordance with Section 12 of this RFP. Notwithstanding anything to the contrary in Section 12, the Proposer shall submit its written protest of the City's determination no later than five (5) business days after the date of the City's letter of disqualification.

The City reserves the right to verify from any other available resources (including past performance record with the City), the information provided by the Proposer in any part of the Proposal package and to rely upon such information gathered during the verification process. The City reserves the right to adjust, increase, decrease, limit, suspend, or rescind any or all determination(s) based on subsequently learned information.

Step 2

The City will establish an Evaluation Panel as identified in Section 5.4 above to evaluate and score the Technical Proposals and oral interviews. Technical Proposals that meet all the Minimum Qualification requirements will be distributed to the Evaluation Panel for an independent technical evaluation. The Evaluation Panel will review and score the Technical Proposals, considering responsiveness, demonstrated competence, and experience. Members of the panel will be impartial, and will have technical knowledge and experience in the subject matter of the Project.

Each member of the evaluation panel will independently evaluate each Proposal using a 600 point rating system. Points will be assigned based on the following criteria and criteria weights:

Evaluation Criteria	Possible Points
---------------------	-----------------

Submittal Requirements	Pass/Fail
Minimum Qualifications	Pass/Fail and Passing Scores
Technical Evaluation Criteria	
<p>Cover Letter Introduction letter demonstrates a clear and concise overview of the core strengths and why the team is most qualified to plan and execute this Project.</p> <p>Cover letter presents the Proposers Vision for the Project.</p> <p>The cover letter indicates whether the Proposer is a single entity, partnership, corporation, joint venture, or other legal entity recognized in the State of California.</p> <p>The cover letter identifies the contact person.</p>	Pass/Fail
<p>Experience and Qualifications Staffing plan matrix and summary describes the role of each team member.</p> <p>Provides a description of the scope of the DB Entity and/or joint venture, Lead Design Firm, and each subcontractor firm's services and responsibilities.</p> <p>Lists a local office location from which firm will be supported while on this Project.</p> <p>List former names, if any, under which the DB Entity has conducted business and the years of operation under each name.</p> <p>Organization Chart sufficiently addresses the positions necessary to support the Project.</p> <p>Key roles and responsibilities are sufficiently indicated on the Organization Chart.</p> <p>Lists projects of similar type, scope, and magnitude to this Project that meet the criteria of this RFP.</p> <p>Lists all relevant information for Projects referenced above.</p> <p>Provides a summary table to cross reference the Proposers Team with participation in the referenced projects.</p>	100
<p>Project Team and Subcontractors List List of key personnel's qualifications and experience demonstrates staff with the required</p>	100

<p>experience who will add value to the Project. Proposer should list, at a minimum, the following personnel:</p> <ul style="list-style-type: none"> • Project Manager • Lead Designer • Stakeholder Engagement/Design Manager • Superintendent • Identified Subcontractors <p>Team members with experience managing the programming, design, construction, activation, and closeout of the following systems and could manage the delivery of these systems for the Projects:</p> <ul style="list-style-type: none"> • Mechanical, Electrical, and Plumbing • Airport Special Systems • Airfield and Aircraft Systems • Airport Terminal Planning • Technical Requirements for the TSA and FAA • Sustainability Practices <p>Other Key team members included in the Proposers Minimum Staffing Plans</p> <p>Provides resumes and lists relevant references/projects for all key personnel</p> <p>Key personnel demonstrate their commitment to the Project.</p>	
<p>Project Approach</p> <p>Approach clearly demonstrates their ability to provide necessary services to support the Project. The approach should include:</p> <ul style="list-style-type: none"> • Approach to management entities and collaboration to ensure minimal impact to ongoing operations while delivering the Project • Approach and commitment to Project Partnering • Approach to innovative energy performance and sustainability measures • Three schedule savings/cost saving strategies applicable to the Project • Examples of risk mitigation • Approach to Trade Packages • Approach to testing, start-up, system activation, commissioning, and pre-opening activities. 	100
Design Narrative	75

The Design narrative provides an innovative and creative passenger experience in the Interim Facilities, including an extended walking distance from Terminal B.	
Design Rendering Demonstrates the design approach to enhance the passenger experience in an economic way to add additional gates.	75
Schedule and Phasing Demonstrates the effectiveness of phasing of the design and construction to meet the opening date referenced in Section 4.2.	75
Safety and Security Approach Explains Proposer's safety and security approach to further promote a safe and secure work environment for all construction and other staff throughout the Project. Approach demonstrates quality, innovation, and effectiveness of safety and security.	75
TOTAL	600

Step 3 Interviews

After evaluating and scoring the Proposals, the City may – at its sole discretion – decide to conduct oral interviews of some or all the prospective Proposers before making its final ranking. If the City decides to conduct oral interviews, it will do so as follows:

- The City will determine how many of the highest ranked Proposers it will interview. The City will interview the highest ranked Proposers within the number of Proposers it decides to interview. For example, if the City decides to interview four (4) Proposers, it will interview the four (4) highest ranked Proposers. The City will establish an impartial interview panel consisting of four (4) or more persons.
- The length and location of the oral interviews will be at the discretion of the City.
- Each member of the interview panel will independently evaluate and score each interviewed Proposer using a 500 point system consisting of the same Evaluation Criteria and criteria weights as is set forth above in this Section.

A Proposer's final numerical score for the interview will be the average of the numerical scores given for the interviews by the members of the interview panel for that Proposers. The City will determine the final ranking of the interviewed Proposers, from highest to lowest, based on their respective numerical interview scores. If the City elects not to conduct interviews, the point value for the interviews will not be considered.

Step 4

Total Possible Points

Following any oral interviews, the City staff will add together the Technical Proposal points and the Oral interview points. City staff will then calculate and assign points for the Price Proposals. The lowest rough order of magnitude (ROM) Price will receive one hundred percent (100%) of the points assigned to the Price Proposal. Remaining Proposers will receive a deduction in points equal to the percentage difference between their total ROM for Evaluation and the lowest ROM for evaluation.

RFP – Written and Oral Proposal Evaluation	Scoring Weight
Technical Proposal	600
Oral Interview	500
Price Proposal	250
Local Business Enterprise (5%)	75
Small Business Enterprise (5%) (only applicable if local)	75
Total Possible Points.	1500

5.6 Written Notification of Rankings

The City will post on BidSync the results of the ranking based on the scores of the Evaluation Panel. The City will indicate that this notice is a “Final Ranking Notice” unless it decides to conduct interviews in accordance with Section 5.5. If the City decides to conduct interviews, then this notice is an “Interim Ranking Notice.” The “Interim Ranking Notice” will state how many of the top ranked Proposers the City will interview and it will provide information regarding the interviews. Following the interviews, the City will post the “Final Ranking Notice” of the ranking on BidSync.

5.7 Post Award Submittal Requirements

The two (2) highest ranked Proposers in the Final Notice must submit a Certificate of Insurance within five (5) business days from the final day of the protest period set forth in Section 12 Protests. A Proposer’s failure to provide the documents within this time frame may result in the City disqualifying that Proposer. The Exemplar Insurance Requirements are located in Exhibit D.

5.8 Negotiations

The City will negotiate the specific Scope of Work and the compensation for the Project with the top ranked Proposer receiving the greatest number of points. If the City and the top ranked Proposer reach agreement, then they will enter into an agreement based on Exhibit B – Exemplar Standard Contract. If the City and the top ranked Proposer cannot reach agreement, then the City may negotiate with the second ranked Proposer. This process will continue until the City reaches an agreement with a Proposer or terminates the RFP. The City may begin negotiating with the next lower ranked Proposer whenever the City determines that doing so is in its best interest. The City may elect to negotiate with more than one Proposer at the same time.

6.0 GENERAL SUBMITTAL REQUIREMENTS

6.1 Submitting Proposal

Each Proposer must submit its Proposal to the submittal location on or before the submittal deadline. The City will not consider any Proposals submitted after the Submittal Deadline. Each Proposer must submit its Proposal to the attention of the Contact Person and must clearly label the front of its submission with the RFP title and number – all as identified on the front cover of this RFP.

6.2 Proposal Submission Package

The Proposal must be a single, complete package that properly and fully responds to all the requirements of this RFP. The Proposal submission package (or small box) will consist of multiple envelopes and are required to be submitted as follows:

Envelope 1: Required Forms

FORM 1 - Certification and Local and Small Business Preference

Complete FORM 1 - CERTIFICATION on which the Proposer must make a number of certifications and representations. Read the Certification carefully and ensure it is signed.

OPTIONAL ADDITION: If you wish to be considered for a local and small business preference as set forth in Chapter 4.12 of the San José Municipal Code, complete FORM 1 – LOCAL AND SMALL BUSINESS PREFERENCE. A “local business enterprise” is entitled to a preference of 5 percent of the total points used to determine the most advantageous submittal. A “local business enterprise” that also is a “small business enterprise” is entitled to an additional preference of 5 percent of the total points used to determine the most advantageous submittal.

The preference only applies to the Proposer submitting the Proposal. If a joint venture or partnership is submitting the Proposal, then the following rules apply.

- a. The “local business enterprise” preference applies if any one of the firms in the joint venture or partnership meets the definition for a “local business enterprise.”
- b. If the joint venture or partnership qualifies as a “local business enterprise,” then whether it meets the definition of “small business enterprise” is determined by the aggregate of all of the employees in the joint venture or partnership.

Proposers cannot submit the Local and Small Business Preference Form after the Submittal Deadline. *If a Proposer does not complete and submit the Local and Small Business Preference Form with its Proposal, then the Proposer cannot receive the preference – even if the Proposer otherwise might qualify for the preference.*

If Certification is included, place it with Form 1.

If Proposer wishes to be considered for the City’s Local and Small Business Preference, in addition to the Certification, Proposer must complete the Local and Small Business Preference portion of Form 1.

FORM 2: Minimum Qualifications Form

Complete FORM 2 – MINIMUM QUALIFICATIONS detail how the Proposer meets the Minimum Qualifications outlined in FORM 2.

FORM 3: Proposer Questionnaire

Complete FORM 3 – PROPOSER QUESTIONNAIRE, to acknowledge recent firm performance and events as described below.

FORM 4 – Exceptions to the Exemplar Standard Contract

Complete FORM 4 noting whether the Proposer takes any exceptions to the standard terms and conditions set forth in the Exemplar. *In selecting a Proposer, the City may consider any exceptions to the standard terms and conditions taken by a Proposer.*

The Proposer selected to perform the services described in this RFP will enter into a Design-Build Contract with the City before performing any work. An exemplar of the standard terms and conditions of the Standard Contract that the Proposer would need to enter into is set forth in Exhibit B of this RFP, entitled “EXEMPLAR STANDARD CONTRACT.”

NOTE: The City has the discretion to consider, without limitation, any exceptions to the standard terms and conditions taken by the Consultant in deciding with which proposer it will negotiate an agreement. This discretion is not limited by the proposer’s ranking based on the Evaluation Criteria or by anything to the contrary in this RFP.

FORM 5 – Insurance Acknowledgement

Complete Form 5 which confirms whether the Proposer has the required insurance as identified in Exhibit D Exemplar Insurance Requirements at the time of submitting the Proposal or whether the Proposer will get the appropriate insurance if the Proposer is one of the highest ranked in the Final Ranking.

The Proposer, at its sole cost and expense and for the full term of the Design-Build Contract and any extension thereof, will be required to obtain and maintain, at a minimum, all the insurance coverages in the amounts and terms outlined in Exhibit D, Exemplar Insurance Requirements.

The City reserves the right to consider alternative proposals and arrangements for insurance coverage for the Project, including and not limited to, using a Contractor Controlled Insurance Program (CCIP). Additionally, the City reserves the right to require the selected Proposer to enter into negotiations for coverage of the Project under a CCIP or any other alternative proposal for insurance coverage

The City will provide any additional details about insurance coverage during the RFP process.

Electronic Submission

One USB flash drive containing all documents required in this Proposal, except Envelope 3.

Envelope 1 must be clearly marked "Envelope 1 – Required Forms and Electronic Submission: CPMS 8895, Mineta San José International Airport, "Interim Facility – Four (4) Gates".

Envelope 2: Technical Proposal

The Technical Proposal must include all requirements identified in Section 9.0 – Technical Proposal. The spiral bound copy must be divided into sections using the "TAB" identifiers designated in Section 9.0. Technical Proposal.

The Proposal shall be a maximum of 25 double-sided sheets of paper and printed double sided to the maximum extent possible. All pages will be letter size (8 ½" by 11") or, if folded to that dimension, twice letter size (11"x17"). All attachments must follow the same sizing.

Envelope 2 must be clearly marked "Envelope 2 – Technical Proposal: CPMS 8895, Mineta San José International Airport, "Interim Facility – Four (4) Gates.".

DO NOT SUBMIT WITH PROPOSAL PACKAGE: Envelope 3: Price Proposal –

Envelope 3 – Price Proposal is to be submitted by short-listed Proposers in the event City invites them to interview based on evaluation and scoring of the proposals. In the event that the City elects not to conduct interviews, City will notify the short-listed Proposers when to submit their Price Proposals. Short-listed Proposers invited to interview shall bring with them to the interview a completed FORM 6 – PRICE PROPOSAL in an Envelope 3 in the manner described in Section 10 of this RFP.

One (1) unbound copy and one electronic version (on UBS or flash drive) of the Proposers Price Proposal Form 6.

Envelope 3 shall be clearly marked "Envelope 3– Price Proposal Form: CPMS 8895, Mineta San José International Airport, "Interim Facility – Four (4) Gates.".

6.3 Number of Copies

With the exception of the Price Proposal, each Proposer must submit seven (7) complete packages of the envelopes identified above to the contact person identified on the front cover.

6.4 Formatting

The Proposal must be in Times New Roman, Arial, Calibri or some similar, easily readable font. The size of the font cannot be any smaller than 11. Narrow or condensed fonts are not permitted.

6.5 Facsimile/Electronic Copies Prohibited

The City will not accept Proposal via facsimile or those that are only in an electronic format.

7.0 BONDS

7.1 Performance and Payment Bonds

The Proposer will be required to deliver to the City, upon commencement of individual construction packages, performance and payment bonds in forms acceptable to the City in the full amount of the construction value (refer to Section 4.3 for the project costs and Exhibit B Exemplar Standard Contract) to guarantee the faithful performance and payments. Bonds shall be maintained for each construction package until the package has been completed and the City consents to the release of Bonds. Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the City of San José as beneficiary.

It is therefore anticipated that the bonding requirements will vary throughout the duration of the Contract as construction amounts are agreed upon, construction commences and completes.

The City reserves the right to negotiate the bonding level requirements for the performance bond only. The City will also consider other guarantees (bank Letter of Credit, or other guarantees) in lieu of the performance bond requirements. Consistent with Cal. Civ. Code Section 9550-9566, the City is prohibited from accepting a letter of credit or other guarantees in lieu of a payment bond; a payment bond is required.

8.0 USE OF INFORMATION

The City has the discretion to consider, without limitation, any of the information disclosed in accordance with this provision in deciding with which proposer it will negotiate an Contract. This discretion is not limited by the proposer's ranking based on the Evaluation Criteria or by anything to the contrary in this RFP.

9.0 TECHNICAL PROPOSAL

The TECHNICAL PROPOSAL shall include all the requirements of this Section and follow the submittal instructions in Section 6.2, Envelope 2.

9.1 TAB A: Cover Letter

Provide a cover letter (maximum 2 pages) signed by an authorized representative of the Proposer to perform the commitments contained in the Proposal and the Contract Documents. It shall serve as an Executive Summary of the Proposal and demonstrate a clear and concise overview of the core strengths of the Proposer's team and why the Proposer's team is the most qualified to plan and execute this Airport Project. The letter should introduce not only each company that is a member of Proposer's team but also the cooperation of your proposed team, highlighting their benefits and attributes and how you plan to integrate to perform the work at the Airport.

- b. The cover letter shall represent the Proposer's vision for the delivery of the Project as detailed in the RFP. Provide comments or suggestions to the Airport for generating the coordination, cooperation, and teamwork to run the Project wisely and efficiently.
- c. Indicate whether the Proposer is a single entity, partnership, corporation, joint venture, or other legal entity recognized in the State of California. If the Proposer is a joint venture, provide a copy of the joint venture agreement in Envelope 1.
- d. Identify the names of the contact person, his or her title, telephone number, email address, mail address, and a brief description of his or her role on the Project. The contact person must be listed as one of the Key Personnel in the Proposal.
- e. By submitting the Proposal, the Proposer affirms the following:
 - Proposer agrees to commit and assign all Key Personnel identified in the Proposal.
 - Proposer understands that the selection of its Proposal will be based, in part, on the Proposer's team and the Key Personnel as submitted in response to this RFP. Therefore, the City will not approve any request for substitution of the Key Personnel within six (6) months after issuance of the Notice to Proceed with Programming, until the basis for the substitution request has been thoroughly and fully investigated for the causes and reasons.
 - If any substitution of the Proposer's Project Manager as submitted with the Proposal is required, the Design-Build Entity shall propose a replacement in writing to the City's Project Manager for approval.
 - Design-Build Entity shall replace their Project Manager departing from the Project or departing from his/her assigned role in the Contract with an individual of comparable experience thirty (30) calendar days prior to the departure of the assigned Project Manager. Failure to replace the Project Manager of Key Personnel shall not relieve the Proposer of its obligation for full performance of the services to be provided because of any unfilled position.

9.2 TAB B: EXPERIENCE AND QUALIFICATIONS

Proposer's Team consists of the Proposer, all joint ventures members, and subcontractors, including Key Personnel. "**Key Personnel**" is defined as those individuals of the Proposer's Team who will have direct, hands-on responsibility within their respective disciplines for the provided services.

Describe the proposed Project Team composition, organization, and management as follows:

1. Organization of Proposer's Team
 - Provide a staffing plan matrix and summary describing the role of each member of the Proposer's team. Describe the scope of the Prime Builder, and/or joint venture, Lead Design Firm, and each subcontractor firm's services and responsibilities during all project phases. Identify the local office location from which the firms will be supported while at the Airport. Indicate all former names, if any, under which the prime firm has conducted business and the years of operation under each name.
 - Provide an organization chart showing the reporting relationships and responsibilities for the Prime Builder, Lead Design Firm(s), and the disciplines of other firms for all Project Phases.
 - For each discipline indicated on the organization chart, indicate the key role and responsibilities to the Project.
2. The Proposer must successfully demonstrate a full range of technical and managerial disciplines and construction capabilities associated with providing these Design – Build services for relevant projects similar in size and complexity to this Project. The Proposer must either individually, or collectively, demonstrate, through project examples, relevant expertise to successfully perform the Proposer's roles and responsibilities described in the Scope of Work.

Provide a description of a minimum of two (2) projects that are similar in type, scope, and magnitude to this Project, as described in the Scope of Services, especially at similar facilities that must be phased and implemented with minimal disruption to operations, where the Proposer or its Key Personnel provided the following services. The Project Manager must be in one of the projects with his/her role identified:

- Professional design and/or construction services for an Airport construction project, valued at \$25 million or more, during live operations within an Airport terminal or boarding area using the Alternative Project Delivery model.
- Utilized a collaborative electronic project management system for project estimates, cost management, and construction management. Specify system used.
- Utilized an electronic design and construction tools and turned over Building Information Models to the owner, with specifications.

Project descriptions shall be limited to one-page each (can be double sided). Provide the following information for each project:

Identify which firm included in the Proposal was key in the performance of the project:

- Name of Project
- Client Contact information – **Current** telephone number and email address. (We must to be able to reach them.)
- The scope of services provided
- Total dollar value of the project
- Total dollar value of the Firm's contract
- Contract start and contract end dates
- Identify the project delivery method
- Indicate whether the project involved Programming Phase Scope development
- Identify the permitting requirements which the Design-Build Entity was responsible for assisting the Owner in obtaining, including development of Standard Operating Procedures
- Identify the Construction Sequencing Work Plan developed by the Design-Build Entity describing the interim operating improvements, conditions, and regulatory requirements.
- Identify approach for facility activation, commissioning, and operational readiness.

Submit a one-page summary table to cross reference the Proposer's Team with participation in the reference projects.

9.3 TAB C: PROJECT TEAM (INDIVIDUALS)

Demonstrate the qualifications and experience of the Key Personnel, including the minimum qualifications for the following positions:

- a. **Project Manager:** The Project Manager should not only have robust and relevant experience, but should be able to thrive in the collaborative working environment of Airport with our multi-faceted stakeholders. The Project Manager should have experience managing the delivery of an Airport Terminal building from Programming to Closeout, preferably one which required complex phasing to maintain operations.
- b. **Lead Designer:** The Lead Designer should have a minimum of ten (10) years of experience in Airport Terminal design. The Lead Designer must possess a valid professional license/registration by the California Architects Board.

- c. **Stakeholder Engagement Manager/Design Manager (SEM):** The Stakeholder Engagement Manager should have experience managing the programming and design of an Airport terminal building facility with an emphasis on the passenger experience. The SEM should be collaborative, innovative, and able to help guide the team towards the Airports collective architectural vision. The SEM should be available to the team, at the minimum during the Programming, Design, and Construction phases.
- d. **Superintendent.** The Superintendent is the team member that will be on site managing the day to day field operations of the project during all phases of construction through closeout. The Superintendent must be collaborative and have experience with Design Build delivery method in an Airport terminal building which required complex phasing to maintain safety, security, and operations in an Airport environment.
- e. Other **individual team members** with experience managing the programming, design, construction, activation, operational readiness, and closeout of the following systems and could manage delivery of these systems for the Project:
 - Mechanical, Electrical, and Plumbing
 - Airport Special Systems
 - Airfield and Aircraft Systems
 - Airport Terminal Planning
 - Technical requirements for Transportation Security Administration and Federal Aviation Administration.
 - Sustainability Practices
- f. Other Key team members included in the minimum staffing plan.

For all Key Personnel, provide no more than a two-page resume, including relevant projects, for each individual that includes the following information (resumes are not part of the page count.)

- First, middle initial and last name
- Business contact information
- Position with firm
- Years of experience (a minimum of 5 years of experience performing work associated with their discipline).
- Years of experience with current firm
- Education
- Applicable Credentials
- Current Professional Registration
- Current LEED accredited professional documentation (as applicable)
- Role on this Project with estimated percentage of time available to work on each phase as outlined in Scope of Work, and estimated percentage of time available to be on site during each phase
- g. For all Key Personnel, provide up to 3 relevant references that relate to the three projects in their resume with the following information:
 - Client name
 - Current phone number
 - Current email address
- h. Provide up to three projects that are similar in scope and size to this Project at an Airport similar to Mineta San José International Airport and may include, but not limited to design and construction using an alternative delivery model such as Design-Build, Progressive

9.4 TAB D: SUBCONTRACTING LIST (TEAM PARTNERS)

Proposer shall provide a listing of all subcontractors to who the Proposer intends to, or anticipates, subcontracting obligations under this Design Build RFP. The requirement applies to a construction subcontractors of any tier. This tab shall specify specific construction trades and scope of work to be performed by such subcontractor

9.5 TAB E: PROJECT APPROACH

Proposer must demonstrate that it can provide all services necessary to support the Project. The Project Approach should demonstrate the Proposer's understanding and commitment to support or implement the following throughout the Project.

Describe the Project execution approach that the Proposer intends to utilize in a coordinated and thorough manner. Describe how the Proposer would provide the depth of technical services required. Include discussion of the following:

- a. Approach to management of the Project entities (lead design firm, subconsultants, subcontractors, etc.) and collaboration with the City team, and the stakeholders throughout the Programming, Design, Construction, Activation/Commissioning/Operational Readiness, and Substantial Completion/Final Completion phases to ensure minimal impact to ongoing operations while providing maximum improvements to the facility, its' systems, concessions, safety, security, etc.
- b. The Proposer must demonstrate their commitment to project partnering that is consistent with the International Partnering Institute Best Practices Guide. Include in the discussion the ability to collaborate with a wide variety of stakeholders experienced at the Airport including City staff, Airlines, Concessionaires, Tenants, FAA, TSA, CBP, and other Regulatory Agencies.
- c. Approach to innovative energy performance and sustainability measures.
- d. Provide a minimum of three schedule savings/cost savings strategies that the team has successfully employed on similar projects and the time/cost reductions the team could realize for these actions.
- e. Approach to Risk Mitigation and how key risk factors will be reduced, identified, and mitigated. Provide examples from past and/or current projects where risk was identified and mitigated.
- f. Approach to subcontractor selection and coordination, including:
 - o Specific approach to selection of core subcontractors.
 - o Coordination of self-performed Work and subcontractor Work.
 - o Specific approach to maximizing meaningful Disadvantaged Business Enterprises and Small Business participation.
 - o Local labor inclusion
- g. Approach to testing, start-up, system activation, facility commissioning, and coordination of pre-opening activities. Explain the Proposer's approach to work closely with the Airlines, concessions, regulatory agencies, and City Airport Divisions during the operational readiness of various interim milestones.

9.6 TAB F: DESIGN NARRATIVE

Provide a one (1) page design narrative, written and signed by the Lead Designer, explaining how the team will economically achieve the Project while still maintaining and/or enhance the passenger experience in the Interim Facility. In addition, discuss how sustainability practices will be incorporated in the overall design.

9.7 TAB G: DESIGN RENDERINGS

The Design Renderings are not expected to be the output of a robust design exercise but rather the City would like the Proposer to demonstrate the design approach and how the Proposer will interpret the integration of the architecture of Terminal B and/or the Rental Car Center in an economical way without compromising the passenger experience.

- The rendering perspectives will be on a 11”X17” page
- Rendering 1 will be the interior perspective of the Interim Facility. View is at the discretion of the Proposer.
- Rendering 2 will be the exterior landside perspective of the Interim Facility four (4) gates.

9.8 TAB H: SCHEDULING AND PHASING

Provide an overview summary schedule showing the Scope of Work, including resource allocation for staff, based on the proposed Project Approach. (Schedule may be an appendix and is not part of the page count.)

Provide a one-page narrative co-written by the Proposer’s Lead Designer and Project Manager explaining how the Proposer will approach achieving the date identified in Section 4.2 for operations.

9.9 TAB I: SAFETY AND SECURITY APPROACH

Safety and Security are the top priority at the Airport in all its daily operations as well as construction safety. The City wants to ensure that every day is a safe day, not only for our employees, our passengers, but also for construction workers. Describe the Proposer’s Safety Approach to promote a safe work environment for all construction and staff throughout the Project area. The Safety and Security Approach should demonstrate the Proposer’s understanding and commitment to support its implementation. In addition, the Proposers shall commit to understanding and follow all Airport and Transportation Security Administration related security requirements as it applies to this Project.

The Project will be constructed during Airport Operations and minimal impact is expected to occur to the existing gates and to Remain Over Night (RON) positions.

10.0 PRICE PROPOSAL

Section 6.0, Envelope 3 – The Price Proposal shall fully satisfy the format and content requirements of the RFP, and shall set forth the Proposer’s Proposed Design Build Rough Order of Magnitude (ROM) for the Project. Materials and data provided in the Price Proposal must be clear, complete, accurate, and in compliance with the RFP.

The proposed Design Build ROM shall include all costs for performing the Work including obtaining all applicable Governmental approvals, engineering, designing, constructing, testing and commissioning of the Project, including all related services and activities in compliance with this RFP. The Design Build ROM shall also include the costs associated with the required insurance, the performance and payment bonds and shall be inclusive of all taxes. The Design

Build ROM proposal shall cover furnishing of all professional services, labor, equipment, materials, and related services required to perform the Work in compliance with the RFP. The proposed Design Build ROM shall take into account the terms and conditions in Exhibit B Exemplar Standard Contract contained in this RFP, including all addenda.

The Price Proposal Form 6 must be signed and dated, indicating the Proposer's name, by an authorized officer of the Proposer. Price Proposals by a partnership, a JV, LLP or LLC, must be executed in the partnership name and signed by an authorized officer of each partner / member. Such signed Price Proposal shall be accompanied by evidence of authority of the officers to sign for the Proposer. The Proposer shall complete all pricing information requested in the forms. No material alterations in the forms by erasures, interpolations, or otherwise, will be acceptable unless each such alteration is signed or initialed and dated by the authorized officer(s) of the Proposer. If initialed, the City may require Proposer to identify any alteration so initialed.

ALL PRICE AND COST INFORMATION SHALL BE INCLUDED IN THE PRICE PROPOSAL. **NO PRICE OR COST INFORMATION SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.** IF ANY PRICE PROPOSAL INFORMATION IS INCLUDED IN THE TECHNICAL PROPOSAL, THE ENTIRE PROPOSAL MAY BE REJECTED.

Cash Flow Forecast - The Proposer shall develop and provide a monthly Cash Flow Forecast of the Design Build ROM consistent with the Project Schedule based on estimated invoice amounts, less retention, to be submitted by month and cumulative, demonstrated by a monthly histogram and a cumulative curve respectively for the duration of the Project from the planned NTP Date to the Final Completion Date and placed in Envelope 3. The cumulative total of the Cash Flow Forecast will equal the proposed Design Build ROM. During discussions with the successful Proposer, the Cash Flow Forecast will be reviewed by the City and a final Cash Flow forecast incorporating any City comments will be utilized as an exhibit to the Design Build Contract and updated by the Design Builder each month with the Payment Request for submittal to the City for approval.

11.0 COMMUNICATIONS REGARDING THE RFP

11.1 Submitting a Question or Objection

Proposers must NOT submit any questions and/or objections to this RFP directly to the Contact Person listed on the cover sheet of the RFP. They must submit any questions and/or objections using BidSync. Contacting any City representative(s) other than the Contact Person about this RFP, or contacting the Contact Person other than by using BidSync, are prohibited and are grounds for disqualification.

11.2 Content of Question or Objection

Questions and/or objections must be as specific as possible and must identify the RFP section number and title at issue. A Proposer submitting an objection must describe the objection as specifically as possible and set forth the rationale for the objection.

11.3 Deadline for Submitting a Question and/or Objection

Proposers must submit any questions or objections *no later than* the Deadline for Submitting Questions and/or Objections indicated on the timeline in this RFP.

11.4 City's Issuance of Addenda, Notices and Answers to Questions

The City will post all addenda and notices regarding this RFP on BidSync. The City may provide a written response to any question(s) and/or objection(s) in the form of a single answer or by issuing an addendum.

11.5 Proposers are Responsible for Checking BidSync

The addenda, notices and answers to questions issued by the City on BidSync become part of this RFP. Each Proposer is responsible for checking BidSync for addenda, notices and answers to questions. In the event a Proposer obtains this RFP through any means other than BidSync, the City will not be responsible for the completeness, accuracy or timeliness of the final RFP document.

11.6 Relying on Other Written or Oral Statements Prohibited

Proposers can rely only on this RFP and any subsequent addenda, notices and answers issued by the City on BidSync. Proposers cannot rely on any other written or any oral statements of the City or its officers, Directors, employees, or agents regarding the Project or the RFP.

12 PROTESTS

12.1 Procedures for Protesting

A Proposer that submitted a Proposal can protest the Proposer rankings only after the City issues the Final Notice of the rankings. A Proposer that desires to protest the Proposer rankings must submit a written protest to the Director of the Department of Public Works, addressed as follows:

City of San José
Attention: David French, CIP Procurement Manager
200 East Santa Clara Street, 5th Floor
San José, CA 95113-1905

The written protest must detail the grounds and factual basis of the protest, and must include all relevant supporting information.

12.2 Time for Submitting Protest

A Proposer desiring to protest the rankings must submit its written protest no later than five (5) business days after the date on the Final Notice of the rankings. The failure to submit a written protest within this time is a bar to protesting the rankings.

12.3 Grounds for which No Protest is Allowed

There is no right to protest based on the following:

- a. Incomplete (non-responsive) Proposals;
- b. Late submission of Proposal; or
- c. A dispute regarding the RFP requirements and/or specifications that could have been addressed by submitting a question and/or objection in accordance with Section 12.

12.4 Director's Decision

The Director of Public Works (Director), or an appropriate designee of the Director, will issue a written decision on any protest. The Director, or designee, may base the decision on the written protest alone or may informally gather evidence from the Proposer filing the protest or any other person having relevant information.

13 GROUND FOR DISQUALIFICATION

- 13.1 All Proposers are expected to have read and understand Sections 14.4 through 14.6 of this RFP and the "Procurement and Contract Process Integrity and Conflict of Interest", Section 15 of the Consolidated Open Government and Ethics Provisions adopted on August 26, 2014. A complete copy of the Resolution 77135 can be found at:

Any Proposer who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:

- Contact regarding this procurement with any City official or employee or Evaluation team other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.
- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.
- Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.
-

13.2 In addition to violations of Process Integrity Guidelines, the following conduct may also result in disqualification:

- Offering gifts or souvenirs, even of minimal value, to City officers or employees.
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
- Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
- Proposer's default under any City Contract, resulting in termination of such Contract.

14 MISCELLANEOUS PROVISIONS

14.1 City's Right to Terminate Process

The City reserves the right to terminate this RFP at any time.

14.2 Costs of Preparing Submittal

Proposer bears all costs associated with its efforts in responding to this RFP.

14.3 Gifts Prohibited

14.3.1 Chapter 12.08 of the San José Municipal Code generally prohibits a City officer or designated employee from accepting any gift(s). The Proposer selected as a result of this procurement will be required to comply with Chapter 12.08. (See Exhibit B - Exemplar Standard Contract.)

14.3.2 By submitting a response to this RFP, the Proposer represents that:

- It is familiar with the requirements of Chapter 12.08, and
- It has complied with, and throughout the remainder of this procurement will continue to comply with, the requirements of Chapter 12.08.

The Proposer's failure to comply with Chapter 12.08 at anytime during this procurement is a ground for disqualification.

14.4 Disqualification of Former Employees

14.4.1 Chapter 12.10 of the City's Municipal Code generally prohibits a former City officer or "designated employee", as defined in Chapter 12.10, from providing services to the City connected with his/her former duties or official responsibilities. The Proposer selected as a result of this procurement will be prohibited from either directly or indirectly using any former City officer or designated employee to perform services in violation of Chapter 12.10. (See, Exhibit B - Exemplar Standard Contract.)

14.4.2 By submitting a response to this RFP, the Proposer represents that:

- It is familiar with the requirements of Chapter 12.10, and
- Its response to this RFP does not contemplate the use of any former City officer or designated employee in violation of Chapter 12.10.

The Proposer's failure to comply with Chapter 12.10 at anytime during this procurement is a ground for disqualification.

14.5 Unfair Competitive Advantage

14.5.1 The City seeks to procure Design-Build services through a competitive, impartial process in which all Proposers are treated fairly. A Proposer that has an actual or apparent unfair competitive advantage jeopardizes the integrity of the competitive process.

14.5.2 A number of different situations can give rise to an actual or apparent unfair competitive advantage. Most commonly, an actual or apparent unfair competitive advantage arises because the Proposer or one of its team members has unequal access to nonpublic information or unique insight into the scope of work. Whether an unfair competitive advantage exists depends on the specific facts of each situation.

14.5.3 The existence of an unfair competitive advantage is a basis for the City to disqualify a Proposer's participation in this RFP. If the City determines that a Proposer is disqualified because of the existence of an unfair competitive advantage, it will provide the Proposer with a written statement of the facts leading to its conclusion that an unfair competitive advantage exists. The Proposer may protest the determination in accordance with the process set out in Section 12 of this RFP. Notwithstanding anything to the contrary in Section 12, the Proposer shall submit its written protest no later than five (5) business days after the date of the City's letter of disqualification.

14.5.4 The Proposer represents that before submitting a response to the RFP it investigated and considered the issue of potential unfair competitive advantage, including considering any team members it has worked with. By submitting a response to the RFP, the Proposer further acknowledges that performing the work resulting from this RFP potentially could be the basis of creating an actual or apparent unfair competitive advantage for any future work. The City strongly advises Proposer to consult with their legal counsel regarding these issues.

14.6 Conflict of Interest

14.6.1 Each Proposer submitting a Proposal is responsible for determining whether or not its participation, as well as the participation of any of its team members, in the contract that is the subject of this RFP constitutes a conflict of interest or a potential conflict of interest. Each Proposer must investigate and manage any potential conflict of interest as part of considering whether to submit a Proposal and when assembling its project team.

Each Proposer also is solely responsible for considering what potential conflicts of interest, if any, entering into the contract that is the subject of this RFP might have on its ability to obtain future contracts for any related, future phases of work.

The conflict of interest laws are complicated and determining the existence of a conflict of interest involves a fact intensive analysis of each particular situation. Proposers are strongly advised to consult with their legal counsel with regard to these conflict of interest matters

14.6.2 The successful Proposer will be required to avoid all conflicts of interest or appearance of conflicts of interest in performing the services. (See Exhibit B - Exemplar Standard Contract.) The successful Proposer will be required to:

- Acknowledge that it is familiar with the conflict of interests laws,
- Certify that it does not know of any facts that constitute a conflict of interest; and
- Agree to immediately notify the City if it becomes aware of any facts giving rise to a conflict of interest.

14.6.3 Although there are a number of conflict of interest laws and regulations with which Proposers must be familiar, the following are the two (2) primary ones. The following descriptions of these two (2) conflict of interest laws are very general and are intended to serve only as a starting point in each Proposer's consideration of the issue.

Political Reform Act (Government Code Sections 83111 – 83116):

In general, the Act prohibits "public officials" from making, participating in making, or using their official position to influence a "governmental decision" in which they have a "financial interest." Under the Act, an *individual* providing Design-Build services to the City is deemed to be a "public official" if the individual either (A) makes certain specified types of governmental decisions, or (B) serves in a staff capacity and in that capacity either (1) participates in making a governmental decision, or (2) performs the same or substantially all the same duties for the City as a City employee who is required to complete a disclosure form under the Act. For more information on this topic, see the California Fair Political Practices Commission's website at <http://www.fppc.ca.gov/>.

If an individual providing Design-Build services to the City or an individual employee of the selected Proposer is deemed to be a "public official," then the *individual* must fill out and submit to the City a Statement of Economic Interests disclosure form, commonly known as a Form 700. (See, Exhibit B - Exemplar Standard Contract.) The scope of the required disclosure is tailored to the nature of the work that the individual will be performing.

Government Code Section 1090:

Section 1090 reflects the common law prohibition against self dealing. Unlike the Political Reform Act, which applies to all government decisions, Section 1090 applies to contracts. In general, it prohibits a government official or employee from entering into a contract that he/she was involved in making. Section 1090 is concerned with financial interests other than those that are remote or minimal.

It is generally accepted that Section 1090 applies to Proposers who carry out duties commensurate with those of government employees. Moreover, the "making" of a contract is defined broadly under Section 1090 and would include a Proposer's participation in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitations for bids.

Violating Section 1090 can result in the Proposer's Contract being void, the Proposer having to disgorge public funds, and the public entity not having to restore the benefits it received. It can also lead to criminal charges.

14.6.4 Given the complexity in determining the existence of a conflict of interest, it is hard to generalize about what facts might, or might not, result in a conflict of interest. Accordingly, the following are intended to be no more than some general guidelines that Proposers should treat solely as a starting point in its analysis.

Generally speaking, there is a greater risk for conflicts of interest when a Proposer seeks progressive participation in various phases of a project. This risk is fairly limited when a Proposer seeks a contract related to a project for which the Proposer prepared only general, planning type of documents, such as needs assessment reports, environmental review

documents, geotechnical reports, site surveys, and site condition assessments. The following situations would tend to pose a higher risk of a conflict of interest and would merit a closer analysis of the issue by a Proposer:

- The Proposer is seeking a contract in which it participated in the development of the RFI, RFQ, RFP or bid documents.
- The Proposer is seeking a contract that would involve it reviewing any of its own work performed under another contract.
- The Proposer is seeking a contract for a project that is part of a program for which the Proposer provides general program management services. The concern would be that, as a general program manager, the Proposer probably would be involved in defining the program, the projects within the program and, therefore, necessarily the resulting contracts.
- The Proposer is seeking a contract for a project in which it prepared the conceptual report. The concern would be that the conceptual report would generally define the project and contract scope.
- The Proposer is seeking a contract for a project in which it prepared an alternative analysis report. The concern would be that such a report proposes to decision-makers the various alternatives in project scope, cost, schedule and environmental impact. Determining a conflict of interest would require an analysis of the extent of the Proposer's participation in the decision-making process of selecting a preferred alternative.

14.6.5 The existence of a conflict of interest is a basis for the City to disqualify a Proposer's participation in this RFP. If the City determines that a Proposer is disqualified because of the existence of a conflict of interest, it will provide the Proposer with a written statement of the facts leading to that conclusion. The Proposer may protest the determination in accordance with Section 1 of this RFP. Notwithstanding anything to the contrary in Section 1, the Proposer shall submit its written protest no later than five (5) business days after the date of the City's letter of disqualification.

14.6.6 Persons/Entities with Identified Conflict

The following persons and firms (including parent or subsidiary organizations) are prohibited from participating in any capacity as a member of a DB Entity Proposal due to their role and/or participation in the development of the concept drawings:

Rodan Builders, Inc (Burlingame, CA)
David Fung, AIA, Architect (Mountain View, CA)
Leland Saylor Associates (Walnut Creek, CA)

14.7 Discrimination

It is the City's policy that the selected Proposer shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San José contracts.

14.8 Public Nature of Submissions

All submissions and other correspondence with the City regarding this RFP become the exclusive property of the City and become public records under the California Public Records Act (California Government Code section 6250 et seq.) All submissions and other correspondence will be subject to the following requirements:

14.8.1 The City has a substantial interest in not disclosing submissions during the evaluation process. For this reason, the City will not disclose any part of the RFP responses before it

issues the Final Notice of rankings. After issuance of the Final Notice of rankings, all submissions will be subject to public disclosure.

14.8.2 There are a limited number of exceptions to the disclosure requirements under the Public Records Act, such as for trade secret information. The City is not in a position to determine what information in a submission, if any, may be subject to one of these exceptions. Accordingly, if a Proposer believes that any specific portion of its submission is exempt from disclosure under the Public Records Act, the Proposer must mark the portion of the submission as such and state the specific provision in the Act that provides the exemption and the factual basis for claiming the exemption. For example, if a Proposer believes a submission contains trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption for such information and the factual basis for claiming the exemption.

14.8.3 If a request is made for information in a submission that a Proposer has properly marked as exempt from disclosure under the Public Records Act (e.g. information that the Proposer has marked as "Confidential", "Trade Secret" or "Proprietary"), the City will provide the Proposer with reasonable notice of the request and the opportunity to seek protection from disclosure by a court of competent jurisdiction. It will be the Proposer's sole responsibility to seek such protection from a court.

14.8.4 Any submission that contains language attempting to make all or significant portions of the submission exempt from disclosure or that fails to provide the exemption information required above will be considered a public record in its entirety. Therefore, do not mark your entire submission as "confidential," "trade secret," or "proprietary."

14.9 City Business Tax

The successful Proposer will need to comply with the San José Municipal Code Chapter 4.76 with respect to payment of the City Business Tax before commencing any work on the project. Contact Finance/Revenue Management at (408) 535-7055 to determine the applicable tax rate(s).

14.10 Environmentally Preferable Procurement Policy

The City has adopted an "Environmentally Preferable Procurement" (EPP) policy. The goal is to encourage the procurement of products and services that help to minimize the environmental impact resulting from the use and disposal of these products. These products include, but are not limited to, those that contain recycled content, conserve energy or water, minimize waste or reduce the amount of toxic material used and disposed. Computers and other electronics are a growing focus of environmentally preferable purchasing activities due to their high prominence in the waste stream, their numerous hazardous chemical constituents, and their significant energy use. Moreover, when these products are improperly disposed of they can release hazardous substances that pollute the environment.

In support of this policy, the selected Proposer will be required to work with the City to apply this policy where it is feasible to do so. In addition, proposers should address any environmental considerations with their proposal response.

The entire EPP policy may be found in the City's internet site at the following link:

<http://www.sanjoseca.gov/DocumentCenter/View/3862>

15.0 AIRPORT SPECIFIC PROCUREMENT PROVISIONS: The following provisions are unique to Airport procurements. For purposes of this provision only, the following words have the

following meaning: (1) “applicant”, “offeror” and “bidder” mean “proposer, (2) “bid” and “offer” means the Proposal, (3) “Design-Build Entity consultant” means “Design-Build Entity,” (4) “sub-consultant” means “sub-Design-Build Entity”, and (5) “owner” and “sponsor” means “City.”

15.1 Title VI Solicitation Notice:

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any agreement entered into pursuant to this procurement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

15.2 Federal Fair Labor Standards Act (FLSA)

All agreements and sub-agreements that result from this procurement will incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The successful proposer will have full responsibility to monitor compliance to the referenced statute or regulation. The successful proposer will have to address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

15.3 Occupational Safety And Health Act Of 1970

All agreements and subcontracts that result from this procurement will incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their Design-Build Entity’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

15.4 FAA Advisory Circulars (AC’s)

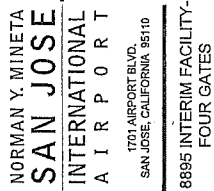
The Proposer must perform services in compliance and in conformance with all applicable and appropriate FAA Advisory Circulars (AC’s). This includes, but not limited, to FAA AC 150/5370-10 “Standards for Specifying Construction of Airports”.

EXHIBIT A

Concept Drawing of Interim Facility – Four Gates

Known Utilities in Vicinity

Conceptual Opinion of Cost



NOT TO SCALE

NOTES

REFERENCE ONLY-DESIGN BUILDER ENTITIES SHALL BE RESPONSIBLE FOR FIELD VERIFICATION

E SHEET A-1.2 FOR LOCATION OF FIBER OPTICS EXTENSION. NEW FIBER OPTIC CABLING MUST BE PROVIDED FROM (E)ROOM: J1350 TO (N)INTERIM FACILITY.

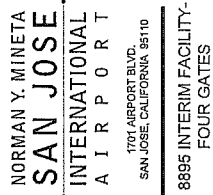
SHEET TITLE **EXHIBIT A**
CONCEPT DRAWING OF
INTERIM FACILITY—FOUR GATES
AND KNOWN UTILITIES IN
VICINITY

SCALE

A-1.1

No.	Description	Date
1	ISSUED FOR EPR	05/03/13

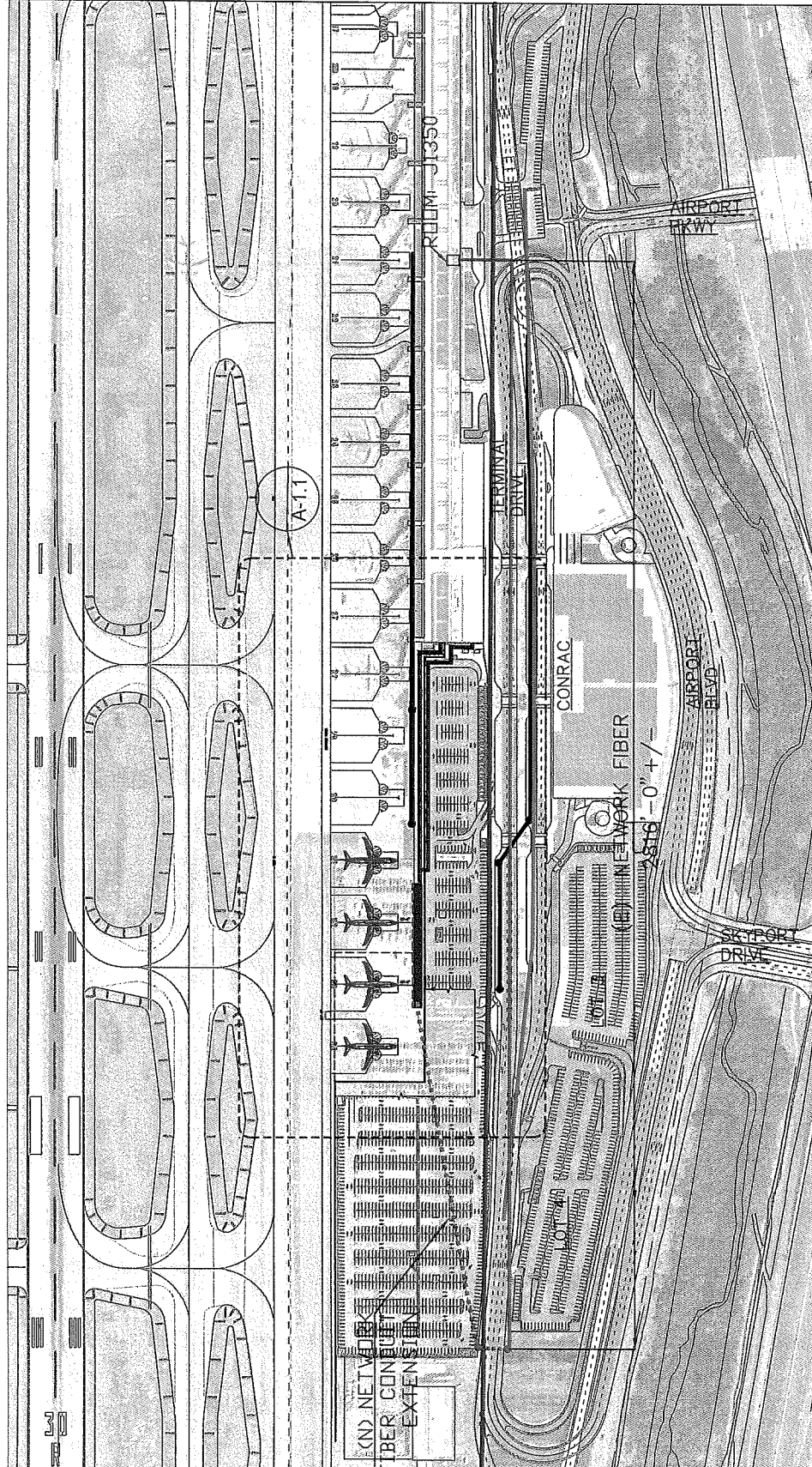
No.	Description	Date

[illegible]

SHEET TITLE **EXHIBIT A**
CONCEPT DRAWING OF
INTERIM FACILITY-FOUR GATES
AND KNOWN UTILITIES IN
VICINITY

SHEET NO.
SCALE

A-1.2

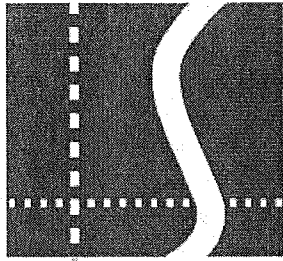


NOT TO SCALE

NOTES

FOR REFERENCE ONLY--DESIGN BUILDER ENTITIES SHALL BE RESPONSIBLE FOR FIELD VERIFICATION. NEW FIBER OPTIC CABLING MUST BE PROVIDED FROM (E) ROOM: J1350 TO (N) INTERIM FACILITY.

Exhibit A
Conceptual Opinion of Cost



**Leland Saylor
Associates**

A Certified DVBE

CONCEPTUAL OPINION OF COST

**SAN JOSE INTERNATIONAL AIRPORT
TERMINAL EXPANSION
INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

SAN JOSE, CA

LSA JOB NUMBER:
17-079

March 13, 2018

PREPARED FOR
SAN JOSE INTERNATIONAL AIRPORT
BY LELAND SAYLOR ASSOCIATES

2121 N. California Blvd, Suite 620 | Walnut Creek | California | 94596
415-291-3200 | 415-291-3201 (f) | www.lelandsaylor.com



PROJECT:	SAN JOSE INTERNATIONAL AIRPORT	JOB NUMBER:	17-079
LOCATION:	SAN JOSE, CA	PREPARED BY:	CS
CLIENT:	SJIA	BID DATE:	
DESCRIPTION:	INTERIM FOUR GATE BOARDING FACILITY (UPDATED)	ESTIMATE DATE:	3/13/2018
		BOARDING AND WALKWAYS GSF:	24,864

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II	SUMMARY OF THE ESTIMATE Intentionally Omitted	10
III	INTERIM BOARDING FACILITY, UPDATED SCHEME 03/13/18	12



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

LSA NO: **17-079**
PREPARED BY: **CS, MP**
CHECKED BY: **TV**
DATE: **3/13/2018**
BOARDING AND WALKWAYS GSF: **24,864**

SECTION I

PREFACE AND NOTES TO THE ESTIMATE

PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

JOB NUMBER: **17-079**
PREPARED BY: **CS**
CHECKED BY: **TV**
ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

1.0 PROJECT SYNOPSIS

This estimate is based on a conceptual study for the San Jose International airport. This feasibility cost study is for updated scheme (03/11/18), based on prior option 2. The scheme includes a four gate hold room, and access from the existing terminal, with one fully enclosed and conditioned walkway, fully ramped, with upward and downward "flat" people mover walkways. This connects to the terminal at departure gates level alongside recently added gates. There are no elevators. In addition, an at-grade covered and partially enclosed walkway is included for arrivals. The walkway extends into existing terminal B baggage hall. The construction of the walkways will be located on both the AOA side and non AOA parking side of the existing airfield. Construction is simple steel frame and metal stud infill system, minimal exterior glazing and storefront entries. Walkways are enclosed with a canopy roofing system, structural steel frame. The departures/transfers walkway enclosure includes metal panel enclosure, partial windows, insulation, and interior finished gypsum board. Floor and ceiling finishes and MEP systems are included. The Arrivals walkway is covered and part-enclosed with metal panels, and some windows, with minimal interior finishes (non-conditioned space). Minimal necessary siteworks are included, comprising demolition of the paving for construction, removal of existing exterior systems at terminal entry and patching of all hardscapes needed. MEP services are included, with connections at closest point in existing terminal building.

1.1 TYPE OF STUDY:

This is a conceptual study for the purpose feasibility and stakeholder negotiations.

1.2 PROJECT DESCRIPTION OF ELEMENTS

Construction Type:	Type 1-A Construction
Foundation Type:	Standard Footings
Exterior Wall Type:	Storefront/Metal Panel.
Roof Type:	Membrane Roofing with Tapered insulation
Stories Below Grade:	None
Stories Above Grade:	One
Sitework:	Construction of both Arrivals and Departures Canopy and Ramp or Access stair into Main Terminal.
Plumbing System:	Conventional Plumbing
Mechanical System:	Conventional Mechanical Work
Fire Protection System:	Conventional Sprinklers
Electrical Service:	Conventional Electrical

1.3 GENERAL NOTES REGARDING PROJECT / BASIS OF ESTIMATE / EXECUTIVE SUMMARY:

The construction of four new boarding gates and a covered walkway to the existing terminal.



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

JOB NUMBER: **17-079**
PREPARED BY: **CS**
CHECKED BY: **TV**
ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

2.0 DEFINITIONS

2.1 ESTIMATE OF COST:

An Estimate of Cost is prepared from a survey of the quantities of work; items prepared from written or drawn information provided, working drawing or bid-documents stage of the design. Historical costs, information provided by contractors and suppliers, plus judgmental evaluation by the Estimator are used as appropriate as the basis for pricing. Allowances as appropriate will be included for items of work which are not indicated on the design documents provided that the Estimator is made aware of them, or which, in the judgment of the Estimator, are required for completion of the work. We cannot, however, be responsible for items or work of an unusual nature of which we have not been informed.

2.2 BID:

An offer to enter a contract to perform work for a fixed sum, to be completed within a limited period of time.



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

JOB NUMBER: **17-079**
PREPARED BY: **CS**
CHECKED BY: **TV**
ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

3.0 BIDS & CONTRACTS

3.1 MARKET CONDITIONS:

In the current market conditions for construction, our experience shows the following results on competitive bids, as a differential from company final estimates:

Number of Bids	Percentage Differential
1	+25 to 100%
2 - 3	+10 to 25%
4 - 5	0 to +10%
6 - 7	0 to -10%
8 or more	-10 to -20%

Accordingly, it is extremely important to ensure that a minimum of 4 to 5 valid bids are received. Since we have no control over the bid process, there is no guarantee that proposals, bids or construction cost will not vary from our opinions or our estimates. Please see Competitive Bidding Statement in the estimate detail section for more information.

4.0 ESTIMATE DOCUMENTS

- 4.1 This Estimate has been compiled initially from the following documents and information supplied, but significantly upgraded through conversations and email correspondence from SJIA on 13/12/18 and 03/13/18:

CONCEPT DRAWING SCHEME 1 - A-1.0,A-1.1,A2.0
CONCEPT DRAWING SCHEME 2 - A-1.0,A-1.1,A2.0

COSTS PROVIDED BY OTHERS:

Passenger boarding bridges, costs from SJIA



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

JOB NUMBER: **17-079**
PREPARED BY: **CS**
CHECKED BY: **TV**
ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

- 4.2 The user is cautioned that significant changes in the scope of the project, or alterations to the project documents after completion of the estimate level or job type can cause major cost changes.

5.0 **GROSS SQUARE FEET**

BUILDING	GSF
INTERIM FOUR GATEHOLD ROOM	8,230
FULLY ENCLOSED WALKWAY- DEPARTURES/TRANSFERS	10,500
PART ENCLOSED WALKWAY-ARRIVALS	6,134

6.0 **WAGE RATES**

6.1 **MARKET WAGE RATES:**

This Estimate is based on prevailing wage-rates and conditions currently applicable in San Jose, CA

7.0 **PRORATE ADDITIONS TO THE ESTIMATE**

7.1 **GENERAL CONDITIONS**

10.00%

An allowance based on 10% of the construction costs subtotal has been included for Contractor's General Conditions



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
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PREPARED BY: **CS**
CHECKED BY: **TV**
ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

7.2 DESIGN CONTINGENCY: 20.00%

An allowance based on 20% of the construction costs subtotal has been included for Design Contingency.

NOTE: This allowance is intended to provide a Design Contingency sum only; for use during the design process. It is not intended to provide for a Construction Contingency sum.

7.3 ESCALATION: 8.00% (For hold room)

An allowance of 8% has been included in this estimate for construction material & labor cost escalation up to the anticipated mid-point of construction, based on bid date as date of this estimate (i.e. this is a TODAY'S DOLLARS estimate).

Escalation from date of this estimate to projected actual bid date should be added when known. An allowance of 5% per annum average for up to the next 2 years may be used for reasonable cover. Heightened escalation potential may be carried as an item on the program's risk register and market conditions should be monitored on an ongoing basis.

No allowance has been made for Code Escalation or Technological Escalation.

7.4 REMOTE SITE FACTOR: 0.00%

No costs relating to project Remote Site are included in the price.

7.5 PHASING ALLOWANCE: 0.00%

No costs relating to Phasing is included in the price.



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ESTIMATE DATE: **3/9/2018**

PREFACE NOTES TO THE ESTIMATE

7.6 BONDS AND INSURANCE: 2.50%

An allowance of 2.5% of the construction cost subtotal is included to provide for the cost of Payment and Performance Bonds, if required.

7.7 CONTRACTOR'S FEE: 7.00%

An allowance based on 7% of the construction cost subtotal is included for the Contractor's office Overhead and Profit. Office overhead of the contractor is always included with the fee.
All field overhead of the contractor is included in the General Conditions section of the estimate.

8.0 SPECIAL NOTES PERTAINING TO THIS ESTIMATE

8.1 SPECIFIC INCLUSIONS:

The following items are specifically included in this estimate:

Initial takeoff and items from scheme layouts provided. Subsequently updated per SJIA as follows:

Include a technology/Network Cost Item

Include 3 Fire Escapes along the Departures Walkway

Include allowance for Boarding bridges (\$1.1M each) for 4 boarding bridges

Include Flat walkways (Thyssen Krupp iwalk) on both side of the departures walkway (for full length of the walkway ~600 feet) with space for walking in the middle of the walkway

Enclosure for Departures Walkway with glazed openings with floor and wall finished and HVAC systems, lighting, sprinkler, etc.

Enclosure on arrivals walkway with glazed openings, non-conditioned

Length of Airside Walkway = 700 feet, width = 15 feet

Length of Landside Walkway = 770 feet, width = 8 feet

Demolition into 1st floor of Terminal B

8.2 SPECIFIC EXCLUSIONS:

The following items are specifically excluded from this estimate:

None



PROJECT: SAN JOSE INTERNATIONAL AIRPORT
LOCATION: SAN JOSE, CA
CLIENT: SJIA
DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)

LSA NO: 17-079
PREPARED BY: CS, MP
CHECKED BY: TV
DATE: 3/13/2018
BOARDING AND WALKWAYS GSF: 24,864

SECTION II

SUMMARY TO THE ESTIMATE

Intentionally Omitted



PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
LOCATION: **SAN JOSE, CA**
CLIENT: **SJIA**
DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**

LSA NO: **17-079**
PREPARED BY: **CS, MP**
CHECKED BY: **TV**
DATE: **3/13/2018**
BOARDING AND WALKWAYS GSF: **24,864**

SECTION III

UPDATED SCHEME

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
UPDATED PER SJIA:		TERMINAL B EXTENSION - NEW CONSTRUCTION				
		HOLDROOM	8,230	SF		
		HOLDROOM PERIMETER	880	LF		
		BUILDING HEIGHT	15	LF		
		PART ENCLOSED WALKWAY-ARRIVALS	6,134	SF		
		FULLY ENCLOSED WALKWAY-DEPARTURES/TRANSFERS	10,500	SF		
1a.A	10.00	FOUNDATIONS				
1a.A	1010.00	FOUNDATIONS	8,230	GSF	27.98	\$ 230,288
1a.A	1030.00	SLAB ON GRADE	8,230	GSF	22.00	\$ 181,060
		FOUNDATIONS	8,230	GSF	49.98	\$ 411,348
1a.B	10.00	SUPERSTRUCTURE				
1a.B	1010.00	FLOOR CONSTRUCTION	8,230	GSF		
1a.B	1020.00	ROOF CONSTRUCTION	8,230	GSF	46.50	\$ 382,695
1a.B	1030.00	STAIRS CONSTRUCTION	8,230	GSF		
1a.B	1040.00	SPECIAL CONSTRUCTION	8,230	GSF		
		SUPERSTRUCTURE	8,230	GSF	46.50	\$ 382,695
1a.B	20.00	EXTERIOR CLOSURE				
1a.B	2010.00	EXTERIOR WALLS	8,230	GSF	63.15	\$ 519,720
1a.B	2020.00	EXTERIOR WINDOWS	8,230	GSF	45.71	\$ 376,200
1a.B	2030.00	EXTERIOR DOORS	8,230	GSF	4.50	\$ 37,000
		EXTERIOR CLOSURE	8,230	GSF	113.36	\$ 932,920
1a.B	30.00	ROOFING				
1a.B	3010.00	ROOF COVERINGS	8,230	GSF	24.00	\$ 197,520
		ROOFING	8,230	GSF	24.00	\$ 197,520
1a.C	10.00	INTERIOR CONSTRUCTION				
1a.C	1010.00	PARTITIONS	8,230	GSF	9.35	\$ 76,940
1a.C	1020.00	INTERIOR DOORS	8,230	GSF	2.55	\$ 21,000
1a.C	1030.00	SPECIALTIES	8,230	GSF	48.89	\$ 402,333
		INTERIOR CONSTRUCTION	8,230	GSF	60.79	\$ 500,273
1a.C	30.00	INTERIOR FINISHES				
1a.C	3010.00	WALL FINISHES	8,230	GSF	36.66	\$ 301,690
1a.C	3020.00	FLOOR FINISHES	8,230	GSF	14.16	\$ 116,529
1a.C	3030.00	CEILING FINISHES	8,230	GSF	16.97	\$ 139,648
		INTERIOR FINISHES	8,230	GSF	67.78	\$ 557,867

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.D	10.00	CONVEYING SYSTEM				
1a.D	1010.00	ELEVATOR & LIFTS	8,230	GSF	-	\$ -
1a.D	1020.00	ESCALATORS & MOVING WALKS		GSF		\$ -
1a.D	3030.00	OTHER CONVEYING SYSTEMS		GSF		NONE
		CONVEYING SYSTEM	8,230	GSF	-	\$ -
1a.D	15.00	MECHANICAL				
1a.D	1520.00	PLUMBING	8,230	GSF	28.10	\$ 231,230
1a.D	1530.00	HVAC	8,230	GSF	45.00	\$ 370,350
1a.D	1540.00	FIRE PROTECTION	8,230	GSF	14.00	\$ 115,220
		MECHANICAL	8,230	GSF	87.10	\$ 716,800
1a.D	50.00	ELECTRICAL				
1a.D	5010.00	ELECTRICAL DISTRIBUTION	8,230	GSF	19.00	\$ 156,370
1a.D	5020.00	LIGHTING & BRANCH WIRING	8,230	GSF	16.50	\$ 135,795
1a.D	5030.00	COMMUNICATION AND SECURITY	8,230	GSF	38.00	\$ 312,740
1a.D	5040.00	OTHER ELECTRICAL SERVICES	4,115	GSF	127.21	\$ 523,450
		ELECTRICAL	8,230	GSF	137.10	\$ 1,128,355
1a.D	60.00	SPECIAL ELECTRICAL				
1a.D	6010.00	SPECIAL ELECTRICAL SYSTEMS	8,230	GSF	29.00	\$ 238,670
		SPECIAL ELECTRICAL SYSTEMS	8,230	GSF	29.00	\$ 238,670
1a.E	10	EQUIPMENT				
		EQUIPMENT				\$ -
1a.E	20	FURNISHINGS				
1a.E	2010	FIXED FURNISHINGS	8,230	GSF	14.58	\$ 120,000
1a.E	2020	WAYFINDING SIGNAGE	8,230	GSF	12.00	\$ 98,760
		FURNISHINGS	8,230		26.58	\$ 218,760
1a.F	10.00	SPECIAL CONSTRUCTION				
1a.F	1011.01	BOARDING PLATFORMS	8,230	GSF		\$ 4,400,000
		SPECIAL CONSTRUCTION	8,230	GSF	534.63	\$ 4,400,000
1a.F	20.00	SELECTIVE BUILDING DEMOLITION				
1a.F	2010.00	BUILDING DEMOLITION	8,230	GSF	12.15	\$ 100,000
		SELECTIVE BUILDING DEMOLITION	8,230		12.15	\$ 100,000

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.G		BUILDING SITE WORK				
1a.G	10.00	SITE PREPARATION	25,687	GSF	2.81	\$ 72,089
1a.G	20.00	SITE IMPROVEMENT, INCL WALKWAYS	25,687	GSF	551.44	\$ 14,164,951
1a.G	30.00	SITE / MECHANICAL UTILITIES	25,687	GSF	3.32	\$ 85,250
1a.G	40.00	SITE / ELECTRICAL UTILITIES	25,687	GSF	9.73	\$ 250,000
1a.G	50.00	OTHER SITE CONSTRUCTION	25,687	GSF	7.79	\$ 200,000
		BUILDING SITE WORK	25,687	GSF	575.09	\$ 14,772,290
		TOTAL DIRECT COST	24,864	GSF	987.67	\$ 24,557,497
		ALLOWANCE FOR BADGING/SECURITY	5.00%			\$ 1,227,875
		SUBTOTAL	24,864	GSF	1,037.06	\$ 25,785,372
		GENERAL CONDITIONS	10.00%			\$ 2,578,537
		SUBTOTAL	24,864	GSF	1,140.76	\$ 28,363,909
		DESIGN CONTINGENCY	20.00%			\$ 5,672,782
		SUBTOTAL	24,864	GSF	1,368.91	\$ 34,036,690
		CONTRACTOR'S FEE	7.00%			\$ 2,382,568
		BONDS, INSURANCE	2.50%			\$ 850,917
		SUBTOTAL	24,864	GSF	1,498.96	\$ 37,270,176
		PHASING	0.00%			
		SUBTOTAL	24,864	GSF	1,498.96	\$ 37,270,176

LELAND SAYLOR ASSOCIATES

PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
 LOCATION: **SAN JOSE, CA**
 CLIENT: **SJIA**
 DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**
UPDATED SCHEME

LSA NO: **17-079**
 PREPARED BY: **CS, MP**
 CHECKED BY: **TV**
 DATE: **3/13/2018**
 BUILDING GFA: **8,230**

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.A	10.00	FOUNDATIONS				
1a.A	1010.00	FOUNDATIONS	8,230	GSF	27.98	\$ 230,288
1a.A	1012.00	GRADE BEAMS	880	LF	250.00	\$ 220,000
	1012.01	MISC THICKENINGS/FOUNDATIONS/PADS	8,230	SF	1.25	\$ 10,288
1a.A	1030.00	SLAB ON GRADE	8,230	GSF	22.00	\$ 181,060
1a.A	1030.01	SLAB ON GRADE 5" TH COMPLETE	8,230	SF	22.00	\$ 181,060
		FOUNDATIONS			49.98	\$ 411,348
1a.B	10.00	SUPERSTRUCTURE				
1a.B	1020.00	ROOF CONSTRUCTION	8,230	GSF	46.50	\$ 382,695
1a.B	1021.00	STRUCTURAL STEEL-ROOF 18LBS/SF	74	TON	4,500.00	\$ 333,315
1a.B	1022.00	METAL DECKING, ROOF :				
1a.B	1022.01	METAL DECK, 3", 20 GA	8,230	SF	6.00	\$ 49,380
1a.B	1030.00	STAIRS CONSTRUCTION SEE SITE IMPROVEMENTS	8,230	GSF		
		SUPERSTRUCTURE			46.50	\$ 382,695
1a.B	20.00	EXTERIOR CLOSURE				
1a.B	2010.00	EXTERIOR WALLS	8,230	GSF	63.15	\$ 519,720
1a.B		EXTERIOR WALL AREA	13,200	SF		
1a.C	2010.01	METAL STUDS EXTERIOR WALLS COMPLETE	9,240	SF	26.00	\$ 240,240
1a.B	2010.02	STANDARD METAL PANEL - FLAT	3,564	SQFT	70.00	\$ 249,480
	2010.03	MISC FINISHES/REPAIRS AT TERMINAL INTERFACE	1	LS	30,000.00	\$ 30,000
1a.B	2020.00	EXTERIOR WINDOWS	8,230	GSF	45.71	\$ 376,200
1a.B	2020.01	CUSTOM ALUMINUM WINDOWS, COMMER. GRADE	3,960	SF	95.00	\$ 376,200
1a.B	2030.00	EXTERIOR DOORS	8,230	GSF	4.50	\$ 37,000
1a.B	2030.01	ENTRY / EXIT VESTIBULE DOUBLE DOOR, TEMPERED GLASS	1	PR	15,000.00	\$ 15,000
		ENTRY / EXIT VESTIBULE SINGLE DOOR, TEMPERED GLASS	4	EA	5,500.00	\$ 22,000
		EXTERIOR CLOSURE			113.36	\$ 932,920

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.B 1a.B	30.00 3010.00	ROOFING ROOF COVERINGS	8,230	GSF	24.00	\$ 197,520
1a.B 1a.B 1a.B	3010.01 3010.02 3010.03	RIGID INSULATION AND DENSDECK DECK PREP. SINGLE PLY ROOFING SHEET METAL GUTTERS/DOWNSPOUTS	8,230 8,230 8,230	SF SF SF	6.00 14.00 4.00	\$ 49,380 \$ 115,220 \$ 32,920
		ROOFING			24.00	\$ 197,520
1a.C 1a.C 1a.C	10.00 1010.00 1010.05	INTERIOR CONSTRUCTION PARTITIONS METAL STUDS INTERIOR WALLS/ PARTITIONS,) GYP BD 2 SIDES MISC FRAMING/BACKING ALLOWANCE	8,230 3,360 8,230	GSF SF SF	9.35 18.00 2.00	\$ 76,940 \$ 60,480 \$ 16,460
1a.C 1a.C	1020.00 1020.01	INTERIOR DOORS HM DOOR, SINGLE, FRAME & HARDWARE	8,230 6	GSF EA	2.55 3,500.00	\$ 21,000 \$ 21,000
1a.C 1a.C 1a.C 1a.C 1a.C 1a.C 1a.C	1030.00 1030.01 1030.02 1030.03 1030.04 1030.05 1030.06	SPECIALTIES ALLOWANCE FOR SPECIALTIES TOILET PARTITIONS-STANDARD TOILET PARTITIONS-ADA MISC DIV 10 SPECIALTIES FINISH CARPENTRY TENANT IMPROVEMENTS @ CONCESSIONS (CASE WORK)	8,230 20 8 4 8,230 8,230 1	GSF FXT EA EA SF SF LS	48.89 425.00 1,700.00 1,900.00 0.75 2.00 350,000.00	\$ 402,333 \$ 8,500 \$ 13,600 \$ 7,600 \$ 6,173 \$ 16,460 \$ 350,000
		INTERIOR CONSTRUCTION			60.79	\$ 500,273
1a.C 1a.C 1a.C	30.00 3010.00 3012.01	INTERIOR FINISHES WALL FINISHES INTERIOR PAINTING PREMIUM WALL FINISH CERAMIC WALL TILE MISC FINISHES AT TERMINAL INTERFACE	8,230 8,230 4,000 2,200 1	GSF SF SF SF LS	36.66 3.00 45.00 35.00 20,000.00	\$ 301,690 \$ 24,690 \$ 180,000 \$ 77,000 \$ 20,000
1a.C	3020.00	FLOOR FINISHES CARPET/RESILIENT MIX BASE ALLOWANCE CERAMIC TILE CERAMIC BASE	8,230 7,566 910 664 218	GSF SF LF SF SF	14.16 12.00 5.50 24.00 22.00	\$ 116,529 \$ 90,792 \$ 5,005 \$ 15,936 \$ 4,796
1a.C 1a.C	3030.00 3030.01	CEILING FINISHES CEILING FINISH SYSTEM AT 1 ST FLOOR, ALLOW FOR ACT TILE WITH SUSPENDED SYSTEM PAINTED GYPSUM BOARD CEILING AT RESTROOMS	8,230 7,566 664	GSF SF SF	16.97 16.00 28.00	\$ 139,648 \$ 121,056 \$ 18,592
		INTERIOR FINISHES	8,230	GSF	67.78	\$ 557,867

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.D	10.00	CONVEYING SYSTEM INCLINE PLATFORM LIFT - EXCLUDED	8,230	GSF		\$ -
1a.D	1020.00	ESCALATORS & MOVING WALKS SEE BELOW - ACCESS WALKWAYS	10,500	GSF		-
		CONVEYING SYSTEM				\$ -
1a.D	20.00	PLUMBING	8,230	SF	28.10	\$ 231,230
1a.D	2010.00	PLUMBING FIXTURES				
1a.D	2010.01	WATER CLOSET, ELECTRONIC SENSOR	12.00	EA	1,750.00	\$ 21,000
1a.D	2010.02	LAVATORY, COUNTERTOP, ELECT SENSOR	8.00	EA	1,450.00	\$ 11,600
1a.D	2010.03	URINAL, WALL, ELECTRONIC SENSOR	4.00	EA	1,775.00	\$ 7,100
1a.D	2010.04	JANITOR'S SINK	2.00	EA	1,900.00	\$ 3,800
1a.D	2010.05	ELECTRIC WATER COOLER, DUAL	4.00	EA	3,750.00	\$ 15,000
1a.D	2010.06	WATER FOUNTAIN	2.00	EA	6,500.00	\$ 13,000
1a.D	2010.07	SINK	2.00	EA	1,400.00	\$ 2,800
1a.D	2010.08	FLOOR DRAIN	6.00	EA	775.00	\$ 4,650
1a.D	2020.00	DOMESTIC WATER DISTRIBUTION				
1a.D	2020.01	ALLOWANCE FOR PIPING	1.00	LS	45,000.00	\$ 45,000
1a.D	2030.00	SANITARY WASTE				
1a.D	2030.01	LOCAL RI / FINAL CONNECTIONS	24.00	EA	420.00	\$ 10,080
1a.D	2030.02	PIPING ALLOWANCE	1.00	LS	30,000.00	\$ 30,000
1a.D	2030.03	POINTS OF CONNECTION	1.00	LS	20,000.00	\$ 20,000
1a.D	2040.00	RAIN WATER DRAINAGE				
1a.D	2040.01	ROOF DRAIN RAIN WATER DRAINAGE	1.00	LS	20,000.00	\$ 20,000
1a.D	2090.00	OTHER PLUMBING SYSTEMS				
1a.D	2090.01	TESTING & STERILIZATION	24.00	EA	300.00	\$ 7,200
1a.D	2090.02	SEISMIC / CORING / SLEEVEING / DOCUMENTATION	1.00	LS	10,000.00	\$ 10,000
1a.D	2090.03	PROJECT MGMT / SAFETY / PRODUCTIVITY / START UP / STAGING / COMMISSIONING SUPERVISION ASSISTANCE	1.00	LS	10,000.00	\$ 10,000
1a.D	3040.00	HVAC	8,230	GSF	45.00	\$ 370,350
		HVAC ALLOWANCE	8,230	SF	45.00	\$ 370,350
1a.D	40.00	FIRE PROTECTION SYSTEMS	8,230	GSF	14.00	\$ 115,220
1a.D	4010.00	SPRINKLERS		GSF		
1a.D	4010.01	AUTOMATED SPRINKLERS	8,230	SF	14.00	\$ 115,220
		MECHANICAL	8,230	GSF	87.10	\$ 716,800
1a.D	50.00	ELECTRICAL				\$ 1,128,355
		ELECTRICAL SERVICE AND DISTRIBUTION	8,230	GSF	19.00	\$ 156,370
		LIGHTING & BRANCH WIRING	8,230	GSF	16.50	\$ 135,795
		COMMUNICATION & SECURITY	8,230	GSF	12.00	\$ 98,760
		VIDEO SURVEILLANCE SYSTEMS	8,230	GSF	10.00	\$ 82,300
		PERSONAL SAFETY SYSTEMS	8,230	GSF	6.00	\$ 49,380
		FIRE DETECTION & ALARM SYSTEM	8,230	GSF	10.00	\$ 82,300
		OTHER ELECTRICAL SERVICES	8,230	GSF	5.00	\$ 41,150
		GROUNDING, TVSS & LIGHTNING PROTECTION				
		TECHNOLOGY AND NETWORKS ALLOWANCE	1	LS	400,000.00	\$ 400,000
		OTHER ELECTRICAL SERVICES DEVICES, OUTLETS, HVAC CONNECTIONS	8,230	GSF	10.00	\$ 82,300
		ELECTRICAL	8,230	GSF	137.10	\$ 1,128,355

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.D	5099.00	SPECIAL ELECTRICAL SYSTEMS	8,230	GSF	29.00	\$ 238,670
		SIGNAGE, PA, 120V OUTLETS, WIFI, DAS,	8,230	GSF	29.00	\$ 238,670
		SPECIAL ELECTRICAL	8,230	GSF	29.00	\$ 238,670
1a.E	20.00	FURNISHINGS/SIGNAGE	8,230	GSF	14.58	\$ 120,000
1a.E	2010.00	FIXED FURNISHINGS	400	SEATS	300.00	\$ 120,000
	2010.01	GATE SEATING				
1a.E	2020.00	WAYFINDING SIGNAGE	8,230	GSF	12.00	\$ 98,760
	2020.01	WAYFINDING SIGNAGE (EXTERIOR AND INTERIOR)	8,230	SF	12.00	\$ 98,760
		FURNISHINGS			26.58	\$ 218,760
1a.F	10.00	SPECIAL CONSTRUCTION				\$ 4,400,000
		BOARDING BRIDGE UNITS (COST PER SJIA, REF SLO AIRPORT)	4	EA	1,100,000.00	\$ 4,400,000
		SPECIAL CONSTRUCTION			534.63	\$ 4,400,000
1a.F	20.00	SELECTIVE BUILDING DEMOLITION				\$ 100,000
1a.F	2010	DEMO FORM OPENING INTO 2ND FLOOR TERMINAL	2	EA	50,000.00	\$ 100,000
		SELECTIVE BUILDING DEMOLITION			12.15	\$ 100,000
1a.G	10.00	BUILDING SITE WORK				
	10.01	SITE PREPARATION				
		SAWCUT DEMO EXISTING APRON SLAB	9,053	SF	5.00	\$ 45,265
		OVER EXCAVATE/FILL/EXPORT	335	CY	80.00	\$ 26,824
1a.G	20.00	SITE IMPROVEMENT				
		WALKWAYS				
		PART ENCLOSED WALKWAY-ARRIVALS	6,134	SF		
		FULLY ENCLOSED WALKWAY-DEPARTURES/TRANSFERS	10,500	SF		
		SAWCUT/DEMO SLAB FOR FNDTNS	3,000	LF	6.00	\$ 18,000
		DEMO SLAB	1,875	SF	2.50	\$ 4,688
		COLUMN FOUNDATIONS - ENCLOSURE	300	EA	650.00	\$ 195,000
		STRUCTURAL STEEL GALVANIZED-ALLOW 15LBS/SF	125	TON	4,800.00	\$ 598,824
		COLUMN FOUNDATIONS - RAMP	72	EA	850.00	\$ 61,200
		SUPPORT STEEL 8LBS/SF	84,000	LBS	9.50	\$ 798,000
		RAMP	10,500	SF	28.00	\$ 294,000
		ROOF DECK/SHEATHING	16,634	SF	9.50	\$ 158,023
		ROOF MEMBRANE	16,634	SF	8.00	\$ 133,072
		MISC SHEET METAL/DOWNSPOUTS	16,634	SF	2.00	\$ 33,268
		PATCH REPAIR SLAB	16,634	SF	1.25	\$ 20,793

LELAND SAYLOR ASSOCIATES

PROJECT: **SAN JOSE INTERNATIONAL AIRPORT**
 LOCATION: **SAN JOSE, CA**
 CLIENT: **SJIA**
 DESCRIPTION: **INTERIM FOUR GATE BOARDING FACILITY (UPDATED)**
UPDATED SCHEME

LSA NO: **17-079**
 PREPARED BY: **CS, MP**
 CHECKED BY: **TV**
 DATE: **3/13/2018**
 BUILDING GFA: **8,230**

EST. #/ ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
		CURB	2,800	LF	35.00	\$ 98,000
		EXTERIOR ENCLOSURE, FULLY ENCLOSED				
		DEPARTURES/TRANSFERS: METAL STUD FRAMING,	30,800	SF	115.00	\$ 3,542,000
		EXT METAL PANEL, INSULATION, GYPSUM BOARD				
		INTERIOR, PAINT, ALLOW WINDOWS @20%				
		METAL PANEL SIDING AT ARRIVALS WALKWAY,	9,800	SF	50.00	\$ 490,000
		PARTIAL HEIGHT, OPEN VENTED WALKWAY,				
		MINIMAL WINDOWS				
		ACCESS RAMP STRUCTURE - SEE BELOW				
		FLOOR & CEILING FINISHES - FULLY ENCLOSED	10,500	SF	50.00	\$ 525,000
		WALKWAY				
		FLOOR & CEILING FINISHES - PARTIALLY	6,134	SF	10.00	\$ 61,340
		ENCLOSED WALKWAY				
		GUARDRAILS/HANDRAIL PERIMETER	2,800	LF	285.00	\$ 798,000
		SIGNAGE ALLOWANCE	16,634	SF	12.00	\$ 199,608
		MOVING WALKWAY APPROX 300 LF, AT 2-3%				
		INCLINE (DEPARTURES & TRANSFERS WALKWAY	4	EA	980,000.00	3,920,000
		ONLY)				
		MEP ALLOWANCE - DEPARTURES/TRANSFERS	10,500	SF	135.00	\$ 1,417,500
		SPRINKLERS ALLOWANCE -	10,500	SF	14.00	\$ 147,000
		DEPARTURES/TRANSFERS				
		MEP ALLOWANCE - ARRIVALS	6,134	SF	15.00	\$ 92,010
		SPRINKLERS ALLOWANCE - ARRIVAL	6,134	SF	14.00	\$ 85,876
		RELOCATE AOA SECURITY FENCING	700	LF	100.00	\$ 70,000
		CIP CONCRETE ACCESS RAMP				
		SEE ABOVE				
		EXIT STAIRS				
		EXIT STAIRS PROVISION, ENCLOSED	3	EA	100,000.00	\$ 300,000
		PARKING LOT				
		MISC ADAPPTIONS/REPAIRS TO PARKING AREA	1	LS	30,000.00	\$ 30,000
		SITE FURNITURE				
		BOLLARDS	30	EA	1,250.00	\$ 37,500
		K RAIL ALLOWANCE	150	LF	75.00	\$ 11,250
		APRON WORK				
		STRIPING ALLOWANCE AROUND BUILDING	1	LS	25,000.00	\$ 25,000
1a.G	30.00	SITE / MECHANICAL UTILITIES	8,230	GSF	10.36	\$ 85,250
		SANITARY SEWER				
		PIPING ALLOW	550	LF	\$55.00	\$ 30,250
		SS MH	2	LS	\$3,500.00	\$ 7,000
		CONNECT TO EXISTING	1	LS	\$8,000.00	\$ 8,000
		WATER				
		FIRE WATER ALLOWANCE	1	LS	\$20,000.00	\$ 20,000
		DOMESTIC WATER ALLOWANCE	1	LS	\$20,000.00	\$ 20,000
1a.G	40.00	SITE / ELECTRICAL UTILITIES	8,230	GSF	30.38	\$ 250,000
		SITE LIGHTING				
		EXTERIOR LIGHTING ALLOWANCE	1	LS	250,000.00	\$ 250,000

LELAND SAYLOR ASSOCIATES

PROJECT: SAN JOSE INTERNATIONAL AIRPORT
 LOCATION: SAN JOSE, CA
 CLIENT: SJIA
 DESCRIPTION: INTERIM FOUR GATE BOARDING FACILITY (UPDATED)
 UPDATED SCHEME

LSA NO: 17-079
 PREPARED BY: CS, MP
 CHECKED BY: TV
 DATE: 3/13/2018
 BUILDING GFA: 8,230

EST. # / ELEMENT	ITEM #	DESCRIPTION	QUANTITY	UNIT	COST	TOTAL
1a.G	50.00	OTHER SITE CONSTRUCTION	8,230	GSF	24.30	\$ 200,000
		VIDEO SURVEILLANCE SYSTEMS CCTV CAMERAS ALLOWANCE	1	LS	200,000.00	\$ 200,000
		BUILDING SITE WORK		GSF	1,794.93	\$ 14,772,289.70

Exhibit B
– Exemplar Standard Contract

RFP FOR INTERIM FACILITY – FOUR GATES PROJECT AT THE
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
EXHIBIT B – EXEMPLAR STANDARD CONTRACT

**DESIGN-BUILD SERVICES FOR
THE INTERIM FACILITY – FOUR GATES PROJECT
AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

DRAFT DESIGN-BUILD CONTRACT

BETWEEN

THE CITY OF SAN JOSE

AND

RFP FOR INTERIM FACILITY – FOUR GATES PROJECT AT THE
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
EXHIBIT B – EXEMPLAR STANDARD CONTRACT

DRAFT DESIGN-BUILD CONTRACT

**Interim Facility – Four Gates Project at the
Norman Y. Mineta San José International Airport**

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DESIGN-BUILD CONTRACT

Interim Facility – Four Gates Project at the Norman Y. Mineta San José International Airport

This Design-Build Contract ("Contract") is entered into by and between the City of San José, a municipal corporation of the State of California ("City"), and **[INSERT NAME OF DESIGN - BUILDER]**, a **[INSERT TYPE OF LEGAL ENTITY]** ("Design-Builder"), effective as of **[INSERT DATE]**, 2018 ("Effective Date"), with reference to the definitions contained in Appendix 1 hereto and the following facts:

A. City owns and operates the Norman Y. Mineta San José International Airport (Airport).

B. City issued a Request for Proposals (RFP) to select a design-builder to design, build, and deliver to City the Interim Facility – Four Gates Project at the Airport (Project). The Project consists of the total design, construction, and furnishings of as described in, and in accordance with, the Project Technical Requirements, complete with all appurtenances necessary to produce such facilities. Additional improvements as described in Section 2.1.1 Project General Description may also be included in this Project.

C. City has selected Design-Builder for the Project based on its response to the RFP.

D. Design-Builder warrants that it is ready, willing and able to design and build the Project pursuant to the terms and conditions of the Contract.

E. Design-Builder has the necessary professional expertise and skill to perform such services.

F. In order to allow City to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting Design-Builder's ability to make claims for increases to the overall Contract Design-Build Lump Sum (Fixed) Price amount, and extensions of the Completion Deadlines. Design-Builder has agreed in the Contract to assume such responsibilities and risks, and the Contract Design-Build Lump Sum (Fixed) Price amount shall reflect the assumption of such responsibilities and risks.

RFP FOR INTERIM FACILITY – FOUR GATES PROJECT AT THE
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
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G. If Design-Builder fails to complete the Project in accordance with the time limitations set forth in the Contract Documents, then City and the members of the public represented by City will suffer substantial losses and damages. The Contract Documents provide that Design-Builder shall pay City substantial Liquidated Damages if such completion is delayed.

H. Following the completion and acceptance of the Project by City, City will own, operate and maintain sanitary sewers, storm drains, and other items installed during the Project.

NOW, THEREFORE, in consideration of the sums to be paid to Design-Builder by City, the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

**SECTION 1. CONTRACT COMPONENTS;
INTERPRETATION OF CONTRACT
DOCUMENTS**

1.1 Certain Definitions

Appendix 1 hereto contains the meaning of various terms used in the Contract Documents

1.2 Contract Documents

The term "Contract Documents" shall mean the documents listed below and, should there be any contradiction between documents, in the order of precedence. The Contract Documents are the following:

- a) Contract Amendments including Change Orders
- b) The Contract and all Appendices and Exhibits
- c) Supplementary or Special Conditions, if any
- d) The RFP Section 10, Project Technical Proposal
- e) The Design Builder's Technical and Price Proposal
- f) Final Design Documents
- g) The agreed Schedule of Values and Project Schedule
- h) The Design Builder's design and construction documents, as issued for procurement and construction including all revisions.
- i) Bonds (and other forms of guarantees)

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1.3 Order of Precedence

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complimentary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth above in Section 1.2.

Portions of the Background Documents are referenced in the Contract Documents for the purpose of defining the existing characteristics, circumstances, restrictions and limitations of the Work. They are not necessarily considered complete in all respects and are provided for references – only to the Design-Builder. The Design-Builder shall undertake any further investigations, studies, evaluations and analysis it deems appropriate to perform the Work in a quality, safe, cost-effective and timely manner to meet the requirements of the Contract Documents. The Background Documents shall be considered part of the Contract only to the extent they are referenced in the Contract Documents. The referenced information shall be deemed incorporated in the Contract Documents to the extent that it is so referenced, with the same order of priority as the Contract Document in which the reference occurs.

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). Notwithstanding the order of precedence among Contract Documents set forth in this Section 1.3, in the event of a conflict among any standard or specification applicable to the Project established by reference contained in the Contract Documents to a described publication, City shall have the right to determine in its sole discretion which provision applies regardless of the order of precedence of the documents in which such standards are referenced. Design-Builder shall request City's determination respecting the order of precedence involving the referenced standards promptly upon becoming aware of any such conflict.

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RFP FOR INTERIM FACILITY – FOUR GATES PROJECT AT THE
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EXHIBIT B – EXEMPLAR STANDARD CONTRACT

1.4 Integration of Standard Specifications into Contract

If any question arises regarding whether any provision of the Standard Specifications are applicable to the Contract or how to apply such provision, City's interpretation regarding such matter shall control. City's interpretation shall be subject to dispute resolution in accordance with Section 19.

1.5 Interpretation of Contract Documents

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; unless otherwise indicated references to Codes are to the codified laws of the State; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to the Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. Design-Builder acknowledges and agrees that the Contract Documents have been prepared jointly by the parties and have been the subject of arm's length and careful negotiation. Design-Builder further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, they shall not be interpreted or construed against the Person who prepared them, and instead

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Interim Facility – Four Gates Project at the
Norman Y. Mineta San Jose International Airport

other rules of interpretation and construction shall be used. On plans, working drawings, and standard plans, calculated dimensions shall take precedence over scaled dimensions.

1.6 Referenced Standards and Specifications

1.6.1 Except as otherwise specified in the Contract Documents or otherwise directed by City, material and workmanship specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the Project shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Effective Date.

1.6.2 In interpreting referenced standards, the following apply:

- (a) References to the project owner shall mean City.

References to the Engineer in the context of provider of compliance judgment may mean Design-BUILDER's Quality Assurance Manager or it may mean a City representative, depending on the context, as determined by City in its sole discretion.

- (b) References to "Plan(s)" shall mean the Final Design Documents.
- (c) References to "Specification(s)" shall mean the Final Design Documents.
- (d) Cross-references to measurement and payment provisions contained in the referenced standard shall be deemed to refer to the measurement and payment provisions contained in the Contract Documents.

1.7 Explanations; Omissions and Misdescriptions

Design-BUILDER shall not take advantage of any apparent Error in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents other than the Final Design Documents, Design-BUILDER shall apply to City in writing for such further written explanations as may be necessary and shall conform to the explanation provided.

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Design-Builder shall promptly notify City of all Errors that it may discover in the Contract Documents, and shall obtain specific instructions in writing regarding any Error in the Contract Documents other than the Final Design Documents before proceeding with the Work affected thereby. The fact that the Contract Documents omit or misdescribe any details of any Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Design-Builder from performing such omitted Work (no matter how extensive) or misdescribed details of the Work, and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder except as specifically allowed under Section 13.

1.8 Computation of Periods

References to “days” contained in the Contract Documents shall mean calendar days unless otherwise specified; provided that if the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-business day, such act or notice may be timely performed on the next succeeding day which is a business day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3.1, and other requirements for which it is clear that performance is intended to occur on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a non-business day. The term “business days” shall mean days on which City is officially open for business.

1.9 Standard for Approvals

In all cases where approvals or consents are required to be provided by City or Design- Builder hereunder, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. In cases where sole discretion is specified the decision shall not be subject to dispute resolution (or litigation) hereunder.

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**SECTION 2. OBLIGATIONS OF CONTRACTOR;
REPRESENTATIONS, WARRANTIES AND COVENANTS;
DESIGN REQUIREMENTS****2.1 Performance Requirements****2.1.1 Project General Description**

The Project is located at the Airport in San José, California. Design-Builder will design, construct and commission an approximately 8,200 square foot remote holdroom south of Terminal B with four (4) gates, that will be connected to Terminal B by an approximately 10,500 square foot walkway fully ramped to meet ADA requirements, with two (2) upward and two (2) downward “flat” people-mover walkways connected to Terminal B at the departure gate level alongside the Gates 29 and 30 corridor (“Departure Walkway”); and (iii) an approximately 6,200 square foot secured walkway for arrivals between the Interim Facility and the at-grade Terminal B baggage claim (“Secured Walkway”, and collectively with the Interim Facility and the Departure Walkway, the “Project”). The Interim Facility will have code compliant restrooms and food and beverage concessions.

There may be additional building modifications, landside modifications, equipment, furniture, and technology requirements, including but not limited to biometric implementation, necessary in Terminal A, Terminal B, and the International Facility. This is to accommodate relocation of airlines, technology improvements (including but not limited to biometric implementation) to all terminal facilities, and other improvements related to the Project as necessary to address passenger facilitation and capacity challenges. The scope of services related to these efforts will be a separate negotiated GMP(s) from the initial holdroom and the corridors stated above and have its own cost and schedule.

2.1.2 Contract

Design-Builder will perform the Work for the Project as designated by City in this Contract, upon City’s issuance of one or more Notices to Proceed directing Design-Builder to proceed with the Work defined in the Contract Documents. Subject to Section 13, Design-Builder will complete all Work stated in the Contract by the applicable

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Completion Deadlines stated in Section 4.2.2.1.

(a) Task Orders

Design-Builder shall perform the Work only as designated by City in one or more executed Task Orders, upon City's issuance of the applicable Notices to Proceed directing Design-Builder to proceed with the Work defined in the Task Orders. Subject to Section 13, Design-Builder shall complete all Work under each Task Order for the applicable Task Order Price and by the applicable Completion Deadlines. City and Design-Builder may execute Task Orders in accordance with this Section.

After execution of the Contract, Design-Builder shall submit to City proposals for all or part of the Project. For each Task Order, City and Design-Builder shall negotiate a price ("Task Order Price"), schedule ("Task Order Schedule") and scope based upon the estimating, cost, risk assessment, overhead and profit principles set forth in Appendices 4 and 20, it being the express intent of City and Design-Builder to determine the price, schedule and scope for Task Orders on this basis.

The Task Order Price shall be as follows: (a) NTE Task Orders shall have a Not to Exceed (NTE) Price; (b) Lump Sum Design Task Orders shall have a Lump Sum Price; and (c) Design-Build Task Orders shall have a Guaranteed Maximum Price (GMP). For each Design-Build Task Order, City and Design-Builder shall also negotiate a Design Development Contingency and a Construction Contingency available to Design-Builder as provided in Section 12.1.4 and a schedule of values ("Schedule of Values") consisting of a cash flow forecast, breakdown of the discreet items of the Task Order Work and the associated value for each item, such that the total of all such values equals the Task Order Price.

City shall have the right to review Design-Builder's back-up for its quantities, labor and work effort estimates, and other materials submitted by Design-Builder with its draft Task Orders during the course of any Task Order negotiations. The negotiations shall be conducted on an Open-Book Basis.

For each Task Order, City and Design-Builder may negotiate formula(s) for sharing any savings resulting from actual cost less than established Lump Sum Pricing or GMP. In addition, the City and successful Proposer may negotiate incentive payments as an inducement to the Proposer to achieve Project completion on or before the Project

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completion deadline.

The parties may agree to issue Task Orders for all or any portion of the Project, as defined in each Task Order. In such event, the Contract provisions regarding the Project shall be deemed to apply to any such portion of the Project, as applicable.

2.1.3 Performance of Work

The Work will include the design, permitting, construction, installation, and any necessary management, integration, fabrication, assembly, and/or testing the Work in conformance with the Contract Documents. All materials, services and efforts necessary to achieve Project Completion on or before the applicable Completion Deadlines shall be Design-Builder's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all such materials, services and efforts are included in the Contract.

2.1.4 Performance Standards

Design-Builder shall furnish the design of the Project and shall construct the Project in accordance with the Contract Documents, in accordance with all professional engineering principles and construction practices generally accepted as standards of the industry in the State, in a good and workmanlike manner, free from defects and in accordance with the terms and conditions set forth in the Contract Documents.

2.1.5 Performance as Directed

Subject to Section 16.3, at all times during the term hereof, including during the course of, and notwithstanding the existence of, any dispute, Design-Builder shall perform in accordance with the Contract Documents in a diligent manner and without delay, shall abide by City's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a dispute arises regarding such performance or direction, the dispute shall be resolved in accordance with Section 19.

2.2 General Obligations of Design-Builder

Design-Builder, in addition to performing all other requirements of the Contract Documents, shall:

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2.2.1 Furnish all design, permitting, construction, testing and other related services, provide all materials and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the Contract Documents specify will be undertaken by City or other Persons): (a) in accordance with the requirements of the Contract Documents, the approved Schedule, all Governmental Rules, all governmental approvals, the approved Quality Control Programs, the approved Design-Builder's Safety Program, the approved Construction Documents and all other applicable safety, environmental and other requirements, taking into account the Project Site limits and other constraints affecting the relevant Project, so as to achieve Project Completion by the applicable Completion Deadlines; and (b) otherwise to do everything required by and in accordance with the Contract Documents.

2.2.2 At all times provide a Project Manager approved by City who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of Design-Builder, (c) will be present (or its approved designee will be present) at the relevant Project Site at all times that Design-Build work is performed, and (d) will be available to execute instructions and directions from City or its authorized representatives.

2.2.3 Utilize the design firm or firms identified in Appendix 5 to perform the design services required by the Contract Documents (or other firms approved in writing by City, which approval shall not be withheld, provided that City shall first have determined that such firm has the demonstrated competence and professional qualifications necessary for the satisfactory performance of the required design services, and that the designated key personnel at such firm have sufficient experience with requirements applicable to the Project). Design-Builder shall not shift design Work from one design firm identified in Appendix 5 to another without the prior written approval of City.

2.2.4 Obtain all governmental approvals required in connection with the Project except for the City-Provided Approvals; and prior to beginning any construction activities in the field, furnish City with fully executed copies of all governmental approvals (other

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than the City-Provided Approvals obtained by City) required for the Project.

2.2.5 Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all governmental approvals.

2.2.6 Provide such assistance as is reasonably requested by City in dealing with any Governmental Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. This provision is not intended to require Design-Builder to provide legal services for the benefit of City.

2.2.7 Comply with, and ensure that all Subcontractors comply with, all requirements of all applicable Governmental Rules, including:

(a) The Labor Code and implementing regulations, including requirements with respect to prevailing wages, non-discrimination and employment and training of apprentices, as more specifically described in Section 7;

(b) All Environmental Laws, including requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Materials (subject to the provisions contained in Section 6.3.2 limiting Design-Builder's obligations to execute Hazardous Waste manifests as a "generator");

(c) The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines;

(d) The Nondiscrimination / Nonpreferential Treatment Requirements set forth in Appendices 7 and 8, incorporated herein, pursuant to Chapter 4.08 of the City of San José Municipal Code.

2.2.8 Cooperate with City, City's other consultants and Governmental Persons with jurisdiction over the Project in review and oversight of the design of the Project, performing oversight and conducting inspections during the construction of the Project and other matters relating to the Work.

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2.2.9 Supervise and be responsible to City for acts and omissions of all Design-Builder-Related Entities.

2.2.10 Pay all applicable federal, State and local sales, consumer, use and similar taxes, property taxes and any other taxes, fees, charges or levies imposed by a Governmental Person, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

2.2.11 Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by resequencing, reallocating, or redeploying Design-Builder's forces to other work, as appropriate.

2.3 Representations, Warranties and Covenants

Design-Builder represents, warrants and covenants that:

2.3.1 Design-Builder and its Subcontractor(s) and Subconsultant(s) have maintained, and throughout the term of the Contract shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Work, and shall perform the Work in accordance with the requirements contained in the Contract Documents.

2.3.2 Design-Builder has evaluated the constraints affecting performance of the Work including, but not limited to, the design, permitting, and construction, and testing of the Project, including the Project Site limits and requirements of the Project Technical Requirements as well as the conditions of the City-Provided Approvals and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

2.3.3 Design-Builder has evaluated the feasibility of performing the Work within the time and for the amount specified therein, accounting for constraints affecting the Project and Design-Builder has reasonable grounds for believing and does believe that such performance (including achievement of the Project by the applicable Completion Deadlines, for the Lump Sum (Fixed) Price amount) is feasible and practical. Prior to execution of the Contract in developing its proposal in response to the RFP, Design-Builder has evaluated the feasibility of performing the Work within the time and for

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the amount specified therein, accounting for constraints affecting the Project. Design-Builder has reasonable grounds to believe and will believe that such performance is feasible and practicable.

2.3.4 Design-Builder has, prior to execution of the Contract, in accordance with prudent and generally accepted engineering and construction practices, reviewed the Project Background Documents provided by City in the RFP, inspected and examined the Project Site and surrounding locations and undertaken other appropriate activities sufficient to familiarize itself with surface and subsurface conditions discernible from the surface affecting the Project, to the extent Design-Builder deemed necessary or advisable. As a result of such review, inspection, examination and other activities, Design-Builder is familiar with and accepts the physical characteristics of the Project Site. Design-Builder acknowledges and agrees that it has been afforded the opportunity to review information and documents and to conduct certain inspections and tests of the Project Site and surrounding locations as described above. Prior to execution of the Contract, Design-Builder shall conduct such reviews, inspections and other tests of the Project Site and surrounding locations as described above. Design-Builder further acknowledges and agrees that changes in conditions at the Project Site may occur after the date of the Contract, and that Design-Builder shall not be entitled to any Change Order in connection therewith except as specifically permitted under Section 13. Before commencing any Work on a particular aspect of a Project, Design-Builder shall verify all governing dimensions at the Project Site, and shall reasonably examine all adjoining work which may have an impact on such Work. Design-Builder shall ensure that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions, subject to Design-Builder's rights to a Change Order under Section 13.

2.3.5 Design-Builder acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable Governmental Rules in effect as of the Effective Date of the Contract and the conditions of any required governmental approvals in effect as of the Effective Date of the Contract prior to entering into the Contract.

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Except as specifically permitted under Section 13, Design-Builder shall be responsible for complying with the foregoing at its sole cost and without any increase in the Contract Price or extension of any Completion Deadline on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents. Design-Builder has no reason to believe that any Governmental Approval required to be obtained by Design-Builder will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any governmental approvals required to be obtained by Design-Builder must formally be issued in the name of City, Design-Builder shall undertake all efforts to obtain such approvals subject to City's reasonable cooperation with Design-Builder, including execution and delivery of appropriate applications and other documentation in form approved by City. Design-Builder shall obtain any Government Approvals which City may be obligated to obtain, including providing information requested by City and participating in meetings regarding such approvals.

2.3.6 All design and engineering Work furnished by Design-Builder shall be performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the State, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents and Construction Documents prepared or checked by them.

2.3.7 Design-Builder shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Project Completion by the applicable Completion Deadlines and in accordance the project's schedule, including furnishing such employees, materials, facilities and equipment and working such hours, extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such goal, all without adjustment to the Contract Price except as otherwise specifically

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provided in Section 13.

2.3.8 Design-Builder is a _____ duly organized and validly existing under the laws of the State of _____ and duly qualified to conduct business in the State, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted, and will remain in good standing and qualified to conduct business in the State throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.3.9 The execution, delivery and performance of the Contract have been duly authorized by all necessary action of Design-Builder and will not result in a breach of or a default under Design-Builder's organizational documents or any indenture or loan or credit agreement or other material agreement or instrument to which Design-Builder is a party or by which its properties and assets may be bound or affected.

2.3.10 Design-Builder is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Design-Builder will comply with such provisions before commencing performance of the Work under the Contract Documents and at all times during the term hereof, whether by provision of its own insurance or self-insurance.

2.4 Ownership of Design

2.4.1 Design Documents

Design and other related Documents shall become City's property upon preparation; Construction Documents shall become City's property upon delivery to City; and other documents prepared or obtained by Design-Builder in connection with the performance of its obligations under the Contract, including studies, manuals, as-built drawings, technical and other reports and the like, shall become the property of City upon Design-Builder's preparation or receipt thereof, and payment by the City in accordance with the Contract. Copies of all Design Documents and Construction Documents shall be furnished to City upon preparation or receipt thereof by Design- Builder, and shall

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not be used by Design-Builder on other work. Design-Builder shall maintain all other documents described in this Section 2.4.1 in accordance with Section 21 and shall deliver copies to City as required by the Contract Documents or upon request if not otherwise required to be delivered, with an indexed set delivered to City as a condition to Project Acceptance or upon termination or completion of the Work hereunder. In the event City uses any drawings or specifications prepared by Design-Builder under the Contract on any other project, City shall not consider Design-Builder or the Engineer of Record to be the engineer of record for any such other project and any such use by City shall be at City's sole risk without liability to Design-Builder, City shall hold Design-Builder and its design Subcontractors harmless from any claims, or actions, arising from such use.

2.4.2 Copyright Ownership

2.4.2.1 Design-Builder and City intend that, to the extent permitted by Governmental Rules, the deliverables to be produced by Design-Builder at City's instance and expense under the Contract are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 et seq., and that City will be the sole copyright owner of the deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

2.4.2.2 To the extent that any deliverable does not qualify as a "work made for hire," Design-Builder hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the deliverables prepared for City under the Contract, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by Governmental Rules. Design-Builder will, and will cause all of its design Subcontractors, employees, agents and other

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persons within its control to, execute all documents and perform all acts that City may reasonably request in order to assist City in perfecting its rights in and to the copyrights relating to the deliverables, at the sole expense of City. Design-Builder warrants to City, its successors and assigns, that on the date of transfer good and marketable title in and to the copyrights for the deliverables shall be validly transferred to City. Design-Builder further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the deliverables other than the agreements with design Subcontractors that provide for the assignment of the Design Documents and are otherwise consistent with this Section 2.4. Design-Builder warrants and represents that the deliverables are complete, entire and comprehensive, and that the deliverables will constitute works of original authorship.

2.5 Design Requirements

2.5.1 Design will proceed as set forth in Appendix 9, Project Technical Requirements.

2.5.2 Design-Builder shall respond to the comments provided by City and make modifications to the Design Documents based on such comments in accordance with Appendix 9. Design-Builder shall notify City in writing within 14 days after receipt of any City comments Design-Builder believes by so incorporating would render the Design Documents or any other Contract Documents to contain Errors or which would otherwise adversely affect in any manner the design or construction of the Project Schedule, and City shall have the right to modify its comments.

2.5.3 Design-Builder shall be primarily responsible for handling all design reviews required by, and obtaining all design approvals of, Utility Owners in connection with Utilities. In the event any Utility Owner fails to perform timely regarding design approvals, City agrees to cooperate with Design-Builder to compel the Utility Owner(s) to perform timely so as to avoid any delays to the Critical Path.

2.5.4 Design-Builder shall construct the Project in accordance with the Contract

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Documents. Except for minor changes, the Final Design Documents may be changed only with prior written approval of City. Design- Builder may modify the Construction Documents and make minor modifications to the Final Design Documents without prior written approval of City, but must deliver the modifications to City in advance of performing the Work, and the City retains the right to review, comments, and object in its sole discretion regarding such modifications if they are not in compliance with the Contract documents.

SECTION 3. INFORMATION SUPPLIED TO CONTRACTOR; DISCLAIMER; ROLES OF PROJECT MANAGEMENT CONSULTANT

3.1 Information Supplied

City has made available to Design-Builder the Background Documents.

3.2 Responsibility for Design

Design-Builder agrees that it has full responsibility for the design of the Project for which it has executed a Contract and that Design-Builder will furnish the design of the Project. Design-Builder specifically acknowledges and agrees that:

(a) Design-Builder shall develop the design of the Project in compliance with the Contract Documents, including specifically, the Project Technical Requirements, and other information in the Contract Documents related to City's requirements for the Project (collectively, "Program Information") to develop a design which fulfills City's program requirements within the constraints of City's budget and schedule.

(b) Design-Builder shall rely on the Program Information to describe the general design requirements for the Project, and not for detailed design dimensions or other requirements. Design-Builder shall be fully responsible for developing a fully coordinated, detailed design which complies with the Project requirements described in the Program Information.

(c) Design-Builder shall not rely on the Program Information as a basis to seek recovery for any adjustment to any Contract Price or a time extension except to the extent such adjustment is based on a change to the Project scope described in the Project Information specifically approved by City in writing, and only to the extent permitted under Section 13.

(d) Design-Builder's warranties and indemnities hereunder cover Errors in the Project even though they may be related to Errors in the Program Information, and apply to the project issued pursuant to the Contract.

(e) Design-Builder is responsible for verifying all calculations and quantity takeoffs contained in the Project Technical Requirements or otherwise provided by City.

3.3 Disclaimer

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3.3.1 Design-Builder understands and agrees that City shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Design-Builder or its Subcontractors and Subconsultants by reason of any use of any information contained in the Program Information (including the portions provided by City) or Background Documents, or any action or forbearance in reliance thereon, except to the extent that Design-Builder is entitled to an increase in the a Contract Price and/or extension of a Completion Deadline under Section 13 with respect to such matter. Design-Builder further acknowledges and agrees that (a) the use by Design-Builder or anyone on Design-Builder's behalf of said information in any way shall be limited to the purposes described in Section 3.2, and (b) Design-Builder is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations it deems advisable to verify or supplement said information, and that any use of said information is entirely at Design-Builder's own risk and at its own discretion.

3.3.2 CITY DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE BACKGROUND DOCUMENTS IS EITHER COMPLETE OR ACCURATE, OTHER THAN TO DESCRIBE CITY'S GENERAL DESIGN REQUIREMENTS FOR THE PROJECT AS PROVIDED IN SECTION 3.2, OR THAT SUCH INFORMATION IS IN CONFORMITY WITH THE REQUIREMENTS OF THE CITY-PROVIDED APPROVALS OR OTHER CONTRACT DOCUMENTS. CITY DOES NOT REPRESENT OR WARRANT THE ACCURACY OR COMPLETENESS OF ANY ITEMIZED LIST SET FORTH IN THE PROJECT TECHNICAL REQUIREMENTS. THE FOREGOING SHALL IN NO WAY AFFECT CITY'S AGREEMENT HEREIN TO ISSUE CHANGE ORDERS IN ACCORDANCE WITH SECTION 13.

3.4 Design Professional Licensing Requirements

City does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract, Design- Builder acknowledges that City has no such intent. It is the intent of the parties that Design-Builder is fully responsible for furnishing the design of the Project

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through subcontracts with licensed design firm(s) as provided herein. Any references in the Contract Documents to Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that Design-Builder shall "furnish" the design for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of all Contract Documents.

SECTION 4. TIME WITHIN WHICH PROJECT SHALL BE COMPLETED; PROJECT SCHEDULE AND PROGRESS

4.1 Time of Essence; Notice to Proceed

4.1.1 Time is of the essence in this Contract.

4.1.2 Design-Builder shall begin performance of the Work when and as directed in the Notice to Proceed.

4.2 Completion Deadlines

4.2.1 Design-Build Contract

4.2.1.1 Contract Completion Deadlines

Design-Builder shall diligently prosecute the Contract to completion by the Project Completion Deadlines as follows:

(a) Substantial Completion:

- _____ calendar days from the NTP designated date for the Design-Builder to proceed with the Work.

(b) Project Acceptance:

- _____ calendar days from NTP designated date for the Design-Builder to proceed with the Work.

4.2.1.2 Project Acceptance Deadline

Design-Builder shall achieve Project Acceptance or Final Completion within 60 days after Substantial Completion date. The deadline for achieving Project Acceptance, as it may be extended hereunder, is referred to herein as the "Project Acceptance Deadline".

4.2.2 "Project Completion Deadlines." No Time Extensions

Except as otherwise specifically provided in Section 13, City shall have no obligation to extend a Completion Deadline and Design-Builder shall not be relieved of its obligation to comply with the Project Schedule and to achieve Project Completion by

the applicable Completion Deadlines for any reason.

4.3 Scheduling of Design, Procurement, Construction and Payment

4.3.1 Project Schedule

The planning, design, construction, development, and completion of the Project shall be undertaken and completed in accordance with the Project Schedule. A Master CPM Schedule, including Design-Builder's updated monthly cash flow, should be created, kept up to date at all times, and distributed to the City monthly. The parties shall use the Project Schedule for planning and monitoring the progress of the Work and the approved Schedule of Values as the basis for determining the amount of monthly progress payments to be made to Design-Builder.

4.4 Prerequisites for Start of Construction

Design-Builder shall not start construction (or recommence construction following any suspension) of the Project prior to occurrence of all the following events except with the prior written approval of City in its sole discretion, and Design-Builder shall commence such construction promptly following occurrence of such events:

City shall have approved the Project Schedule, the Quality Control Programs and Design-Builder's Safety Program for the Project.

4.4.1 All requirements of the Construction Quality Control Program which are a condition to construction shall have been met.

4.4.2 Except as otherwise approved in writing by City, City shall have approved for compliance with the Contract Documents the Project's Design Documents and Construction Documents relating to any portion of the Project for which the Design Builder will be procuring or constructing.

4.4.3 All governmental approvals necessary for commencement of construction of the applicable portion of the Project shall have been obtained and all conditions of such governmental approvals which are a prerequisite to commencement of such construction shall have been performed.

4.4.4 All insurance policies and bonds required to be delivered to City hereunder prior to commencement of construction shall have been received and approved by
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City and shall remain in full force and effect.

4.4.5 All pre-construction environmental surveys and mitigation shall have been completed as required for the area proposed for construction, and Design-Builder shall have performed all other survey work for the applicable portions of Work and delivered all notices required by the Contract Documents to be delivered prior to commencement of construction.

As used in this Section 4.4, the term "construction" specifically excludes potholing and geotechnical investigations incidental to design Work, mobilization, site security and establishment of work yard(s) and storage sites.

SECTION 5. CONTROL OF WORK

5.1 Control and Coordination

5.1.1 Control and Coordination of Work

Design-Builder shall be solely responsible for, and have control over, the construction means, methods, techniques, sequences, procedures, Project Site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents. Design-Builder shall construct, fabricate, assemble, provide, install, integrate, commission, test and verify all aspects of the Project in accordance with their respective Final Design Documents and Construction Documents.

5.2 Safety

Design-Builder shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all persons on the Project Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of City and its consultants, visitors to the Site and members of the public who may be affected by the Work. Design-Builder shall at all times comply with all safety requirements of the Contract and Design-Builder's Safety Program. The foregoing provisions shall not relieve Subcontractors of their duties to comply with Design-Builder's Safety Program and take reasonable precautions for the safety of and provide protection to prevent damage, injury or loss to persons or property on the Project Site on which they are working.

5.3 Process to Be Followed Upon Discovery of Certain Site Conditions

5.3.1 Notification to City

5.3.1.1 If Design-Builder becomes aware of (a) any on-site material that Design-Builder believes may contain Hazardous Materials required to be reported, investigated or remediated under any Environmental Law or (b) any Differing Site Conditions, as a condition precedent to Design-Builder's right to a Change Order, Design-Builder shall immediately notify City thereof telephonically or in person, to

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be followed immediately by written notification to City. Design-Builder shall immediately stop Work in and secure the area. In such event, City will view the location within three business days of receipt of notification and shall advise Design-Builder at that time whether Work should be resumed or whether further investigation is required.

5.3.1.2 Notwithstanding the foregoing, Design-Builder shall not be obligated to stop Work upon discovery of any materials or conditions which the Contract Documents or any Background Documents indicate are likely or potentially present in the location in question; provided, however, that Design-Builder shall provide prompt notice to City of any such discovery. Furthermore, if any Governmental Approval specifies a procedure to be followed which differs from the procedure set forth herein, Design-Builder shall follow the procedure set forth in the Governmental Approval. Refer to Section 6.3 for additional requirements relating to Hazardous Materials.

5.3.2 Further Investigation

City shall promptly conduct such further investigation as City deems appropriate. City shall use reasonable efforts to determine within five days after receipt of such notification whether the situation falls within the scope of Section 5.3.1.1(a) or (b), and shall immediately notify Design-Builder of its determination once it is made. City shall at that time also advise Design-Builder of any action to be taken regarding the situation. If Hazardous Materials are involved, the notice shall describe the type of remediation measures, if any, that Design-Builder will undertake with respect thereto.

5.3.3 Recommencement of Work

City shall have the right to require Design-Builder to recommence Work in the area at any time, even though an investigation may still be ongoing. Design-Builder shall promptly recommence Work in the area upon receipt of notification from City to do so. Upon recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Governmental Rules with respect to such Work, consistent with City's determination or preliminary determination regarding the nature of the material or condition.

5.3.4 Public Contract Code Section 7104

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Design-Builder acknowledges and agrees that as a result of its agreement to undertake responsibility for differences in site conditions from those which may have been anticipated by Design-Builder, except to the extent that a Change Order is allowed under Section 13.9, information regarding site conditions included in the Project Technical Requirements and Background Documents shall not be considered “indicated” therein as such term is used in Public Contract Code section 7104, except to the extent that a Change Order is allowed under Section 13.9. Design-Builder specifically waives the benefit of Public Contract Code Section 7104 to the extent that it may be inconsistent with the provisions set forth in Section 13.9.

5.4 Obligation to Minimize Impacts

Design-Builder shall ensure that all of its activities and the activities of Design-Builder- Related Entities, its subcontractors and subconsultants are undertaken in a manner that will minimize the adverse impact or effect on surrounding property and the public to the maximum extent practicable.

5.5 Inspection and Testing

5.5.1 Design-Builder Inspection and Testing

Design-Builder shall perform the inspection, sampling and testing necessary for Design-Builder to comply with its obligations under the Contract Documents.

5.5.2 Oversight and Inspection and Testing by City and Others

All materials and each part or detail of the Work shall also be subject to oversight, inspection and testing by City and other Persons designated by City. At all points in performance of the Work at which specific inspections or approvals by City are required by the Construction Quality Control Program, Design-Builder shall not proceed beyond that point until City has made such inspection or approval or waived its right to inspect or approve, which waiver shall be in writing. In addition, when any Utility Owner is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect and test the Work. Such oversight, inspection and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. Design-Builder hereby consents to such

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oversight, inspection and testing. Upon request from City, Design-Builder shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.3 Obligation to Uncover Finished Work

Design-Builder shall inform City of any part of the Work which is about to be covered and offer a full and adequate opportunity to City to inspect and test such part of the Work before it is covered. At all times before Project Acceptance, Design-Builder shall remove or uncover such portions of the finished construction Work as directed by City. After examination by City and any other Persons designated by City, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall not be the basis for an adjustment to the Contract Price and Design-Builder shall not be entitled to any time extension. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by City or without inspection in accordance with Section 5.5.2 may be ordered uncovered, removed or restored without adjustment in the Contract Price and without a time extension, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 5.5.3 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a City-Caused Delay, and Design-Builder shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to any Critical Path occasioned thereby. Refer to Section 5.7 for provisions regarding payments owing by Design-Builder to City if City agrees (in its sole discretion) to accept certain nonconforming Work.

5.6 Effect of Oversight, Spot Checks, Audits, Tests, Acceptances and Approvals

5.6.1 Oversight and Acceptance

The oversight, spot checks, audits, tests, acceptances and approvals conducted

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by City and others do not constitute acceptance of the materials or Work inspected or waiver of any warranty or legal or equitable right with respect thereto. City may suggest corrective remedies for nonconforming Work and/or identify additional Work which must be performed to bring the Project into compliance with the Contract Documents requirements at any time prior to Project Acceptance, whether or not previous oversight, spot checks, audits, tests, acceptances or approvals were conducted by City or any such Persons.

5.6.2 No Estoppel

Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, or any of its Warranty or indemnity obligations, as the result of oversight, spot checks, audits, reviews, tests or inspections performed by any Persons, approvals or acceptances made by any Persons, or any failure of any Person to take such action. City shall not be precluded or estopped, by any measurement, estimate or certificate made either before or after Project Acceptance, or by making any payment, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the work performed and materials furnished by Design-Builder, or from showing that the work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, City shall not be precluded or estopped from recovering from Design-Builder and its Surety(ies) such damages as City may sustain by reason of Design-Builder's failure to comply or to have complied with the terms of the Contract Documents.

5.7 Nonconforming Work

5.7.1 Rejection, Removal and Replacement of Work

Nonconforming Work rejected by City as not in compliance with the Contract Documents shall be removed and replaced so as to conform to the requirements of the Contract Documents, without adjustment to the Contract Price and without a time extension; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies

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from occurring in the future. The fact that City may not have discovered the nonconforming Work shall not constitute an acceptance of such nonconforming Work. If Design-Builder fails to correct any nonconforming Work within ten days of receipt of notice from City requesting correction, or if such nonconforming Work cannot be corrected within ten (10) days, and Design-Builder fails to: (a) provide to City a schedule for correcting any such nonconforming work acceptable to City within such ten-day (10) period, (b) commence such corrective Work within such ten-day period and (c) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then City may cause the nonconforming Work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due Design-Builder and/or obtain reimbursement from Design-Builder for such cost.

5.7.2 Agreement to Accept Nonconforming Work

If Design-Builder requests that City accept nonconforming Work and City agrees to accept the nonconforming Work without requiring it to be fully corrected, City shall be entitled to reimbursement of a portion of the Contract Price in an amount equal to the greater of the amount deemed appropriate by City to provide compensation for future maintenance and/or other costs relating to the nonconforming Work, or 100% of Design-Builder's cost savings associated with its failure to perform the Work in accordance with Contract requirements. Such reimbursement shall be payable to City within 30 days after Design-Builder's receipt of an invoice therefor. Design-Builder acknowledges and agrees that City shall have sole discretion regarding acceptance or rejection of nonconforming Work and shall have reasonable discretion with regard to the amount payable in connection therewith, which amount shall be subject to dispute resolution set forth in Section 19.

SECTION 6. ACCESS TO SITE; UTILITY RELOCATIONS; COOPERATION WITH LOCAL AGENCIES

6.1 Access to Site

City shall provide access to the Project Site consistent with the Project Schedule in accordance with issuance of a Notice to Proceed date for the Design-Builder to perform the Work under the Design-Build Contract.

6.2 Utility Relocations

6.2.1 Design-Builder's Responsibility

Design-Builder is responsible for causing all Utility Adjustments, whether the Utility Adjustment Work is performed by Design-Builder or by the Utility Owner. All Utility Adjustment Work shall comply with all applicable Governmental Rules, the Contract Documents, the Standard Specifications, standards of practice and construction methods that the Utility Owner customarily applies to comparable facilities being constructed by or for the Utility Owner at its own expense (and not for the purpose of accommodating the facilities of others). Design-Builder shall coordinate, monitor and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work in accordance with the Project Schedule, in coordination with the Work and in compliance with the standards of design and construction and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with Utility Owners and except as otherwise provided in Section 13, Design-Builder shall continue to be the responsible party to City for timely performance of all Utility Adjustment Work so that upon completion of the Work, all Utilities located within or in the vicinity of the Project Site are compatible with the Project. City shall provide to Design-Builder the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their own expense, subject, however, to any applicable Governmental Rules affecting the easement holder's payment obligations for Utility Adjustments.

6.2.2 Utility Adjustment Costs

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6.2.2.1 Design-Builder is responsible for all costs of the Utility Adjustment Work, excluding costs attributable to Betterment and any other costs for which the Utility Owner is responsible under Governmental Rules and as provided in Section 13. Design-Builder shall fulfill this responsibility either by performing the Utility Adjustment Work itself as Cost of the Work or by reimbursing the Utility Owner for its Utility Adjustment Work.

Design-Builder is solely responsible for collecting directly from the Utility Owner any reimbursement due to Design-Builder for Betterment costs or other costs incurred by Design-Builder for which the Utility Owner is responsible under Governmental Rules. The mechanisms for determining costs for reimbursement and for payment shall be as agreed between Design-Builder and the Utility Owner.

6.2.2.2 If for any reason Design-Builder is unable to collect any amounts due to Design-Builder from any Utility Owner, then (a) City shall have no liability for such amounts, (b) Design-Builder shall have no right to collect such amounts from City or to offset such amounts against amounts otherwise owing from Design-Builder to City and (c) Design-Builder shall have no right to stop Work or to exercise any other remedies against City on account of such failure to pay.

6.2.3 Accuracy of Utility Information

6.2.3.1 If (a) any Utility requiring Utility Adjustment is not indicated at all in the Background Documents, is not anticipatable and materially impacts the Work (“unidentified”), or (b) any Utility is materially different in size, location or type of service from that indicated in the Background Documents, is not anticipatable and materially impacts the Work (“misidentified”), then subject to certain limitations as specified in Section 6.2.3.2, Design-Builder shall be entitled to a Change Order in accordance with Section 13 to (i) increase the Contract Price for additional costs of performing the Work (subject to Section 13.9.1) directly attributable to such lacking or differing information, if any, in excess of \$50,000 per occurrence and (ii) extend any affected Completion Deadline to the extent that any delay in the Critical Path is

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directly caused by any such lacking or differing information.

6.2.3.2 Design-Builder shall not be entitled to a Change Order pursuant to Section 6.2.3.1 for increased costs of the Work or delays attributable to unidentified or misidentified Utilities to the extent that the existence of the facility was known to Design-Builder or could have been inferred from the presence of other facilities, such as buildings, meters, junction boxes, manholes or identifying markers, visible during a surface inspection of the area conducted prior to execution of the Contract or to the extent attributable to the failure of Design-Builder to meet the professional standard of care prior to the Effective Date of the Design-Build Contract.

6.2.3.3 Design-Builder acknowledges that any information with respect to Utilities provided in the Background Documents is for informational purposes only, is preliminary and has not been verified, and shall not be relied upon by Design-Builder, except as otherwise provided in Section 6.2.3.1. Design-Builder further acknowledges that Design-Builder will have ample opportunity as part of the Contract to analyze the utility information provided by City, to contact and inquire of Utility Owners and to perform such additional investigations as Design-Builder deems appropriate to verify and supplement such information.

6.2.3.4 The parties specifically intend for Design-Builder to bear responsibility for Utility Adjustment of all Utilities impacted by the Project, including any facilities that have not been accurately identified by City, and to allocate to Design-Builder all risk of increased costs of the Work hereunder resulting from inaccuracies in the reputed locations of such facilities, except as otherwise provided in this Section 6.2.3. Design-Builder acknowledges and agrees that the provisions of this Section 6.2.3 satisfy City's obligations pursuant to California Government Code Section 4215, and to the extent that California Government Code section 4215 might be construed to the contrary, Design-Builder hereby waives the benefit of such statute. Design-Builder agrees that in the event any waiver pursuant to this Section 6.2.3.4 is deemed ineffective (thus resulting in a reduction in the scope of the Work), City shall be entitled to a credit against the Contract Price equal to the actual costs incurred by City to

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cause performance of the obligations and satisfaction of the liabilities from which Design-Builder is thereby relieved.

6.2.4 Payment and Performance Bonds; Insurance

All Utility Adjustment Work performed by Design-Builder will be automatically covered by the Payment and Performance Bonds described in Section 8. If required as a condition for the performance by Design-Builder of Utility Adjustment Work, Design-Builder will provide separate bonds or other security satisfactory to the Utility Owners. Design-Builder shall include the cost (or the allocable cost, as applicable) of any applicable bond premiums in all cost estimates it provides for Utility Adjustment Work.

6.2.5 Betterments

Design-Builder shall be responsible for addressing any requests by Utility Owners that Design-Builder design and/or construct a Betterment. Any Betterment, whether designed and/or constructed by Design-Builder or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment. Under no circumstances shall Design-Builder proceed with any Betterment that is incompatible with the Project or is not in compliance with Governmental Rules, the governmental approvals or the Contract Documents. Under no circumstances will Design-Builder be entitled to any additional compensation or time extension hereunder as the result of any Betterment, whether performed by Design-Builder or by the Utility Owner.

6.2.6 Failure of Utility Owners to Cooperate

6.2.6.1 Design-Builder shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for the Project. Design-Builder shall notify City immediately if (a) Design-Builder becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals or (b) any other dispute arises between Design-Builder and a Utility Owner with respect to the Project, despite Design-Builder's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that City assist in resolving the dispute or in otherwise obtaining the Utility Owner's

timely cooperation. Design-Builder shall provide City with such information as City requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Schedule. After delivering to City any notice or request for assistance, Design-Builder shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

6.2.6.2 If Design-Builder requests City's assistance pursuant to Section 6.2.6.1, Design-Builder shall provide evidence reasonably satisfactory to City that (a) the subject Utility Adjustment is necessary, (b) the time for completion of the Utility Adjustment in the Schedule was, in its inception, a reasonable amount of time for completion of such work, (c) Design-Builder has made diligent efforts to obtain the Utility Owner's cooperation and (d) the Utility Owner is not cooperating. Following City's receipt of satisfactory evidence, City shall take such reasonable steps as may be requested by Design-Builder to obtain the cooperation of the Utility Owner or resolve the dispute; however, City shall have no obligation to prosecute eminent domain or other legal proceedings or to exercise any other remedy available to it under Governmental Rules or existing contract, unless City elects to do so in its sole discretion. If City holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and City elects in its sole discretion not to exercise those rights, then City shall assign those rights to Design-Builder upon Design-Builder's request; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights. Any assistance City provides shall not relieve Design-Builder of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work.

6.2.6.3 If requested by City, Design-Builder shall cooperate with City in any efforts to obtain Utility Owner cooperation and/or to resolve disputes with Utility Owners, including in connection with any lawsuit or alternate proceedings undertaken by City for such purpose. Such cooperation shall include Design-Builder's staff and consultants acting as witnesses in such lawsuits and proceedings and providing testimony, information, reports, graphs, photos, plans, renderings and similar materials

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to City's counsel at Design-Builder's expense. City shall remit to Design-Builder any amounts collected on Design-Builder's behalf as a result of any such action or proceeding, after first deducting all costs (including attorneys', accountants' and expert witness fees and costs) incurred by City in pursuing such action or proceeding. Any assistance provided by City shall not relieve Design-Builder of its sole and primary responsibility for the satisfactory compliance with its obligations under the Contract Documents and timely completion of all necessary Utility Adjustments.

6.2.6.4 Provided Design-Builder has fulfilled the requirements of Sections 6.2.6.2(a) through (d), to the extent that any delay in the Critical Path is directly attributable to a delay by a Utility Owner, Design-Builder shall be entitled to a Change Order in accordance with Section 13 to extend any affected Completion Deadline by one day for every two days of such delay in the Critical Path.

6.2.7 Restrictions on Change Orders

6.2.7.1 Except as expressly provided otherwise in this Section 6.2, Design-Builder shall not be entitled to either a Contract Price increase or a time extension attributable to Utilities Adjustments for any reason, including:

- (a) any Errors in designs furnished by any Utility Owner, including any failure of such designs to comply with all applicable requirements; and
- (b) any defect in construction performed by any Utility Owner or any other failure of such construction to comply with all applicable requirements. Any Contract Price increase to which Design-Builder is entitled pursuant to this Section 6.2 shall not include any costs of coordinating with Utility Owners.

6.3 Hazardous Materials Management

6.3.1 Procedures and Compensation for Hazardous Materials Management

6.3.1.1 If Design-Builder encounters any Hazardous Materials, in addition to the requirements set forth in Section 5.3.1, Design-Builder shall (a) promptly advise City of any obligation to notify State or federal agencies under applicable Governmental Rules and (b) take reasonable steps, including design modifications

and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials. Where excavation or dewatering is not reasonably avoidable, Design-Builder shall select the most cost-effective approach to Hazardous Materials Management, unless otherwise directed by City. Wherever feasible and consistent with applicable Governmental Rules, contaminated soil and groundwater shall not be disposed off-site. All Hazardous Materials shall be managed in accordance with applicable Governmental Rules, governmental approvals, Design-Builder's management plan approved by City and the approved Safety Plan.

6.3.1.2 Upon Design-Builder's fulfillment of all applicable requirements of Sections 5.3.1, 6.3 and 13, and subject to the limitations and exceptions contained therein, Design-Builder shall be entitled to a Change Order to (a) increase the Contract Price for additional costs (subject to Section 13.9.1) directly attributable to changes in the Work arising from discovery of unidentified pre-existing Hazardous Materials within the Project Site, if any, in excess of \$50,000 per occurrence and (b) extend any affected Completion Deadline to the extent that any delay in the Critical Path is directly caused by any such conditions. Entitlement to additional compensation or a time extension shall be limited to costs of Work performed pursuant to the approved management plan under Section 6.3.1.1.

6.3.1.3 Notwithstanding the foregoing, no additional compensation or time extension shall be allowed with respect to:

- (a) Any unidentified Hazardous Materials, to the extent that the existence of such Hazardous Materials was known to Design-Builder;
- (b) Any unidentified Hazardous Materials, to the extent attributable to the failure of Design-Builder to meet the professional standard of care prior to the Design-Build Contract;
- (c) Release(s) or threatened Release(s) of Hazardous Material attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Governmental Rules, Environmental Approvals or contract by any Design-Builder-Related Entity;

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- (d) Immaterial quantities of Hazardous Materials;
- (e) Any known Hazardous Materials that could have been avoided by reasonable design modifications or construction techniques; or
- (f) Any Hazardous Materials on property outside of the Project Site, except that compensation will be allowed for remediation work on such property to the extent that it is integrally intertwined with remediation work required within the Project Site.

6.3.1.4 To the extent that any proceeds of insurance are available to pay the cost of any Hazardous Materials Management, Design-Builder shall rely on insurance to provide compensation, in lieu of requesting a Change Order.

6.3.2 Hazardous Materials Generator

As between Design-Builder and City, City shall be considered the generator of existing Hazardous Materials located within the Project Site as of the Effective Date; provided, however, that the foregoing shall not preclude or limit any rights or remedies that City may have against third parties and/or prior owners, lessees, licensees and occupants of such properties, and provided that Design-Builder (and not City) shall be considered the generator with respect to any Release(s) of Hazardous Materials attributable to the negligence, willful misconduct, or breach of applicable Governmental Rules or contract by any Design-Builder-Related Entity.

6.3.3 Materials Brought to Site by Design-Builder

Design-Builder shall be solely responsible for: (a) compliance with all Governmental Rules applicable to Hazardous Materials brought onto the Site by any Design-Builder-Related Entity; (b) use, containment, storage, management, transport and disposal of all such Hazardous Materials in accordance with the Contract and all applicable Governmental Rules and any other applicable environmental approvals; and (c) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays and liability associated with, arising out of or related to such Hazardous Materials.

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6.3.4 Environmental Approvals Relating to Hazardous Materials

It is the responsibility of Design-Builder to obtain all governmental approvals relating to Hazardous Materials Management including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Materials. Design-Builder shall be solely responsible for compliance with such governmental approvals and applicable Governmental Rules, including those governing the preparation of waste profiles, waste manifests and bills of lading.

6.4 Environmental Mitigation and Approval Requirements**6.4.1 Environmental Laws**

Design-Builder shall comply with all applicable Environmental Laws in performance of the Work, and with applicable requirements contained in governmental approvals issued there under, whether obtained by City or Design-Builder, including the requirements set forth in the City-Provided Approvals.

6.4.2 New Approvals**6.4.2.1 Approvals To Be Obtained at City's Expense**

City shall be responsible for obtaining any New Approvals necessitated by a City-Directed Change or Force Majeure Event. Design-Builder shall provide support services to City with respect to obtaining any such New Approval, without additional charge to City. Any Change Order covering a City-Directed Change or Force Majeure Event shall include compensation to Design-Builder for any changes in the Work (including performance of additional mitigation measures but excluding performance of such support services) resulting from such New Approvals, as well as any time extension necessitated by the City-Directed Change or Force Majeure Event subject to the conditions and limitations contained in Section 13.

6.4.2.2 Approvals To Be Obtained at Design-Builder's Expense

If a New Approval becomes necessary for any reason other than those specified in Section 6.4.2.1, Design-Builder shall be fully responsible for the cost of obtaining the New Approval and any other environmental approvals that may be necessary, and for

all requirements and delays resulting there from, as well as for any litigation arising in connection therewith. If Design-BUILDER wishes to adopt any design or construction approach that would require a revision, modification or amendment to a City- Provided Approval, Design-BUILDER shall consult with City. Design-BUILDER shall not implement any such approach unless concurrence of City has first been obtained.

6.5 Cooperation with Local Agencies

6.5.1 Compliance with Local Agency Requirements

Design-BUILDER shall comply with local agency requirements applicable to the Work, including payment of all plan review and construction inspection costs charged by local agencies relating to the Work.

6.5.2 Encroachment Permits

Governmental approvals to be obtained by Design-BUILDER hereunder include encroachment permits for Work to be performed in areas under the jurisdiction of local agencies. Design-BUILDER shall pay all permit fees and shall comply with all permit requirements including obtaining necessary approvals of plans and specifications.

6.5.3 Bonds and Insurance

Upon request by City, Design-BUILDER shall: (a) provide additional obligee riders acceptable to the Surety to the Payment and Performance Bonds in favor of local agencies; and (b) provide certificates naming local agencies as additional insureds to the policies required to be provided under Section 9.

6.6 Vehicle Signage

Design-BUILDER shall affix signage, as approved by City, to each and all vehicles used to perform Work related to the Project.

SECTION 7. SUBCONTRACTORS AND LABOR**7.1 Omitted**

Reserved.

7.2 Subcontracts for Design Subconsultants and Construction Subcontractors**7.2.1 Listed Design Subcontractors**

Design-Builder shall use the design Subcontractors as provided in Section 2.2.3.

7.2.2 Procurement of New Construction Subcontracts and**Substitution of Construction Subcontracts**

Design-Builder shall be subject to the provisions of the Standard Specifications regarding construction Subcontractors, including provisions for Subcontractor substitutions, that are listed in Appendix 5. In the event that Design-Builder wishes to use first-tier construction Subcontractors that are not listed in Appendix 5, Design-Builder shall solicit bids and award any such Subcontracted construction work to the lowest responsible bidder. Design-Builder shall include a prequalification plan for first-tier construction Subcontractors with an estimated Subcontract value over \$250,000 not already pre-qualified with the Design-Builder by the City.

7.2.3 Subcontract Requirements

7.2.3.1 Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to City, (a) City is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express or implied, shall inure to the benefit of City, and its respective successors and assigns; and (c) the rights of Design-Builder under such instrument are assigned to City contingent only upon delivery of a written request from City following default by Design-Builder or termination or expiration of the Contract, allowing City to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of Design-Builder accruing after the date of assumption by City.

7.2.3.2 Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be fully responsible for all of the Work. City shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind it. Each Subcontract shall include the following provision:

Nothing contained herein shall be deemed to create any privity of contract between the City and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of City to the Subcontractor except those allowed under California law. In the event of any claim or dispute arising under the Subcontract and/or Design-Builder's Contract with City, the Subcontractor shall look only to Design-Builder for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against City arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work.

The foregoing provision shall not limit Design-Builder's rights to recovery under the Contract relating to the Work performed by a Subcontractor.

7.2.3.3 Except for subcontractors and subconsultants already pre-qualified with the Design-Builder by the City, Design-Builder shall notify and request approval of any additional subcontractors and subconsultants that Design-Builder intends to engage. Design-Builder shall allow City access to all Subcontracts and records regarding Subcontracts and shall deliver to City, within ten days after receipt of a request from City, true and complete copies of all Subcontracts as may be requested.

7.2.4 Subcontract Work

Design-Builder shall be fully responsible to City for all acts and omissions of its own employees, and of Subcontractors and their employees. Design-Builder shall also coordinate the Work performed by Subcontractors. If City makes reasonable objection to the use or continued use of a design Subcontractor other than the Architect or Engineer of Record, the design Subcontractor shall be replaced at the request of City and shall not again be employed on the Project. No Subcontractor may start any Work until after City receives a copy of such Subcontractor's valid California Contractor License (as applicable to construction subcontractors) and any insurance

documents required pursuant to Section 9.

7.2.5 Form of Subcontract

Design-Builder shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are appropriate for the scope of the Work to be performed by each Subcontractor to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents.

7.2.5.1 Each Subcontract shall:

- (a) Set forth effective procedures for claims and change orders.
- (b) Require the Subcontractor to carry out its scope of work in accordance with the Contract requirements and to participate in any dispute resolution proceeding pursuant to Section 19, if such participation is requested by Design-Builder or City.
- (c) Set forth warranties, guaranties and liability provisions of the contracting party in accordance with good commercial practice for work of similar scope and scale.
- (d) Include the following: (i) requirement to maintain usual and customary books and records for the type and scope of operations of business in which the Subcontractor is engaged (e.g., constructor, equipment supplier, designer, service provider); (ii) provision permitting audits to be conducted by Design-Builder and City; (iii) requirement to provide progress reports to Design-Builder appropriate for the type of work it is performing sufficient to enable Design-Builder to provide the reports it is required to furnish City under the Contract; (iv) requirement for the Subcontractor to maintain all appropriate licenses; and (v) provision prohibiting assignment of the Subcontract without Design-Builder's prior written consent.
- (e) Include the following: (i) be terminable by the Subcontractor only for cause; and (ii) include an indemnity from the Subcontractor in favor of Design-Builder and the Indemnified Parties against any and all loss, damage, injury,

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liability, cost or cause of action arising out of, related to or associated with, the actions, omissions, negligence, willful misconduct, or breach of applicable Governmental Rules or contract by the Subcontractor or any of its officers, employees, agents or representatives.

(f) Expressly require the Subcontractor to participate in meetings between Design-Builder and City, upon City's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be provided by Design-Builder, and provided further that nothing in this clause (f) shall limit the authority of City to give such direction or take such action which, in its opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(g) Contain certification by the Subcontractor that the Subcontractor is experienced in and qualified to do, and knowledgeable about, the subcontracted Work.

The amount of retainage to be withheld under Subcontracts shall not exceed the amount withheld by City pursuant to Section 12.3.1, and (b) if the Subcontract is exclusively for performance of design or construction management services, it shall not include any requirement for retainage to be withheld.

7.2.5.2 City shall have the right, but not the obligation, to review the form of subcontract used by Design-Builder for the Project and to require modifications thereto to conform to the requirements set forth herein.

7.2.6 Subcontracts with Affiliates

All Subcontracts with Affiliates shall be on terms no less favorable than those that would have been provided by Persons not affiliated with Design-Builder, and all Subcontracts between a Subcontractor and one of its affiliates shall be on terms no less favorable than those that would have been provided by Persons not affiliated with the Subcontractor.

7.2.7 Other Requirements

Design-Builder shall comply with all other subcontracting requirements set

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forth in the Contract Documents.

7.3 Equality Assurance

Design-Builder shall comply with the Nondiscrimination / Nonpreferential Treatment requirements set forth in Appendix 7 and Appendix 8, which are attached hereto and incorporated herein, pursuant to Chapter 4.08 of the City of San José Municipal Code. Failure by Design-Builder to carry out these requirements is a material breach of the Contract, which may result in termination of the Contract or such other remedy a City deems appropriate.

7.4 Labor Code Requirements

I. Design-Builder shall strictly adhere to the provisions of the Labor Code, including Sections 1810 through 1813 and 1815, regarding minimum wages, the 8-hour day and 40-hour week, overtime, Saturday, Sunday, and holiday work. Design-Builder shall forfeit to City the penalties prescribed in the Labor Code for noncompliance, including the penalties set forth in Section 1813 for violations of Sections 1810 through 1815.

7.4.1 Pursuant to the requirements of Section 1860 of the Labor Code, Design-Builder will be required to secure the payment of workers' compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code.

7.4.2 Pursuant to Section 1861 of the Labor Code, Design-Builder is obligated to sign and file with City a certification as set forth in the Standard Specifications, Section 7- 1.01A(6). Execution of the Contract by Design-Builder shall constitute signing and filing of the certificate.

7.4.3 Design-Builder shall comply with the applicable provisions of the Labor Code and implementing regulations relating to Labor Nondiscrimination, including those more specifically set forth in Appendix 10.

7.5 Prevailing Wages

Attention is called to the fact that the State of California Wage requirements apply to construction Work for the entire Project. Not less than the General Prevailing Rate of Per Diem Wages must be paid for all construction Work. Copies of the Prevailing

Rate of Per Diem Wages are on file with City's Office of the City Clerk or City's Office of Equality Assurance and can be obtained from those offices. Additional provisions regarding the Prevailing Wage Requirements are included in Appendix 10, Contract Provisions for Labor Management. All questions regarding prevailing wage should be directed to City's Office of Equality Assurance at (408) 535-8430. Design-Builder agrees to comply with all of the applicable provisions of Sections 1777.5 and 1777.6 of the Labor Code, which Sections are hereby specifically referred to, incorporated herein by reference and made a part hereof as though set forth at length herein.

7.6 Key Personnel; Character of Employees

7.6.1 The name and title of each key individual indicated on the project staff organizational chart ("Key Personnel") shall be set forth in Appendix 11. All Key Personnel must have experience on projects of a like size and scope, and their responsibilities on those projects must have been as significant as and comparable in scope to the responsibilities he or she will have on the Project.

7.6.2 If any Key Personnel should be unable to continue in the performance of assigned duties because of death, disability or termination, Design-Builder will promptly notify City, with an explanation of the circumstances. Design-Builder will furnish to City within 30 days the name of the person substituting for the individual unable to continue, together with any information City may require to judge the experience and competence of the substitute person. Upon City's approval, such substitute person will be assigned to the Project and if City rejects the substitute, Design-Builder will have five days thereafter to submit a second substitute person. Such process will be repeated until a proposed replacement has been approved by City. Design-Builder will not make any other changes in assignment of Key Personnel without City's prior written approval.

7.6.3 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If City determines in its sole discretion that any Person employed by Design-Builder or by

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any Subcontractor is not performing the Work in a proper, safe and skillful manner, then at the written request of City, Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written approval of City in its sole discretion. If Design-Builder or the Subcontractor fails to remove such Person or Persons or fails to furnish skilled and experienced personnel for the proper performance of the Work, then City may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to a Change Order. Once compliance is achieved, City will notify Design-Builder and Design-Builder shall be entitled to and shall promptly resume the Work.

7.6.4 Design-Builder acknowledges and agrees that the award of the Contract by City to Design-Builder was based, in large part, on the qualifications and experience of the personnel listed in the Proposal and Design-Builder's commitment that such individuals would be available to undertake and perform the Work. Design-Builder represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work.

7.7 Gifts

7.7.1 Design-Builder is familiar with City's prohibition against acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

7.7.2 Design-Builder agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

7.7.3 The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the Contract by Design-Builder. In addition to any other remedies City may have in law or equity, City may terminate the Contract for such breach as provided in Section 16.

7.8 Disqualification of Former Employees

Design-Builder is familiar with the provisions relating to the disqualification of

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former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code (the “Revolving Door Ordinance”). Design-Builder shall not utilize either directly or indirectly any officer, employee, or agent of City to perform services under the Contract, if in the performance of such services, the officer, employee or agent would be in violation of the Revolving Door Ordinance.

SECTION 8. PERFORMANCE AND PAYMENT BONDS

Each bond required hereunder shall be provided by a Surety authorized to do business in the State with an A.M. Best Co. "Best's Rating" of A or better and Class VIII or better, or as otherwise approved by City in its sole discretion.

8.1 Performance Bond

As a condition to issuance of a Notice to Proceed for the Design-Build Contract, Design-Builder shall provide to City and continuously maintain in place for the benefit of City, a Performance Bond in the form of Appendix 13 in the amount of the Contract Price. If the Contract Price is increased in connection with a Change Order, City may, in its sole discretion, require a corresponding proportionate increase in the amount of the Performance Bond.

8.2 Payment Bond

As a condition to issuance of a Notice to Proceed for the Design-Build Contract, Design-Builder shall provide to City and continuously maintain in place for the benefit of City, a Payment Bond in the form of Appendix 15 in the amount of the Contract Price. Design-Builder shall maintain the Payment Bond in full force and effect until (a) Design-Builder has delivered to City (i) evidence satisfactory to City that all Persons eligible to file a claim against the bond have been fully paid and (ii) unconditional releases of Liens and stop notices from all Subcontractors who filed preliminary notice of a claim against the bond, or (b) expiration of the statutory period for Subcontractors to file a claim against the bond. If the Contract Price is increased in connection with a Change Order, City may, in its sole discretion, require a corresponding proportionate increase in the amount of the Payment Bond.

8.3 No Relief of Liability

Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety of any of the obligations of Design-Builder shall not relieve Design-Builder of any of its obligations hereunder.

SECTION 9. INSURANCE

9.1 Insurance Requirements

From the Effective Date of the Contract, Design-Builder shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Design-Builder, its agents, representatives, employees or subcontractors. General Liability coverage shall be maintained for a minimum of 5 years after completion of the Project, and Errors and Omissions coverage shall be maintained for a minimum of five years after completion of the Project.

Design Builder shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Design-Builder, its agents, representatives, employees or subcontractors. Design-Builder will also be required to obtain additional insurance, if required, by any local, State or Federal Agency that must issue a permit to complete the work as required or in connection with the performance of the work hereunder by the Design-Builder, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Design-Builder's bid.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) including:
 - a. Products and completed operations/product hazard coverage:
 - i. Such insurance shall be maintained for five years after final payment.
 - ii. Design Builder shall furnish City and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and five years thereafter.

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- b. Blanket contractual liability coverage, to the extent permitted by law.
 - c. Broad form property damage coverage.
 - d. Severability of interest.
 - e. Personal injury coverage.
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance; and
4. Design Builder's Pollution Liability Insurance, a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Design Builder's operations and completed operations. This insurance includes coverage for all operations, completed operations, and professional services (without exclusion for asbestos or lead).
5. Professional Liability Errors and Omissions insurance for all Professional Services rendered including architecture, engineering, or design services; and
6. Builders Risk Insurance for "all risk" or special form causes of loss;

There shall be no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

II. Minimum Limits of Insurance

Design Builder shall provide coverage the greater of either limits as set forth in Design Builder's policy(ies) or:

1. Commercial General Liability: \$25,000,000 each occurrence/aggregate limit for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Business Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Design Builder's Pollution Liability Insurance: \$2,000,000 per contamination incident. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions arising from Design Builder's or its Design Builder's operations and completed operations. Policy shall have three years tail coverage, if canceled and non-renewed, within three years after the expiration or earlier termination of the Agreement.
5. Professional Liability (Errors and Omissions Coverage) of \$2,000,000 per claim/ aggregate limit with three years tail coverage, if canceled and non-renewed, within three years of completion of the project.
6. Builders Risk Insurance for "all risk" or special form causes of loss. for limits equal to 100% of the completed value of contract, with coverage to continue until final acceptance of the Work by the City. At the discretion of the City, the requirement for such coverage may include additional protection for Earthquake and/or Flood. The City shall be added as a loss payee on such policy.

In the event that Design Builder requests to use an umbrella policy or excess policy to meet policy limits, umbrella or excess coverage must follow form or have greater

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scope of coverage than required in the section **I. Minimum Scope of Insurance.**

City shall receive the same status on the excess/umbrella policy including meeting all provision as set forth in section **II. Other Insurance Provisions.**

III. Deductibles and Self-Insured Retentions

No deductible or self-insured retention shall exceed \$100,000, be more than ten percent of limits required, or be more than is specified in the scope or limits of insurance, unless the Design Builder can, to the satisfaction of the City Risk Manager, (1) make a financial showing of ability to meet minimum deductibles/claims in the event of a claim, (2) reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and Design Builders; or (3) procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

IV. Other Insurance Provisions

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

1. Commercial General Liability and Business Automobile Liability only:

- a. The City, its officials, employees, agents and Design Builders are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Design Builder; products and completed operations of the Design Builder; premises owned, leased or used by the Design Builder; or automobiles owned, leased, hired or borrowed by the Design Builder. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and Design Builders. Additional insured endorsements provided must at least be as broad as or equivalent to:
 - i. Additional insured endorsements that include both ongoing operations and products and completed operations coverage

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through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together).

- ii. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- iii. Umbrella or excess policy limits will be allowed in excess of \$2 each occurrence so long as the policy follows form in scope and limits to the Commercial General Liability Policy.

b. The Design Builder's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and Design Builders. Any insurance or self-insurance maintained by the City, its officials, employees, agents or Design Builders shall be excess of the Design Builder's insurance and shall not contribute with it. Any excess or umbrella policies to meet Design Builder's insurance obligations shall be endorsed to follow form for the City, its officials, employees, agents and Design Builders.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or Design Builders.

d. Coverage shall state that the Design Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and Design Builders.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state waiver of subrogation against the City, its officials, employees, agents and Design Builders.

3. Builders Risk

Coverage shall be endorsed to include the City as a loss payee.

4. All Coverages

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Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. If required as a policy provision, Design Builder shall take all affirmative steps to notify insurer of this obligation and secure any needed special endorsement to meet this contractual obligation.

The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

V Duration

1. All policies and limits shall be in full force and effect on or before the inception of the contract with proof of coverage
2. Commercial General Liability, Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of three (3) years after completion of work under this AGREEMENT.
3. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date work commenced under this AGREEMENT.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, DESIGN BUILDER must purchase an extended reporting period equal to or greater than three (3) years after completion of work under this AGREEMENT.

VI Acceptability of Insurance

Insurance is to be placed with insurers of an A.M. Best's Rating of A, VII or greater. Any self insurance programs or programs not otherwise meeting this requirement must be approved by the City's Risk Manager.

VII Verification of Coverage

Design Builder shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and

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endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Design Builder shall furnish City and each other additional insured evidence of continuation of such insurance at final payment and three years thereafter.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Design Builder's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance
Risk Management
200 East Santa Clara St., Floor T-14
San Jose, CA 95113-1905

VIII Subcontractors

Design Builders shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**SECTION 10. SITE SECURITY; MAINTENANCE AND
REPAIR****10.1 Site Security**

During the period commencing upon the date indicated in issuance of the Notice to Proceed for the Design-Build Contract with respect to the Project and ending upon Project Acceptance, Design-Builder shall provide appropriate security for the Project Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the Work and materials and equipment to be incorporated therein, as well as all other property at or on the Project Site, whether owned by Design-Builder, City or any other Person.

10.2 Obligation to Maintain and Repair**10.2.1 Maintenance Liability Period**

Design-Builder's maintenance liability under this Section 10.2 with respect to Project shall commence upon issuance of the Notice to Proceed for the Project. Effective as of the date on which the Project Completion occur Design-Builder shall be relieved of maintenance liability for the Project.

10.2.2 Maintenance and Repair Liability

Design-Builder shall maintain, rebuild, repair, restore or replace all Work (including Design Documents, Construction Documents, materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of the Project and regardless of whether City has title thereto), that is injured or damaged during the period specified in Section 10.2.1. All such Work shall be at no additional cost to City. Design-Builder shall also have full responsibility for rebuilding, repairing and restoring all other property at the Project Site whether owned by Design-Builder, City or any other Person. Where necessary to protect the Work or materials from damage, Design-Builder shall, at Design-Builder's expense, provide suitable drainage and erect those temporary structures that are necessary to protect the Work or materials from damage. The suspension of the Work, regardless of cause, shall not relieve Design-Builder of the responsibility for the Work

and materials as herein specified.

10.2.3 Use of Insurance Proceeds

If insurance proceeds with respect to any loss or damage are paid to City under any insurance policies required to be provided hereunder, then City shall arrange for such proceeds to be paid to Design-Builder as repair or replacement work is performed by Design-Builder to the extent that City has not previously paid for such repair or replacement work; provided, however, that release of such proceeds to Design-Builder shall not be a condition precedent to its performing such replacement or repair work or indicate that such replacement or repair work has been approved and accepted by City, and Design-Builder shall remain obligated to pay deductibles as specified in Section 9.

10.3 Title

Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for City for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which shall have been delivered to the Project Site shall pass to City, free and clear of all Liens, upon the sooner of (a) incorporation into the Project or (b) payment by City to Design-Builder of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Design-Builder shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Project Completion or until Design-Builder is removed from the Project.

SECTION 11. WARRANTIES

11.1 Warranties

11.1.1 Warranty

Design-Builder warrants that (a) all design Work furnished pursuant to the Contract Documents shall conform to all professional engineering principles generally accepted as standards of the industry in the State, (b) the Work shall be free of defects, including design Errors, except to the extent that such defects are inherent in prescriptive specifications included in the Contract Documents, (c) the Project shall be fit for use for the intended function, (d) materials and equipment furnished under the Contract Documents shall be of good quality and new, and (e) the Work shall meet all of the requirements of the Contract Documents and industry standards for performance, service life, deterioration and wear.

11.1.2 Warranty Term

The Warranty term for the Project shall commence upon acceptance thereof by City. Except as may be extended below, the Warranties regarding the Project shall remain in effect until one year after Project Acceptance. If City determines that any of the Work has not met the requirements set forth in this Section 11.1 at any time within the Warranty term, then Design-Builder shall correct such Work as specified below, and repair any damage to the Project as well or other property of the City to the extent caused by the failure of the work to meet the requirements set forth in this Section 11.1, even if the performance of such corrective work extends beyond the stated warranty term. City and Design-Builder shall conduct a walkthrough of the Project Site prior to expiration of the Warranty term and shall produce a Punch List of those items requiring Warranty Work.

Design-Builder warrants the Work for one year against faulty materials and workmanship.

11.1.3 Remedy

Within seven (7) days of receipt by Design-Builder of notice from City

specifying a failure of any of the Work to satisfy Design-Builder's Warranties, or of any Subcontractor representation, warranty, guarantee or obligation which Design-Builder is responsible to enforce, Design-Builder shall implement appropriate action to remedy such violation and shall notify City in writing of the action; provided, however, that in case of an emergency requiring immediate curative action, Design-Builder shall immediately implement such action. If Design-Builder does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Design-Builder and City fail to reach such an agreement within such seven-day period (or immediately should City disapprove of the actions being taken, in the case of emergency conditions), City, after notice to Design-Builder, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Design-Builder. City may agree to accept nonconforming Work in accordance with Section 5.7.2. Notwithstanding the foregoing, in the event of existence of a condition on or affecting the Project which the Director of Public Works believes poses an immediate and imminent danger to public health or safety, the Director of Public Works may, without notice, rectify the dangerous condition at Design-Builder's cost, if the need for such action is ultimately determined to be due to a failure of the Work to satisfy Design-Builder's Warranties or any Subcontractor representation, warranty, guarantee or obligation which Design-Builder is responsible to enforce.

11.1.4 Permits and Costs

Design-Builder shall be responsible for obtaining and paying for any required access permits from City and any required consents from any other Persons in connection with Warranty Work. Design-Builder shall bear all costs of Warranty Work, including additional testing and inspections.

11.2 Subcontractor Warranties

11.2.1 Warranty Requirements

Without in any way derogating the Warranties and Design-Builder's own representations and warranties and other obligations with respect to all of the Work,

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Design-Builder shall obtain from all Subcontractors and cause to be extended to City appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors (a) shall be written so as to survive all City inspections, tests and approvals, and (b) shall run directly to and be enforceable by Design-Builder and City and their respective successors and assigns. Design-Builder hereby assigns to City all of Design-Builder's rights and interest in all extended warranties for periods exceeding the applicable warranty term which are received by Design-Builder from any of its Subcontractors.

11.2.2 Enforcement

During the Warranty term, upon receipt from City of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Design-Builder shall enforce or perform any such representation, warranty, guaranty or obligation, in addition to Design-Builder's other obligations hereunder. City's rights under this Section 11.2.2 shall commence at the time such representation, warranty, guaranty or obligation is furnished and shall continue until the expiration of Design-Builder's relevant warranty. Until such expiration, the cost of any equipment, material, labor (including re- engineering) or shipping shall be for the account of Design-Builder if such cost is covered by such a warranty and Design-Builder shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors in accordance with the procedures set forth in Section 11.1.3.

11.3 No Limitation of Liability

The foregoing Warranties and Subcontractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Governmental Rules, and shall not limit Design-Builder's liability or responsibility imposed by the Contract Documents or applicable Governmental Rules with respect to the Work, including liability for design defects, latent construction defects, strict liability,

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negligence or fraud.

11.4 Damages for Breach of Warranty

In addition to City's other rights and remedies hereunder, at law or in equity, Design-Builder shall be liable for actual damages resulting from any breach of an express or implied warranty or any defect in the Work.

11.5 Warranty Disputes

Any disagreement between City and Design-Builder relating to this Section 11 shall be subject to dispute resolution in accordance with Section 19.

SECTION 12. PAYMENT FOR SERVICES**12.1 Contract Price****12.1.1 Contract Design-Build Lump Sum (Fixed) Price**

Notwithstanding anything herein to the contrary, the aggregate compensation (including all Contingencies) available to compensate Design-Builder for the Project, exclusive of Change Orders, shall not exceed \$50 Million.

12.1.2 Contract Price

As full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents associated with Project, City shall pay to Design-Builder the Design-Build Contract Price in accordance with this Section 12. Contract Price shall be increased or decreased only by a Change Order issued in accordance with Section 13 or by a Contract amendment.

12.1.3 Items Included in the Contract Price

Design-Builder acknowledges and agrees that, subject only to Design-Builder's rights under Section 13, the Contract Price includes (a) all studies, investigations, designs, permits, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Design-Builder's performance of its obligations under the Contract Documents (including all Work, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work); (b) the cost of obtaining all Governmental approvals (except as specified in Section 2.2.4); (d) all costs of compliance with and maintenance of the governmental approvals and compliance with Governmental Rules; (e) payment of any taxes, duties, permit and other fees and/or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; and (f) compensation for all risks and contingencies assigned to Design-Builder under the Contract Documents.

12.1.4 Design-Builder Contingency**12.1.4.1 Each Task Order will have two Design-Builder controlled**

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contingencies. Concurrent with the establishment of the Task Order Price, the parties shall negotiate a Design Development Contingency and a Construction Contingency (collectively the “Design-Builder Contingency”). The Design-Builder Contingency shall be identified as a separate line item in the Contract, but shall be treated as separate from the Task Order Price.

12.1.4.2 Once determined, the Design-Builder Contingency shall be treated as a single contingency fund. The Design-Builder Contingency is intended to pay for allowable costs pursuant to Appendix 20 in excess of the Task Order Price.

12.1.4.3 Subject to Section 13, if at any time the Design-Builder Contingency for any Task Order does not contain sufficient funds to pay all eligible expenses, Design-Builder shall be solely at risk for any additional costs incurred under the Task Order.

12.1.4.4 In the event money remains unused in a Design-Builder Contingency upon Task order Completion, either party may elect to split all or any portion of the unused Design-Builder Contingency between City and Design-Builder on a %/ % basis, respectively.

12.2 Invoicing and Payment

The following process shall apply to invoicing and payment:

12.2.1 Payment

Invoices shall be paid within the Design-Build Lump Sum Contract Price on the basis of the approved Schedule of Values (SOV) included in the Contract Documents and the measured progress each month as approved by the City. Design-Builder shall be obligated to complete all of the Design-Build Work for an amount not to exceed the Design-Build Lump Sum in accordance with the Contract Schedule.

12.2.1.1 Profit and Overhead

Profit allocated to the Project will be incorporated in the item breakdown within the Schedule of Values.

12.2.2 Draft Invoice and Progress Meeting

Design-Builder shall deliver a draft invoice based on the evaluated progress of Work

items listed in the Schedule of Values to City on or about the first business day of each month. At each Progress Meeting to be held no later than the fifth business day of each month, Design-Builder and City's designated representative shall ascertain the progress of the Work and verify the quantities for any Time and Materials and unit priced Work. Each Progress Meeting shall be attended by Design-Builder and City and/or its consultants. Design-Builder and City's designated representative shall review the draft invoice and certificate reflecting the value of Work completed as of the date of the meeting (based on (a) quantities and unit prices for unit priced Work, (b) time and materials for Work, (c) percentage completion for Lump Sum Design Work and (d) percentage completion of each line item in the Schedule of Values for Design-Build Work. Design-Builder and City's designated representatives shall sign the draft invoice, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed, calculated in accordance with the type of Schedule, plus the value of unit priced, Time and Materials and Schedule of Values Work, less Retainage and progress payments previously made. The amounts set forth in the draft invoice shall be used by Design-Builder in preparation of its monthly payment request described in Section 12.2.3.

12.2.3 Delivery of Invoice

Within seven (7) days after each Progress Meeting, Design-Builder shall submit to City two copies of an invoice in the form attached hereto as Appendix 18, for the Work performed under the Contract Documents during the immediately preceding month. Each invoice shall be based upon the approved draft invoice. Within seven (7) business days after City's receipt of the invoice, City will review the invoice and all attachments thereto for consistency with the draft invoice prepared at the most recent Progress Meeting and conformity with all requirements of the Contract Documents, and shall notify Design-Builder of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts. Design-Builder may include such disapproved amounts in the next month's invoice after correction of

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the deficiencies noted by City (all such disapproved amounts shall be deemed in dispute unless otherwise agreed).

12.2.4 Payment by City

Within thirty (30) days after receipt by City of each complete invoice and the related Certificate, City shall pay Design-Builder the amount of the invoice approved for payment less any applicable Retainage and less any amounts which City is otherwise entitled to withhold or deduct.

12.2.4.1 City and Design-Builder may agree to modify the Schedule of Values during the Project Schedule in the event of changes to the Work or agreed modifications to the breakdown of the Design-Build Lump Sum Price indicated in the SOV.

12.3 Deductions, Exclusions and Limitations on Payment

12.3.1 Retainage

12.3.1.1 City shall withhold funds (the “Retainage”) from each Design-Build Contract payment to be made to Design-Builder as described in Section 12.2.4 until such time as Project Substantial Completion is achieved in accordance with Standard Specification Section 9-1.06.

12.3.1.2 No portion of the Retainage shall be released unless and until all of the following conditions have been met: (a) Liquidated Damages shall not then be payable to City; (b) Design-Builder shall have established to City’s reasonable satisfaction that Liquidated Damages are not anticipated to be payable to City; (c) Design-Builder shall have applied in writing for such release; (d) no Event of Default has occurred and no event has occurred that, with the passage of time or the giving of notice, would constitute an Event of Default; and (e) such release shall have been approved in writing by each Surety.

12.3.1.3 City agrees to release Retainage being withheld for Work performed by Subcontractors, upon receipt of application from Design-Builder stating that the Subcontractor has completed all Work required to be performed under its Subcontract, stating the amount withheld by Design-Builder under the Subcontract,
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and providing all backup information and stop notice and lien releases as may be required by City. City will process such applications once per fiscal quarter, with the first release to occur following completion of 50% of the Work.

12.3.1.4 City agrees to release a portion of the Retainage from time to time in accordance with Section 9-1.06 of the Standard Specifications. The amount to be released shall be reduced by (a) any amounts which City is required to retain under Public Contract Code section 9203, (b) amounts applied to the payment of losses, damages or expenses incurred by City for which Design-Builder is responsible, (c) amounts that City deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project which have not been bonded around per statutory requirements, and (d) the estimated cost of repairing any nonconforming Work or otherwise remedying any breach of contract by Design-Builder.

On the date that Final Payment for the Project is due hereunder, City shall release to Design-Builder all remaining Retainage other than estimated amounts to pay (a) amounts applied to the payment of Liquidated Damages, amounts City is required to retain under Public Contract Code section 9203, amounts applied to the payment of losses, damages or expenses incurred by City for which Design-Builder is responsible, (d) amounts that City deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop notices from Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project which have not been bonded around per statutory requirements, and (e) 150% of the estimated cost of repairing any nonconforming Work or otherwise remedying any breach of contract by Design-Builder. Final payment of such Retainage not applied to the matters identified above shall be made upon Design-Builder showing, to City's reasonable satisfaction, that all such matters have been resolved, including delivery to City of a certification representing that there are no outstanding claims of Design-Builder or any claims, Liens or stop notices of any Subcontractor, Supplier, laborer, Utility Owner or other third party with respect to the Work other than those that have been bonded around by

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Design-Builder in accordance with statutory requirements or which are directly related to City's acts or omissions and are included in RFC Notices filed concurrently with the Application for Final Payment.

12.3.1.5 Design-Builder shall have the right to substitute securities or a letter of credit for the Retainage pursuant to the procedures contained in Public Contract Code Section 22300. No such substitution shall be accepted until such securities or letter of credit have been approved by City as qualifying for substitution, the value of such securities has been established to City's reasonable satisfaction, the parties have entered into an escrow agreement (if the securities are to be held in escrow) in form substantially similar to that contained in Public Contract Code Section 22300, and all documentation necessary for assignment of the securities to City or to the escrow agent, as appropriate, has been delivered in form reasonably satisfactory to City.

12.3.1.6 If Design-Builder has substituted securities for any of the Retainage, then City may request that such securities be revalued from time to time, but not more often than monthly. Such revaluation would be made by the Person designated by City and approved by Design-Builder. If such revaluation results in a determination that such securities have a market value which is less than the amount of Retainage for which they were substituted, then notwithstanding anything to the contrary contained herein, the amount of the Retainage required under the Contract shall be increased by such difference in market value. Such increased Retainage shall be withheld from the next progress payment due Design-Builder hereunder.

12.3.2 Deductions

In addition to the deductions provided for under Section 12.3.1, City may deduct from each progress payment and the Final Payment the following:

(a) Any City or third party claims or losses for which Design-Builder is responsible, other than third-party personal injury or property damage claims or losses covered by insurance hereunder, or any Liquidated Damages which have accrued as of the date of the application for payment;

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(b) If a notice to stop payment is filed with City, due to Design-Builder's failure to pay for labor or materials used in the work, money due for such labor or materials, plus the 25% prescribed by law, will be withheld from payment to Design-Builder. In accordance with Section 3196 of the Civil Code, City may accept a bond by a corporate surety in lieu of withholding payment;

(c) Any sums expended by or owing to City as a result of Design-Builder's failure to maintain the as-built drawings;

(d) Any sums expended by City in performing any of Design-Builder's obligations under the Contract which Design-Builder has failed to perform; and

(e) Any other sums which City is entitled to recover from Design-Builder under the terms of the Contract.

The failure by City to deduct any of these sums from a progress payment shall not constitute a waiver of City's right to such sums.

All amounts owing by Design-Builder to City under the Contract shall earn interest from the date on which such amount is owing at the lesser of (i) 10% per annum or (ii) the maximum rate allowable under applicable Governmental Rules.

12.3.3 Unincorporated Materials

City will not pay for materials not yet incorporated in the Work unless all of the following conditions are met:

12.3.3.1 Material shall be delivered to the Project Site, or delivered to Design-Builder and promptly stored by Design-Builder in bonded storage at a location approved by City. Design-Builder shall submit certified bills for such materials with the invoice, as a condition to payment for such materials. If such materials are stored at any site not approved by City, Design-Builder shall accept responsibility for and pay all personal and property taxes that may be levied against City by any state or subdivision thereof on account of such storage of such materials. City will permit Design-Builder, at its own cost, to in good faith contest the validity of any such tax levied against City in appropriate proceedings and in the event of any judgment or decree of a court, Design-Builder agrees to pay same together with any penalty or

other costs, relating thereto.

12.3.3.2 All such materials so accepted shall be and become the property of City. Design-Builder at its own cost shall promptly execute, acknowledge and deliver to City proper bills of sale or other instruments in writing in a form acceptable to City conveying and assuring to City title to such material included in any invoice, free and clear of all Liens. Design-Builder at its own cost shall conspicuously mark such material as the property of City, shall not permit such materials to become commingled with non-City- owned property and shall take such other steps, if any, as City may require or regard as necessary to vest title to such material in City free and clear of Liens.

12.3.3.3 Material included in an invoice but which is subsequently lost, damaged or unsatisfactory shall be deducted from succeeding invoices.

12.3.3.4 Payment for material furnished and delivered as indicated in this Section 12.3.3 will not exceed the amount paid by Design-Builder as evidenced by a bill of sale supported by paid invoice. City shall withhold Retainage from such payment as specified in Section 12.3.1.

12.4 Final Payment

Final Payment for the Work will be made as follows:

12.4.1 On or about the date of delivery of its Affidavit of Project Completion, Design-Builder shall prepare and submit a proposed Application for Final Payment to City showing the proposed total amount due Design-Builder, including Retainage. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall list all outstanding or pending RFC Notices and all existing or threatened claims, Liens and stop notices by Subcontractors, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Project Completion, stating the amount at issue associated with each such notice. The Application for Final Payment shall be accompanied by:

(a) complete and legally effective releases or waivers of Liens and stop notices satisfactory to City, from all Persons legally eligible to file Liens and stop notices in

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connection with the Work, which may be contingent upon receipt of final payment, provided City may issue final payment in the form of a joint check; (b) consent of Surety(ies) to final payment; (c) an executed release meeting the requirements of Section 12.4.3 and otherwise satisfactory in form and content to City; and (d) such other documentation as City may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. RFC Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 13 and Section 19.

12.4.2 As a condition to its obligation to make payment to Design-Builder based on the Application for Final Payment, City shall have received an executed release meeting the requirements of Section 12.4.3 and otherwise satisfactory in form and content to City. The payment amount will be reduced by any amounts deductible under Section 12.3.2, and by any amounts that City is entitled to withhold under Section 12.3.1.5.

12.4.3 The executed release from Design-Builder shall be from any and all claims arising from the Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any RFC Notices listed as outstanding in the Application for Final Payment. The release shall be accompanied by an affidavit from Design-Builder certifying that:

(a) it has resolved any claims made by Subcontractors, Utility Owners and others against Design-Builder or the Project other than claims included in outstanding RFC Notices listed in the Application for Final Payment;

(b) it has no reason to believe that any Person has a valid claim against Design-Builder or the Project which has not been communicated in writing by Design-Builder to City as of the date of the certificate; and

(c) all guarantees and warranties are in full force and effect. The release and the affidavit shall survive Final Payment.

12.4.4 All prior partial estimates and payments shall be subject to correction in

the final estimate of payments.

12.5 Payment to Subcontractors

12.5.1 Upon receipt of payment from City, Design-Builder shall promptly pay each Subcontractor, out of the amount paid to Design-Builder on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract. Retainage on Subcontracts shall comply with applicable Governmental Rules. Upon satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Design-Builder shall return all moneys withheld in retention from the Subcontractor. Such payment shall be made promptly following satisfaction of the foregoing requirements, even if Work to be performed by Design-Builder or other Subcontractors is not completed and has not been accepted, provided that release of the Subcontract retention shall be made on or before the later to occur of (a) 10 days following satisfaction of the foregoing requirements or (b) 30 days following receipt of payment from City for the completed Subcontract Work.

12.5.2 Each Subcontract shall require the Subcontractor to make payments to sub-subcontractors and Suppliers in a similar manner.

12.5.3 This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Design-Builder or any Subcontractor in the event of a dispute involving late payment or nonpayment by Design-Builder or deficient Subcontract performance or noncompliance by a Subcontractor.

12.5.4 City shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

12.6 Disputes

Failure by City to pay any amount in dispute shall not alleviate, diminish or modify in any respect Design-Builder's obligation to perform under the Contract Documents, including Design-Builder's obligation to achieve Project Acceptance for the Project and

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all Work in accordance with the Contract Documents, and Design-Builder shall not cease or slow down its performance under the Contract Documents on account of any such amount in dispute. Any dispute regarding such payment shall be resolved pursuant to Section 19. Design-Builder shall proceed as directed by City pending resolution of the dispute. Upon resolution of any such dispute, each party shall promptly pay to the other any amount owing.

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

SECTION 13.**CHANGES IN THE WORK**

This Section 13 sets forth the requirements for obtaining all Change Orders under the Contract. Design-Builder hereby acknowledges and agrees that the Design-Build Lump Sum Contract Price constitutes full compensation for performance of all Work, subject only to those exceptions specified in this Section 13, and that City is subject to constraints limiting its ability to increase the Contract Prices or extend the Completion Deadlines. Design-Builder hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract for any reason whatever, except as specifically set forth in this Section 13.

13.1 Circumstances Under Which Change Orders May Be Issued**13.1.1 Definition of and Requirements Relating to Change Orders****13.1.1.1 Definition of Change Order**

The term “Change Order” shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. City may issue unilateral Change Orders as specified in Section 13.2.2. Change Orders may be requested by Design-Builder only pursuant to Section 13.3. A Change Order shall not be effective for any purpose unless executed by City. Change Orders may be issued for the following purposes (or combination thereof):

- (a) to modify the scope of the Work;
- (b) to revise a Completion Deadline;
- (c) to revise a Contract Price; and
- (d) to revise other terms and conditions of the Contract Document

Upon City’s approval of the matters set forth in the Change Order form whether it is initiated by City or requested by Design-Builder), City shall sign such Change Order

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form indicating approval thereof. A Change Order may, at the sole discretion of City, direct Design-Builder to proceed with the Work with the amount of any adjustment of any Completion Deadline or Contract Price to be determined in the future.

13.1.1.2 Issuance of Directive Letter

City may at any time issue a Directive Letter to Design-Builder in the event of any desired change in the Work or in the event of any dispute regarding the scope of the Work. The Directive Letter will state that it is issued under this Section 13.1.1.2, will describe the Work in question and will state the basis for determining compensation, if any. Design-Builder shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Design-Builder's original scope of Work, Design-Builder shall proceed with the Work as directed but shall have the right pursuant to Section 13.3 to request that City issue a Change Order with respect thereto).

13.1.1.3 Directive Letter as Condition Precedent to Claim that City-Directed Change Has Occurred

13.1.1.3.1 Receipt of a Directive Letter from City shall be a condition precedent to Design-Builder's right to claim that a City-Directed Change has occurred, in addition to provision of notice and subsequent Request for Change Order pursuant to Section 13.3.2; provided that no Directive Letter shall be required for any City-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by City or its duly authorized representatives. Except when a Directive Letter is not required pursuant to this Section 13.1.1.3, Design-Builder shall be deemed to have waived any right to payment for work performed prior to receipt of a Directive Letter from City stating that it is issued pursuant to Section 13.1.1.2, or a Change Order for such Work signed by City, notwithstanding that Design-Builder believes such work is outside of its original scope. Receipt of a Directive Letter from City is not a condition precedent to Design-Builder's right to a Change Order on grounds other than performance of a City-Directed Change.

13.1.1.3.2 The fact that a Directive Letter was issued by City shall not be considered evidence that in fact a City-Directed Change occurred. The determination whether a City-Directed Change in fact occurred shall be based on an analysis of the original Contract requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The requirements of Section 13.1.1.3.1 shall not imply that a Directive Letter would be required in order for Design-Builder to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13.

13.1.2 Right of City to Issue Change Orders

City may, at any time and from time to time, without notice to any Surety, authorize and/or require changes in the Work within the general scope of the Contract pursuant to a Change Order. For the purpose of this Section 13.1.2, any direction to perform work shall be considered within the general scope of the Contract if it is related to the Project; any direction to delete or modify Work shall be considered within the general scope unless as a result the Contract would no longer be considered a design-build contract for the Project of the nature described in the RFP. Design-Builder shall have no obligation to perform any work outside the general scope of the Contract, except on terms mutually acceptable to City and Design-Builder.

13.2 City-Initiated Change Orders

This Section 13.2 concerns (a) Change Orders issued by City following a Change Notice and (b) Change Orders unilaterally issued by City.

13.2.1 Change Notice

13.2.1.1 If City desires to issue a City-Directed Change or to evaluate whether to initiate such a change, then City may, at its discretion, issue a Change Notice. A Directive Letter may also constitute a Change Notice.

13.2.1.2 Within seven days after Design-Builder's receipt of a Change Notice, or such longer period as may be mutually agreed to by City and Design-Builder, City and Design-Builder shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period as may be mutually agreed to by City and Design-Builder, City and Design-Builder shall

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consult concerning the estimated cost and time impacts. Design-Builder shall provide data regarding such matters as requested by City.

13.2.1.3 Within five business days after the second consultation and provision of any data described in Section 13.2.1.2, City shall notify Design-Builder whether City (a) wishes to issue a Change Order, (b) wishes to request Design-Builder to provide a cost and schedule proposal, (c) wishes to request Design-Builder to prepare a modified work plan for the change and a cost and schedule proposal based on the modified plan, or (d) no longer wishes to issue a Change Order. City may at any time, in its sole discretion, require Design-Builder to provide two (2) alternative costs and schedule proposals, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all acceleration schedule associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

13.2.1.4 If so requested, Design-Builder shall, within ten (10) business days after receipt of the notification described in Section 13.2.1.3, or such longer period as may be mutually agreed to by City and Design-Builder, prepare and submit to City for review and approval by City a Cost and Schedule Proposal (in the format provided by City) for the requested change, complying with all applicable requirements of Section 13.4, and incorporating and fully reflecting all requests made by City. Design-Builder shall bear the cost of developing the Cost and Schedule Proposal, including any modifications thereto requested by City, except that costs of design and engineering work required for preparation of plans or exhibits necessary to the Cost and Schedule Proposal, as pre-authorized by City, may be included in the Change Order as reimbursable items. If the Change Order is approved, such design and engineering costs will be included within the Change Order, otherwise, they shall be separately reimbursed through a separate Change Order.

13.2.1.5 If Design-Builder and City agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to

be made to the Contract Price or a Completion Deadline, City may, in its sole discretion, order Design-Builder to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at City's option, be in the form of: (a) a Time and Materials Change Order as provided in Section 13.7 or (b) a Directive Letter under Section 13.1.1.2.

J. If it is not practicable, due to the nature and/or timing of the event giving rise to a proposed Change Order, for Design-Builder to provide a complete Cost and Schedule Proposal meeting all of the requirements of Section 13.4, Design-Builder shall provide an incomplete proposal which includes all information capable of being ascertained. Said incomplete proposal shall: (a) include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to City stating why such requirements cannot be met; (b) provide such information regarding projected impact on a critical path as is requested by City to the extent such impact is ascertainable; and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase or decrease associated therewith, to the extent such amount is then ascertainable. Design-Builder shall provide monthly updates to any incomplete Cost and Schedule Proposals in the same manner as updates to incomplete Requests for Change Order under Section 13.3.2.3.2.

13.2.2 Unilateral Change Orders

City may issue a Change Order at any time, regardless of whether it has issued a Change Notice. Design-Builder shall be entitled to compensation in accordance with Section 13.7 for additional Work which is required to be performed as the result of any unilateral Change Order, and shall have the right to submit the issue of entitlement to an extension of the Completion Deadlines to dispute resolution in accordance with Section 19. For deductive unilateral Change Orders, the Change Order may contain a price deduction deemed appropriate by City, and Design-Builder shall have the right to submit the amount of such price deduction to dispute resolution in accordance with Section 19.

13.2.3 Changes in Law

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City shall be entitled to a change in the Contract Price for any Change in Law that changes the cost of the Work, if and to the extent that the Change in Law (i) allows a material modification in the design of the Project resulting in a net cost change,

(ii) changes the mitigation requirements for the Project associated with archaeological or paleontological resources, or (iii) specifically targets the Project. The change in Contract Price shall be calculated in accordance with Section 13.6.5.

13.3 Design-Builder-Initiated Change Orders

13.3.1 Eligible Changes

13.3.1.1 Design-Builder may request a Change Order to extend a Completion Deadline only for delays which change the duration of a Critical Path and to increase or decrease the Contract Price directly attributable to one or more of the following events or circumstances:

(a) Additional or reduction in the Work resulting from City-Directed Changes and City-Caused Delays for which City has not issued a Change Order or a Change Notice;

(b) Additional or reductions of Work resulting from certain changes to the Program Information, to the extent permitted by Section 3.2(c);

(c) Force Majeure Events, to the extent permitted by Section 13.9;

(d) Certain Utility Adjustment Work and certain delays by Utility Owners, to the extent permitted by Section 6.2;

(e) Discovery of unidentified, pre-existing Hazardous Materials, to the extent permitted by Section 6.3;

(f) Differing Site Conditions, to the extent permitted by Section 13.9;

(g) Changes in Law, to the extent permitted by Section 13.9.

13.3.1.2 Design-Builder's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13 and furthermore is subject to Design-Builder's compliance with all notification and other requirements identified herein. Design-Builder shall initiate the Change Order process by delivery of an RFC Notice as described in Section 13.3.2, followed by submittal of a Request for Change Order and supporting documentation to City.

13.3.2 Procedures

The requirements set forth in this Section 13.3.2 constitute conditions precedent to Design-Builder's entitlement to request and receive a Change Order except those involving a Change Notice. Design-Builder understands that it shall be forever barred from recovering against City under this Section 13 if it fails to give notice of any act, or failure to act, by City or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper Request for Change (RFC) Notice, and thereafter complies with the remaining requirements of this Section 13.3.

13.3.2.1 Request for Change (RFC) Notice

Design-Builder shall deliver to City a written notice ("RFC Notice") stating that an event or situation has occurred within the scope of Section 13.3.1 which Design-Builder believes justifies a change in the Contract Price and/or a Completion Deadline and shall state which subsection(s) thereof is applicable. The first notice shall be labeled "RFC No. 1" and subsequent notices shall be numbered sequentially.

Each RFC Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any RFC Notice is delivered later than ten days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described therein, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the RFC Notice, and shall be deemed to have waived the right to seek an extension of any Completion Deadline with respect to any delay in a Critical Path which accrued prior to the date of delivery of the written notice. Furthermore, if any RFC Notice concerns any condition or material described in Section 5.3.1,

Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that City is not afforded the opportunity to inspect such material or condition before it is disturbed. Design-Builder's failure to provide a RFC Notice within sixty (60) days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude Design-Builder from any relief, unless Design-Builder can show, based on a preponderance of the evidence, that (a) City was not materially prejudiced by the lack of notice, or (b) City's designated representative specified in accordance with Section 23.5.1 had actual knowledge, prior to the expiration of the 60-day period, of the event or situation and that Design-Builder believed it was entitled to a Change Order with respect thereto.

13.3.2.1.1 The RFC Notice shall: (a) state in detail the facts underlying the anticipated Request for Change Order, the reasons why Design-Builder believes additional compensation or time will or may be due and the date of occurrence; (b) state the name, title, and activity of each City representative knowledgeable of the facts underlying the anticipated Request for Change Order; (c) identify any documents and the substance of any oral communication involved in the facts underlying the anticipated Request for Change Order; (d) state in detail the basis for necessary accelerated schedule performance, if applicable; (e) state in detail the basis that the work is not required by the Contract, if applicable; (f) identify particular elements of Contract performance for which additional compensation may be sought under this Section 13.3.2; (g) identify any potential critical path impacts; and (h) provide an estimate of the time within which a response to the notice is required to minimize cost, delay or disruption of performance.

If the Request for Change Order relates to a decision which the Contract leaves to the discretion of a Person or as to which the Contract provides that such Person's decision is final, the RFC Notice shall set out in detail all facts supporting Design-Builder's objection to the decision, including all facts supporting any contention that the decision was capricious or arbitrary or is not supported by substantial evidence.

13.3.2.1.2 The written notification described in Section 5.3.1.1 may also serve as a RFC Notice provided it meets the requirements for RFC Notices.

13.3.2.1.3 Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from Design-Builder's failure to timely provide requested additional information under this Section 13.3.2.1.

13.3.2.2 Delivery of Request for Change Order

Design-Builder shall deliver all Requests for Change Order under this Section 13.3 to City Engineer within Thirty (30) days after delivery of the RFC Notice to the City of their authorized representative, or such longer period of time as may be allowed in writing by City. City may require design and construction costs to be covered by separate Requests for Change Order. If Design-Builder requests a time extension, then City, in its sole discretion, may require Design-Builder to provide two alternative Requests for Change Order, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If it is not feasible to recover to the original Completion Deadline or if Design-Builder believes that the costs associated with such a recovery are prohibitive, then Design-Builder shall recommend a date to be shown in the alternative Change Order form. If Design-Builder fails to deliver a complete Request for Change Order or incomplete Request for Change Order meeting all of the requirements of Section 13.3.2.3 within the appropriate time period, Design-Builder shall be required to provide a new RFC Notice before it may submit a Request for Change Order.

13.3.2.3 Incomplete Requests for Change Order

Each Request for Change Order provided under Section 13.3.2.2 shall meet all requirements set forth in Section 13.4; provided that if any such requirements cannot be met due to the nature and/or timing of the occurrence, Design-Builder shall provide an incomplete Request for Change Order which fills in all information capable of being ascertained. Said incomplete Request for Change Order shall: (a)

include a list of those Change Order requirements which are not fulfilled together with an explanation reasonably satisfactory to City stating why such requirements cannot be met, (b) provide such information regarding projected impact on a critical path as is requested by City, and (c) in all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

13.3.2.3.1 Design-Builder shall furnish, when requested by City or its designee, such further information and details as may be required to determine the facts or contentions involved. Design-Builder agrees that it shall give City or its designee access to any and all of Design-Builder's books, records and other materials relating to the proposed Change Order, and shall cause its Subcontractors to do the same, so that City or its designee can investigate the basis for such proposed Change Order. Design-Builder shall provide City with a monthly update to all outstanding Requests for Change Order describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to City, expenditures to date and time anticipated for completion of the activities for which the time extension is claimed. City may reject the Request for Change Order at any point in the process. Once a complete Request for Change Order is provided, City's failure to respond thereto within 21 days of delivery of the request shall be deemed a rejection of such request.

13.3.2.4 Importance of Timely Response

Design-Builder acknowledges and agrees that, due to limitations on funding for the Project, timely delivery of notification of such events and situations and Requests for Change Orders and updates thereto are of vital importance to City. City is relying on Design-Builder to evaluate promptly upon the occurrence of any event or situation whether the event or situation will affect the Contract Schedule or the Contract Price and, if so, whether Design-Builder believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect a Contract Price or a Completion Deadline, City will evaluate the situation and determine

whether it wishes to make any changes to the definition of the Project so as to bring it within City's funding and time restraints. The following matters (among others) shall be considered in determining whether City has been prejudiced by Design-Builder's failure to provide timely notice: (a) the effect of the delay on alternatives available to City (that is, a comparison of alternatives which are available at the time notice was actually given and alternatives which would have been available had notice been given within ten days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence); and (b) the impact of the delay on City's ability to obtain and review objective information contemporaneously with the event.

13.3.2.5 Compliance With Section 5.3.1 Requirements

Design-Builder shall comply with all applicable requirements contained in Section 5.3.1, unless precluded from doing so by emergency circumstances.

13.3.2.6 Review of Subcontractor Claims

Prior to submission by Design-Builder of any Request for Change Order which is based in whole or in part on a request by a Subcontractor to Design-Builder for a price increase or time extension under its Subcontract, Design-Builder shall have reviewed all claims by the Subcontractor which constitute the basis for the Request for Change Order and determined in good faith that each such claim is reasonably justified hereunder and that Design-Builder is justified in requesting an increase in the Price and change in Completion Deadlines in the amounts specified in the Request for Change Order. Each Request for Change Order involving Subcontractor Work, and each update to an incomplete Change Order request involving such Work shall include a summary of Design-Builder's analysis of all Subcontractor claims components and shall include a certification signed by Design-Builder's Project Executive stating that Design-Builder has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any Request for Change Order involving

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Subcontractor Work which is not accompanied by such analysis and certification shall be considered incomplete.

13.3.3 Performance of Disputed Work

If City refuses to issue a Change Order based on Design-Builder's request, Design-Builder shall nevertheless perform all work as specified by Directive Letter, and shall have the right to submit the issue to dispute resolution pursuant to Section 19. Design-Builder shall maintain and deliver to City, upon request, contemporaneous records, meeting the requirements of Section 13.10, for all work performed which Design-Builder believes constitutes extra work (including non-construction work), until all Disputes regarding entitlement or cost of such work are resolved.

13.4 Contents of Change Orders

13.4.1 Form of Change Order

Each Cost and Schedule Proposal and Request for Change Order shall be prepared in form acceptable to City, and shall meet all applicable requirements of this Section 13.

13.4.2 Scope of Work, Cost Estimate, Delay Analysis and Other Supporting Documentation

Design-Builder shall prepare a scope of work, cost estimate, delay analysis and other information as required by this Section 13.4.2 for each Cost and Schedule Proposal and Request for Change Order.

13.4.2.1 Scope of Work

The scope of work shall describe in detail satisfactory to City all activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

13.4.2.2 Cost Estimate

The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials,

equipment and markups for overhead and profit, unless City agrees otherwise. The estimate shall include costs allowable under Section 13.5.2, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, Design-Builder shall obtain quotes (with breakdowns showing cost of labor, materials, equipment and markups for overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for Design-Builder's estimate. No markup shall be allowed in excess of the amounts allowed under Appendix 4. Design-Builder shall identify all conditions with respect to prices or other aspects of the cost estimate, such as pricing contingent on firm orders being made by a certain date or the occurrence or non-occurrence of an event.

13.4.2.3 Delay Analysis

If Design-Builder claims that such event, situation or change affects a Critical Path, it shall provide an impacted delay analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost, and with a narrative report, in form satisfactory to City, which compares the proposed new schedule to the current approved Schedule.

13.4.2.4 Other Supporting Documentation

Design-Builder shall provide such other supporting documentation as may be required by City.

13.4.3 Justification

All Requests for Change Orders shall include an attachment containing a detailed narrative justification therefor, describing the circumstances underlying the proposed change, identifying the specific provision(s) of Section 13 which permit a Change Order to be issued, and describing the data and documents (including all data and reports required under Section 13.10) which establish the necessity and amount of such proposed change.

13.4.4 Design-Builder Representation

Each Change Order shall contain a certification under penalty of perjury,

using a form acceptable to City, executed by Design-Builder and stating that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) except as otherwise expressly provided in the Change Order, the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change, and (c) the cost and pricing data forming the basis for the Change Order is complete, accurate and current.

13.5 Certain Limitations

13.5.1 Limitation on Contract Price Increases

Any increase or decrease in the Contract Price allowed hereunder shall exclude: (a) costs caused by the breach of contract or fault or negligence, or act or failure to act by any Design-Builder-Related Entity; (b) costs to the extent that they are unnecessary or could reasonably be avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including in the equation any additional costs reasonably incurred in connection with such reallocation or redeployment); and (c) costs for remediation of any nonconforming Work.

13.5.2 Limitation on Delay and Disruption Damages

13.5.2.1 Acceleration Costs; Delay and Disruption Damages

Except for delays caused by Differing Site Conditions, acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by City as an alternative to allowing an extension of a Completion Deadline as contemplated by Sections 13.2.1.3 and 13.3.2.2. Other delay and disruption damages shall be compensable hereunder only in the case of delays which entitle Design-Builder to an extension of a Completion Deadline, to the extent of such extension, as follows:

(a) For City-Caused Delays, Design-Builder shall be entitled to 100% of the extended overhead incurred by Design-Builder during the delay period.

(b) For delays caused by events for which neither the City nor Design-

Builder are responsible, Design-Builder shall be entitled to 50% of the extended overhead incurred by Design-Builder during the delay period.

(c) For delays concurrently caused by the City and the Design-Builder, the Design-Builder shall be entitled to 50% of the extended overhead incurred by Design- Builder during the delay period.

(d) For delays concurrently caused by Design-Builder and other events for which the City is not responsible, Design-Builder shall be entitled to 25% of the extended overhead incurred by Design-Builder during the delay period.

13.5.2.2 Other Limitations

Delay and disruption damages shall be limited to direct costs in the percentages described in Section 13.5.2.1 and markups thereon in accordance with Section 13.7 and any additional field office and jobsite overhead costs incurred by Design- Builder directly attributable to such delays. In addition, before Design-Builder may obtain any increase in the Contract Price to compensate for additional or extended overhead, Acceleration Costs or other damages relating to delay, Design-Builder shall have demonstrated to City's satisfaction that:

(a) its schedule which defines the affected Critical Path in fact set forth a reasonable method for completion of the Work;

(b) the change in the Work or other event or situation which is the subject of the requested Change Order has caused or will result in an identifiable and measurable disruption of the Work which impacted the Critical Path activity (i.e. consumed all available Float and extended the time required to achieve Project Completion beyond the applicable Completion Deadline); the delay or damage was not due to any breach of contract or fault or negligence, and could not reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment); and

(c) Design-Builder has suffered or will suffer actual costs due

to such delay, each of which costs shall be documented in a manner satisfactory to City.

13.5.3 Limitation on Time Extensions

If a delay for which Design-Builder is otherwise entitled to an extension of a Completion Deadline under Section 13.3.1.1, except for delays caused by Differing Site Conditions, Design-Builder's entitlement to an extension of a Completion Deadline is limited in certain circumstances as follows:

(a) For City-Caused Delays, Design-Builder shall be entitled to an extension of the Completion Deadline equal to 100% of the delay period.

(b) For delays caused by events for which neither the City nor Design-Builder are responsible, Design-Builder shall be entitled to an extension of the Completion Deadline equal to 100% of the delay period.

(c) For delays concurrently caused by the City and the Design-Builder, the Design-Builder shall be entitled to an extension of the Completion Deadline equal to 50% of the delay period.

(d) For delays concurrently caused by Design-Builder and other events for which the City is not responsible, Design-Builder shall be entitled to an extension of the Completion Deadline equal to 50% of the delay period.

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it (a) did not impact a Critical Path, or (b) could reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a City-Caused Delay, City shall have agreed, if requested to do so, to reimburse Design-Builder for its costs incurred, if any, in resequencing, reallocating or redeploying its forces). Design-Builder shall be required to demonstrate to City's satisfaction that the change in the Work or other event or situation which is the subject of the Request for Change Order seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path activity (i.e., consumed all available Float

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and extended the time required to achieve Project Completion beyond the applicable Completion Deadline).

13.5.4 Work Performed Without Direction

To the extent that Design-Builder undertakes any efforts outside of the scope of the Work, unless Design-Builder has received a Directive Letter or Change Order signed by City to undertake such efforts, Design-Builder shall be deemed to have undertaken the extra work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, City may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole cost.

13.6 Change Order Pricing

The price of a Change Order under this Section 13.6 shall be a negotiated, lump sum price, a unit price, or a time & material not to exceed (NTE) price. Lump sum or unit prices shall be based on the original allocations of the Contract Price to comparable activities, whenever possible. If reference to price allocations is inappropriate and if requested by City, negotiation for Change Orders shall be on an Open Book Basis and may be based on competitive Subcontractors' bid prices. All changes to be executed on a T&M Not to Exceed basis must have the Design-Builder's documentation approved by the City or its Representative for all actual costs including, but not limited to, engineering and design, trade labor, materials and equipment for direct costs in order to support the Design-Builder's invoice for payment.

13.6.1 Detailed Cost Proposal

Design-Builder may be required to submit a detailed cost proposal identifying all categories of costs in accordance with the requirements of Section 13.7: (a) showing all impacts on the Contract from Work additions, deletions and modifications shown in the Change Order being priced; and (b) setting out the proposed costs in such a way that a fair evaluation can be made.

13.6.2 Identification of Conditions

Design-Builder shall identify all conditions with respect to prices or other aspects of the proposal, such as pricing contingent on firm orders being made by a certain date or the occurrence or nonoccurrence of an event.

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13.6.3 Contents

A negotiated Change Order shall specify costs, scheduling requirements, time extensions and all costs of any nature arising out of the Work covered by the Change Order. Notwithstanding the foregoing, the parties may mutually agree to use a multiple- step process involving issuance of a Change Order which includes an estimated construction cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and further definition of the estimated construction cost.

13.6.4 Added Work

When the Change Order adds Work to Design-Builder's scope, the change in the Contract Price shall be negotiated based on estimated costs of labor, material and equipment, or shall be based on actual costs in accordance with Section 13.7. For negotiated Change Orders, markups for profit and overhead shall be consistent with Sections 13.5.2 and 13.7.3, and risk associated with the Work described in the Change Order shall be addressed through an additional amount agreed to by City and Design- Builder.

13.6.5 Deleted Work

When the Change Order deletes Work from Design-Builder's scope, the amount of the reduction in the Contract Price shall be based upon a current estimate, including a bill of material, a breakdown of labor and equipment costs and the markup for overhead and profit associated with the deleted Work. The current estimated amount of risk associated with such Work shall be a factor in determining the markup for the deduction. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

13.6.6 Change Order Both Adding and Deleting Work

When the Change Order includes both added and deleted Work, Design-Builder shall prepare a statement of the cost of labor, material and equipment for both added and deleted work. If the cost of labor, material and equipment for the work added and deleted results in a:

(a) Net increase in cost, the change shall be treated as work added and the provisions of Section 13.6.4 shall be used to determine markups for overhead and profit. Markups for overhead and profit will be allowed only for the net increase in cost in order to establish the amount to be added to the Contract Price.

(b) Net decrease in cost, the change shall be treated as work deleted and the provisions of Section 13.6.5 shall be used on the net decrease in cost in order to establish the price deduct to the Contract Price.

(c) Net change of zero cost increase and decrease, there will be no change in the Contract Price.

13.6.7 Unit Priced Change Orders

Measurement of unit-priced quantities will be in accordance with Section 9-1.01 of the Standard Specifications. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Unit-priced Change Orders shall initially include an estimated increase in the Contract Price based on estimated quantities. Upon final determination of the quantities, City will issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.7 Time and Materials Change Orders

13.7.1 Issuance

City may at its discretion issue a Time and Materials NTE Change Order whenever City determines that a Time and Materials Change Order is advisable. The Time and Materials Change Order shall instruct Design-Builder to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total not to exceed change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, City shall issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.7.2 Pricing and Payment

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13.7.2.1 Time and Materials NTE Change Orders shall be issued in accordance with Section 9-1.03 of the Standard Specifications. Design-BUILDER shall comply with all recordkeeping and other obligations set forth in said Section 9-1.03.

13.7.2.2 Payments for Time and Materials NTE Work shall be invoiced with the regular monthly invoice, based on the extra work reports furnished by Design-BUILDER for each period. Costs evidenced by daily extra work reports furnished less than five (5) business days prior to preparation of the invoice shall be included in the subsequent month's invoice.

13.7.3 Overhead Items

Unless otherwise indicated in this Section 13.7, the markups and labor surcharges under this Section 13.7 are full and complete compensation for all overhead and other indirect costs of the added or changed Work, as well as for profit thereon. The following items are considered overhead costs and are included in the Change Order markups and labor surcharges set forth in Section 9-1.03 of the Standard Specifications:

- (a) Salary and expenses of executive officers, supervising officers or supervising employees;
- (b) Design-BUILDER's superintendents and other construction supervision;
- (c) Clerical or stenographic employees;
- (d) Charges for minor equipment, such as small tools, including shovels, picks, axes, saws, bars, sledges, lanterns, jacks, cables, pails, wrenches, etc., consumables, and other miscellaneous supplies and services;
- (e) Any and all field and home office overhead and operating expenses whatsoever;
- (f) Subsistence and travel expenses for all personnel; and
- (g) Quality assurance and quality control.

With respect to non-construction related labor costs, overhead is covered by

the labor surcharge, and includes accessories such as computer assisted drafting and design (CADD) systems, software and computers, facsimile machines, scanners, plotters, etc.

13.8 Omitted.

13.9 Change Orders for Differing Site Conditions, Force Majeure Events and Changes in Law

13.9.1 Differing Site Conditions

For the purpose of this Section 13.9.1 only, the term “Differing Site Conditions” shall be deemed to include Utilities and Hazardous Materials. Upon Design- Builder's fulfillment of all applicable requirements of Section 5.3.1 and Section 13, City shall issue Change Orders, (a) to increase the applicable Contract Price for additional direct costs directly attributable to changes in the Work arising from Differing Site Conditions, if any, subject to the limitations set forth in Section 13.9.1.2 below, and (b) to extend any affected Completion Deadline to the extent that any delay in the Critical Path is directly caused by any such conditions.

13.9.1.1 In the event a Differing Site Condition directly causes a delay to the Critical Path, thereby entitling Design-Builder to an extension of the Completion Deadline, City shall increase the Contract Price for 50% of the extended overhead costs incurred as a result of such delay to the Critical Path only if the Critical Path delay is not concurrent with any other Critical Path Delay caused by Design-Builder.

13.9.1.2 Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost, and that the Design-Builder is taking steps to mitigate the impact of any delay caused by the Differing Site Condition. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Project Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative

design or construction solutions to eliminate or minimize the problem and the associated costs.

13.9.1.3 Prior to filing any request for a Change Order relating to a Differing Site Condition, Design-Builder shall inquire if insurance proceeds may be available to cover costs in connection with such item. If Design-Builder finds that reasonable grounds for filing an insurance claim exist, then Design-Builder shall so notify City. City shall not be in default for failure to pay any amounts which Design-Builder or City finds may be covered by insurance, unless and until the claim is denied by the insurance company. Design-Builder shall maintain contemporaneous records of all costs incurred by it with respect to the Differing Site Condition pending the insurance company's determination regarding the claim. Upon denial of any such claim by the insurance company and receipt of a Change Order request, City will process the Request for Change Order. City shall have the right to contest the denial of any insurance claim, and Design-Builder shall cooperate with City in that regard. Notwithstanding anything to the contrary contained in Section 13.3.2, Design-Builder shall not be obligated to include amounts which may be covered by insurance in any Change Order request until twenty (20) days after the insurance company has denied the claim. However, the notice requirements of Section 13.3.2 shall remain effective with respect to the event in question.

13.9.2 Force Majeure Events

Subject to the limitations contained in, and upon Design-Builder's fulfillment of all applicable requirements of, this Section 13, City shall issue Change Orders to increase the Contract Price for additional costs (subject to Section 13.5.2) directly attributable to changes in the scope of the Work arising from a Force Majeure Event and to extend the applicable Completion Deadlines as the result of any delay in a Critical Path directly caused by a Force Majeure Event. No increase in the Contract Price or extension of time will be granted for a delay caused by a shortage of materials unless Design-Builder furnishes to City documentary proof that Design-Builder has made every effort to obtain such materials from all known sources within reasonable

reach of the Work in a diligent and timely manner, and further proof in the form of supplementary progress schedules, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of Design-Builder's operations. City shall hold Design-Builder harmless from any Force Majeure Event resulting from acts of terrorism. Design-Builder shall hold City harmless from any and all claims by Design-Builder for damage to Design-Builder's property and Subcontractors' property resulting from acts of terrorism.

13.9.3 Change in Law

Upon Design-Builder's fulfillment of all applicable requirements of this Section 13, and subject to the restrictions and limitations contained therein, City shall issue Change Orders (a) to increase the Contract Price for additional costs (subject to Section 13.5.2) directly attributable to a Change in Law, to the extent that the Change in Law (i) requires a material modification in the design of the Project, (ii) results in imposition of additional mitigation requirements on the Project due to impacts on archaeological or paleontological resources, or (iii) specifically targets the Project; and/or (b) to extend the Completion Deadlines as the result of any delay in the Critical Path caused by any Change in Law described in clause (a) above.

13.10 Change Order Records

Design-Builder shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Work for which it is entitled (or for which it believes it is entitled) to an increase in a Contract Price based on a T&M NTE change order. Design-Builder shall contemporaneously collect, record in writing, segregate and preserve (a) separate daily occurrence logs, together with all other data necessary to determine the T&M costs of all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Relocations, and (b) all data necessary to show the actual impact (if any) of the change on each Critical Path with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Schedule is in dispute. Such data shall be provided to the City and its authorized

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representatives as directed by City, on forms approved by City. The cost of furnishing such reports is included in Design-Builder's predetermined overhead and profit markups.

13.10.1 Daily Work Reports and Data Collection

Design-Builder shall furnish City completed daily work reports for each day's Work which is to be paid for on a time and material basis. The daily Time and Material Work reports shall be detailed as follows:

- (a) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom reimbursement is requested.
- (b) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (c) Quantities of materials, prices, and extensions.
- (d) Transportation of materials.

13.10.2 The reports shall also state the total costs to date for the Time and Materials Change Order Work.

13.10.3 Supplier's Invoices

Materials charges shall be substantiated by valid copies of Supplier's invoices. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports. Should said Supplier's invoices not be submitted within 60 days after the date of delivery of the materials, City shall have the right to establish the cost of such materials at the lowest current wholesale prices at which such materials are available, in the quantities concerned, delivered to the location of Work, less any discounts available.

13.10.4 Execution of Reports

All Time and Materials Change Order reports shall be signed by Design-Builder's Superintendent.

13.10.5 Adjustment

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City will compare its records with the completed daily Time and Material Work reports furnished by Design-Builder and make any necessary adjustments. When these daily time and material Work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit. Design-Builder's cost records pertaining to Work paid for on a Time and Material basis shall be open, during all regular business hours, to inspection or audit by representatives of City during the life of the Contract and for a period of not less than three years after Project Acceptance, and Design- Builder shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to any Person other than Design-Builder, Design-Builder shall make every reasonable effort to insure that the cost records of each such other Person will be open to inspection and audit by representatives of City on the same terms and conditions as the cost records of Design-Builder. Payment for such costs may be deleted if the records of such third parties are not made available to City's representatives. If an audit is to be commenced more than 60 days after Project Acceptance, Design- Builder will be given a reasonable notice of the time when such audit is to begin.

13.11 Matters Not Eligible for Change Orders and Waiver

Design-Builder acknowledges and agrees that no increase in the Contract Price or extension of a Completion Deadline is available except in circumstances expressly provided for in the Contract, that such price increase and time extension shall be available only as provided in this Section 13 and that Design-Builder shall bear full responsibility for the consequences of all other events and circumstances. Matters which are Design- Builder's exclusive responsibility include the following:

- (a) Errors in the Design Documents and Construction Documents (including Errors therein traceable to Errors in the Background Documents and Program Criteria Document (including portions provided by City));
- (b) any design changes requested by City as part of the process of (i) approving the Design Documents for consistency with the requirements of the Contract

Documents, the governmental approvals and/or applicable Governmental Rules or (ii) designing the Project within the applicable budget and within the applicable deadlines set forth in Section 4.2.2.2;

(c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (unless arising from causes which otherwise give rise to a right to a Change Order);

(d) action or inaction of Design-Builder's employees, Suppliers or Subcontractors (unless arising from causes which otherwise give rise to a right to a Change Order);

(e) untimely delivery of equipment or material, or unavailability or defectiveness or increases in costs of material, equipment or products specified by the Contract Documents, except to the extent resulting from a Force Majeure Event;

(f) any costs covered by insurance proceeds received by (or on behalf of) Design-Builder;

(g) correction of nonconforming Work and review and acceptance thereof by City (including rejected design submittals);

(h) failure by Design-Builder to comply with Contract requirements (including any failure to provide the notifications to property owners, Utility Owners and others required by the Contract Documents);

(i) delays not on a Critical Path;

(j) obtaining all governmental approvals except as specified in Section 2.2.4, and compliance with the terms and conditions of all governmental approvals;

(k) any suspensions, terminations, interruptions, denials, non-renewals of, or delays in issuance of a Governmental Approval that is required to be obtained by Design-Builder, or any failure to obtain such Governmental Approval;

(l) any increased costs or delays related to any Utility Adjustment Work or failure to timely obtain any approval, work or other action from a Utility Owner, except as specified in Section 6.2;

(m) any situations which, while not within one of the categories delineated

above, were or should have been anticipated because such situations are referred to elsewhere in the Contract or arise out of the nature of the Work; and

(n) all other events beyond the control of City for which City has not expressly agreed to assume liability hereunder.

Design-Builder hereby assumes responsibility for all such matters, and acknowledges and agrees that assumption by Design-Builder of responsibility for such risks, and the consequences and costs and delays resulting therefrom, is reasonable under the circumstances of the Contract and that contingencies associated with the Contract Price in Design-Builder's sole judgment, will constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

DESIGN-BUILDER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION (INCLUDING ANY CONSTRUCTIVE CHANGE IN THE WORK, DELAY, SUSPENSION OR ACCELERATION) FOR WHICH DESIGN-BUILDER FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY REQUEST FOR CHANGE ORDER AS REQUIRED IN THIS SECTION 13, AND AGREES THAT IT SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.12 Disputes

If City and Design-Builder agree that a request to increase the Contract Price and/or extend any Completion Deadline by Design-Builder has merit, but are unable to agree as to the amount of such price increase and/or time extension, City agrees to mark up the Request for Change Order or Cost and Schedule Proposal, as applicable, provided by Design-Builder to reduce the amount of the price increase or time extension as deemed appropriate by City. In such event, City will execute and deliver the marked-up Change Order to Design-Builder within a reasonable period after receipt

of a request by Design- Builder to do so, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of City and Design-Builder to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Time and Materials Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by Design-Builder of any nature arising from or relating to the Work covered by the Change Order. Design-Builder's Claim and any award by the dispute resolver shall be limited to the incremental costs incurred by Design-Builder with respect to the disputed matter (crediting City for any corresponding reduction in Design-Builder's other costs) and shall in no event exceed the amounts allowed by Section 13.7 with respect thereto.

13.13 Changes Not Requiring Change Order

Deviations from design standards specified in the Contract Documents which have a neutral net cost effect shall not require a Change Order provided such deviations are approved by City. Any other change in the requirements of the Contract Documents shall require either a Directive Letter or a Change Order.

13.14 No Release or Waiver

13.14.1 No extension of time granted hereunder shall release Design-Builder's Surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and the Contract shall be and shall remain in full force and effect during the continuance and until Project Completion unless formally suspended or terminated by City in accordance with the terms hereof. Permitting Design-Builder to finish the Work or any part thereof after a Completion Deadline, or the making of payments to Design-Builder after such date, shall not constitute a waiver on the part of City of any rights under the Contract.

13.14.2 Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work, nor the performance and acceptance of any

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part of the Work or materials specified by the Contract after a Completion Deadline, shall be deemed to be a waiver by City of its right to terminate the Contract for abandonment or failure to complete within the time specified (as it may have been extended) or to impose and deduct damages as may be provided.

13.14.3 No course of conduct or dealings between the parties nor express or implied acceptance of alterations or additions to the Work, and no claim that City has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Design-Builder shall not undertake any work included in any request, order or other authorization issued by a person in excess of that person's authority as provided in Appendix 19. Design-Builder shall be deemed to have performed any work not properly authorized as a volunteer and at its sole cost. In addition, City may require Design-Builder to remove or otherwise undo any such work, at Design-Builder's sole cost.

SECTION 14. SUSPENSION**14.1 Suspensions for Convenience**

City may, at any time and for any reason, by written notice, order Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that City deems appropriate for the convenience of City. Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from City directing Design-Builder to resume Work. Any such suspension for convenience shall be considered a City-Directed Change; provided that City shall have the right to direct suspensions for convenience not exceeding 48 hours each, which shall not be considered a City-Directed Change; and provided further that all suspensions shall be considered a City-Caused Delay, if a Critical Path is delayed. Adjustments of the Contract Price and the Completion Deadlines shall be available for any such City-Directed Change, subject to Design-Builder's compliance with the terms and conditions set forth in Section 13.

14.2 Suspensions for Cause

City has the authority to suspend the Work by written order, wholly or in part, for Design-Builder's failure to:

- (a) Comply with any Governmental Approval, Governmental Rule or otherwise carry out the requirements of the Contract;
- (b) Carry out orders of City;
- (c) Comply with requirements for developing and implementing the Quality Control Programs; or
- (d) Comply with environmental requirements.

Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from City directing Design-Builder to resume Work. City shall have no liability to Design-Builder in connection with any such suspension.

14.3 Responsibilities of Design-Builder During Suspension Periods

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During periods that Work is suspended, Design-Builder shall continue to be responsible for the Work. During any suspension period, Design-Builder shall prevent damage or injury to the Project, and provide for drainage, erect necessary temporary structures, signs or other facilities required to maintain the Project. Additionally, Design-Builder shall continue other Work that has been or can be performed onsite or offsite during the period that Work is suspended.

SECTION 15. TERMINATION FOR CONVENIENCE**15.1 Termination**

City may terminate the Contract and the performance of the Work by Design-Builder in whole or, from time to time, in part, if City determines, in its sole discretion that a termination is in City's best interest. City shall terminate by delivering to Design-Builder a written Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of the Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

15.2 Design-Builder's Responsibilities After Receipt of Notice of Termination

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, and except as otherwise directed by City, Design-Builder shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Section 15:

15.2.1 Stop Work as specified in the notice.

15.2.2 Notify all affected Subcontractors that the Contract is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by City.

15.2.3 Place no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.

15.2.4 Unless instructed otherwise by City, terminate all Subcontracts to the extent they relate to the Work terminated.

15.2.5 Assign to City in the manner, at the times, and to the extent directed by City, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case City will have the right, in its sole discretion, to accept performance, settle or pay any termination settlement proposal arising out of the termination of such Subcontract.

15.2.6 Subject to the prior written approval of City, settle all outstanding

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liabilities and all termination settlement proposals arising from termination of Subcontracts.

15.2.7 No later than 120 days from the effective date of termination, unless extended in writing by City upon written request of Design-Builder within this 120-day period, provide City with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to City, and such other information as City may request; and transfer title and deliver to City through bills of sale or other documents of title, as directed by City, (a) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (b) the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to City if the Work had been completed.

15.2.8 Complete performance in accordance with the Contract Documents of all Work not terminated.

15.2.9 Take all action that may be necessary, or that City may direct, for the safety, protection and preservation of (a) the public, including public and private vehicular movement, (b) the Work and (c) equipment, machinery, materials and property related to the Project that is in the possession of Design-Builder and in which City has or may acquire an interest.

15.2.10 As authorized by City in writing, use its best efforts to sell at reasonable prices any property of the types referred to in Section 15.2.7; provided, however, that Design-Builder (a) is not required to extend credit to any purchaser, and (b) may acquire the property under the conditions prescribed and at prices approved by City. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by City under the Contract Documents or paid in any other

manner directed by City.

15.2.11 If requested by City, withdraw from the portions of the Project Site designated by City and remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by, Design-Builder and any Subcontractor in the performance of the Work as City may direct.

15.2.12 Take other actions directed by City.

15.3 Acceptance

15.3.1 Design-Builder shall continue to be responsible for damage to materials after issuance of the Notice of Termination for Convenience, except as follows:

(a) Design-Builder's responsibility for damage to materials for which partial payment has been made as provided herein shall terminate when City's designated representative certifies that those materials have been stored in the manner and at the locations directed by City.

(b) Design-Builder's responsibility for damage to materials purchased by City subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of those materials has been taken by City.

15.3.2 When City's Project Manager determines that Design-Builder has completed the Work directed to be completed prior to termination and such other work as may have been ordered to secure the Project for termination, City's Project Manager will recommend that City formally accept such Work, and immediately upon and after the acceptance by City, Design-Builder will not be required to perform any further work thereon and shall be relieved of the contractual responsibilities for injury to persons or property which occurs after the formal acceptance of such Work by City.

15.4 Settlement Proposal

After receipt of a Notice of Termination for Convenience or Notice of Partial Termination for Convenience, Design-Builder shall submit a final termination settlement proposal to

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City in the form and with the certification prescribed by City. Design-Builder shall submit the proposal promptly, but no later than 120 days from the effective date of termination unless Design-Builder has requested a time extension in writing within such 120-day period and City has agreed in writing to allow such an extension. Design-Builder's termination settlement proposal shall then be reviewed by City and acted upon, returned with comments, or rejected. If Design-Builder fails to submit the proposal within the time allowed, City may determine, on the basis of information available, the amount, if any, due Design-Builder because of the termination and shall pay Design-Builder the amount so determined.

15.5 Amount of Negotiated Termination Settlement

Design-Builder and City may agree, as provided in Section 15.4, upon the whole or any part of the amount or amounts to be paid to Design-Builder by reason of the total or partial termination of Work for convenience pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work which has been completed as of the termination date and subsequently inspected and accepted by City. Such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and Design-Builder will be paid the agreed amount as described in this Section 15.5. Nothing in Section 15.6, prescribing the amount to be paid to Design-Builder in the event that Design-Builder and City fail to agree upon the whole amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Design-Builder pursuant to this Section 15.5. City's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve Design-Builder from its obligations with respect thereto, including Warranties, or affect Design-Builder's rights under the Performance Bond and/or Payment Bond as

to such completed or non-terminated Work.

15.6 No Agreement as to Amount of Termination Settlement

If Design-Builder and City fail to agree upon the whole amount to be paid to Design-Builder by reason of the termination of Work for convenience pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by City in accordance with the following, but without duplication of any items or of any amounts agreed upon in accordance with Sections 15.4 and 15.5:

15.6.1 City will pay Design-Builder the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience:

(a) Design-Builder's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Section 13.7.3, for all Work performed, including mobilization, demobilization and work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to City's satisfaction. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by Design-Builder, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. Deductions will also be made, when the contract is terminated as the result of a Force Majeure event, for the cost of materials damaged by the "occurrence." When, in the opinion of City's Project Manager, the cost of a contract item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost shall be disallowed.

(b) The percentage of Design-Builder's fee is based on the percentage complete of the Contract Work.

(c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2.6, exclusive of the

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amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience of Work under the Contract, which amounts shall be included in the cost on account of which payment is made under clause (a) above.

(d) The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2.9 and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to Design-Builder of handling material returned to the vendor, delivered to City or otherwise disposed of as directed by City, and including a reasonable allowance for Design-Builder's administrative costs in determining the amount payable due to termination of the Contract.

15.6.2 Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 15.6.1) plus its settlement costs, and that items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. The total amount to be paid to Design-Builder, exclusive of costs described in Sections 15.6.1(c) and (d), may not exceed the sum of the Contract Price less the amount of payments previously made. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, deposits or other items which were previously passed through to City by Design-Builder, such refund shall be paid directly to City or otherwise credited to City. Except for normal spoilage, and except to the extent that City will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Design-Builder under Section 15.6.1, the fair value, as determined by City, of equipment, machinery, materials and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to City, or sold pursuant to Section 15.2.10. Upon determination of the amount of the termination payment, the Contract shall be

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amended to reflect the agreed termination payment, Design-Builder shall be paid the agreed amount, and the Contract Price and Contract NTE Amount shall be reduced to reflect the reduced scope of Work.

15.6.3 If a termination hereunder is partial, Design-Builder may file a proposal with City for an equitable adjustment of the price for the continued portion of the Contract. Any proposal by Design-Builder for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by City. The amount of any such adjustment as may be agreed upon shall be set forth in an amendment to the Contract.

15.7 Reduction in Amount of Claim

The amount otherwise due Design-Builder under this Section 15 shall be reduced by (a) the amount of any claim which City may have against any Design-Builder-Related Entity in connection with the Contract, (b) the agreed price for, or the proceeds of sale, of property, materials, supplies or other things acquired by Design-Builder or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to City, (c) all unliquidated advance or other payments made to or on behalf of Design-Builder applicable to the terminated portion of the Work or Contract, (d) amounts that City deems advisable to retain to cover any existing or threatened claims, Liens and stop notices relating to the Project, including claims by Utility Owners, (e) the cost of repairing any nonconforming Work and (f) any amounts due or payable by Design-Builder to City.

15.8 Payment

City may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of the Contract, whenever in the opinion of City the aggregate of such payments shall be within the amount to which Design-Builder will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by Design-Builder to City upon demand together with interest at

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the rate of the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules.

15.9 Subcontracts

15.9.1 Design-Builder shall ensure that provisions are included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such terminations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Section 15.

15.9.2 Each Subcontract shall provide that, in the event of a termination for convenience by City, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, or to any payment which constitutes consequential damages on account of the termination or partial termination.

15.10 No Consequential Damages

Under no circumstances shall Design-Builder be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 15. The payment to Design-Builder determined in accordance with this Section 15 constitutes Design-Builder's exclusive remedy for a termination hereunder.

15.11 No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages which City may have and City may pursue any cause of action which it may have by law, in equity or under the Contract.

15.12 Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a dispute to be resolved in accordance with Section 19.

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

SECTION 16. DEFAULT**16.1 Default of Design-Builder**

16.1.1 Design-Builder shall be in default under the Contract upon the occurrence of any one or more of the following events or conditions:

(a) Design-Builder fails promptly to begin the Work under the Contract following issuance of the Notice to Proceed, or fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from City to do so or (if applicable) after cessation of the event preventing performance;

(b) Design-Builder materially fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to remove and replace rejected materials or nonconforming or unacceptable Work;

(c) Design-Builder suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work (exclusive of work stoppage (i) due to termination by City, or (ii) due to and during the continuance of a Force Majeure Event or suspension by City);

(d) Design-Builder fails to maintain the insurance and bonds required hereunder;

(e) Design-Builder shall have assigned or transferred the Contract Documents or any right or interest herein, except as expressly permitted under Section 23.4;

(f) Design-Builder shall have failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or shall have failed to comply with any Governmental Rule or failed reasonably to comply with the instructions of City consistent with the Contract Documents;

(g) Design-Builder materially breaches any other agreement, representation or warranty contained in the Contract Documents;

(h) Failure of Design-Builder to discharge or obtain a stay of any final

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judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate which remains outstanding for a period in excess of six months (provided that for purposes hereof posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay);

(i) Issuance of any final judgment holding Design-Builder liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act;

(j) Any representation or warranty made by Design-Builder in the Contract Documents or the Proposal or any certificate, schedule, instrument or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made;

(k) Design-Builder commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any Surety; or

(l) An involuntary case is commenced against Design-Builder seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Design-Builder or Design-Builder's debts under any bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Builder or any substantial part of Design-Builder's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Design-Builder in good faith or shall remain undismissed and unstayed for a period of 60 days; or any such involuntary case; or any of the foregoing acts or events shall occur with respect to any Surety.

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16.1.2 Design-Builder and Surety shall be entitled to 10 days written notice and opportunity to cure any breach before an Event of Default is declared, provided that no such notice and opportunity to cure is required for any breach which by its nature cannot be cured. Failure to provide notice to Surety shall not preclude City from exercising its remedies against Design-Builder. If a breach is capable of cure but, by its nature, cannot be cured within 10 days, as determined by City, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as Design-Builder commences such cure within such 10-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event shall such cure period exceed 180 days in total. Design-Builder hereby acknowledges and agrees that the events described in Section 16.1.1(i) through (l) are not curable. Notwithstanding the foregoing, City may, without notice and without awaiting lapse of the period to cure any default, in the event of existence of a condition on or affecting the Project which City believes poses an immediate and imminent danger to public health or safety, rectify the dangerous condition at Design-Builder's cost.

16.2 Remedies

16.2.1 If any breach described in Section 16.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 16.1.2, City may declare that an "Event of Default" has occurred and notify Design-Builder to discontinue the Work. The declaration of an Event of Default shall be in writing and given to Design-Builder and Surety. In addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract and the Performance Bond, if an Event of Default shall occur, then City shall have the following rights without further notice and without waiving or releasing Design-Builder from any obligations and Design-Builder shall have the following obligations (as applicable):

- (a) City may terminate the Contract or a portion thereof, including Design-Builder's rights of entry upon, possession, control and operation of the Project, in which case, the provisions of Sections 15.2 and 15.3 shall apply;
- (b) If and as directed by City, Design-Builder shall withdraw from the

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Project Site and shall remove materials, equipment, tools and instruments used by, and any debris or waste materials generated by, any Design-BUILDER-Related Entity in the performance of the Work;

(c) Design-BUILDER shall deliver to City possession of any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Project that City deems necessary for completion of the Work;

(d) Design-BUILDER shall confirm the assignment to City of the Subcontracts requested by City and Design-BUILDER shall terminate, at its sole cost, all other Subcontracts;

(e) City may deduct from any amounts payable by City to Design-BUILDER such amounts payable by Design-BUILDER to City, including reimbursements owing, Liquidated Damages or other damages that City has determined may be payable to City under the Contract Documents;

(f) City shall have the right, but not the obligation, to pay such amount and/or perform such act as may then be required;

(g) City may appropriate any or all materials and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete the Contract or may enter into an agreement for the completion of the Contract according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Contract, including completion of the Work by City; and/or

(h) If City exercises any right to perform any obligations of Design-BUILDER, in the exercise of such right City may, but is not obligated to, among other things:

(i) perform or attempt to perform, or cause to be performed, such work; (ii) spend such sums as City deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such work; (iii) execute all applications, certificates

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and other documents as may be required for completing the work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2 If an Event of Default shall have occurred, Design-Builder and Surety shall be liable to City (in addition to any other damages under the Contract Documents except for those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by City or any party acting on City's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). Upon occurrence of an Event of Default and so long as it continues, City shall be entitled to withhold all or any portion of further payments to Design-Builder until Project Acceptance or the date on which City otherwise accepts the Project as complete or determines that it will not proceed with completion, at which time City will determine whether Design-Builder is entitled to further payments. Promptly following Project Acceptance or the date on which City otherwise accepts the Project as complete or determines that it will not proceed with completion, the total cost of all completed Work shall be determined, and City shall notify Design-Builder and its Surety in writing of the amount, if any, that Design-Builder and its Surety shall pay City or City shall pay Design-Builder or its Surety with respect thereto. All costs and charges incurred by City, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due Design-Builder or its Surety. If such expense exceeds the sum which would have been payable under the Contract, then Design-Builder and its Surety(ies) shall be liable and shall pay to City the amount of such excess. If the Surety fails to pay such amount immediately upon City's demand, then City shall be entitled to collect interest from the Surety on the amounts City is required to pay in excess of the remaining balance of the Contract Price. The interest rate which the Surety shall pay shall be the lesser of (a) 10% per annum or (b) the maximum rate allowable under applicable Governmental Rules. The

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interest rate shall accrue on all amounts City has had to pay excess of the remaining balance of the Contract Price from the date of City payment.

16.2.3 Design-Builder acknowledges that if a default under Section 16.1.1(k) or (l) occurs, such event could impair or frustrate Design-Builder's performance of the Work. Accordingly, Design-Builder agrees that upon the occurrence of any such event, City shall be entitled to request of Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten days of delivery of the request shall entitle City to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, City shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from City's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract and the Performance Bond.

16.2.4 In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, City may pay Design-Builder for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by the Contract. No claim under this provision will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Builder.

16.2.5 Subject to Section 16.1.2, in the event that the Contract is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

16.2.6 The exercise or beginning of the exercise by City of any one or more rights or remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by City of any or all other such rights or remedies, each of which shall be cumulative.

16.2.7 Design-Builder and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by Design-Builder hereunder or by City's

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declaration of an Event of Default, or by actions taken by City under this Section 16.2.

16.2.8 City's remedies associated with any false statement contained in Design-Builder's response to the RFP shall include the right to rescind the Contract.

16.3 Right to Stop Work for Failure by City to Make Undisputed Payment

Design-Builder shall have the right to stop Work if City fails to make an undisputed payment due hereunder within seven days after receipt of notice of nonpayment. Any such work stoppage shall be considered a suspension under Section 14. Design-Builder shall not have the right to terminate the Contract for default as the result of any failure by City to make an undisputed payment due hereunder, but Design-Builder shall have the right to declare a termination for convenience under Section 15 by delivering to City a written notice of termination specifying its effective date.

SECTION 17. LIQUIDATED DAMAGES

Design-Builder understands and agrees that if Design-Builder fails to complete the Work required in accordance with the Contract Documents, City will suffer damages which cannot be quantified as of the date of execution hereof. Therefore, Design-Builder and City have agreed to stipulate the amount payable by Design-Builder in the event of its failure to meet certain Completion Deadline(s). The parties intend for the Liquidated Damages set forth herein to constitute liquidated damages as such term is used in Government Code Section 53069.85 to the extent said statute may apply, and to constitute stipulated damages to the extent that said statute is not applicable. Design-Builder acknowledges and agrees that the Liquidated Damages are intended to compensate City solely for Design-Builder's failure to meet the applicable Project Completion Deadlines, and shall not excuse Design-Builder from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that City has agreed to accept Liquidated Damages as compensation for its damages associated with delay in meeting a Project Completion Deadline shall not preclude City from exercising its other rights and remedies respecting the delay set forth in Section 16.2 other than the right to collect other damages due to the delay.

17.1 Amount of Liquidated Damages

Liquidated Damages will be applied to the Design-Builder for not achieving certain Contract Times for this Project as follows:

The Design-Builder shall pay to the City of San Jose a sum of **FIVE THOUSAND DOLLARS (\$5,000)** per day for each and every day's delay in achieving the Contract Time to obtain Substantial Completion of the Work in excess of the number of days from Notice to Proceed prescribed in Section 4 of the Design-Build Contract.

The Design-Builder shall pay to the City of San Jose a sum of **ONE THOUSAND DOLLARS (\$1,000)** per day for each and every day's delay in achieving the Contract Time to obtain Final Completion of the Work in excess of the number of days from the

Notice to Proceed prescribed in Section 4 of the Design-Build Contract.

17.2 Reasonableness of Liquidated Damages

Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages to City and the public caused by late completion. Design-Builder and City agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix Design-Builder's costs and to avoid later disputes over which items are properly chargeable to Design-Builder. It is understood and agreed by Design-Builder that any Liquidated Damages payable in accordance with this Section 17 are in the nature of liquidated damages and not a penalty and that such sums are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

17.3 Payment; Offset; Reduction; Waiver

17.3.1 Liquidated Damages shall be payable by Design-Builder to City within ten days after Design-Builder's receipt of an invoice from City.

17.3.2 City shall have the right to deduct any amount owed by Design-Builder to City hereunder from any amounts owed by City to Design-Builder, including any Retainage which may be payable by City to Design-Builder pursuant to Section 12.3.1.

17.3.3 Permitting or requiring Design-Builder to continue and finish the Project or any part thereof after a Completion Deadline shall not act as a waiver of City's right to receive Damages hereunder or any rights or remedies otherwise available to City.

17.4 Exclusion of Consequential Damages

17.4.1 Liability Excluded

Notwithstanding any other provision of the Contract Documents and except as set forth in Section 17.4.2, in no event shall either City or Design-Builder be liable

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to the other party for indirect, incidental, special, punitive or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory.

17.4.2 Exceptions to Exclusion

The exclusion of consequential damages set forth in Section 17.4.1 shall not exclude or affect:

17.4.2.1 Design-Builder's obligation to pay Liquidated Damages;

17.4.2.2 Liability for fraud, intentional misconduct or criminal acts determined in a court of law (other than a violation of a criminal law based upon strict liability or negligence); or

17.4.2.3 Design-Builder's liability for any type of damage or loss to the extent it is covered by the proceeds of insurance.

17.4.2.4 Design-Builder's liability for its indemnities set forth in Section 18

SECTION 18. INDEMNIFICATION**18.1 Indemnifications by Design-Builder**

18.1.1 Subject to Section 18.1.3, Design-Builder shall defend, indemnify and hold harmless City, the members of the City Council, and their successors and assigns and their respective officers, directors, agents and employees (collectively referred to as the “Indemnified Parties”) from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, costs, penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys’, accountants’ and expert witness fees and costs incurred in connection with the enforcement of this indemnity, arising out of, relating to, or resulting from:

(a) The breach or alleged breach of the Contract by any Design-Builder-Related Entity;

(b) The failure or alleged failure by any Design-Builder-Related Entity to comply with the governmental approvals, any applicable Environmental Laws or other Governmental Rules (including Governmental Rules regarding Hazardous Materials Management);

(c) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Design-Builder-Related Entity to comply with requirements of the Contract Documents or governmental approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Design-Builder-Related Entity, or (iii) the actual physical entry onto or encroachment upon another’s property by any Design-Builder-Related Entity;

(d) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information,

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or other items furnished or communicated to City or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from City's failure to comply with specific written instructions regarding use provided to City by Design- Builder;

(e) The alleged negligent act or omission or willful misconduct of any Design-Builder-Related Entity provided that the injury or damage alleged to have resulted from a patent defect occurred during performance of the Contract or within four years after Project Completion, and that the injury or damage alleged to have resulted from a patent defect occurred during performance of Design-Builder is discovered within ten years after Project Completion;

(f) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of Design-Builder or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any Design-Builder-Related Entity;

(g) Any and all stop notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice or Lien, provided that City is not in default in payments owing to Design-Builder with respect to such Work;

(h) Any spill or release or threatened spill or release of a Hazardous Material (i) which was brought onto the Site by any Design-Builder-Related Entity, or

(ii) attributable to the negligence, willful misconduct, or breach of contract by any Design- Builder-Related Entity;

(i) The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Design-Builder-Related Entity with or hindering the progress or completion of work being performed by other contractors as described in Standard Specification Section 7-1.14, or failure of any Design-Builder- Related Entity to cooperate reasonably with other contractors in

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accordance therewith; and/or

(j) Design-Builder's performance of, or failure to perform, any Utility Adjustments which are Design-Builder's responsibility pursuant to the Contract Documents, or any dispute between Design-Builder and a Utility Owner as to whether work relating to a Utility Adjustment constitutes a Betterment.

18.1.2 Subject to Section 18.1.3, Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, cost,

penalties, fines, damages, losses, liabilities and response costs, including any injury to or death of persons or damage to or loss of property, and including penalties, fines, attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from Errors in the Design Documents or the Utility plans furnished by Design-Builder, regardless of whether such Errors were also included in the Background Documents or Program Criteria Document (including the portions provided by City). Design-Builder agrees that, because the concepts in the Background Documents and Program Criteria Document (including the portions provided by City) are subject to review and modification by Design-Builder, such documents shall not be deemed "design furnished" by City or any of the other Indemnified Parties, as the term "design furnished" is used in Civil Code section 2782 and Section 18.1.3.2. Design-Builder hereby waives the benefit (if any) of Civil Code section 2782 and agrees that this Section 18.1.2 constitutes an agreement governed by Civil Code section 2782.5.

18.1.3 The following restrictions shall apply to the indemnities set forth in Sections 18.1.1 and 18.1.2:

18.1.3.1 Design-Builder's indemnity obligation shall not extend to any loss, damage or cost in excess of required insurance coverage amounts to the extent that such loss, damage or cost was caused by the active negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party (in other words, a

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comparative negligence standard shall apply).

18.1.3.2 Except as permitted by Civil Code sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on Design-Builder for the active negligence of City, or to relieve City of liability for such active negligence.

18.1.4 In claims by an employee of Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5 Design-Builder hereby acknowledges and agrees that it is Design-Builder's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Design-Builder's performance of such obligation.

18.1.6 For purposes of this Section 18.1, "third party" means any person or entity other than an Indemnified Party and Design-Builder, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party which is within the scope of the indemnities and which is not covered by the Indemnified Party's workers' compensation program, and "third party" includes City in its capacity as owner or operator of property other than the Project triggering Design-Builder's indemnification obligation hereunder.

18.2 Omitted.

18.3 No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

18.4 CERCLA Agreement

The indemnities set forth in Section 18.1.1(h) are intended to operate as

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agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), and Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the Indemnified Parties.

18.5 Intent of Indemnity for Breach of Contract

The requirement to provide an indemnity for breach of contract set forth in Section 18.1.1(h) is intended to provide protection to City with respect to third party claims associated with such breach. It is not intended to provide City with an alternative cause of action for damages incurred directly by City with respect to such breach.

18.6 Defense and Indemnification Procedures

18.6.1 If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 18.1, City shall by writing as soon as practicable after receipt of the claim, (a) inform Design-Builder of the claim, (b) send to Design-Builder a copy of all written materials City has received asserting such claim and (c) notify Design-Builder that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Design-Builder accepts the tender of in accordance with Section 18.6.3. As soon as practicable after Design-Builder receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender claim in writing to the insurers under all potentially applicable insurance policies. City and other Indemnified Parties also shall have the right to tender such claims to such insurers.

18.6.2 If the insurer under any applicable insurance policy accepts the tender of defense, City and Design-Builder shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then Section 18.6.3 shall apply.

18.6.3 If the defense is tendered to Design-Builder, then with 45 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Design-Builder (a) accepts the

tender of defense and confirms that the claim is subject to full indemnification hereunder without any “reservation of rights” to deny or disclaim full indemnification thereafter, (b) accepts the tender of defense but with a “reservation of rights” in whole or in part or (c) rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of the Contract Documents.

18.6.4 If Design-Builder accepts the tender of defense under Section 18.6.3(a), Design-Builder shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (a) Design-Builder shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and (b) the Indemnified Party shall fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between the Indemnified Party and Design-Builder concerning such defense.

18.6.5 If Design-Builder responds to the tender of defense as specified in Section 18.6.3(b) or (c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement subject to Section 18.6.7.

18.6.6 If the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that (a) a conflict exists between it and Design-Builder which prevents or potentially prevents Design-Builder from presenting a full and effective defense, (b) Design-Builder is otherwise not providing an effective defense in connection with the claim, or (c) Design-Builder lacks the financial capacity to satisfy potential liability or to provide an effective defense, the Indemnified Party may assume its own defense by delivering to Design-Builder written notice of such election and the reasons therefor.

18.6.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto, all costs and expenses it incurs in investigating and defending a claim for which it is entitled to indemnification hereunder shall be reimbursed by Design-Builder on a current basis. In the event the Indemnified Party is entitled to and elects to conduct its own defense, then (a) in the case of a defense conducted under Section 18.6.4, it shall have the right to settle or compromise the claim without Design-Builder's prior written consent and with the full benefit of Design-Builder's indemnity, and (b) in the case of a defense conducted under Section 18.6.5, it shall have the right to settle or compromise the claim with Design-Builder's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator, and with the full benefit of Design-Builder's indemnity.

18.6.8 A refusal of, or failure to accept, a tender of defense, as well as any dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 18.6.6 may be treated by either party as a claim subject to dispute resolution pursuant to the provisions of Section 19. Design-Builder shall be entitled to contest an indemnification claim and pursue, through dispute resolution, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

18.6.9 The parties acknowledge that while this Section 18 contemplates that Design-Builder will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the parties with respect to such claims and liabilities. In such case, where either party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other party on management of the claim or liability in question. If the parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself. The parties agree that they will defer all cross-complaints until after resolution of liability with the plaintiff. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial

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proceedings, the parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of this Section 18, and consistent with the outcome of such proceedings concerning the respective liabilities of the parties on the claim or liability.

18.6.10 In determining responsibilities and obligations for defending suits pursuant to this Section 18.6, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident;
(c) contractual arrangements then governing the performance of the activity; and
(d) allegations of respective fault contained in the claim.

SECTION 19 PARTNERING AND DISPUTE RESOLUTION**19.1 Partnering**

19.1.1 City and Design-Builder shall use good faith efforts to promote the formation of a successful Formal Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Formal Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

19.1.2 In Formal Partnering, City and Design-Builder implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. City and Design-Builder may participate in additional facilitated workshops during the life of the Project as they mutually agree is necessary and appropriate.

19.1.3 The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract.

19.1.4 The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by City and Design-Builder.

19.1.5 All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

19.2 Commencement of Dispute Resolution Process

It is the policy of City to encourage City and Design-Builder to reach a mutually agreeable resolution of a dispute that cannot be resolved with the use of Partnering techniques. This

Dispute Resolution Process involves a three-tiered approach to encouraging the resolution of Disputes. Except as otherwise provided herein, each of the tiers of the Dispute Resolution Process shall be completed prior to commencing any litigation. All Claims and other disputes (collectively, “Disputes”) between Design-Builder and City shall be resolved as provided in this Section 19 and implemented in Part 4 of Chapter 14.06 of the San José Municipal Code. All Disputes that cannot be resolved with Partnering are to be decided strictly in accordance with the terms and conditions of the Contract Documents and general principles of contract law of the State of California. Before Design-Builder may submit any Dispute to dispute resolution under Section 19.3, it must first obtain a final City Decision following a Settlement Conference in accordance with this Section 19.2.

19.2.1 Request for Settlement Conference

19.2.1.1 If a Dispute cannot be resolved through Formal Partnering techniques, then Design-Builder shall request a conference to meet with City in an effort to resolve the Dispute in a manner acceptable to both parties.

19.2.1.2 City shall conduct the conference in a timely manner, with the goal of attempting to resolve the Dispute as early as possible. The conference shall be conducted informally, with both sides being able to present their respective issues.

19.2.1.3 Both Design-Builder and City will exchange written documentation of the Dispute sufficiently prior to the conference to allow it to be adequately considered by all parties.

19.2.2 Facilitated Dispute Resolution

19.2.2.1 If the Dispute remains unresolved after the conference provided for in Section 19.2.1, then Design-Builder shall request Facilitated Dispute Resolution.

19.2.2.2 The scheduling of Facilitated Dispute Resolution and the selection of a person to act as facilitator will be agreed upon by City and Design-Builder.

19.2.2.3 All costs associated with conducting Facilitated Dispute Resolution will be shared equally by City and Design-Builder.

19.2.2.4 City will issue a Final City Decision to Design-Builder within 30 business days after conclusion of the Facilitated Dispute Resolution meeting(s); provided

that if no written decision is issued, City shall be deemed to have denied Design-Builder's protest and a Final City Decision to that effect shall be deemed received by Design-Builder at the end of such 30 business day period. The Final City Decision shall be final and conclusive on the subject, subject to Design-Builder's right to submit the issue to further Dispute Resolution and Section 19.3.

19.2.3 Foregoing Dispute Resolution

Notwithstanding anything to the contrary set forth in Section 19, City and Design-Builder may at any time mutually agree to forego the conference set forth in Section 19.1, the Facilitated Dispute Resolution set forth in Section 19.2.

19.3 Additional Dispute Resolution Procedures

The parties may agree to include additional dispute resolution procedures in the Project.

19.4 Effect of Dispute Resolution Procedures

The dispute resolution procedure set forth in this Section 19, together with all rules, regulations, Contract provisions and administrative procedures established by the Director to implement this provision, are intended to directly conflict with, and supersede in its entirety, and shall be in lieu of, those construction dispute resolution procedures set forth in Article 1.5 of Chapter 1 of Part 3 of Division 2 of the California Public Contract Code. The dispute resolution policy is not intended to preclude the parties from litigating a dispute or from otherwise mutually agreeing after a dispute arises from engaging in other methods of dispute resolution.

19.5 Continuing Performance

During any dispute resolution proceedings, Design-Builder shall carry on its duties under the Contract Documents and City shall continue to make payments in accordance with the Contract.

19.6 Participation in Proceedings

19.6.1 Joinder

Design-Builder agrees that, (a) at City's request, Design-Builder shall take appropriate action to join third parties involved in the design or construction of any part of

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the Project as parties in dispute resolution proceedings under this Section 19 or any litigation, and (b) Design-Builder will allow itself to be joined as a participant in any proceeding that involves City and any other Person relating to the Project. This provision is for the benefit of City and not for the benefit of any other party.

19.7 Emergency Dispute Resolution

If a Dispute arises which must be resolved expeditiously in order to prevent serious damage to person or property, or serious interference with a critical path, both parties shall make every effort to resolve such Dispute quickly. In such case, if Design-Builder's Project Executive and City's Project Manager cannot reach a resolution of that Dispute within 24 hours, they must refer the Dispute to their respective Chief Executive Officers (or other officer with each party to make final decisions subject only to City Council approval and any required third party approvals) for a meeting between those Chief Executive Officers to occur within the following 24 hours. Once the urgent aspects of the Dispute have been resolved, the parties may continue with the remaining procedures for dispute resolution if necessary and to the extent applicable.

19.8 Time Limitation

Design-Builder acknowledges and agrees that City is subject to constraints which have resulted in limitations on its ability to increase the Design-Build Lump Sum (Fixed) Price or extend a Completion Deadline. Design-Builder acknowledges and agrees that, due to limitations on funding for the Project, prompt resolution of Disputes is of vital importance to City. Design-Builder agrees that the time limitations stated in the Contract for the filing of Claims and/or complaints or for serving a Complaint in litigation are necessary and reasonable. Design-Builder expressly waives any longer statute of limitations contained in any statute, including Government Code Sections 900 et seq. that would otherwise be applicable.

SECTION 20.

PROJECT SUBSTANTIAL COMPLETION AND PROJECT ACCEPTANCE

20.1 Project Completion

20.1.1 Notice by Design-Builder

With respect to the Design-Build Project, Design-Builder shall provide written notice to City when, in the opinion of the Design-Builder, each of the following have occurred

For Project Substantial Completion: Design-Builder has completed all Work (except Punch List items and other minor items as accepted by the City) in order to allow the entire Project to operate for its intended use, without the need of temporary supports or need for future closures, and including the following:

(a) Design-Builder has furnished to City a certification from Design-Builder's Project Executive, in form and substance satisfactory to City, certifying conformity of the construction with the Design Documents;

(b) Design-Builder has furnished to City a certification from Design-Builder's Construction Quality Assurance Manager, in form and substance satisfactory to City, certifying that there are no outstanding non-conformances other than those identified on the Punch List;

(c) Design-Builder has ensured that the Project may be operated without damage to the Project or any other property on or off the Project Site, and without injury to any Person ;

(d) Design-Builder has received all applicable Governmental Approvals required for Project use ;

(e) Design-Builder Design-Builder has satisfied all conditions to acceptance by local agencies and Utility Owners ;

20.1.2 Inspection by City

Upon receipt of Design-Builder's notice under Section 20.2.1, City will conduct

such inspections, surveys and/or testing as the City deems desirable. If such inspections, surveys and/or tests disclose that any of Work does not meet the requirements of the Contract Documents, City will promptly advise Design-Builder as to any Errors in the Work (including incomplete Work) necessary to be corrected as a condition to achieving Substantial Completion or Project Acceptance. Upon correction of the Errors (including incomplete Work) identified as a prerequisite to Project Completion, Design-Builder shall provide written notification to City, and City will conduct additional inspections, surveys and/or testing as it deems desirable. This procedure shall be repeated until City finds that all prerequisites to Project Completion have been met.

20.1.3 Certificate of Project Substantial Completion

City will issue a Certificate of Project Completion at such time as (a) City finds that all conditions set forth in Section 20.2.1 have been satisfied, (b) City finds that all Errors (including incomplete Work) identified as prerequisites to Project Completion have been corrected, and (c) Design-Builder and City have agreed upon a Punch List for Work to be performed prior to Project Acceptance.

20.1.4 Recordation of Notice of Project Completion

Design-Builder is advised that recordation of a notice of completion meeting the requirements of Civil Code section 3093, within ten days after completion of all construction Work, has the effect of reducing the period for filing of stop notices and claims against the Payment Bond, under Civil Code sections 3184 and 3252. If Design-Builder wishes City to record a notice of completion, Design-Builder shall prepare such notice and deliver it to City at least ten days prior to the scheduled date for completion of construction. The notice shall: (a) identify City as the Project owner as defined in Civil Code Section 3092(g); (b) provide the names and addresses of the record owners of the improvements constructed hereunder (i.e. City and Utility Owners); and (c) otherwise meet the requirements of Civil Code Section 3093.

20.2 Project Acceptance

20.2.1 Conditions to Project Acceptance

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20.3.1.1 Promptly after Project Completion has occurred, Design- Builder shall perform all Work, if any, which was deferred for purposes of Project Completion, and shall satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all equipment, materials, facilities, improvements, structures and components have been properly adjusted and tested, and provision of all deliverables described in Section 20.3.2. When all of the foregoing have occurred, Design-Builder shall provide an executed sworn Affidavit of Project Completion to City including the following statement:

To the best of Design-Builder's knowledge and belief, all Work under the Interim Facility Four Gates Project has been completed in accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Price; all requests for funds for undisputed work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project including claims by Utility Owners, there is no existing default of City's obligations under any agreement with a Utility Owner that are Design-Builder's responsibility pursuant to the Contract Documents, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or an event of default under any agreement with a Utility Owner; and upon receipt of final payment, Design-Builder and Subcontractors acknowledge that City and any and all employees of City and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Contract.

If Design-Builder is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by City.

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The affidavit shall include a representation of Design-Builder that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.3.2 Project Acceptance shall be deemed to have occurred when all of the following have occurred:

- (a) All requirements for Project Completion shall have been fully satisfied;
- (b) City shall have received all Design Documents, original working drawings, shop drawings and final as-built drawings of the Project, right-of-way record maps, surveys, test data and other deliverables required under the Contract Documents, and Design-Builder shall have satisfied the applicable requirements set forth in the Project Technical Requirements
- (c) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Builder as provided in the Contract Documents shall have been delivered to City and all replacement spare parts shall have been purchased and delivered to City free and clear of Liens; and
- (d) The items on the Punch List shall have been completed to the satisfaction of City, and all of Design-Builder's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after
- (e) Project Acceptance shall have been satisfied in full or waived in writing by City.
- (f) All of Design-Builder's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities shall have been removed from the Project Site, Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of City, and the Project Site is in good working order and condition; and
- (g) All necessary work by Utility Owners had been completed,

and Design-Builder has obtained all design and construction approvals by Utility Owners.

20.3.3 Inspection and Issuance of Certificate of Project Acceptance

Upon receipt of notification from Design-Builder that all conditions to Project Acceptance have been met, City will make final inspection and City will either issue a Certificate of Project Acceptance or notify Design-Builder regarding any Work remaining to be performed. If City fails to issue a Certificate of Project Acceptance, Design-Builder shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Builder shall give City a revised Affidavit of Project Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until City has given Design-Builder an executed Certificate of Project Acceptance.

20.3.4 No Relief from Liability

Project Acceptance will not prevent City from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall it prevent City from recovering from Design-Builder, its Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment sustained for failure of Design-Builder to fulfill the obligations under the Contract. A waiver on the part of City of any breach of any part of Design-Builder shall not be held to be a waiver of any other or subsequent breach. Project Acceptance shall not relieve Design-Builder from any of its continuing obligations hereunder, including Warranty obligations.

SECTION 21. DOCUMENTS AND RECORDS**21.1 Maintenance of, Access to and Audit of Records**

Design-Builder shall maintain at its Project administration office in the State a complete set of all books and records prepared or employed by Design-Builder in its management, scheduling, cost accounting and otherwise with respect to the Project. Design-Builder shall grant to City, and Utility Owners such audit rights and allow such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Person) as such Persons may request from time to time in connection with the negotiation of Contract, issuance of Change Orders, resolution of Disputes and such other matters as such Persons reasonably deem necessary for purposes of complying or verifying compliance with the Contract and Governmental Rules.

21.1.1 Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates Design-Builder has been overcredited under a previous progress report or progress payment, that overcredit will be credited against current progress reports or payments.

21.1.2 For cost and pricing data submitted in connection with pricing Contract and Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by Governmental Rules, such Persons and their representatives have the right to examine all books, records, documents and other data of Design-Builder related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used

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therein.

21.1.3 Except for audits of claims, described in Section 21.1.4 below, and except as otherwise required under any applicable Governmental Rule, City's audit rights extend only to (a) subcontractors and subconsultants listed in Appendix 5; and (b) subcontractors and subconsultants at any tier only if the total compensation payable to the subcontractor or subconsultant is greater than \$10,000. Except for audits of claims, described in Section 21.1.4 below, and except as otherwise required under any applicable Governmental Rule, City shall not have audit rights for subcontracts that are competitively bid by the Design-Builder.

21.1.4 All claims filed against City shall be subject to audit at any time following the filing of the claim. The audit may be performed by employees of City or by an auditor under contract with City. No notice is required before commencing any audit before 60 days after Project Acceptance. Thereafter, City shall provide 20 days' notice to Design-Builder, any Subcontractors or their respective agents before commencing an audit. Design-Builder, Subcontractors or their agents shall provide adequate facilities, acceptable to City, for the audit during normal business hours. Design-Builder, Subcontractors or their agents shall cooperate with the auditors. Failure of Design-Builder, Subcontractors or their agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books and records of Design-Builder, Subcontractors or their agents shall constitute a waiver of the claim and shall bar any recovery thereunder.

21.1.5 At a minimum, the auditors shall have available to them the following documents relating to the Contract and/or the Work:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;

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- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks;
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) All documents that relate to each and every claim together with all documents that support the amount of damages as to each claim;
- (r) Work sheets used to prepare the claim establishing the cost components for items of the claim including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
- (s) email;
- (t) network servers, data storage devices, backup tapes/media; and
- (u) letters and correspondence.

21.1.6 Full compliance by Design-Builder with the provisions of this Section 21.1 is a contractual condition precedent to Design-Builder's right to seek relief under Section 19.

21.1.7 Design-Builder represents and warrants the completeness and accuracy

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of all information provided by it or its agents in connection with this Section 21.1.

21.2 Retention of Records

Design-Builder shall maintain all records and documents relating to the Work and the Project (including copies of all original documents delivered to City) in Santa Clara County, California or at its home office in _____, until three years after the latest Project Acceptance date or the termination of the Contract, whichever is applicable, or any longer period required by Governmental Rules. Design-Builder shall notify City where such records and documents are kept. Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books, electronic information and files and other evidence bearing on Design-Builder's costs under the Contract Documents. Design-Builder shall make these records and documents available for audit and inspection to City, at Design-Builder's offices in Santa Clara County, California, at all reasonable times, without charge, and shall allow City to make copies of such documents (at no expense to Design-Builder). Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. If approved by City, photographs, microphotographs or other authentic reproductions may be maintained instead of original records and documents. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Design-Builder's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Design-Builder, Design-Builder's representatives, or Design-Builder's successor-in-interest.

21.3 Confidential Information; Public Records Act

21.3.1 All data, documents, discussions or other information developed or received by or for Design-Builder in performance of the Contract and marked in writing

as “confidential” are to be considered confidential and not to be disclosed to any person for a period of five years after Project Acceptance except as authorized by City, or as required by Governmental Rules, including the Public Records Act.

21.3.2 If Design-Builder is presented with a request from a third party (other than Design-Builder’s Subcontractors under the Contract) for any records, data or documents which may be in Design-Builder’s possession by reason of the Contract, Design-Builder shall refer such request to City’s Authorized Representative and Design-Builder shall not provide any such records, data or documents to any such third party without prior written authorization from City’s Authorized Representative. If Design-Builder is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Design-Builder’s possession by reason of the Contract, Design-Builder must immediately give notice to City with the understanding that City will have the opportunity to contest such process by any means available to it before the records or documents are submitted to a court or other third party. Design-Builder, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

Design-Builder acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in City’s possession, including materials submitted by Design-Builder, are subject to the provisions of the California Public Records Act (Government Code sections 6250 et seq.). Design-Builder shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with “Trade Secret” or “Confidential” as it determines to be appropriate. Design-Builder is advised to contact legal counsel concerning such law and its application to Design-Builder.

21.3.3 If any of the materials submitted by Design-Builder to City are clearly and prominently labeled “Trade Secret” or “Confidential” by Design-Builder, City will endeavor to advise Design-Builder of any request for the disclosure of such

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materials prior to making any such disclosure. Under no circumstances, however, will City be responsible or liable to Design-Builder or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of City.

21.3.4 In the event of litigation concerning the disclosure of any material submitted by Design-Builder to City, City's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk.

21.3.5 Design-Builder shall collect and preserve each of the following types of data in written form contemporaneously during Design-Builder's performance of the Work, all of which shall be in form approved by City and index filed as approved by City:

- (a) Monthly report of labor by classification of management, supervision, engineering and other technical personnel used on the job;
- (b) Daily Labor and Equipment Reports from Design-Builder and each Subcontractor for construction related activities;
- (c) Quality Control documentation as required by the Project Technical Requirements;
- (d) A Daily Occurrence Log (in the form of a bound book with entries in ink) for construction related activities which shall be maintained by Design-Builder's Project Executive or his/her designee(s), in which shall be recorded daily in a narrative form all significant occurrences on the Project, including permit problems, unusual weather, asserted Force Majeure events, events and conditions causing or threatening to cause delay or disruption or interference with the progress of any of the Work, known injuries to person or property, a listing of each activity depicted on the Project Schedule which is being actively prosecuted; notifications given and received, and significant Project related meetings; and

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(e) A Daily Record in the format required by City, recording all labor, materials and equipment expenses which are being incurred by reason of any event, condition or circumstance which Design-Builder believes is or may become the subject of a claim against City. Any initialed or signed concurrence by City (or designees) will be for purposes of verifying physical labor, material and equipment count rather than validating Design-Builder's Claims.

To the extent requested by City, provide City with access to and a copy of each item described in this Section 21.3.6 (provided, however, that the provision of such information shall not constitute a notice under Section 13.3.2).

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SECTION 22.

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

SECTION 23. MISCELLANEOUS PROVISIONS

23.1 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

23.2 Waiver

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes.

23.3 Independent Contractor

It is understood and agreed that Design-BUILDER, in the performance of the Work and services agreed to be performed by Design-BUILDER, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Design-BUILDER shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design-BUILDER hereby expressly waives any claim it may have to any such rights.

23.4 Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of City and Design-Builder and their permitted successors, assigns and legal representatives.

23.4.1 City may assign all or part of its right, title and interest in and to any Contract Documents, including rights with respect to the Payment and Performance Bonds, to any other Person.

23.4.2 The parties agree that the expertise and experience of Design-BUILDER are

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material considerations for the Contract. Design-Builder shall not assign or transfer any interest in the Contract nor the performance of any of Design-Builder's obligations hereunder, without the prior written consent of City, in City's sole discretion, and any attempt by Design-Builder to assign the Contract or any rights, duties or obligations arising hereunder shall be void and of no effect.

23.5 Designation of Representatives; Cooperation with Representatives

23.5.1 City and Design-Builder shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Appendix 19 hereto provides the initial designations. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 23.11. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind City or Design-Builder.

23.5.2 Design-Builder shall cooperate with City and all representatives of City designated as described above.

23.6 Gratuities and Conflicts of Interest

23.6.1 Design-Builder is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

23.6.2 Design-Builder agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

23.6.3 The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of the Contract by Design-Builder. In addition to any other remedies City may have in law or equity, City may terminate the Contract for such breach as provided in Section 16.

23.6.4 Employment (whether as an employee, consultant, or independent contractor) of personnel on City's payroll by any Design-Builder-Related Entity is not permitted in the performance of the Contract, even though such employment may

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be outside City employee's regular working hours or on Saturdays, Sundays, holidays or vacation time; further, employment by any Design-Builder-Related Entity of personnel who have been on City's payroll within one year prior to the date of Contract award is also prohibited, if such employment is caused by and/or dependent upon Design-Builder securing the Contract or a related contract with City.

23.6.5 The rights and remedies of City specified in this Section 23.6 are not exclusive and are in addition to any other rights and remedies allowed by law.

23.7 Survival

Design-Builder's representations and warranties, the dispute resolution provisions contained in Section 19, and all other provisions which by their inherent character should survive termination of the Contract and/or Project Acceptance, shall survive the termination of the Contract and Project Acceptance.

23.8 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations and responsibilities of the parties to the Contract Documents with respect to third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between City and a Subcontractor or any Person other than Design-Builder.

23.9 Personal Liability of City Employees

City's authorized representatives are acting solely as agents and representatives of City when carrying out the provisions of or exercising the power or authority granted to them under the Contract. They shall not be liable either personally or as employees of City for actions in their ordinary course of employment. No agent, consultant, officer or authorized employee of City nor any member of City's Council, shall be personally responsible for any liability arising under the Contract.

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23.10 Governing Law and Venue

The Contract Documents shall be governed by and construed in accordance with the law of the State, without regard to conflict of law principles. In the event suit is brought by either party to the Contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

23.11 Notices and Communications

Notices under the Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by telefacsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence with Design-Builder shall be sent to Design-Builder's Project Administrator or as otherwise directed by Design-Builder's Project Administrator. The address for such communications shall be:

Company:
(name).
Attention:
(contact)
(address)
(address)
Phone:
Facsimile:
email
address:

In addition, copies of all notices to proceed and suspension, termination and default notices shall be delivered to the following persons:

Company:
(name).
Attention:
(contact)
(address)

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(address)

Phone:

Facsimile:

email

address:

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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All communications to City shall be marked as regarding the Interim Facility – Four Gates Project at the Airport and shall be delivered as follows:

Rodney Rapson
200 East Santa Clara St. 5th Floor
San Jose, CA 95113

In addition, copies of all notices regarding disputes, termination and default notices shall be delivered to the following:

Office of the City Attorney
200 East Santa Clara St.
San Jose, CA 95113

23.11.1 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Standard or Daylight Time (as applicable) and all other notices received after 5:00

p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Design-Builder's Project Executive and technical representatives designated by City. Design-Builder's representatives shall be available at all reasonable times for consultation. Except as otherwise provided in Section 23.5.1, each party's representative shall be authorized to act on behalf of such party in matters concerning the Work.

23.11.2 Design-Builder shall copy City on all written correspondence pertaining to the Contract between Design-Builder and any Person other than Design-Builder's Subcontractors, consultants and attorneys.

23.12 Further Assurances

Design-Builder shall promptly execute and deliver to City all such instruments

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and other documents and assurances as are reasonably requested by City to further evidence the obligations of Design-Builder hereunder, including assurances regarding the validity of

(a) the assignments of Subcontracts contained herein and (b) any instruments securing performance hereof.

23.13 Severability

If any clause, provision, section or part of the Contract is ruled invalid under Section 19 or otherwise by a court having proper jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

23.14 Headings

The captions of the sections of the Contract are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

23.15 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subjectmatter.

23.16 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

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instrument.

SECTION 24.

AIRPORT SPECIFIC PROVISIONS

24.1 Use of Terms

The following provisions are unique to Airport contracts. For purposes of this Section 24 only, the following words have the following meaning: (1) “applicant”, “offeror” and “bidder” mean “Design-Builder”, (2) “bid” and “offer” means the Proposal, (3) “consultant” and “contractor” mean “Design-Builder” (4) “sub-consultant” means “sub-contractor”, and (5) “owner” and “sponsor” means “City.”

24.2 Federal Funding

The City anticipates that none of the Work performed under this Agreement will be funded by the Federal Aviation Administration’s (FAA) Airport Improvement Program (AIP).

24.3 FAA Advisory Circulars

The Design-Builder must perform services in compliance and in conformance with all applicable and appropriate FAA Advisory Circulars (AC). This includes, but not limited to, FAA AC 150/5100-14E, entitled “Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects”, and FAA AC 150/5370-10 “Standards for Specifying Construction of Airports”.

24.4 DBE Program

24.4.1 General. Because it anticipates being awarded \$250,000 or more in AIP funded contracts during the federal fiscal year, the City has an approved DBE program on file with the FAA. Under the DBE program, the City has established an overall DBE participation goal of 6.30% for the Airport for Federal Fiscal Years 2017 – 2019. The City is committed to meeting its overall DBE participation goal from 100% race-neutral participation and 0% through race-conscious measures (contract goals). No contract goal has been established for this Agreement and no demonstration of good faith efforts is required.

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24.4.2 City Expectations: The City is committed to attracting and enhancing diverse business participation amongst DBEs, minority-owned businesses, women-owned businesses and other small and local businesses in its Airport contracts. The City encourages and expects contractors performing Airport contracts to do the same.

24.4.3 Contractor Assurance (§ 26.13): The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible.

24.5.4 Prompt Payment (§26.29): The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime Contractor receives from the City. The prime Contractor agrees further to return any retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

24.5.5 Cooperation with City Reporting Efforts: The Design-Builder acknowledges that the City needs to prepare and provide reports to the Department of Transportation regarding the use of DBEs on City agreements. The Design-Builder will cooperate in providing information to the City regarding the use of DBE subconsultants as needed for the City to complete these reports.

24.5 Civil Rights - General:

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The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the request for proposals or request for qualifications solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

24.6 Title VI Clauses for Compliance with Nondiscrimination Requirements

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the Contractor’s obligations under this contract and the Nondiscrimination Acts And

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Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the

sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.”

24.8 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

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EXHIBIT B – EXEMPLAR STANDARD CONTRACT

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

24.9 Federal Fair Labor Standards Act (Federal Minimum Wage)

This contract incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from

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this requirement directly with the U.S. Department of Labor – Wage and Hour Division. The Contractor must include this provision in each subcontract that it enters into.

24.10 Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

24.11 Labor Peace Assurance and Employee Work Environment

Pursuant to the San José Municipal Code Chapter 25.11, "Design-Builder's Labor Peace Assurances and Employee Work Environment Report" is attached hereto as Appendix 21. Design-Builder shall require each of its subcontractors to provide it with assurances as to how the subcontractor will prevent service disruptions at the Airport due to labor disputes.

RFP FOR INTERIM FACILITY – FOUR GATES PROJECT AT THE
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EXHIBIT B – EXEMPLAR STANDARD AGREEMENT

Executed as of the day and year written on the first page of this Contract.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation of the State of California

KEVIN FISHER
Chief Deputy City Attorney

By _____
TONI J. TABER, CMC
City Clerk

“DESIGN-BUILDER”

[INSERT NAME OF CONSULTANT], a
[INSERT TYPE OF BUSINESS ENTITY –
e.g. a California corporation, a Delaware
limited liability company, an individual]

By _____
Name:
Title:

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Interim Facility – Four Gates Project at the
Norman Y. Mineta San José International Airport

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

APPENDIX 1

DEFINED TERMS

As used in the Design-Build Contract to which this Appendix is attached and in the other Contract Documents, the following terms shall have the meanings set forth below. References to Sections and Appendices shall mean Sections and Appendices of the Design-Build Contract unless otherwise specified:

Affiliate shall mean (a) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its members, partners or shareholders holding a 10% or greater interest in Design-Builder; and (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Design-Builder, (ii) any of Design-Builder's members, partners or 10% or greater shareholders or (iii) any Affiliate of Design-Builder under part (a) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. Work performed by Affiliates shall be deemed performed by Design-Builder's own organization.

Application for Final Payment shall mean Design-Builder's written request for Final Payment of the Contract Price including reconciliation of all partial payments, claims, changes or other proper adjustments to the Contract Documents, as described in Section 12.4.1.

Architect shall mean Design-Builder's architect in charge of the Project.

Background Documents shall mean the documents listed in Appendix 6.

Betterment shall mean any upgrading of a Utility in the course of a Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility.

Notwithstanding the foregoing, the following are not considered Betterments:

- (a) any upgrading which is required for accommodation of the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Governmental Rules;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) any upgrading required by the Utility Owner's standard specifications, standards of practice and construction methods; and
- (g) any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

In case of any discrepancy between the foregoing definition of Betterment and that agreed upon between City and a Utility Owner with respect to a particular Utility Adjustment, the definition agreed upon between City and the Utility Owner shall prevail.

Business Day shall mean each day on which City is officially open for business.

Certificate of Project Acceptance shall mean the formal written acknowledgment issued by City to Design-BUILDER that all Work has been fully completed in accordance with the Contract Documents described in Section 20.3.3.

Certificate of Project Completion shall mean the formal written acknowledgment issued by City to Design-BUILDER that Design-BUILDER has achieved Project Completion.

Change Notice shall mean a notice delivered by City to Design-BUILDER pursuant to Section 13.2.1.

Change Order shall have the meaning set forth in Section 13.1.1.1.

Change in Law shall mean the enactment, adoption, modification, repeal or other change in any Governmental Rule that occurs after the Effective Date of the Contract (including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule) which is materially inconsistent with Governmental Rules in effect on the Effective Date of the Contract, but excluding any such change in or new Governmental Rule which was passed or adopted but not yet effective as of the Effective Date of the Contract.

City shall mean the City of San Jose.

City-Caused Delays shall mean unavoidable delays, to the extent that they affect a Critical Path, arising from the following matters and no others: (a) City-Directed Changes and (b) failure or inability of City to provide responses to proposed schedules, plans, Design Documents, Construction Documents and other submittals and matters for which response by City is required, within the time periods indicated in the Contract Documents; and (c) uncovering, removing and restoring Work, to the extent provided in Section 5.5.3.

City Decision shall mean the written decision issued by City pursuant to Section "19.2.

City-Directed Changes shall mean any changes in the Work (including changes in the standards applicable to the Work) which City has directed Design-BUILDER to perform as described in Section 13.1, and any order to suspend for convenience exceeding 48 hours per order pursuant to Section "14.1.

City's Project Manager shall mean the individual designated by City to manage the Project and to receive delivery of notices to City.

City-Provided Approvals shall mean any required City approvals, including but not limited to: building, fire, and hazardous materials permits.

Claim shall mean a separate demand by Design-BUILDER for (a) a time extension which is disputed by City, or (b) payment of money or damages arising from work done by or on behalf of Design-BUILDER in connection with the Contract which is disputed by City.

Completion Deadlines shall mean, depending on the context, any or all of the following deadlines, in connection with the Project Technical Requirements.

Construction Documents shall mean all shop drawings, working drawings and samples necessary for construction of the Project in accordance with the Contract Documents.

Contract shall mean, depending on the context, (a) the Design-Build Contract, or (b) collectively, the Contract Documents which establish the respective rights and obligations of City and Design-Builder.

Contract Documents shall have the meaning set forth in Section 1.2.

Contract Price shall have the meaning Contract Design-Build Lump Sum (Fixed) Price.

Cost and Schedule Proposal shall mean each submittal serving to identify price and schedule modifications associated with Change Orders issued pursuant to Section 13, meeting all applicable requirements set forth in Section 13.

Critical Path shall mean each critical path on the Project Schedule which ends on the Completion Deadline (i.e. the term shall apply only following consumption of all available Float in the schedule. The lower case term "critical path" shall mean the sequence of activities on the Project Schedule that shows the shortest time path for completion of each task.

Design-Build Contract shall mean that certain Design-Build Contract for the Interim Facility – Four Gates Project at the Airport executed by City and Design-Builder, including any and all amendments thereto.

Design-Builder shall mean the entity identified as Design-Builder on Page 1 of the Design-Build Contract.

Design-Builder Contingency shall have the meaning set forth in Section 12.1.4.1.

Design-Builder-Related Entities shall mean Design-Builder, Subcontractors, their employees, agents and officers and all other Persons for whom Design-Builder may be legally or contractually responsible.

Design Builder's Superintendent shall mean the Project Superintendent identified in the Statement of Qualifications.

Design Documents shall mean all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals necessary for design of the Project in accordance with the Contract Documents, following approval thereof by City and others as required by the Contract Documents.

Design Review shall mean the formal review of an existing or proposed design for the purpose of detection and remedy of design deficiencies that would affect fitness- for-use and environmental aspects of the product, process or service, and/or identification of potential improvements of performance, safety and economic aspects.

Deviation shall mean any change, deviation, modification or alteration from the requirements of the Contract Documents (including deviations from standards referenced in the Contract Documents).

Differing Site Condition shall be defined in Section 4-1.07 of Appendix 2.

Directive Letter shall mean a letter issued by City pursuant to Section 13.1.1.2.

Director shall mean the director of the City department primarily responsible for the design, construction and administration of City public works projects.

Disputes shall have the meaning set forth in Section 19.2.

Dispute Review Board shall mean the board described in Section 19.3.1.

Engineer of Record shall mean Design-Builder's Engineer in charge of the Project.

Environmental Laws shall mean all Governmental Rules now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment including into the air, surface water or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport or handling of Hazardous Materials or otherwise relating to the protection of public health, public welfare or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air) including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 *et seq.*; the California Occupational Safety and Health Act of 1973, Lab. Code §§63000 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*; the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 *et seq.*; and Fish and Game Code §§ 1600 *et seq.*, all as amended.

Error shall mean an error; omission, inconsistency, inaccuracy, deficiency or other defect.

Event of Default shall have the meaning set forth in Section 16.2.1.

Facilitated Dispute Resolution shall mean City and Design-Builder meeting with a trained, neutral facilitator in an effort to reach a mutually agreeable resolution to a dispute. It is an informal, non-binding dispute resolution process in which each side has an opportunity to present its position and supporting information.

Final Design Documents shall mean the complete final construction plans (including drawings, elevations, sections, details and diagrams) and specifications for the Project.

Final Payment shall mean payment by City of the final installment of the Contract Price.

Float shall generally mean the difference between early completion times and late completion times for activities shown on Project Schedule, and shall include any float contained

within an activity as well as any period containing an artificial activity (that is, one which is not encompassed with the meaning of the word "Work").

Force Majeure Event shall mean any of the following events (provided such events are beyond the control of Design-Builder and are not due to an act or omission of any Design-Builder-Related Entity which materially and adversely affects Design-Builder's obligations hereunder and which event (or the effects of the event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder:

- (a) Any acts of God or of the public enemy, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes; and
- (b) Any blockade, rebellion, riot or act of sabotage or civil commotion or act of terrorism.

The term "shortage of materials," as used in the definition of "Force Majeure Event," shall apply only to materials, articles, parts or equipment which are standard items and are to be incorporated in the Work, and includes only the physical shortage of material.

The term "Force Majeure Event" shall be limited to the matters listed above and specifically excludes from its definition the following matters which might otherwise be considered force majeure:

- [i] rain; unless unseasonably excessive
- [ii] except as provided in (b) above, malicious or other acts intended to cause loss or damage or other similar occurrence;
- [iii] except as provided in (a) above, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence;
- [iv] the presence at, near or on the Site, as of the Effective Date of the Contract of any Hazardous Materials, including substances disclosed in the Phase I Environmental Assessment Report as well as any substances contained in any structure required to be demolished in whole or in part or relocated as part of the Work;
- [v] the suspension, termination, interruption, denial or failure to obtain or nonrenewal of any permit, license, consent, authorization or approval (including all Governmental Approvals) which is necessary for the performance of the Work or the operation or maintenance of the Project;
- [vi] any Change in Law;
- [vii] any lawsuit relating to any New Approval which is Design-Builder's risk under Section 6.4.2;
- [viii] shortages of materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet specific requirements of the

Contract;

- [ix] Delays in obtaining materials due to priority in filling orders; and
- [x] all other matters not caused by City or beyond the control of City and not listed in (a) and (b) above.

Formal Partnering as further defined in Appendix 2, shall mean City and Design-Builder implementing partnering through at least one pre-construction workshop conducted by a facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. City and Design-Builder may participate in additional facilitated workshops during the life of the public work construction project as they decide is necessary and appropriate.

Governmental Approval shall mean any approval, authorization, certification, consent, exemption, filing, lease, license, permit, registration or ruling, required by or with any Governmental Person in order to perform the Work or any Utility Adjustment being performed by a Utility Owner, including any modification or supplement to any of the foregoing, but excluding (a) any such approvals relating to the work to be performed by other contractors as specifically described in the Contract Documents and (b) any such approvals required by or with a Governmental Person in its capacity as a Utility Owner.

Governmental Person shall mean any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

Governmental Rule shall mean any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Person, which is applicable to the Work, the Project, the Site or any Utility Adjustment being performed by a Utility Owner, whether now or hereafter in effect.

Guaranteed Maximum Price (GMP) shall mean a sum established between the City and Design-Builder as the maximum cost of performing the contracted Work on the basis of labor and materials, plus overhead expenses and profit, all as further specified in the Contract.

Hazardous Materials shall mean any: (a) substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Governmental Rule; (b) substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law; (c) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under clause (a) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimus amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) asbestos or asbestos-containing materials on or in the Site (other than mineral asbestos naturally occurring in the ground). The term "Hazardous Materials" includes Hazardous Waste.

Hazardous Materials Management shall mean sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Governmental Rules.

Hazardous Waste shall mean material that is hazardous waste as defined in Section 25117 of the California Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with applicable Governmental Rules.

Indemnified Parties shall have the meaning set forth in Section 18.1.1.

Lien shall mean any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Liquidated Damages shall mean the damages described in Section 17.

Master CPM Schedule shall mean the CPM Project schedule.

New Approval shall mean any of the following: (a) a new Governmental Approval of the same type as the City-Provided Approvals; and (b) a revision, modification, or amendment to one or more of the City-Provided Approvals.

Notice of Termination for Convenience shall mean written notice issued by City to Design-Builder terminating the Work of Design-Builder for convenience.

Notice to Proceed or NTP shall mean the written authorization issued by City that permits Design-Builder to proceed with the Work.

Open Book shall mean allowing City to review underlying assumptions and data associated with pricing, including assumptions as to schedule, composition of equipment spreads, equipment rates, productivity, estimating factors, design and productivity allowances, contingency and indirect costs and other items reasonably required by City to satisfy itself to the reasonableness of the amount.

Partnering shall mean either the formal or informal the development of team- based relationships between Design-Builder and City pursuant to Section 19.1 in which: (1) trust and open communications are encouraged and expected from participants, (2) parties address and resolve issues and problems promptly and at the lowest possible level, (3) parties seek to develop solutions that are agreeable and meet the needs of everyone involved, (4) all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and (5) parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership. The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between City and Design-Builder.

Payment Bond shall mean the bond described in Section 8.2.

Performance Bond shall mean the bond described in Section 8.1.

Person shall mean any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization or Governmental Person.

Program Criteria Document shall mean the document identified as the Program Criteria Document and provided to Design-Builder with the City-Provided Information and to be revised by Design-Builder in accordance herewith.

Progress Meeting shall mean the meetings described in Section 12.2.2.

Project shall mean the Interim Facility – Four Gates Project described in the Project Technical Requirements.

Project Acceptance shall mean acceptance under Section 20.3 of the - Contract.

Project Acceptance Deadline shall have the meaning set forth in Section 4.2.2.2.

Project Completion shall mean completion under Section 20.2 of the Contract.

Project Completion Deadline shall have the meaning set forth in Section 4.2.2.1.

Project Site shall mean those areas designated in writing by City for performance of the Work with reference to the Project. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the term "Project Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by City under Section 12.3.3.1, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Design-Builder or Subcontractors covered by the worker's compensation policy included in the insurance described in Section 9, but excluding any permanent locations of Design-Builder or such covered Subcontractors.

Project Manager shall mean the individual designated as such in Appendix 11 or such other individual as is designated by Design-Builder to undertake such role, following approval of the change by City.

Project Technical Requirements shall mean Appendix 9 to the Design-Build Contract.

Punch List shall mean the list of Work that remains to be completed after achievement of Project Completion and shall be limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety, use or operability of the Project.

Quality Assurance or QA shall mean all those planned and systematic actions necessary to provide adequate confidence that an item is in conformance with established requirements and will satisfy given needs. The activity of providing the evidence needed to establish confidence that quality functions are being performed adequately. QA is a management tool.

Quality Assurance Manager or QA Manager shall mean the individual as is designated in writing by Design-Builder to undertake the duties of the Quality Assurance Manager, following approval by City.

Quality Control or QC shall mean those functions that provide a means to control and measure characteristics, as related to established system design requirements. It shall also mean the techniques and activities that sustain the quality of an item to satisfy given needs; also the use of such techniques and activities. QC is a production tool.

Quality Control Programs shall mean the Design Quality Control Program and the Construction Quality Control Program.

Release of Hazardous Materials shall mean any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Request for Change Order shall mean a document submitted by Design-Builder in accordance with Section 13.3.2 requesting that a Change Order be issued.

Request for Proposals or RFP shall mean the Interim Facility – Four Gates Fourth Street 84 in Interceptor Phase VI-A Project Request for Proposals approved by the City Council on _____.

Retainage shall have the meaning set forth in Section 12.3.1.1.

RFC Notice shall have the meaning set forth in Section 13.3.2.1.

Schedule of Values shall have the meaning set forth in Section 2.1.2(a).

Standard Specifications shall mean the 1992 Edition of the City of San Jose Standard Specifications for Public Works Construction, issued by the Department of Public Works, as amended by the Modified General Provisions set forth in Appendix 2, and subject to certain additional modifications as specified in the Project Technical Requirements.

State shall mean the State of California.

Subcontract shall mean an agreement between Design-Builder and one or more third parties providing for such third party to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement between a Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier, at any tier.

Subcontractor shall mean any Person with whom Design-Builder has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.

Supplier shall mean any Subcontractor that supplies machinery, equipment, materials or systems to Design-Builder or any Subcontractor in connection with the performance of the Work and that does not perform Work at the Site. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site

shall not be deemed to be performing Work at the Site. The term "Supplier" includes fabricators and material dealers.

Surety shall mean each properly licensed surety company, insurance company or other Person approved by the California State Insurance Commissioner to do business in the State and approved by City, which has issued the Payment Bond or the Performance Bond.

Project Completion shall mean Project Completion and Project Acceptance.

Project Schedule shall have the meaning set forth in Section 2.1.2.2.

Task Order shall mean an executed amendment to the Contract setting forth the scope of services, schedule of performance price and any other material terms for Design-Builder's performance of Work.

Time and Materials Change Order shall have the meaning set forth in Section 13.7.

Time and Materials Work shall mean Work performed pursuant to a Time and Materials Change Order.

Utility shall mean a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the facility, and similar substances that directly or indirectly serve the public. The necessary appurtenances to each Utility Project shall be considered part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line.

Utility Adjustment shall mean each relocation (temporary or permanent), abandonment, protection in place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project.

Utility Adjustment Work shall mean all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of existing Utility property interests and acquisition of replacement Utility property interests, whether provided by Design-Builder, the City, or by the Utility Owners. The term also includes any reimbursement of Utility Owners. Any Utility Adjustment Work furnished or performed by Design-Builder is part of the Work; any Utility Adjustment Work furnished or performed by the City or a Utility Owner is not part of the Work.

Utility Owner shall mean the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Warranties shall mean the express warranties of Design-Builder set forth in Section 11.1.

Work shall mean all of the administrative, design, engineering, real property acquisition support and occupant relocation services, Utility Adjustment Work, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Project Acceptance and to fulfill the Warranties, except for those efforts which the Contract Documents expressly specify will be performed by City or Persons other than Design-Builder-Related Entities. In certain cases the term is also used to mean the products of the Work.

APPENDIX 2

MODIFIED GENERAL PROVISIONS

(Replacement Sections 1 through 9)

This Appendix 2 sets forth the Modified Standard Specifications for the Interim Facility – Four Gates Project at the Airport. The provisions contained in this Appendix 2 shall replace Sections 1 through 9 of the 1992 Standard Specifications for Public Works Construction issued by the Department of Public Works (the "City Standard Specifications"), and differ materially from the printed volume. The 1992 edition of the City Standard Specifications is a complete revision of and supersedes the publication of the same title dated 1975.

The Modified Standard Specifications may include cross-references to provisions of the City Standard Specifications which are not applicable to this Contract because they have been superseded by other provisions of the Contract Documents. Any such cross-references shall be deemed references to the Contract Document provisions which have superseded the referenced provisions of the City Standard Specifications. Note that the City Standard Specifications are patterned after the Caltrans Standard Specifications; however, they have been modified to make them consonant with City of San Jose requirements. The subsections within Sections 1 through 9 of these Modified Standard Specifications and the City Standard Specifications bear identical numbers and cover the same subject matter of the Caltrans Standard Specifications. Additional subsections were added to the Caltrans Standard Specifications as necessary to complete the City Standard Specifications.

SECTION 1

DEFINITION AND TERMS

- 1-1.01 General
- 1-1.02 Abbreviations
- 1-1.03 Definitions and Terms
- thru**
- 1-1.49

CITY OF SAN JOSE
STANDARD SPECIFICATIONS
FOR
PUBLIC WORKS CONSTRUCTION

SECTION 1 - DEFINITION AND TERMS

1-1.01 General. Unless the context otherwise requires, wherever in the specifications and other contract documents the following abbreviations and terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as provided in this Section 1. Refer to Contract Appendix 1 for additional defined terms.

Working titles having a masculine gender such as "journeyman" are utilized in the specifications for the sake of brevity, and are intended to refer to persons of either sex.

1-1.02 Abbreviations.

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APHA	American Public Health Association
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASHVE	American Society of Health and Ventilating Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood-Preservers' Association
CF	Cubic Foot

CSJ	City of San Jose
CY	Cubic Yard
EA	Each
EEI	Electrical Engineers Institute
EIA	Electronic Industries Association
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
Gal	Gallon
H	Hour
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
IMSA	International Municipal Signal Association
J	Joule
KPa	Kilopascal
LB	Pound
LF	Linear Foot
LS	Lump Sum
MFBM	Thousand Foot Board Measure
MI	Mile
MPa	MegaPascal
MSYD	Thousand Station Yard
N	Newton
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
Ω	Ohm
Pa	Pascal
PUC	Public Utilities Commission
REA	Rural Electrification Administration
S	Second
SS	State Specification
STA	Station

TAB	Tablet
UBC	Uniform Building Code
UL	Underwriters' Laboratories Inc.
V	Volt
W	Watt

1-1.03 Acceptance. The formal written acceptance by the Engineer of an entire contract which has been completed in all respects in accordance with the plans and specifications and any modifications thereof previously approved.

1-1.032 (Blank)

1-1.034 Admitted Surety, Insurer or Carrier. A surety or insurance carrier admitted to transact insurance in the State of California, as evidenced by the surety's or insurer's possession of a valid Certificate of Authority issued by the California Department of Insurance, as defined by the California Insurance Code.

1-1.036 (Blank)

1.04 (Blank)

1-1.05 Base. A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

1-1.06 Basement Material. The material in excavation or embankments underlying the lowest layer of subbase, base, pavement, surfacing or other specified layer which is to be placed.

1-1.075 (Blank)

1-1.08 Bridge. Any structure which carries a utility facility, or railroad, highway, street, or road, pedestrian, or other traffic, over a water course or over or under or around any obstruction.

1-1.081 Calendar Day. A calendar day shall be any day including all legal holidays, Saturdays and Sundays.

1-1.082 Caltrans. The Department of Transportation of the State of California organized to administer the affairs relating to State highways.

1-1.083 Caltrans Specifications. The standard specifications of the State of California, Department of Transportation.

1-1.084 City Clerk. City Clerk of the City of San Jose, and Ex-officio Clerk of the City Council.

1-1.085 City Council. City Council of the City of San Jose.

1-1.086 City of San Jose. A chartered municipal corporation of the State of California, as created by law; also referred to as the "City" or "Owner."

1-1.087 City Manager. Chief Administrative Officer of the City.

1-1.088 Conduit. A pipe or tube in which smaller pipes, tubes, or electrical conductors are inserted or are

to be inserted.

1-1.09 Contract. (Blank)

1-1.092 (Blank)

1-1.094 (Blank)

1-1.096 (Blank)

1-1.10 Contractor. The Design-Builder, unless it is not capitalized in which case it means a contractor other than the Design-Builder

1-1.102 County Agencies. Whenever, in these specifications, reference is made to any County agency or officer, such reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction and authority of the agency or officer mentioned.

1-1.104 County Engineer. The County Engineer of the county in which the work is to be performed, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them.

1-1.11 Culvert. Any structure, other than a bridge, which provides an opening under a roadway for drainage or other purposes.

1-1.115 (Blank)

1-1.12 (Blank)

1-1.13 Department of Public Works. The Department of Public Works of the City of San Jose as created by law, also referred to herein as the "Department."

1-1.14 Detour. A temporary route for traffic around a closed portion of a road.

1-1.15 Director of Public Works. The executive officer of the Department of Public Works, as created by law also referred to as the "Director": also the ex-officio Superintendent of City Streets, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them; also referred to herein as the "Engineer."

1-1.16 Divided Highway. A highway with separated traveled ways for traffic, generally in opposite directions.

1-1.17 (Blank)

1-1.18 Engineer. The City Engineer of the City of San Jose, being also the Director of the Department of Public Works of the City of San Jose, and ex-officio Superintendent of City Streets of San Jose, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties properly delegated to them.

1-1.19 (Blank)

1-1.20 Federal, State or Local Agencies. Whenever, in the specifications, reference is made to any Federal, State or Local agency or officer, including but not limited to the City, such reference shall be deemed made to any agency or officer succeeding in accordance with law to the powers, duties, jurisdiction, and authority of the agency or officer mentioned.

1-1.21 Fixed Costs. Any necessary labor, material and equipment costs directly expended on the item or items under consideration which remain constant regardless of the quantity of the work done.

1-1.22 Frontage Road. A local street or road auxiliary to and located generally on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

1-1.225 Full Compensation. Total and complete payment including overhead and profit for furnishing all supervision, labor, materials, tools, equipment, and doing all work involved in providing the item complete and in place in accordance with the requirements of the Contract.

1-1.23 Grading Plane. The surface of the basement material upon which the lowest layer of subbase, base, pavement, surfacing, or other specified layer, is placed.

1-1.24 Highway. The whole right of way or area which is reserved for and secured for use in constructing the roadway and its appurtenances also referred to herein as "street" or "road."

1-1.242 (Blank)

1-1.245 Inspector. An authorized representative of the Engineer, acting exclusively for the benefit of City, properly assigned to make all necessary inspections of the work performed or being performed, or of the materials furnished or being furnished by the Contractor for conformance to the Contract Documents.

1-1.25 Laboratory. The established laboratory of the Department or other laboratories authorized by the Department to test materials and work involved in the Contract.

1-1.255 Legal Holidays. Those days designated as holidays in the City of San Jose Municipal Code.

1-1.257 Limit of Work. The area described or outlined on the project plans. This area shall constitute the extent of the Contractor's operation related to the Project.

1-1.26 (Blank)

1-1.265 Manual of Traffic Controls. The Department of Transportation (Caltrans) publication entitled "MANUAL OF TRAFFIC CONTROLS for Construction and Maintenance Work Zones."

1-1.267 Material Storage Area. An area, if any, described or outlined on the project plans to be used by the Contractor for material and equipment storage related to the project.

1-1.27 Median. That portion of a divided highway separating the traveled ways for traffic in opposite directions including inside shoulders.

1-1.272 (Blank)

1-1.274 (Blank)

1-1.276 Notice to Proceed. The notice issued by the Engineer authorizing the Contractor to proceed with the work, among other particulars.

1-1.277 Notice of Termination. The written notice issued by the Engineer specifying that the Contract is terminated.

****MAS 1/23/2017**

****Section 1.278 Partnering was added from CSJ SS Std Special Provisions**

1-1.278 Partnering. The development of team-based relationships between the Design-Build Entity and City in which: (1) trust and open communications are encouraged and expected from participants, (2) parties address and resolve issues and problems promptly and at the lowest possible level, (3) parties seek to develop solutions that are agreeable and meet the needs of everyone involved, (4) all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and (5) parties seek input from each other in an effort to find better solutions for the

problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership. The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Design-Build Entity

1-1.28 Pavement. The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

1-1.29 Plans. The official Project plans, and Standard Plan Details, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions and details of the work to be performed. All such documents are to be considered as a part of the plans whether or not reproduced in the special provisions.

In the above definition, the following terms are defined as follows:

(a) Standard Plan Details - The Standard Plan Details of the Department, approved by City Council, also referred to herein as Standard Details.

(b) Project Plans - Final Design Documents.

1-1.295 Private Improvement Contract. Any improvement contract financed by a private party other than the City, to be constructed in public or private streets, and easements.

1-1.130 Processing. Any operation or operations of whatever nature and extent required to produce a specified material.

1-1.31 (Blank)

1-1.32 (Blank)

1-1.33 (Blank)

1-1.334 Right of Way. The whole right-of-way or area which is reserved for and secured for use in constructing the improvement and its appurtenances.

1-1.34 Roadbed. The roadbed is that area between the intersection of the upper surface of the roadway and the side slopes or curb lines. The roadbed rises in elevation as each increment or layer of subbase, base, surfacing or pavement is placed. Where the medians are so wide as to include areas of undisturbed land, a divided roadway is considered as including 2 separate roadbeds.

1-1.35 Roadway. That portion of the right of way included between the outside lines of sidewalks, or curbs, slopes, ditches, channels, waterways, and including all the appertaining structures, and other features necessary to proper drainage and protection.

1-1.36 Shoulders. The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

1-1.37 Special Provisions. Specific clauses setting forth conditions or requirements peculiar to the Work and supplementary to these Standard Specifications. The State of California Department of Transportation (Caltrans) publications entitled "Labor Surcharge And Equipment Rental Rates" and "General Prevailing Wage Rates" are to be considered as a part of the special provisions.

1-1.38 Specifications. The directions, provisions and requirements contained in the Contract Documents.

1-1.39 State. The State of California.

1-1.40 (Blank)

1-1.41 Subbase. A layer of specified material of planned thickness between a base and the basement material.

1-1.42 Subgrade. That portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of any other material is placed.

1-1.425 (Blank)

1-1.43 Substructure. All that part of the bridge below the bridge seats, tops of piers, haunches of rigid frames, or below the spring lines of arches. Backwalls and parapets of abutments and wing walls of bridges shall be considered as parts of the substructure.

1-1.435 Superintendent of Streets. The Superintendent of City Streets of San Jose, also referred to as the "Engineer," "Director of Public Works," or "Director," acting directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

1-1.44 Superstructure. All that part of the bridge except the bridge substructure.

1-1.45 Surfacing. The uppermost layer of material placed on the traveled way, or shoulders. This term is used interchangeably with pavement.

1-1.46 Traffic Lane. That portion of a traveled way for the movement of a single line of vehicles.

1-1.47 Traveled Way. That portion of the roadway for the movement of vehicles, exclusive of shoulders.

1-1.48 (Blank)

1-1.49 Working Day. Any day that is not a weekend or Legal Holiday.

END OF SECTION

SECTION2

[Blank]

SECTION3

[Blank]

SECTION 4

SCOPE OF WORK

4-1.01	Intent of Plans and Specifications
4-1.02	Final Cleaning Up
4-1.03	Blank
4-1.03A	Blank
4-1.03B	Blank
4-1.03B(1)	Blank
4-1.03B(2)	Blank
4-1.03B(3)	Blank
4-1.03C	Blank
4-1.03D	Blank
4-1.03E	Blank
4-1.04	Detours
4-1.05	Use of Materials Found on the Work
4-1.07	Differing Site Conditions

SECTION 4

SCOPE OF WORK

4-1.01 Intent of Plans and Specifications. The intent of the plans and specifications is to prescribe the details for the construction and completion of the Work which the Contractor undertakes to perform in accordance with the terms of the Contract. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals, and do all the work involved in executing the contract in a satisfactory and workmanlike manner.

4-1.02 Final Cleaning Up. Before final inspection of the Work, the Contractor shall clean the job site, highway, material sites, and all ground occupied by the Contractor in connection with the Work of all rubbish, excess materials, falsework, temporary structures, and equipment. All parts of the Work shall be left in a neat and presentable condition. Full compensation for final cleaning up will be considered as included in the Contract Price and no separate payment will be made therefor.

Nothing herein, however, shall require the Contractor to remove warning, regulatory, and guide signs prior to formal acceptance by the Director.

4-1.03 (Blank)

4-1.03A (Blank)

4-1.03B (Blank)

4-1.03B(1) (Blank)

4-J.03B(2) (Blank)

4-1.03B(3) (Blank)

4-1.03C (Blank)

4-1.03D (Blank)

4-1.03E (Blank)

4-1.04 Detours. The Contractor shall construct and remove detours and detour bridges for the use of public traffic as provided in the Contract Documents, or as shown on the Plans, or as directed by the Engineer. When public traffic is routed through the work, provision for a passageway through construction operations will not be considered as detour construction or detour maintenance and such work shall conform to and be paid for as provided in Section 7-1.08, "Public Convenience," unless otherwise specified in the Contract Documents.

Detours used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained by the Contractor at Contractor's expense, as cost of the work. The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the Work until such detours are in satisfactory condition for use by public traffic.

Contractor shall conduct its hauling activities so as to enable maintenance of the detour in a condition satisfactory for public traffic, without difficulty. Where the Contractor's hauling is causing such damage to the detour that its maintenance in a condition satisfactory for public traffic is made difficult and unusually expensive, the Engineer shall have authority to regulate the Contractor's hauling over the detour. The City may restrict use of the detour so as to facilitate maintenance.

4-1.05 Use of Materials Found on the Work. Unless designated as selected material as provided in Section 19-2.07, "Selected Material," the Contractor, with the approval of the Engineer, may use in the proposed construction such stone, gravel, sand or other suitable material suitable as may be found in excavation. The Contractor shall not excavate or remove any material from within the Project location that is not within the excavation, as indicated by the slope and grade lines, without written authorization from the Engineer.

4-1.07 Differing Site Conditions. For all excavations extending below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

1. Subsurface or latent physical conditions at the Site differing from those indicated in the Contract Documents.
2. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

END OF SECTION

SECTION 5

CONTROL OF WORK

5-1.01	Authority of Engineer
5-1.02A	Trench Excavation Safety Plans
5-1.03	Conformity with Contract Documents and Allowable Deviations
5-1.04	Coordination and Interpretation of Plans, Standard Specification, and Special Provisions
5-1.04A	Blank
5-1.04B	Blank
5-1.05	Blank
5-1.06	Superintendence
5-1.065	Blank
5-1.07	Blank
5-1.08	Inspection
5-1.08A	Inspection for Sole Benefit of the City
5-1.09	Removal of Rejected and Unauthorized Work
5-1.09A	Blank
5-1.09B	Modification to Contractor's Work
5-1.10	Equipment and Plants
5-1.11	Alternative Equipment
5-1.115	Blank
5-1.12	Blank
5-1.13	Blank
5-1.14	Blank
5-1.15	Blank
5-1.16	Blank

SECTION 5

CONTROL OF WORK

5-1.01 Authority of Engineer. It will be the Engineer's duty to inspect materials and workmanship for all deviations from the drawings, specifications and other Contract provision which may come to the Engineer's notice. Such inspection is for the sole benefit of the City and shall not act as a waiver of defects in the Work. The Engineer shall decide all questions which may arise as to the quality or acceptability of materials furnished and Work performed and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to compensation. The Engineer's decision shall be final and the Engineer shall have authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly. The Engineer shall have the right to order the work stopped, if in the Engineer's opinion such action becomes necessary, until the Engineer has determined and ordered that the Work may proceed in due fulfillment of all Contract requirements. All orders from the Engineer and City for this and all other sections of this Appendix 2 shall be in writing and formally submitted to the Design-Builder.

5-1.02 Plans and Working Drawings. The Plans shall be supplemented by such working drawings prepared by the Contractor as are necessary to adequately control the work. No change shall be made by the Contractor in any working drawing after it has been reviewed by the Engineer without the further written approval.

Working drawings for any part of the permanent work shall include, but not be limited to: stress sheets, anchor bolt layouts, shop details, erection plans, equipment lists and any other information specifically required elsewhere in the Contract Documents.

Working drawings for cribs, cofferdams, falsework, temporary support systems, haul bridges, centering and form work and for other temporary work and methods of construction the Contractor proposes to use, shall be submitted when required by the Project Schedule or ordered by the Engineer. Such working drawings shall be subject to review by the Engineer insofar as the details affect the character of the finished Work and for compliance with design requirements applicable to the construction when specified or called for, but details of design will be left to the Contractor who shall be responsible for the successful construction of the Work.

Working drawings shall be reviewed by the Engineer before any Work involving such drawings is performed. It is expressly understood that review of the Contractor's working drawings shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the Work in conformity with the requirements of the plans and specifications. Such review shall not operate to waive any of the requirements of the plans and specifications or relieve the Contractor of any obligation thereunder, and defective Work, materials and equipment may be rejected notwithstanding such review.

Working drawings shall include shop details, erection plans, masonry layout diagrams, and bending diagrams for reinforcing steel, which shall be approved by the Engineer before any Work involving these plans is performed. Plans for cribs, cofferdams, falsework, centering and form work shall be required and shall be subject to approval unless approval is waived by the Engineer. These plans will be subject to approval insofar as the details affect the character of the finished Work, but other details of design will be left to the contractor, who shall be responsible for the successful construction of the work.

It is expressly understood, however, that approval by the Engineer of the Contractor's working drawings does not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. Contractor shall be responsible for agreement and conformity of his working drawings with approved plans and specifications and Special Provisions.

The Engineer's review of working drawings, and other submittals submitted for the Engineer's review by the Contractor shall not act as a waiver of defects subsequently discovered in such documents or in Work performed by the Contractor in reliance on those documents.

The Engineer's review of the Contractor's plans shall in no way be construed to impose tort liability on the City or any of its officers or employees by reason of any damage to property or person, including death resulting from or arising out of the use of such plan, and the Contractor shall indemnify, defend, and hold harmless the City, its officers and employees from any loss or liability resulting from the use of such plans as provided in the Contract.

The Contractor shall keep on the Work a copy of the plans and specifications including all authorized change orders, and shall at all times give the Engineer and the Engineer's representatives access thereto.

Plans and specifications and copies thereof furnished by the Engineer shall not be used on other projects without the Engineer's consent.

5-1.02A Trench Excavation Safety Plans. Attention is directed to Section 7-1.01E, "Trench Safety." The Contractor shall, before beginning any excavation or trench work, 5 feet or more in depth, secure a permit "to perform Excavation or Trenchwork," from the State of California, Division of Industrial Safety. Excavation for any trench 5 feet or more in depth shall not begin until completion of review by the Engineer, of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench showing the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during such excavation. No such plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

The acceptance of the copy of the permit "to perform Excavation or Trench work," or review by the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of trenches, shall in no way be construed to impose tort liability on the City or any of its officers or employees by reason of any damage to person, including death or property resulting from or arising out of the use of such plan, and the Contractor shall be fully responsible for any such damage, and the Contractor shall indemnify and hold harmless the City, its officers and employees from any loss or liability resulting from the use of such plan as provided in the Contract.

The permit together with a copy of approved plan for trench safety shall be maintained on the job site at all times.

5-1.03 Conformity with Contract Documents and Allowable Deviations. Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications.

Although measurement, sampling and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and the Engineer's decision as to any allowable deviations therefrom shall be final.

5-1.04 Coordination and Interpretation of Plans, Standard Specifications, and Special Provisions. These Standard Specifications, the Standard Plan Details, project plans, special provisions, Contract change orders, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary, and to describe and provide for a complete Work.

Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently

detailed or explained in these Standard Specifications, the Special Provisions, or the plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of these specifications, the special provisions or the plans, reference shall be made to the Engineer, whose decision thereon shall be final.

If the Contractor, in the course of the work, discovers any discrepancies between the plans and the conditions actually encountered at the Project site, or any errors or omissions in the plans or in the layout given by stakes, points or instructions, it shall be the Contractor's duty to inform the Engineer immediately in writing; and the Engineer shall promptly investigate the same. Any Work done after such discovery, until authorized will be done at the Contractor's risk.

In the event of any discrepancy, between any drawing and the figures written thereon, the figures shall be taken as correct. Detail drawings shall prevail over general drawings.

The headings and titles printed on the plans and in these general conditions, in the specifications and elsewhere in the contract documents, are inserted for the convenience of reference only, and shall not be taken or considered as having any bearing on the interpretation thereof.

5-1.04A (Blank)

5-1.04B (Blank)

5-1.05 (Blank)

5-1.06 Superintendence. The Contractor shall designate in writing before starting Work, an authorized representative who shall have the authority to represent and act for the Contractor.

Said authorized representative shall be present at the Site of the Work at all times while Work is actually in progress on the Contract. When Work is not in progress and during periods when Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work which may be required.

The Engineer shall be supplied at all times with the names and telephone numbers of at least 2 persons in charge of or responsible for the Work who can be reached for emergency work 24 hours a day, 7 days a week. In the event that one or both are unavailable at any time, the Contractor will provide alternative contacts for persons in charge of or responsible for the Work.

5-1.065 (Blank)

5-1.07 (Blank)

5-1.08 Inspection. The Engineer shall, at all times, have safe access to the Work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of these specifications, the special provisions, and the plans. All work done and all materials furnished shall be subject to the Engineer's inspection.

The inspection of the Work or materials shall not relieve the Contractor of any obligations to fulfill the Contract as prescribed. Work and materials not meeting such requirements shall be made good and unsuitable Work or materials may be rejected, notwithstanding that such Work or materials have been previously inspected by the Engineer or that payment therefor has been included in a progress estimate.

Projects financed in whole or in part with Federal, State, County or Regional agency funds or otherwise subject to the jurisdiction or control by another public entity, shall be subject to inspection at all times by the appropriate Federal, State, County, or Regional agency or other public entity involved.

The Contractor shall notify the Engineer at least 24 hours in advance of the time required for the services of the Inspector. Should the Contractor fail to notify the Engineer and proceed with Work requiring inspection, all said Work shall be rejected by the Engineer. The Work so rejected may be subsequently accepted by the Engineer only after receipt of the certification described below and only if the Engineer approves such certification. Should the Contractor request acceptance of such rejected Work the Contractor shall, at the Contractor's sole expense, as cost of the work, secure the services of: private material testing laboratories, consulting engineers or licensed land surveyors, as previously approved by the City, who shall certify that said Work does, in fact, conform to the requirements of the plans and these Specifications.

5-1.08A Inspection for Sole Benefit of the City. The Contractor is hereby advised that inspection of the Contractor's work during the Contract is for the sole and exclusive benefit of the City. Such inspection shall not relieve the Contractor from any obligation to perform the Work pursuant to the plans and Specifications, even if defects or deficiencies in such Work were noted or observed at the time of such inspection and not communicated to the Contractor.

5-1.09 Removal of Rejected and Unauthorized Work. All Work which has been rejected shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed to the Contractor for such removal, replacement, or remedial

Work. Any extra work done without written authority from the City will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized Work shall be remedied, removed, or replaced at the Contractor's expense, as cost of the work.

Upon failure of the Contractor to comply promptly with any written order of the Engineer made under this Section 5-1.09, the Engineer may cause rejected or unauthorized work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.

5-1.09A (Blank)

5-1.09B Modification to Contractor's Work. The City may modify the Contractor's Work, either before or after acceptance of the Project. Notification of the City's intent to modify the Contractor's Work will be made in writing 48 hours prior to commencement of the modification.

Whenever the City makes a claim against the Contractor for defective workmanship or materials, it shall be the sole obligation of the Contractor to establish that the defect being complained of was due solely to a modification, if any, made by the City.

5-1.10 Equipment and Plants. Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the project.

Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered, in writing, by the Engineer, shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

The make, model, serial number and manufacturer's rated capacity for each scale shall be clearly stamped or stenciled on the load receiving element and its indicator or indicators. All meters shall be similarly identified, rated and marked. Upon request of the Engineer, the Contractor shall furnish a statement by the manufacturer, designating sectional and weighbridge capacities of portable vehicle scales.

Each machine or unit of equipment shall be operated by an experienced operator skilled in handling the particular make of machine or unit of equipment in use at a speed or rate of production not to exceed that recommended by the manufacturer.

All vehicles used to haul materials over existing traveled ways shall be equipped with pneumatic tires and operated within legal wheel load limits.

5-1.11 Alternative Equipment. While certain of these specifications may provide that equipment of a particular size and type is to be used to perform portions of the Work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of a different size or type in place of the equipment specified.

The Engineer, before considering or granting such request, may require the Contractor to furnish, at the Contractor's expense, as cost of the work, evidence satisfactory to the Engineer that the equipment proposed for use by the Contractor is capable of producing Work equal to, or better than, that which can be produced by the equipment specified.

If such permission is granted by the Engineer, it shall be understood that such permission is granted for the purpose of testing the quality of Work actually produced by such equipment and is subject to continuous attainment of results which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment specified. The Engineer shall have the right to withdraw such permission at any time that the Engineer determines that the alternative equipment is not producing Work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of such permission by the Engineer, the Contractor will be required to use the equipment originally specified and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, as cost of the work, any defective or unsatisfactory Work produced with the alternative equipment.

Neither the City nor the Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of such permission.

Permission to use alternative equipment in place of equipment specified will only be granted where such equipment is new or improved and its use is deemed by the Engineer to be in furtherance of the purposes of this Section 5-1.11. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of such equipment on any other project.

Nothing in this Section 5-1.11 shall relieve the Contractor of responsibility for furnishing materials or producing finished Work of the quality specified in these specifications or in the special provisions.

5-1.115 (Blank)

5-1.12 (Blank)

5-1.13 (Blank)

5-1.14 (Blank)

5-1.15 (Blank)

5-1.16 (Blank)

**MAS 1/23/2017

**Section 5-1.17 Partnering was added from CSJ SS Std Special Provisions

5-1.17 Partnering. - The City and Contractor will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and Contractor will engage in either Formal Partnering or Informal Partnering, depending upon the size of the project.

5-1.17A Formal Partnering. – In Formal Partnering the City and the Contractor implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and Contractor may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids (or proposals for Design-Build projects) is \$10 million or more, the City and Contractor shall participate in Formal Partnering.

For all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million dollars, the Contractor may elect to require the parties to participate in Formal Partnering. The Contractor shall elect Formal Partnering by submitting a request in writing to the Engineer after approval of the Contract.

The scheduling of a partnering workshop, selection of the partnering facilitator and workshop site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a Contractor's election to require Formal Partnering for all other projects.

The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and Contractor. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Engineer may issue a change order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

The division of cost for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-1.03B, "Work Performed By Special Forces or Other Special Services," of the Standard Specifications, and paying to the Contractor one-half of that costs, except no markups will be allowed.

All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

5-1.17B Informal Partnering. In Informal Partnering the City and the Contractor will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and Contractor may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and Contractor will engage in informal partnering as follows: (1) on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below \$1 million, and (2) on all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million and the Contractor has not elected Formal Partnering.

END OF SECTION

SECTION 6

CONTROL OF MATERIALS

- 6-1.01 Source of Supply and Quality of Materials
- 6-1.02 Blank
- 6-1.03 Storage of Materials
- 6-1.04 Defective Materials
- 6-1.05 Trade Names and Alternatives
- 6-1.05A Blank
- 6-1.06 Plant Inspection
- 6-1.07 Certificates of Compliance
- 6-1.08 Foreign Materials
- 6-1.085
- 6-1.09 State Specification Numbers
- 6-1.10 Blank
- 6-1.11 Samples
- 6-2.01 General
- 6-2.02 Possible Local Material Sources
- 6-2.03 Mandatory Local Material Sources
- 6-3.01 General
- 6-3.02 Testing by Contractor
- 6-3.03 Statistical Testing
- 6-3.04 Field Tests, Adjustments and Operations

SECTION 6
CONTROL OF MATERIALS

6-1 GENERAL

6-1.01 Source of Supply and Quality of Materials. The Contractor shall furnish all materials required to complete the Work.

Only materials conforming to the requirements of the Specifications shall be incorporated in the Work.

The materials furnished and used shall be new, except as may be provided elsewhere in the Contract Documents. The materials shall be manufactured, handled, and used in a workmanlike manner to insure completed Work in accordance with the Contract Documents.

Materials to be used in the Work will be subject to inspection and tests by the Engineer or the Engineer's designated representative. The Contractor shall furnish without charge such samples as may be required. The Contractor shall furnish the Engineer a list of sources of materials and the locations at which such materials will be available for inspection. The list shall be submitted on a City furnished form and shall be furnished to the Engineer in sufficient time to permit inspecting and testing of materials to be furnished from such listed sources in advance of their use. No material which, even after approval, has in any way become unfit for use shall be used in the Work. The Engineer may inspect, sample or test materials at the source of supply or other locations, but such inspection, sampling or testing will not be undertaken until the Engineer is assured by the Contractor of the cooperation and assistance of both the Contractor and the supplier of the material. The Contractor shall assure that the Engineer or the Engineer's authorized representative has free access at all times to the material to be inspected, sampled or tested. It is understood that such inspections and tests in no way shall be considered as a guaranty of acceptance of such material nor of continued acceptance of material presumed to be similar to that upon which inspections and tests have been made, and that inspection and testing performed by the City shall not relieve the Contractor or the Contractor's suppliers of responsibility for quality control.

Manufacturers' warranties, guaranties, instruction sheets and parts lists, which are furnished with certain articles or materials incorporated in the work, shall be delivered to the Engineer before acceptance of the contract.

Reports and records of inspections made and tests performed, when available at the site of the work, may be examined by the Contractor.

6-1.02 (Blank)

6-1.03 Storage of Materials. Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

6-1.04 Defective Materials. All materials which the Engineer has determined do not conform to the requirements of the plans and specifications will be rejected whether in place or not. They shall be removed immediately from the Site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work, unless approval in writing has been given by the Engineer. Upon failure of the Contractor to comply promptly with any written order of the Engineer made under the provisions in this Section 6-1.04, the Engineer shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any moneys due or to become due the Contractor.

6-1.05 Trade Names and Alternatives. For convenience in designation on the plans or in the specifications, certain articles or materials, to be incorporated in the Work may be designated under a

trade name or the name of a manufacturer and catalog information and followed by the words "or equal." The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary as required by the Engineer. The Engineer shall be the sole judge as to the quality and suitability of alternative articles or materials and the Engineer's decision shall be final.

Whenever the specifications permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of such substitute material will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the material or article proposed. Such request shall be made in ample time to permit approval without delaying the Work, but need not be made in less than 35 days after award of the Contract.

Approval by the Engineer of substitute item proposed by the Contractor shall not relieve Contractor of the responsibility for full compliance with the Contract Documents and for adequacy of the substituted item. The Contractor shall also be responsible for resultant changes and all additional costs which the substitution requires in its work, the work of Subcontractors and of other contractors and shall effect such changes without cost to the City.

6-1.05A (Blank)

6-1.06 Plant Inspection. The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection however, will not be undertaken until the Engineer is assured of full cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have escorted entry at mutually agreed to times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

6-1.07 Certificates of Compliance. A Certificate of Compliance shall be furnished prior to the use of any materials for which these specifications or the special provisions require that such a certificate be furnished. In addition, when so authorized in the Contract Documents, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the specifications. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the plans and specifications and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

6-1.08 Foreign Materials. Materials which are manufactured, produced or fabricated outside of the United States shall be delivered to a distribution point in the San Francisco Bay Area, unless otherwise required in these specifications or the special provisions, where they shall be retained for a sufficient

period of time to permit inspection, sampling, and testing. The Contractor shall not be entitled to an extension of time for acts or events occurring outside of the United States and it shall be the Contractor's responsibility to deliver materials obtained from outside of the United States to the point of entry into the continental United States in sufficient time to permit timely delivery to the job Site.

The Contractor, at cost of the work, shall supply the facilities and arrange for any testing required in California. All testing by the Contractor shall be subject to witnessing by the Engineer.

The manufacturer, producer or fabricator of foreign material shall furnish to the Engineer a Certificate of Compliance in accordance with the provisions in Section 6-1.07, "Certificates of Compliance." In addition, certified mill test reports clearly identifiable to the lot of material shall be furnished where required in these specifications or otherwise requested by the Engineer.

If the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members is to be performed outside of the United States, the following requirements shall apply:

1. Such fabrication shall be performed only within the plants and by fabricators who have previously established, to the satisfaction of the Engineer, that they have the experience, knowledge, trained manpower, quality controls, equipment and other facilities required to produce the quality and quantity of Work required. At the option of the Engineer, prequalification of the plant and fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by the Engineer or the Engineer's representative, or both.
2. The Contractor shall make written application to the Engineer for approval for such foreign fabrication at the earliest possible time and, in no case, later than 50 days in advance of the planned start of fabrication. The application shall list the specific units or portion of a Work which will be fabricated outside of the United States.
3. The Contractor shall advise the Engineer, in writing, at least 20 days in advance of the actual start of any such foreign fabrication.
4. All documents pertaining to the Contract, including but not limited to, correspondence, bid documents, working drawings and data shall be written in the English language and all numerical data shall use the foot-pound-second system of units of measurement.

The use of steel manufactured outside of the United States as unidentified stock material, as provided in Section 55-2.07, "Unidentified Stock Material," will not be allowed.

6-1.09 State Specification Numbers. The State Specification number of material furnished on the Contract shall conform to the number specified in these specifications or the special provisions for the material involved, except that material conforming to a later specification issue will be acceptable.

6-1.10 (Blank)

6-1.11 Samples. All materials must be fully equal to samples previously submitted. The Contractor shall furnish to the Engineer for testing, samples of all materials proposed to be used in the Work, and also samples of completed Portland cement concrete or asphaltic concrete work. When so required by the Engineer, the Contractor shall submit for approval samples of the various materials, together with the finish thereon, as specified for that intended to be used in the Work. All materials and workmanship shall be equal in every respect to that of the samples so submitted and approved. These samples shall be sent to such place as the Engineer may direct. In all cases, freight must be prepaid by the Contractor. These samples will be returned to the Contractor, if requested, freight collect.

Where samples are called for, 2 or more samples of materials to be used in fulfilling the requirements of the specifications shall be deposited with the Engineer as soon as possible prior to their use in the Work.

No materials or equipment of which samples are required to be submitted for approval shall be used on the Work until such approval has been given by the Engineer, save only at the Contractor's risk and expense, as cost of the work.

6-2 LOCAL MATERIALS

6-2.01 General. Local material is rock, sand, gravel, earth, or other mineral material, other than local borrow or selected material, obtained or produced from sources in the vicinity of the work specifically for use on the project. Local material does not include materials obtained from established commercial sources.

Local materials shall be furnished by the Contractor from any source the Contractor may elect, except that when mandatory local material sources of certain materials are designated in the special provisions, the Contractor shall furnish material from such designated mandatory sources.

The Contractor shall be responsible for making all arrangements necessary to obtain materials from any local material source other than a mandatory local material source. If the Contractor elects to obtain materials from a possible local material source, subject to the provisions of Section 6.02, "Possible Local Material Sources," the Contractor shall comply with the requirements of said section. If the Contractor elects to obtain material from any other non-mandatory source, the Contractor shall furnish the Engineer with satisfactory evidence that the Contractor has entered into an agreement with the property owner for obtaining material from such source and with copies of any necessary permits, licenses and environmental clearances before removing any material from such sources.

The furnishing of local materials from any source is subject to the provisions in Section 6-2, "Local Materials."

Unless described in the special provisions as a mandatory local material source, or approved in writing by the Engineer, material sources shall not be excavated at locations where the resulting scars will present an unsightly appearance from any highway. No payment will be made for material obtained in violation of this provision.

The Contractor shall, as cost of the work, make any arrangements necessary for hauling over local public and private roads from any source.

When requested by the Contractor in writing, the City will test materials from any local material source, which has not been previously tested. If satisfactory material from such local source is used in the Work, the Contractor will not be charged for the costs of the tests.

In all other cases, the cost of such testing requested by the Contractor shall be at the Contractor's expense, as cost of the work and deductions will be made from any moneys due or to become due the Contractor, sufficient to cover the costs of such tests.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in conforming to the provisions in this Section 6-2.01, for furnishing and producing materials from any source shall be considered as included in the cost of the work.

6-2.02 Possible Local Material Sources. Where the City has made arrangements with owners of land in the vicinity of a Project for the obtaining of material from an owner's property, Contractor may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. The Contractor may, if Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the Contract, and it is expressly understood and agreed that the City

assumes no responsibility to the bidder or Contractor whatsoever in respect to the arrangements made with the property owner to obtain materials therefrom and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quality or quantity of materials that can be obtained or produced from such property or the type or extent of processing that may be required in order to produce material conforming to the requirements of the specifications.

In those instances in which the City has compiled "Materials Information" said compilation may include the documents setting forth the arrangement made with some of the property owners for the obtaining of material from such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 6-2.02 concerning said documents. All necessary permits, licenses and environmental clearances needed to enable the Contractor to use a possible local material source for which the "Materials Information" compilation for the project does not include said permits, licenses and environmental clearances issued to the Department (whether or not the arrangement made by the City with the owner of the property is included in the compilation) shall be obtained by the Contractor and copies thereof shall be furnished to the Engineer before any material is removed from such source. The Contractor is cautioned to make such independent investigation and examination as the bidder or Contractor deems necessary for its satisfaction as to the quality and quantity of materials available from such property, the type and extent of processing that may be required in order to produce material conforming to the requirements of the specifications and the rights, duties and obligations acquired or undertaken under such arrangement with the property owner. Notwithstanding that the Contractor may elect to obtain materials from any such property owner's property, no material may be obtained from such property unless the Contractor has first either:

- (1) Executed a document that will guarantee to hold such owner harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises and also agree to conform to all other provisions set forth in the arrangement made between the City and the property owner. Said document will be prepared by the Engineer for execution by the Contractor, or
- (2) Entered into an agreement with the owner of the material source on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

If the Contractor elects to obtain material under (1), the use of such site shall be subject to the terms, conditions and limitations of the arrangement made between the property owner and the City, and the Contractor shall pay such charges as are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the Contract sufficient to cover the charges for such material removed.

If the Contractor elects to obtain material under (2), the Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the Contract to cover such charges.

Before acceptance of the Contract, the Engineer may require the Contractor to submit written evidence that the owner of the material source is satisfied that the Contractor has satisfactorily complied with the provisions of either (1), the arrangement between the City and the owner, or (2), the agreement between the owner and the Contractor, as the case may be.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing and producing specified materials from possible local material sources, including the construction of any access roads or fences and any clearing, grubbing and stripping of

material sources, and all processing of whatever nature and extent required, shall be considered as included in the price paid for the Contract item of Work involving such material and no additional compensation will be allowed therefor.

6-2.03 Mandatory Local Material Sources. The Contractor shall perform all work required to obtain and produce acceptable materials from the mandatory local material sources designated in the special provisions, if any, and the Contractor shall have no right to obtain such materials from any other source or sources. As part of such work in producing acceptable materials from the mandatory sources, it will be necessary for the Contractor to perform certain processing of the material as set forth in the special provisions. Any processing of the material required in addition to that specified in the special provisions which, in the opinion of the Engineer, is necessary to produce acceptable material from the mandatory sources will be paid for as extra work as provided in Section 13 of the Contract.

If the Engineer determines that the designated mandatory local material source or sources are no longer to be used because they are exhausted or for other reasons, the Engineer will designate an alternative mandatory local material source or sources from which the Contractor shall obtain the balance of the material required.

In such case the City will pay the Contractor for the cost of moving the Contractor's plant to such new mandatory source and erecting it as extra work for which Contractor is entitled to a Change Order pursuant to Section 13 of the Contract. Construction of access roads, fences, clearing and grubbing or stripping of such new mandatory source, ordered in writing by the Engineer to be performed, will be paid for as extra work as provided in Section 13 of the Contract. The Department will also allow or deduct, as the case may be, the increase or decrease in haul cost due to an increase or decrease in the length of haul involved. Increased haul costs will be paid for as extra work as provided the Contract and deductions for decreased haul will be determined in the same manner. No allowance or additional compensation will be made for lost time or for delay in completing the work due to moving the Contractor's plant from the designated mandatory source to the alternative mandatory source, other than an extension of time pursuant to Section 13 of the Contract. Any processing of the material required in addition to that specified in the special provisions for the originally designated mandatory source which, in the opinion of the Engineer, is necessary to produce acceptable material from the alternative mandatory source will be paid for as extra work as provided in Section 13 of the Contract.

The Contractor will be charged the same royalty as provided in the special provisions for the original designated mandatory local material source.

The Contractor shall, prior to entering a mandatory local material source or an alternative mandatory local material source, execute a document that will guarantee to hold the owner of such property harmless from all claims for injury to persons or damage to property resulting from the Contractor's operations on the property owner's premises. Said document will be prepared by the Engineer for execution by the Contractor.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in obtaining and producing specified materials from mandatory sources, including the construction of any access roads or fences and any clearing, grubbing, and stripping of mandatory local material sources, except as otherwise provided for in this Section 6-2.03, shall be considered as included in the price paid for the contract item of work involving such material and no additional compensation will be allowed therefor.

6-3 TESTING

6-3.01 General. Unless otherwise specified, all tests shall be performed in accordance with the methods used by the Department of Public Works, and shall be made by the Engineer or the Engineer's designated representative.

The City uses Caltrans and American Society for Testing and Material (ASTM) developed methods for testing the quality of materials and Work. These methods are identified by number and are referred to in the specifications as California and ASTM Tests. Copies of individual California Tests are available at the City's Material Testing Laboratory.

Whenever the specifications require compliance with specified values for the following properties, tests will be made by the California Test indicated unless otherwise specified:

Properties	California Test
Relative Compaction.....	216 or 231
Sand Equivalent.....	217
Resistance (R-value).....	301
Grading (Sieve Analysis).....	202
Durability Index.....	229

Whenever a reference is made in the specifications to a California Test by number, it shall mean the California Test in effect on the Notice to Proceed Date of the project.

Whenever the specifications provide an option between 2 or more tests, the Engineer will determine the test to be used.

Whenever a reference is made in the specifications to a specification, manual, or test designation either of the American Society for Testing and Materials, the American Association of State Highway and Transportation Officials, Federal Specifications, or any other recognized national organization, and the number or other identification representing the year of adoption or latest revision is omitted, it shall mean the specification, manual, or test designation in effect on the Notice to Proceed Date of the project.

Whenever said specification manual or test designation provides for test reports (such as certified mill test reports) from the manufacturer, copies of such reports, identified as to the lot of material, shall be furnished to the Engineer. The manufacturer's test reports shall supplement the inspection, sampling and testing provisions in Section 6, "Control of Materials," and shall not constitute a waiver of the City's right to inspect. When material which cannot be identified with specific test reports is proposed for use, the Engineer may, at the Engineer's discretion, select random samples from the lot for testing. Test specimens from the random samples, including those required for retest, shall be prepared in accordance with the referenced specification and furnished by the Contractor at the Contractor's expense, as cost of the work. The number of such samples and test specimens shall be entirely at the discretion of the Engineer. Unidentified metal products such as sheet, plate, hardware, etc. shall be subject to the requirements of Section 55-2.07, "Unidentified Stock Material."

When requested by the Engineer, the Contractor shall furnish, without and increase to the cost of the work, samples of all materials entering into the Work, and no material shall be used prior to approval by the Engineer, except as provided in Section 6-1.07, "Certificates of Compliance." Samples of material from local sources shall be taken by or in the presence of the Engineer, otherwise the samples will not be considered for testing.

6-3.02 Testing by Contractor. Contractor shall be responsible for controlling the quality of the material entering the Work and of the Work performed, and shall perform testing as necessary to ensure control. The test methods used for quality control testing shall be as determined by Contractor and shall conform to the requirements of the Contract and the approved Construction Quality Control Program. The results of the testing shall be made available to the Engineer upon request. These tests are for Contractor's use in controlling the Work and will also be used as acceptance tests in accordance with the Contract.

Full compensation for performing quality control tests and making the results available to the Engineer shall be considered as included in the Contract Price.

6-3.03 Statistical Testing. Whenever both individual test results and operating range requirements are specified in these specifications or the Special Provisions, materials shall meet both requirements. Materials used in the Work to replace materials which did not comply with requirements and were removed shall conform to the limits specified for the operating range.

Individual samples tested prior to the first use of aggregates from each source, or prior to the first use of aggregates after appreciable changes have been made in aggregate processing procedures, shall conform to the limits specified for the operating range.

If individual test results on materials used in the Work do not fall within specified limits, but the operating range utilizing such test results is within the specified operating range limits, the individual test results may be waived at the discretion of the Engineer. No test result for material used in the Work shall be omitted from the operating range determination.

Operating ranges shall be computed as follows:

Operating ranges shall be rounded to the same number of significant figures as are reported for individual test results. When the figure to be dropped is less than 5, round down; if greater than 5, round up, and if it is 5, round up or down to the even number.

Operating ranges shall be continuous for the entire Project. In determining an operating range for a material property, all of the individual test results that represent material actually used in the Work, except individual test results for portions of such material for which requirements have been revised by an executed Contract Change Order, shall be used in the calculation. The test results shall enter the calculation sequence in the chronological order that the Work is performed.

The first individual test results shall start an operating range and shall meet the operating range requirements. Until more than 4 test results are available, the operating range shall be the numerical average of the individual test results. When more than 4 test results are available, the operating range shall be determined by adding the last 4 individual test results, adding the new individual test results to this product and then dividing this sum by 5.

Where more than one source is used for a single material and the sources are not similar in all respects, a separate operating range shall be calculated for each source.

Where a single source provides material to more than one project, a separate operating range shall be calculated for each project. A single test result representing material delivered to different projects shall be used in each operating range for which it is appropriate and separate tests will not be required.

If individual test results on materials used in the Work do not fall within specified limits, but the operating range utilizing such test results is within the specified operating range limits, the individual test results may be waived at the discretion of the Engineer. No individual test result for material used in the Work shall be omitted from the operating range determination.

6-3.04 Field Tests, or Adjustments and Operations. The Contractor shall arrange for the presence of a manufacturer's representative or other qualified persons who shall instruct City operating personnel in the operation and care of all the various pieces of equipment and parts of the installation as determined by the Engineer. The Contractor shall superintend the operations of the equipment during the 30-day period and shall be responsible for the proper operation thereof, and shall make no claim against the City for any damage to the equipment during such operation, or for the services of the above-mentioned representatives or other qualified persons. The Contractor shall make changes, adjustments, or replacements of equipment as may be required to make the equipment comply with the specifications, or

to replace any defective parts or material.

END OF SECTION

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7-1.01	Laws to be Observed
7-1.01A	Labor Code Requirements
7-1.01A(1)	City Compliance Officer
7-1.01A(2)	Working Hours
7-1.01A(3)	Prevailing Wage
7-1.01A(4)	Payroll Records
7-1.01A(5)	Employee Sign In/Sign Out
7-1.01A(6)	Discrimination Prohibited
7-1.01A(7)	Apprentices
7-1.01A(8)	Workers' Compensation
7-1.01A(9)	Certified Electricians
7-1.01A(10)	Labor Standards Enforcement
7-1.01A(11)	Subcontractors
7-1.01B	Blank
7-1.01C	Contractor's Licensing Laws
7-1.01D	Blank
7-1.01E	Trench Safety
7-1.01F	Air Pollution Control
7-1.01G	Water Pollution
7-1.01H	Use of Pesticides
7-1.01I	Sound Control Requirements
7-1.01J	Assignment of Antitrust Actions
7-1.01K	Blank
7-1.01L	Blank
7-1.01M	Prohibition of Gifts
7-1.02	Weight Limitations
7-1.03	Payment of Taxes

7-1.04	Permits and Licenses
7-1.05	Patents
7-1.06	Safety and Health Provisions
7-1.07	Blank
7-1.08	Public Convenience
7-1.09	Public Safety
7-1.10	Use of Explosives
7-1.11	Preservation of Property
7-1.12	Responsibility for Damage
7-1.121	Protection of Contractor's Work and Property
7-1.122	Blank
7-1.122A	Blank
7-1.125	Blank
7-1.13	Disposal of Material outside the Project Limits
7-1.14	Cooperation
7-1.145	Mutual Responsibility of Contractors
7-1.15	Relief from Maintenance and Responsibility
7-1.16	Blank
7-1.165	Blank
7-1.166	Blank
7-1.17	Blank
7-1.18	Property Rights in Materials Rights
7-1.19	Rights in Land and Improvements
7-1.20	Repair of Equipment
7-1.21	Material Plants
7-1.22	Blank
7-1.23	Blank
7-1.24	Blank
7-1.25	Blank
7-1.26	Blank
7-1.27	Blank

7-1.28 Blank

7-1.29 Blank

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7-1.01 Laws to be Observed. The Contractor shall keep fully informed of all existing and future Governmental Rules which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with, and shall cause all the Contractor's agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and shall to the fullest extent allowed by law protect, defend and indemnify the City of San Jose, and all officers, employees, and agents thereof connected with the Work, including but not limited to the Engineer, against any claim or liability arising from any work performed under the Contract or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or their employees, subcontractors or suppliers at any tier unless such claim or liability arises due to the sole negligence or willful misconduct of the City, its officers, employees or agents, and as provided in the Contract. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Contract for the work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing.

7-1.01A Labor Code Requirements. Attention is directed to the following requirements of the Labor Code:

****MAS 1/23/2017**

****Section 7-1.01A(1) to 7-1.01A(11) was added from CSJ SS Std Special Provisions**

7-1.01A(1) City Compliance Officer

1. **City Compliance Officer:** For purposes of this Section 7-1.01A, the "City Compliance Officer" is the Director of the Office of Equality Assurance or such other City employee as the City Manager may designate as having primary responsibility for administering and enforcing the labor standard requirements set forth in this Section 7-1.01A. The term includes the City Compliance Officer's staff and any other City employees and agents authorized to assist in the administration and enforcement of these labor standards.

2. **Contact Information:** The address of the City's Office of Equality Assurance for purposes of correspondence and inquiries is 200 East Santa Clara Street, 5th Floor, San José CA 95113-1905. The Office's phone number is 408-535-8430.

3. **Scope of Authority:** The City Compliance Office has primary responsibility for administering and enforcing the prevailing wage requirements, the payroll requirements and all other labor standards required by this Contract.

7-1.01A(2) Working Hours

The Contractor shall comply with the working-hour requirements set forth in Sections 1810 through 1815 of the California Labor Code, which are incorporated into this Contract. Working-hour requirements include, but are not limited to, the following.

1. **General Requirement:** Eight hours constitutes a legal day's work. Employees of the Contractor cannot work more than 8 hours during any one calendar day and more than 40 hours during any one calendar week.
2. **Exception:** Notwithstanding the general requirement set forth above, the Contractor may permit its employees to work more than 8 hours per calendar day and 40 hours per calendar week if the Contractor pays at least 1 ½ times the basic rate of pay for all hours worked in excess of 8 hours per day.
3. **Record Keeping:** The Contractor must keep accurate records showing the name and actual hours worked each day and each calendar week by each of its employees. The Contractor shall make the records available at all reasonable hours for inspection by the City Compliance Officer or by the Division of Labor Standards Enforcement. The Contractor's failure to make and maintain the required records is a misdemeanor.
4. **Restitution for Underpayment:** If the Contractor requires or permits an employee to work in violation of the working-hour requirements set forth in this Section 7-1.01A(2), then the Contractor shall pay the employee the difference between the amount that should have been paid and the actual amount paid.
5. **Penalties:** In addition to paying restitution for an underpayment, the Contractor shall forfeit to the City \$25 for each employee for each calendar day during which the Contractor requires or permits such employee to work in violation of the working-hour requirements set forth in this Section 7-1.01A(2).
6. **Withholding of Restitution and Penalties:** The Engineer may withhold and retain from any payments or moneys due the Contractor the following: (1) the amount of any outstanding restitution resulting from an underpayment, and (2) the amount of any penalties resulting from such underpayment. The Engineer's right to withhold and retain moneys under this provision is separate and independent from any other right to withhold and retain moneys included in this Contract.

7-1.01A(3) Prevailing Wage

The Work in this Contract is a Public Work, as that term is defined for prevailing wage purposes in Sections 1720 through 1720.6 of the California Labor Code, and is subject to the City's prevailing wage policy set forth in Chapter 14.09 of Title 14 of the San José Municipal Code, entitled "Prevailing Wage Requirements for City Contracts Involving Public Works." In accordance with Chapter 14.09, the Contractor shall comply with the prevailing wage requirements set forth in Sections 1720 through 1782 of the California Labor Code, which are incorporated into this Contract. The prevailing wage requirements with which the Contractor must comply include, but are not limited to, the following:

1. **Prevailing Wage Requirement:** The Contractor shall pay, and shall cause its subcontractors to pay, employees performing Work not less than the general prevailing rates of per diem wages, for each craft, classification and type of worker, as determined by the Director of the Department of Industrial Relations of the State of California.
2. **Project-Specific Rates:** Copies of the General Prevailing Wage Determinations made by the Director of the Department of Industrial Relations of the State of California for each craft, classification and type of worker required to perform the Work are available from the City Compliance Officer. Please direct all questions regarding prevailing wage requirements to the City Compliance Officer.
3. **Unlisted Job Classifications:** The prevailing wage rate applicable to a craft, classification or type of worker not shown on the General Prevailing Wage Determinations shall be the rate applicable to the most closely related craft, classification or type of worker. Contact the Office of Equality Assurance

at (408) 535-8430 for crafts, classifications or types of workers not listed in the General Prevailing Wage Determinations.

4. **Paying Higher Wages:** The prevailing wage rates are minimum rates. The Contractor may pay workers more than the applicable prevailing wage rate. The City will not pay extra compensation based on the inability of the Contractor to hire workers at the prevailing wage rates.

5. **No Adjustments:** The City will not pay extra compensation based on increases in the prevailing wage rates during the term of the Contract.

6. **Posting Notice:** The Contractor must post at each job site at which Work is performed a sign informing employees that the City's prevailing wage requirements apply to the Work and that these requirements are enforced by the City Compliance Officer. The sign shall include the City Compliance Officer's telephone number and address. The Contractor also must post at each job site where Work is performed the General Prevailing Wage Determinations in effect for each craft, classification and type of worker employed required to perform the Work. If the Contractor fails to post the sign or General Prevailing Wage Determinations as required, the Engineer or City Compliance Officer shall have the right to do so.

7. **Restitution for Underpayment:** The Contractor, or any subcontractor of the Contractor, must pay the following amount to each employee who was paid less than the applicable prevailing wage rate during any period of time that such employee was performing Work: the difference between the applicable prevailing wage rate and the actual amount paid.

8. **Penalties:** The Contractor, and any subcontractor of the Contractor, shall forfeit up to \$200 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. The City shall determine the amount of the penalty based on the guidelines and factors set forth in Section 1775(2) of the California Labor Code.

9. **Liability for Subcontractor's Penalties:** The Contractor is liable for any penalties resulting from the payment of less than the prevailing wage rate by one of its subcontractors unless the Contractor can clearly demonstrate to the City Compliance Officer all of the following:

a. The contract between the Contractor and its subcontractor for the performance of the Work included a copy of Sections 1171, 1175, 1176, 1777.5, 1813 and 1815 of the California Labor Code; and

b. The Contractor periodically reviewed the certified payroll records of its subcontractor for payment of the specified general prevailing rate of per diem wages; and

c. Upon becoming aware of the subcontractor's payment of less than the applicable prevailing wage rate, the Contractor diligently took corrective action to halt or rectify the violation, including, but not limited to, retaining sufficient funds from payments due the subcontractor for Work performed; and

d. Before making final payment to its subcontractor, the Contractor obtained an affidavit, signed under penalty of perjury, from the subcontractor stating that the subcontractor paid each of its workers not less than the applicable general prevailing rate of per diem wages and any amounts due pursuant to Section 1813 of the California Labor Code.

10. **Withholding:** The Engineer may withhold and retain from payments or moneys due the Contractor the following: (1) the amount of any outstanding restitution resulting from an underpayment, (2) penalties resulting from such underpayment, and (3) any amounts required to satisfy any civil wage and penalty assessment issued by the California Labor Commission in accordance with the California

Labor Code. The Engineer's right to withhold under this provision is separate and independent from any other right to withhold moneys included in this Contract.

11. **Notice of Withholding:** The City Compliance Officer will provide written notice to the Contractor and subcontractor, if applicable, of any withholding resulting from a prevailing wage violation. The notice will describe the nature of the violation, the amount of wages, penalties and forfeitures withheld, and the procedure for obtaining review of the withholding.

a. **Service of Notice:** The City Compliance Officer will serve the notice by first-class and certified mail, in a sealed envelope, with postage prepaid, addressed to the person on whom it is to be served, at the office address last given for that person.

b. **Service on Surety:** The City Compliance Officer will also serve a copy of the notice by certified mail to the surety that issued the payment and performance bonds for the Contract.

c. **Appeal of Withholding:** In accordance with Section 1771.6 of the California Labor Code, the Contractor or the affected subcontractor may seek review of the City's withholding by transmitting a written request for review to the Office of the Labor Commissioner for the State of California. The Contractor or the affected subcontractor shall transmit a copy of the written request for review to the City Compliance Officer.

d. **Time to Appeal Withholding:** In accordance with Section 1742 of the California Labor Code, a written request to review a notice of withholding must be transmitted to the Office of the Labor Commissioner for the State of California within 60 calendar days after service of the notice. If review is not requested within 60 calendar days, then the City Compliance Officer's determination is final.

12. **Attachment 5:** The Contractor is directed to review Attachment 5 of the Bid Documents for further information regarding prevailing wage requirements applicable to this Contract.

7-1.01A(4) Payroll Records

The Contractor and each of its subcontractors shall make and keep payroll records in accordance with Section 1776 of the California Labor Code and with this Section 7-1.01A(3), both of which are incorporated into this Contract. The requirements to make and keep payroll records are as follows:

1. **General Requirement:** The Contractor and its subcontractors must keep accurate payroll records. For each journey-man, apprentice, worker, or other employee performing Work, the payroll records must show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages.

2. **Form of Payroll Records:** The Contractor and its subcontractors must prepare the payroll records on forms provided by the Division of Labor Standards Enforcement for the State of California on forms containing the same information as the forms provided by the Division of Labor Standards Enforcement. The Contractor and subcontractor shall obtain the approval of the City Compliance Officer before using any form other than one provided by the Division of Labor Standards Enforcement.

3. **Location of Payroll Records:** Within 10 working days of starting Work, the Contractor shall inform the City Compliance Officer of the location of all payroll records, including the street address, city, and county. Within 5 working days of changing the location of the payroll records, the Contractor shall notify the City Compliance Officer of the new location.

4. **Submission of Payroll Records with Progress Payment:** In accordance with Section 9-1.06A of the Special Provisions, entitled "Application for Progress Payment," the Contractor must submit the payroll records of its employees and those of its subcontractor(s) to the City with each application for progress payment. The payroll records submitted to the City shall meet all of the requirements set forth in this Section 7-1.01A(3).

a. **Verification/Certification:** The payroll records submitted to the City must be both verified, and the copies certified, by the Contractor or subcontractor that prepared the record. The verification must be a written declaration, made under penalty of perjury, stating the following: (1) the information contained in the payroll record is true and correct, and (2) the Contractor or subcontractor has complied with the requirements of Sections 1771, 1811 and 1815 for Work performed by its employees.

b. **Condition Precedent to Payment:** As set forth in Section 9-1.06A of the Special Provisions, the submission of verified and certified payroll records with each application for progress payment is an *express condition precedent* to the City's obligation to make a progress payment. An application for progress payment is incomplete in the absence of verified and certified payroll records, and the Engineer is not obligated to approve or make, in whole or in part, any progress payment due the Contractor until the Contractor has submitted the required payroll records.

5. **Written Request for Payroll Records:** The Contractor or subcontractor must provide verified and certified payroll records to the City Compliance Officer on or before 10 working days following receipt of the written request for such records by the City Compliance Officer.

a. **Penalties:** If the Contractor or subcontractor fails to timely comply with the request, then the Contractor or subcontractor, whichever one failed to provide the records, shall pay a penalty to the City of \$100 for each calendar day, or portion thereof, for each worker, until the records are provided. The Contractor is not liable for a penalty imposed as a result of a subcontractor's failure to comply with the City's written request for payroll records.

b. **Withholding:** The Engineer may withhold and retain from payments or moneys due the Contractor the amount of any penalties imposed based on a failure to timely respond to the City's written request for payroll records. The Engineer's right to withhold under this provision is separate and independent from any other right to withhold moneys included in this Contract.

6. **Inspection of Records by Employee:** A verified and certified copy of an employee's pay record shall be made available, on request, for inspection or given to the employee or the employee's authorized representative. The records shall be available at all reasonable hours at the principal office of the contractor.

7. **Inspection of Records by Department:** A verified and certified copy of all payroll records shall be made available, upon request, for inspection or furnished to the City Compliance Officer and the Division of Labor Standards Enforcement of the Department of Industrial Relations. The records shall be available at all reasonable hours at the principal office of the contractor.

7-1.01A(5) Employee Sign In/Sign out

The Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site. The Contractor shall establish procedures so that all employees sign in and out of the job site. The Contractor shall provide, upon request, a copy of the sign-in and sign-out sheet to the City Compliance Officer and to any employee or the employee's authorized representative.

7-1.01A(6) Discrimination Prohibited

1. **Labor Code Prohibition:** The Contractor must comply with, and is subject to, the employment non-discrimination requirements set forth in Section 1735 of the California Labor Code, which is incorporated into this Contract.
2. **City Prohibition:** The Contractor also must comply with, and is subject to, the nondiscrimination/nonpreference requirements set forth in Chapter 4.08 of Chapter 4 of the San José Municipal Code, entitled “Nondiscrimination Requirements for Contracts,” which is incorporated into this Contract.
 - a. **Attachment 1 of Contract:** The nondiscrimination/nonpreference requirements set forth in Attachment 1 of this Contract implement, in part, the requirements of Chapter 4.08. The Contractor shall comply with the requirements set forth in Attachment 1.
 - b. **Subcontractors:** The Contractor shall include the same provisions in Attachment 1 in every subcontract entered into in furtherance of the Contract so that such provisions are binding on each subcontractor.

7-1.01A(7) Apprentices

1. **Compliance:** The Contractor and its subcontractors shall comply with the requirements of the State Apprenticeship Program, as set forth in Section 1777.5 and Chapter 4 of division 3 of the California Labor Code (starting at Section 3070), which collectively are incorporated into this Contract. The Contractor is solely responsible for securing compliance with Section 1777.5 for all apprenticeable occupations.
2. **Subcontracts:** The Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.
3. **Evidence of Compliance:** The Contractor shall comply promptly with all requests of the City Compliance Officer for documentation that the Contractor and its subcontractors are in compliance with the State Apprenticeship Program.
4. **Penalties:** The Contractor is subject to the penalties set forth in Section 1777.7 of the California Labor Code for a failure to comply with the requirements of Section 1777.5. Section 1777.7 is incorporated into this Contract.
5. **Withholding:** The Engineer may withhold and retain from payments or moneys due the Contractor the amount of any penalties imposed based on a violation of Section 1777.5 of the California Labor Code. The Engineer’s right to withhold under this provision is separate and independent from any other right to withhold moneys included in this Contract.

7-1.01A(8) Workers’ Compensation

1. **Requirement:** The Contractor shall secure worker’s compensation for all of its employees in accordance with Section 3700 of the California Labor Code. By signing the Contract, the Contractor is certifying and filing with the City the following:

“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 provision before commencing the performance of the Work of this Contract.”

2. **Prohibition:** The Contractor is prohibited from performing Work if at the time of such Work the Contractor is not in compliance with Section 3700 of the California Labor Code. The Contractor must not allow a subcontractor to perform Work if at the time of such Work the subcontractor is not in compliance with Section 3700 of the California Labor Code.

3. **Proof of Compliance:** Before starting any Work, the Contractor shall provide the Engineer with one of the following: (1) satisfactory proof that it is properly insured by one or more insurers authorized to write worker’s compensation insurance in California, or (2) a valid certificate of consent to self-insure issued by the Director of Industrial Relations for the State of California.

a. **Maintaining Compliance:** The Contractor shall maintain such insurance or certificate of consent to self-insure for the term of the Contract.

b. **Requests for Proof of Compliance:** Upon the request of the Engineer at any time during the term of the Contract, the Contractor must provide satisfactory proof that it is in compliance with Section 3700 of the California Labor Code.

4. **Failure to Comply:** The Contractor’s failure to comply promptly with a request by the Engineer for proof of compliance with Section 3700 of the California Labor Code, or the Contractor’s failure to be in compliance with Section 3700, is a material breach of this Contract. Such breach is a basis for the Engineer to suspend Work in accordance with Section 8-1.05 of these Specifications. The Contractor is responsible for all costs and damages resulting from any such suspension of Work.

5. **Withhold:** If any injury occurs to any employee of the Contractor for which the employee, or the employee’s dependents, is entitled to compensation from the City under the California Labor Code provisions applicable to worker’s compensation, the Engineer may withhold and retain from any moneys due the Contractor an amount sufficient to cover such compensation.

6. **Subcontractors:** The Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of this Section 7-1.01A(8).

7-1.01A(9) Certified Electricians

The Contractor must use, and must cause its subcontractor(s) to use, properly certified persons to perform any Work as electricians in accordance with Chapter 4.5 of Division 1 of the California Labor Code, entitled “Electrician Certification” (Sections 108 – 108.5).

7-1.01A(10) Labor Standards Enforcement

1. **Cooperation:** The Contractor and its subcontractors shall cooperate fully with the City Compliance Officer as part of any action by the City Compliance Officer to administer and/or enforce the labor standards set forth in this Section 7-1.01A.

2. **Inspections:** The Contractor and its subcontractors agree that the City Compliance Officer has the following rights in the performance of the Officer’s duties: (1) to engage in random inspections of job sites, (2) to have access to the employees performing Work, and (3) to have access to employee time sheets, inspection logs, payroll records, paychecks and any other documents reasonably related to an appropriate investigation of the Contractor’s and subcontractor’s compliance with the labor standards set forth in this Section 7-1.01A.

3. **Audit:** The City Compliance Officer may audit such records of the Contractor and its subcontractors as the Officer deems necessary to determine compliance with the labor standards set forth in this Section 7-1.01A.

7-1.01A(11) Subcontractors

Notwithstanding anything to the contrary, the prevailing wage requirements, payroll record requirements and all other labor standard requirements set forth in this Section 7-1.01A are applicable to every subcontractor engaged by the Contractor to perform Work. The Contractor shall include in every such subcontract the following provision(s): (1) an agreement from the subcontractor that it is subject to each of the labor standard requirements set forth in this Section 7-1.01A, (2) an agreement from the subcontractor that it will comply with each of the labor standard requirements, and (3) an agreement from the subcontractor that the City Compliance Officer can enforce each of the labor standard requirements against the subcontractor to the same extent it can enforce the provisions against the Contractor.

7-1.01B (Blank)

7-1.01C Contractor's Licensing Laws. Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors.

All bidders and contractors shall be licensed in accordance with the laws of this State and any bidder or contractor not so licensed is subject to the penalties imposed by such laws.

In all City projects where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed at the time of bid in accordance with the laws of this state. At the time a federally funded contract is awarded, the Contractor shall be properly licensed in accordance with the laws of the State of California at the time the contract is awarded.

The first payment for work or material under any contract shall not be made by the City unless and until the Registrar of Contractors certifies to the City that the records of the Contractors State License Board indicate that the Contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors State License Board. 7-1.01D Vehicle Code. Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within such areas as are within the limits of the Project and are open to public traffic, Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code.

Attention is directed to the statement in said Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of Contractor's equipment and the protection of the public from injury and damage from such equipment.

7-1.01D Blank

7-1.01E Trench Safety. Attention is directed to the provisions of Section 6705 of the Labor Code concerning trench excavation safety plans.

7-1.01F Air Pollution Control. The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including any air pollution control rules, regulations, ordinances and statutes.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the Project right of way.

7-1.01G Water Pollution. The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule their operations so as to avoid or minimize

muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways, and other bodies of water, and shall consist of constructing those facilities required by the Contract Documents.

In order to provide effective and continuous control of water pollution, it may be necessary for the Contractor to perform the Contract Work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Contractor's operations. The Contractor shall coordinate water pollution control work with all other Work done on the Contract.

Before starting any construction Work on the Project, the Contractor shall submit, for acceptance by the Engineer, a program to control water pollution effectively during construction of the Project. Such program shall show the schedule for the erosion control work included in the Contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the Project to minimize the effects of their operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Engineer, until such program has been accepted.

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the Engineer may direct the Contractor to revise the operations and the water pollution control program. Such directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further Work shall be performed on said items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.

The City will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the Work due to the Contractor's failure to submit an acceptable water pollution control program.

The Contractor may request the Engineer to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if the Engineer deems it necessary because of the effect of the Contractor's operations.

Unless otherwise approved by the Engineer in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 750,000 square feet for each separate location, operation, or spread of equipment before either temporary or permanent erosion control measures are accomplished.

Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.

Nothing in the terms of the Contract nor in the provisions in this Section 7-1.01G shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.

When borrow material is obtained from other than commercially operated sources, erosion of the borrow

site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.

The requirements of this section shall apply to all work performed under the contract and to all non-commercially operated borrow or disposal sites used for the project.

The Contractor shall also conform to the following provisions:

1. Where working areas encroach on live streams, barriers adequate to prevent the flow of muddy water into streams shall be constructed and maintained between working areas and streams, and during construction of such barriers, muddying of streams shall be held to a minimum.
2. Removal of material from beneath a flowing stream shall not be commenced until adequate means, such as a bypass channel, are provided to carry the stream free from mud or silt around the removal operations.
3. Should the Contractor's operations require transportation of materials across live streams, such operations shall be conducted without muddying the stream. Mechanized equipment shall not be operated in the stream channels of such live streams except as may be necessary to construct crossings or barriers and fills at channel changes.
4. Water containing mud or silt from aggregate washing or other operations shall be treated by filtration, or retention in a settling pond, or ponds, adequate to prevent muddy water from entering live streams.
5. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream.
6. Portland cement or fresh Portland cement concrete shall not be allowed to enter flowing Water of streams.
7. When operations are completed, the flow of streams shall be returned as nearly as possible to a meandering thread without creating possible future bank erosion, and settling pond sites shall be graded so they will drain and will blend in with the surrounding terrain.
8. Material derived from roadway work shall not be deposited in a live stream channel where it could be washed away by high stream flows.
9. Where there is possible migration of anadromous fish in streams affected by construction on the project, the Contractor shall conduct their operations so as to allow free passage of such migratory fish.

Compliance with the requirements of this section shall in no way relieve the Contractor from their responsibility to comply with the other provisions of the Contract, in particular the Contractor's responsibility for damage and for preservation of property.

Full compensation for conforming to the requirements of this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefor.

7-1.01H Use of Pesticides. The Contractor shall comply with all rules and regulations of the State of California, Department of Food and Agriculture, the State of California. Department of Health, the State of California, Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of the Work on the Contract.

Pesticides shall include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes and any substance or mixture of substances intended for use as plant regulator, defoliant or desiccant shall be considered a pesticide.

7-1.01I Sound Control Requirements. The Contractor shall minimize noise and comply with all local sound control and noise level rules, regulations and ordinances which apply to any Work performed pursuant to the Contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

7-1.01J Assignment of Antitrust Actions. The Contractor's attention is directed to the following provisions of Government Code Sections 4553, and 4554 which shall be applicable to the Contractor and subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgement by the parties.

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

7-1.01K (Blank)

7-1.01L (Blank)

7-1.01M Prohibition of Gifts. Pursuant to Chapter 10.36, Part 5, "Prohibition of Gifts and Certain Contributions" of the City Municipal Code, the Contractor shall be familiar with the City's prohibition against acceptance of any gift by a City officer or designated employee. Said prohibition is found in Chapter 10.36 of the San Jose Municipal Code.

The Contractor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift prohibited by Chapter 10.36 shall constitute a material breach of this Contract by Contractor. In addition to any other remedies City may have in law or equity, City may terminate for cause this Contract for such breach as provided elsewhere in the Contract Documents.

7-1.02 Weight Limitations. Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set

forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not such area is subject to weight limitations under Section 7-1.01D, "Vehicle Code," except as hereinafter provided in this Section 7-1.02.

After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In such locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor at the Contractor's expense, as cost of the work, as directed by the Engineer.

Within the limits of the Project and subject to the control of the Engineer, and provided that the Contractor at the Contractor's expense, as cost of the work shall provide such protective measures as are deemed necessary by the Engineer and shall repair any damage caused by such operations, the Contractor will be permitted to:

- (1) Make transverse crossings of such portions of an existing public road or street as are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (2) Make transverse crossings of treated bases, surfacing, or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
- (3) Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the weight limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures:
 - (a) The maximum loading on bridge structures due to pneumatic-tired truck and trailer combinations shall not exceed (1) 28,000 pounds for single axles, (2) 48,000 pounds for tandem axles, nor (3) 60,000 pounds total gross load for single vehicles or 110,000 pounds total gross load for truck and trailer or semi-trailer combinations.
 - (b) The loading on bridge structures due to 2 and 3 axle pneumatic-tired earth movers shall not exceed that shown in the following table.

**ALLOWABLE CONSTRUCTION LOADING ON BRIDGES
FOR 2 AND 3 AXLE EARTH MOVERS**

Spacing of Bridge Girders	Maximum Axle Loading
(center to center in feet)	(in pounds)

4	28,000
5	29,000
6	30,000
7	32,000
8	34,000
9	37,000
10' and over	40,000

Minimum axle spacing:

For 3-axle earth movers

Axles 1 to 2 = 8 feet

Axles 2 to 3 = 20 feet

For 2-axle earth movers

Axles 1 to 2 = 20 feet

(4) Move equipment within the limits of the project over completed or existing be, surfacing, pavement, and structures, whether or not open to the public, in accordance with the limitations and conditions established by the Engineer.

Within the limits of the Project and subject to the condition that the Contractor shall repair, at the Contractor's expense, as cost of the work, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If such conditions are not set forth on the plans, the provisions in the first paragraph in this Section 7-1.02 will apply.

Should the Contractor desire to increase the load carrying capacity of a structure or structures which are to be constructed as a part of the Contract, in order to facilitate Contractor's own operations, the Contractor may request the Engineer to consider redesigning the structure or structures. Proposals by the Contractor to increase the load carrying capacity of structures above 130,000 pounds per single axle or pair of axles less than 8 feet apart, or above 330,000 pounds total gross vehicle weight, will not be approved. The request shall include a description of the structure or structures involved and a detailed description of the overloads to be carried, the date the revised plans would be required, and a statement that the Contractor agrees to pay all costs involved in the strengthening of the structure or structures, including the cost of revised plans, and further that the Contractor agrees that no extension of time will be allowed by reason of any delay to the work which may be due to the alteration of the structure or structures. If the Engineer determines that strengthening the structure or structures will be permitted, the Engineer will inform the Contractor of the estimated cost of the alterations, including engineering, and the date that revised plans could be furnished. If the cost and date are satisfactory to the Contractor, the Engineer will prepare a change order providing for the agreed upon alterations and payment to the City.

7-1.03 Payment of Taxes. The Contract Price paid for the Work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

In the event that Contractor will purchase from vendors or suppliers outside the State of California materials, machinery, tools, fixtures, or equipment totaling in excess of \$1 million for the Work, Contractor shall, prior to commencing the Work, obtain a sub-permit of its seller's permit designating the address in the City of San Jose where the Work is being performed as the jobsite using the State of California Board of Equalization form BOE-530 (Schedule C- Detailed Allocation by Suboutlet of Combined State and Uniform Local Sales and Use Tax). Contractor shall include this provision in all of its construction subcontracts for the project.

7-1.04 Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees as cost of the work, and give all notices necessary and incident to the due and lawful prosecution of the work in sufficient time to prevent delays to the work.

The Environmental Quality Act (Public Resources Code, Sections 21000 to 21176, inclusive) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from local agencies in connection with performing the Work of the Contract. The Contractor shall comply with the provisions of said statutes in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

In the event that the City has obtained permits, licenses or other authorizations, applicable to the work, the Contractor shall comply with the provisions of said permits, licenses and other authorizations.

****MAS 1/23/2017**

****Paragraph added to Section 7-1.04 was added from CSJ SS Std Special Provisions**

The Contractor shall defend, indemnify, and hold harmless the City, its employees, and its agents from all legal claims, losses, actions in law or equity civil and/or criminal, arising from any and all acts, omissions, or negligence of the Contractor in violation of any permit or license issued.

7-1.05 Patents. The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Work, and agrees to indemnify and hold harmless the City, its employees, duly authorized agents and duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes as provided in the Contract.

7-1.06 Safety and Health Provisions. The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the Federal Government, State of California, County of Santa Clara and the City of San Jose or any other government agency of competent jurisdiction.

All working areas utilized by the Contractor to perform Work during the hours of darkness, shall be lighted to conform to the minimum illumination intensities established by California Division of Occupational Safety and Health Construction Safety Orders.

All lighting fixtures shall be mounted and directed in a manner precluding glare to approaching traffic.

Full compensation for conforming to the requirements of this section shall be considered as included in the Contract prices paid for the various items of Work involved and no separate payment will be made therefor.

7-1.07 (Blank)

7-1.08 Public Convenience. This Section 7-1.08 defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with the Contractor's operations.

Attention is directed to Section 4-1.04, "Detours," for provisions relating to the passage of traffic around the work over detours.

Attention is directed to Section 7-1.09, "Public Safety," for provisions relating to the Contractor's responsibility for the safety of the public. The requirements in said Section 7-1.09 are in addition to the requirements of this Section 7-1.08 and the Contractor will not be relieved of any responsibilities as set forth in said Section 7-1.09 by reason of conformance with any of the provisions in this Section 7-1.08.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of this Section 7-1.08 and said Section 7-1.09.

In the event of a suspension of the work, attention is directed to Contract Section 14. The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible such traffic shall be routed on new or existing paved surfaces.

Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense, as cost of the work.

Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, and buildings along the line of the Work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right of way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered. Excavation and the construction of embankments shall be conducted in such manner as to provide a reasonably smooth and even surface satisfactory for use by public traffic at all times: sufficient fill at culverts and bridges to permit traffic to cross shall be placed in advance of other grading operations, and if ordered by the Engineer in writing roadway cuts shall be excavated in lifts and embankments constructed part width at a time, construction being alternated from one side to the other and traffic routed over the side opposite the one under construction. Culvert installation or culvert construction shall be conducted on but one-half the width of the traveled way at a time and that portion of the traveled way being used by public traffic shall be kept open and unobstructed until the opposite side of the traveled way is ready for use by traffic.

Upon completion of rough grading at the grading plane, or placing any subsequent layer thereon, the surface of the roadbed shall be brought to a smooth, even condition free of humps and depressions, satisfactory for the use of public traffic.

After subgrade preparation for a specified layer of material has been completed, the Contractor shall, at the Contractor's expense, as cost of the work, repair any damage to the roadbed or completed subgrade, including damage caused by the Contractor's operations or use by public traffic.

While subgrade and paving operations are underway, public traffic shall be permitted to use the shoulders and, if half-width paving methods are used, shall also be permitted to use the side of the roadbed opposite

the one under construction. When sufficient width is available, a passageway wide enough to accommodate at least 2lanes of traffic shall be kept open at locations where subgrade and paving operations are in active progress.

Upon written order by the Engineer, the Contractor shall furnish a pilot car and driver and flaggers for the purpose of expediting the passage of public traffic through the Work under one- way controls. At locations where traffic is being routed through construction under one-way controls and when ordered by the Engineer in writing, the movement of the Contractor's equipment from one portion of the Work to another shall be governed in accordance with such one-way controls.

Water or dust palliative shall be applied if ordered in writing by the Engineer for the alleviation or prevention of dust nuisance as provided in Section 10, "Dust Control."

In order to expedite the passage of public traffic through or around the work and where ordered in writing by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (Type K), barricades, and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work.

Whenever a section of surfacing, pavement, or the deck of a structure has been completed, the Contractor shall open it to use by public traffic if the Engineer so orders in writing or may open it to use by public traffic if the Engineer so consents. In either case, the Contractor will not be allowed any compensation due to any delay, hindrance, or inconvenience to the Contractor's operations caused by such public traffic, but will thereupon be relieved of responsibility for damage to completed permanent facilities caused by public traffic, within the limits of such use. The Contractor will not be relieved of any other responsibility under the contract nor will the Contractor be relieved of cleanup and finishing operations.

Full compensation for conforming to the requirements in this Section 7-1.08 and in the special provisions shall be considered as included in the Contract Price.

7-1.09 Public Safety. It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

Attention is directed to the insurance and indemnification requirements in Sections 9 and 18 of the Design-Build Contract. Attention is directed to Section 7-1.08, "Public Convenience," for provisions relating to the Contractor's responsibility for providing for the convenience of the public in connection with the Contractor's operations.

Attention is directed to Section 12, "Construction Area Traffic Control Devices," for requirements concerning flagging and traffic-handling equipment and devices used in carrying out the provisions of said Section 7-1.08 and this Section 7-1.09.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense, as cost of the work, furnish, erect and maintain such fences, temporary railing (Type K), barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

Such fences, temporary railing (Type K), barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, as cost of the work, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.

The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered.

Signs, lights, flags, and other warning and safety devices and their use shall conform to the requirements

set forth in the current Caltrans Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor at the Contractor's expense, as cost of the work, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor at the Contractor's expense, as cost of the work shall be approved by the Engineer as to size, wording and location.

The installation of general roadway illumination shall not relieve the Contractor of any responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workers and construction equipment on or across lanes onto public traffic shall be performed in a manner that will not endanger public traffic.

The Contractor's trucks or other mobile equipment which leave a freeway lane, that is on to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.

When leaving a Work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

Lanes, ramps, and shoulders shall be closed in accordance with the details shown on the plans, the provisions of Section 12, "Construction Area Traffic Control Devices," and as provided in the Contract Documents.

The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever the falsework or girders will reduce clearances available to public traffic.

Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks and shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less than 4 feet beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in accordance with the provisions in Caltrans Section 86-6.11, "Falsework Lighting."

The Contractor shall notify the Engineer not less than 15 days before the anticipated start of each falsework and girder erection operation whenever such falsework or girders will reduce clearances available to public traffic.

Where the height of vehicular openings through falsework is less than 15 feet, a W34B "Vertical Clearance" sign shall be provided above each opening facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that said signs are clearly visible. The minimum height of the letters and numbers shall be 6 inches and 10 inches, respectively.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Temporary facilities which the Contractor uses to perform the work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.

Temporary facilities which could be a hazard to public safety if improperly designed shall comply with

design requirements specified in the Contract for such facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved.

Full compensation for conforming to all of the provisions in this Section 7-1.09 shall be considered as included in the Contract Price and no additional compensation will be allowed therefor.

Should the Contractor be negligent or fail to furnish and/or maintaining warning and protective facilities as required herein, the City may furnish and/or maintain such facilities and charge Contractor therefor by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by City.

In the event the Contractor does not provide such flaggers and guards as are required by this section, the Director may request that the San Jose Police Department provide for public safety and that the costs related thereto shall be deducted from any periodic progress payments due the Contractor.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the right-of-way open for use by public traffic.

7-1.10 Use of Explosives. The use of explosives is expressly prohibited unless specifically provided for in the special provisions.

7-1.11 Preservation of Property. Attention is directed to Sections 9 and 18 of the Design-Build Contract, 7-1.12, "Responsibility for Damage," Section 8-1.10, "Utility and Non-Highway Facilities," and the Scope of Work. Due care shall be exercised to avoid injury to existing highway improvements or facilities, utility facilities, adjacent property, and roadside trees, shrubs, and other plants that are not to be removed.

Roadside trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway facilities, and any other improvements or facilities within or adjacent to the highway shall be protected from injury or damage, and if ordered by the Engineer in writing, the Contractor shall provide and install suitable safeguards, approved by the Engineer, to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense, as cost of the work. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work, or as good as required by the specifications accompanying the Contract, if any such objects are a part of the Work being performed under the Contract. The Engineer may make or cause to be made such temporary repairs as are necessary to restore to service any damaged highway facility. The cost of such repairs shall be borne by the Contractor and may be deducted from any moneys due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown upon the plans shall not relieve the Contractor of any responsibility under Section 8-1.10, "Utility and Non-Highway Facilities." It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities which may be subject to damage by reason of the Contractor's operations.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in protecting or repairing property as specified in this Section 7-1.11, shall be considered as included in the Contract Price paid for various items of work and no additional compensation will be allowed therefor.

7-1.12 Responsibility for Damage. The City and all agents, officers and employees thereof including

but not limited to the Engineer, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public, or for damage to property from any cause which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or at any time before its completion and final acceptance.

The Contractor shall protect, indemnify, defend and hold harmless the City and all agents, officers and employees thereof including but not limited to the Engineer, from all claims, suits or actions of every name, kind and description including attorney's fees, brought forth, or on account of, injuries to or death of any person including but not limited to workers and the public, or damage to property resulting from the performance of a Contract, as provided in the Design-Build Contract. With respect to third party claims against the Contractor, the Contractor waives any and all rights to any type of express or implied indemnity against the City, its agents, officers or employees.

It is the intent of the parties that the Contractor will indemnify and hold harmless the City, its agents, officers and employees from any and all claims, suits or actions as set forth above regardless of the existence or degree of fault or negligence on the part of the City, the Contractor, the Subcontractor or Subcontractors at any tier or employee of any of these, other than the sole negligence or willful misconduct of the City, its agents, officers and employees.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the City may be retained by the City until disposition has been made of such suits or claims for damages as aforesaid.

The retention of money due the Contractor shall be subject to the following:

1. The City will give the Contractor 30 day's notice of its intention to retain funds from any partial payment which may become due to the Contractor prior to acceptance of the Contract. Retention of funds from any payment made after acceptance of the Contract may be made without such prior notice to the Contractor.
2. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments pursuant to Section 9-1.06, "Partial Payments."
3. If the City has retained funds and it is subsequently determined that the City is not entitled to be indemnified and hold harmless by the Contractor in connection with the matter for which such retention was made, the City shall pay interest on the amount retained at the same rate as that received by the City on such funds for the period of such retention.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including but not limited to workers and the public, or damage to property. Contractor shall indemnify and hold harmless any county, city or district, their officers and employees connected with the Work, within the limits of which county, city or district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the City and all officers and employees thereof connected with the Work.

Nothing in this Contract is intended to make the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a

standard of care owed to the public or any member thereof.

7-1.121 Protection of Contractor's Work and Property. The Contractor shall protect their work, supplies and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever which is under the Contractor's control, until the completion and acceptance of the Work. Neither the City nor any of its agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the Work of the Contractor.

7-1.122 (Blank)

7-1.122A (Blank)

7-1.125 (Blank)

7-1.13 Disposal of Material outside the Project Limits. If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the City, or, if material is to be disposed of and the City has not made arrangements for disposal of such material, the Contractor shall make arrangements for disposing of materials outside the Project limits and the Contractor shall pay all costs involved as cost of the work. Arrangements shall include, but not be limited to, entering into agreements with property owners and obtaining necessary permits, licenses and environmental clearances. Before disposing of any material outside the project limits, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained said permits, licenses and clearances.

When any material is to be disposed of outside the Project right of way, and the City has not made arrangements for disposal of such material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer said authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on said property, and before any material is disposed of on said property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in said authorization.

When material is disposed of as above provided and the disposal location is visible from a highway, the Contractor shall dispose of the material in a neat and uniform manner to the satisfaction of the Engineer.

Where the City has made arrangements with owners of land in the vicinity of a project for the disposal of materials on an owner's property, such arrangements are made solely for the purpose of providing all bidders an equal opportunity to dispose of said materials on such property. Bidders or Contractors may, upon written request, inspect the documents evidencing such arrangements between property owners and the City. If the Contractor so elects, exercise any rights that have been obtained, which may be exercised by a Contractor under such arrangements, subject to and upon the conditions hereinafter set forth.

Such arrangements are not a part of the Contract and it is expressly understood and agreed that the City assumes no responsibility to the Contractor whatsoever in respect to the arrangements made with the property owner to dispose of materials thereon and that the Contractor shall assume all risks in connection with the use of such property, the terms upon which such use shall be made, and there is no warranty or guaranty, either express or implied, as to the quantity or types of materials that can be disposed of on such property.

In those instances in which the Department has compiled "Materials Information," said compilation will include the documents setting forth the arrangement made with some of the property owners for the disposal of material on such owners' properties. The inclusion of such documents therein shall not in any respect operate as a waiver of any of the provisions in this Section 71.13 concerning said documents.

The Contractor is cautioned to make such independent investigation and examination as the Contractor

deems necessary to satisfy itself as to the quantity and types of materials which may be disposed of on such property and the rights, duties and obligations acquired or undertaken under such arrangement with the property owner.

Notwithstanding that the Contractor may elect to dispose of materials on any such property owner's property, no material may be disposed of on such property unless the Contractor has first entered into an agreement with the owner of the disposal site on any terms mutually agreeable to the owner and the Contractor; provided that the Contractor shall furnish to the Engineer a release, in a form satisfactory to the Engineer, executed by the owner, relieving the City of any and all obligations under the City's arrangement with the owner.

The Contractor shall pay such charges as are provided for in the agreement between the owner and the Contractor and deductions will not be made from any moneys due or that may become due the Contractor under the Contract to cover such charges.

Before acceptance of the Contract the Engineer may require the Contractor to submit written evidence that the owner of the disposal site is satisfied that the Contractor has satisfactorily complied with the provisions of the agreement between the owner and the Contractor.

Full compensation for all costs involved in disposing of materials as specified in this Section 7- 1.13, including all costs of hauling, shall be considered as included in the Contract Price and no additional compensation will be allowed therefor.

7-1.14 Cooperation. Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the Site (including material sources) at any time, by the use of other forces.

When 2 or more contractors are employed on related or adjacent work, or obtain materials from the same material source, as provided in Section 6-2.02, "Possible Local Material Sources," or Section 6-2.03 "Mandatory Local Material Sources," each contractor shall conduct their operations in such a manner as not to cause any unnecessary delay or hindrance to the other.

Each contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish the work within the time specified for completion. The Contractor shall conduct, adjust, correct and coordinate its Work with the work of others to avoid discrepancies that may result in the whole work and shall defend, indemnify and hold the City harmless against any claims arising therefrom as provided in the Design-Build Contract. The Contractor, including Subcontractors at any tier, shall keep informed of the progress and the detail work of other contractors and shall notify the Engineer immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with the Contractor's own operations. Failure of a Contractor to keep informed of the work progressing on the Project Site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's work. If the Critical Path of the Work of the Contractor is delayed because of any acts or omissions of any other contractor, the Contractor shall have the right to request relief pursuant to the Design-Build Contract.

7-1.145 Mutual Responsibility of Contractors. If the Contractor or any of their Subcontractors or employees cause loss or damage to any other contractor, and if such other contractor makes a claim against the City, its employees or agents, on account of any loss so sustained, the City shall notify the Contractor, who shall defend, indemnify and save harmless the City, its employees and agents against any

such claim, expense or judgment arising therefrom as provided in the Design- Build Contract.

7-1.15 Relief From Maintenance and Responsibility. Upon the request of the Contractor, the Engineer may relieve the Contractor of the duty of maintaining and protecting certain portions of the Work as described below, which have been completed in all respects in accordance with the requirements of the Contract and to the satisfaction of the Engineer and of which City has taken occupancy or use, and thereafter except with the Engineer's consent, the Contractor will not be required to do further work thereon, except in accordance with the Warranties or as otherwise agreed by Contractor. In addition, such action by the Engineer will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by public traffic or from the action of the elements or from any other cause but not from injury or damage resulting from the Contractor's own operations or from the Contractor's negligence.

However, nothing in this Section 7-1.15 providing for relief from maintenance and responsibility will be construed as relieving the Contractor of full responsibility for making good defective work or materials found at any time before or after the formal written acceptance of the entire Contract by the Engineer.

If the Contractor is relieved of maintenance and responsibility of a portion of the Work performed under this contract and the City takes occupancy or use of that portion of the Work, the Contractor hereby agrees to provide reasonable access to the City's maintenance forces to properly maintain those areas occupied by the City.

7-1.16 (Blank)

7-1.165 (Blank)

7-1.166 (Blank)

7-1.17 (Blank)

7-1.18 Property Rights in Materials. Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been installed for their intended use or after partial payment has been made as provided in Section 12 of the Design- Build Contract, for material delivered on the ground or stored subject to or under the control of the City and unused. All such materials shall become the property of the City upon being so attached or affixed or shall become the property of City upon payment for materials delivered on the ground or stored subject to or under the control of the City and unused, as provided in Section 12 of the Contract.

7-1.19 Rights in Land and Improvements. Nothing in these specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or

use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of such land, structure, or building.

The Contractor shall not occupy City-owned property outside the right of way as shown on the plans or outside the expressly designated areas in the Contract Documents unless the Contractor enters into a rental agreement with the City. The agreement will be based on the fair rental values.

7-1.20 Repair of Equipment. The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the Work shall be considered a part of the Work to be performed under the Contract and any laborers, workers, or mechanics working on such machinery, equipment, or tools, unless employed by bona fide commercial repair shops, garages, blacksmith shops, or machine shops, which have been established and operating on a commercial basis for a period of at least 2 months prior to the award of the Contract, shall be subject to all the requirements

relating to labor set forth in the Contract Documents.

7-1.21 Material Plants. The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of the City shall be considered a part of the Work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract Documents.

7-1.22 (Blank)

7-1.23 (Blank)

7-1.24 (Blank)

7-1.25 (Blank)

7-1.26 (Blank)

7-1.27 (Blank)

7-1.28 (Blank)

7-1.29 (Blank)

END OF SECTION

SECTIONS PROSECUTION AND PROGRESS

8-1.01	Subcontracting
8-1.02	Assignment
8-1.03	Beginning of Work
8-1.04	Blank
8-1.05	Blank
8-1.06	Blank
8-1.06A	Blank
8-1.07	Blank
8-1.07A	Blank
8-1.08	Blank
8-1.09	Blank
8-1.10	Utility and Non-Highway Facilities
8-1.11	Blank
8-1.11A	Blank
8-1.12	Blank
8-1.13	Blank

SECTION 8

PROSECUTION AND PROGRESS

8-1.01 Subcontracting. The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the work under the Contractor's control.

No Subcontractor will be recognized by City as such and purpose of City, and all persons engaged in the Work will be considered by City as employees of the Contractor and the Contractor will be held responsible for their Work, which shall be subject to the provisions of the Contract Documents.

Contractor shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State. Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at http://www.dir.ca.gov/dir/Labor_law/DLSE/Debar.html.

Before Work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the Work to be subcontracted, the names of the Subcontractors and the description of each portion of the Work to be so subcontracted.

When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the Subcontractor or any designated employee of the Subcontractor shall be removed immediately on the request of the Engineer and shall not again be employed on the Work.

The roadside production of materials produced by other than the Contractor's forces shall be considered as subcontracted. Roadside production of materials shall be construed to be production of aggregates of all kinds with portable, semiportable or temporary crushing or screening, proportioning, and mixing plants established or reopened for the purpose of supplying aggregate or material for a particular project or projects. The erection, establishment, or reopening of such plants and the operation thereof in the production of said materials for use on the Work shall conform to the requirements relating to labor set forth in these specifications and in the special provisions.

Nothing contained in the specifications or plans shall be construed as creating any contractual relationship between any Subcontractor and the City. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among Subcontractors or to limit the work performed by any trade.

The Contractor shall be fully responsible to the City for the acts and omissions of Subcontractors, and of persons employed by the Contractor.

The Contractor shall be responsible for the coordination of trades, subcontractors, and suppliers engaged upon the Work.

Any and all Subcontractors or material suppliers at any tier shall be bound by the provisions of these specifications.

8-1.02 Assignment. The performance of the Contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or the original Contractor's surety of their responsibilities under the Contract nor will the City consent to any assignment of a part of the Work under the Contract.

The Contractor may assign moneys due or to become due under the Contract and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper set-offs in favor of the City and to all deductions provided for in

the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the Work in the event that the Contractor should be in default therein.

8-1.03 Beginning of Work. The Contractor shall notify the Engineer, in writing, of the Contractor's intent to begin work at least 72 hours before Work is begun. The notice shall be delivered to the Office of the Engineer and shall specify the date the Contractor intends to start. If the Project has more than one location of Work, a separate notice shall be given for each location.

Should the Contractor begin work in advance of receiving Notice to Proceed, any Work performed in advance of the said date of Notice to Proceed shall be considered as having been done by the Contractor's own risk and expense and as a volunteer unless a Notice to Proceed is subsequently issued. Should any Work be performed prior to Notice to Proceed, such Work shall be subject to inspection and acceptance by City as provided for elsewhere in the Contract Documents.

8-1.04 (Blank)

8-1.05 (Blank)

8-1.06 (Blank)

8-1.06A (Blank)

8-1.07 (Blank)

8-1.07A (Blank)

8-1.08 (Blank)

8-1.09 (Blank)

8-1.10 Utility and Non-Highway Facilities. Attention is directed to Section 7-1.11, "Preservation of Property," and Section 7-1.12, "Responsibility for Damage," the insurance and indemnification requirements in Sections 9 and 18 of the Contract, Article 6 of the Contract, and the Scope of Work. The Contractor shall protect from damage utility and other non-highway facilities that are to remain in place, be installed, relocated or otherwise rearranged.

The right is reserved to the City and the owners of facilities, or their authorized agents, to enter upon the highway right-of-way for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such other forces. Wherever necessary, the work of the Contractor shall be coordinated with the rearrangement of utility or other non-highway facilities, and the Contractor shall make arrangements with the owner of such facilities for the coordination of the work.

Attention is directed to the possible existence of facilities not indicated on the City-Provided Information and to the possibility that utility lines may be in locations different from that which is indicated in the City-Provided Information. The Contractor shall ascertain the exact location, size and type of all lines within the Project Site or otherwise potentially impacted by Project construction, whether or not such lines are shown in the City-Provided Information, the location of their service laterals or other appurtenances, and of existing service lateral or appurtenances of any other underground facilities which can be inferred from the presence of visible facilities such as buildings, meters and junction boxes prior to doing Work that may damage any of such facilities or interfere with their service.

If the Contractor cannot locate an underground facility whose presence is indicated on the City-Provided Information, the Contractor shall so notify the Engineer in writing. If the Contractor discovers

underground main or trunk lines not indicated on the City-Provided Information, the Contractor shall immediately give the Engineer and the Utility Company written notification of the existence of such facilities. Such main or trunk lines shall be located and protected from damage as directed by the Engineer. The Contractor shall, if directed by the Engineer, repair any damage which may occur to such main or trunk lines.

Should the Contractor desire to have any rearrangement made in any utility facility, or other improvement, for the Contractor's convenience in order to facilitate construction operations, the Contractor shall request that the City make whatever arrangements are necessary with the owners of such utility or other non-highway facility for such rearrangement and City shall bear all expenses in connection therewith.

The Contractor shall immediately notify the Engineer of any delays to operations as a direct result of underground main or trunk line facilities which were not indicated on the plans or in the special provisions or were located in a position substantially different from that indicated on the plans or in the special provisions, or as a direct result of utility or other non-highway facilities not being rearranged as herein provided (other than delays in connection with rearrangements made to facilitate construction operations or delays due to a strike or labor dispute).

Nothing herein shall preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by Contract to pay the cost of removal or relocation of existing utility facilities.

8-1.11 (Blank)

8-1.11A (Blank)

8-1.12 (Blank)

8-1.13 (Blank)

END OF SECTION

SECTION9
MEASUREMENT AND PAYMENT

9-1.01	Measurement of Quantities
9-1.015	Final Pay Quantities
9-1.02	Blank
9-1.03	Force Account Payment
9-1.03A	Work Performed by Contractor
9-1.03A(1)	Labor
9-1.03A(1a)	Actual Wages (Construction Work)
9-1.03A(1b)	Labor Surcharge (Construction Work)
9-1.03A(1c)	Subsistence and Travel Allowance (Construction Work)
9-1.03A(1d)	Cost of Labor (Non-Construction-Related Work)
9-1.03A(2)	Materials
9-1.03A(2a)	
9-1.03A (2b)	
9-1.03A (2c)	
9-1.03A (2d)	
9-1.03A (2e)	
9-1.03A(3)	Equipment Rental
9-1.03A(3a)	Equipment on the Work
9-1.03A(3b)	Equipment not on the Work
9-1.03A(3c)	Owner-Operated Equipment
9-1.03A(3d)	Dump Truck Rental
9-1.03B	Work Performed by Special Forces or Other Special Services
9-1.03C	Records
9-1.03D	Payment
9-1.04	Blank
9-1.05	Blank
9-1.06	Partial Payments
9-1.065	Payment of Withheld Funds

SECTION 9

MEASUREMENT AND PAYMENT

9-1.01 Measurement of Quantities. All Work to be paid for at a price per unit of measurement will be measured by the Engineer in accordance with United States Standard Measures. A ton shall consist of 2,000 pounds avoirdupois.

Unless shipped by rail, material paid for by weight shall be weighed on scales furnished by and at the expense of the Contractor as cost of the work, or on other sealed scales regularly inspected by the Division of Measurement Standards or its designated representative.

All weighing, measuring and metering devices used to measure the quantity of materials used in the work shall be suitable for the purpose intended and shall conform to the tolerances and specifications as outlined in Title 4, Chapter 8 of the California Administrative Code, the provisions of the California Business and Professions Code, Division 5, and these specifications. Devices not Type-approved by the Division of Measurement Standards shall be Type-approved in accordance with California Test 109.

All weighing, measuring or metering devices used to determine the quantity of materials to be paid for will be considered to be "commercial devices," and shall be sealed by the Division of Measurement Standards or its authorized representative as often as the Engineer may deem necessary. The installation of all portable vehicle scales must be approved by the Engineer prior to sealing.

Vehicle scales shall be of sufficient size to permit the entire vehicle or combination of vehicles to rest on the scale deck while being weighed. Combination vehicles may be weighed as separate units provided they are disconnected while being weighed. The maximum concentrated load shall not exceed the manufacturer's designed sectional capacity of the scale.

All weighing, measuring or metering devices required by these specifications for the purpose of proportioning a material or product will be considered to be "non-commercial devices," and shall be tested and approved in accordance with California Test 109. This testing shall be done by one of the following, in the presence of the Engineer, as often as the Engineer deems necessary:

A County Sealer of Weights and Measures

A Scale Service Agency

A Division of Measurement Standards Official

The Contractor shall notify the Engineer at least 24 hours in advance of testing the device. All undersupports for scale bearing points shall be constructed of Portland cement concrete produced from commercial quality aggregates and cement, which contains not less than 470 pounds of cement per cubic yard. Undersupports shall be constructed in a manner to prevent any shifting or tilting of the support. They shall have a minimum height of 14 inches above ground line. The footings shall have a minimum depth of 6 inches below the ground line. The bearing surface of the footings shall have a minimum width of 30 inches and shall be of such area that the pressure does not exceed 4,000 pounds per square foot. Adequate drainage shall be provided to prevent saturation of the ground under the scale. Scale bulkheads shall be of adequate material and strength to resist displacement.

If timber bulkheads are used, the minimum cross section shall be 8 inches by 8 inches. Wedges shall not be used to shim the supports. If shimmying is necessary, it shall be done by securely attached metal shims, or by grouting. Shimmying shall not exceed 3 inches. The approach ramps shall be level with the scale deck for a distance of not less than 1/2 the length of the scale deck. The mechanical indicating elements shall be installed level and plumb and shall be rigidly mounted upon a concrete foundation.

The lever system and mechanical indicating elements of hopper scales shall be rigidly attached to non-

yielding supports in such a manner as to prevent any loss in weight due to bending and distortion of the supports.

When a multiple beam type scale is used in proportioning materials, an over and under indicator shall be provided which will give positive visible evidence of the amount of any over and under weight. The indicator shall be so designed that it will operate during the addition of the last 200 pounds of any weighing. The over-travel of the indicator shall be at least 1/3 of the loading travel. Indicators shall be enclosed against moisture and dust.

All over and under, dial, and other indicators for weighing and measuring systems used in proportioning materials shall be grouped so that the smallest increment for each indicator can be accurately read from the point at which the proportioning operation is controlled.

The Contractor shall bear the expense, as cost of the work of all service fees for testing and approving of "non-commercial devices." The cost of the equipment, labor and materials furnished by the Contractor to assist in the testing of weighing, measuring or metering devices will be considered as included in the contract prices paid for the various contract items requiring said weighing, measuring or metering and no separate payment will be made there.

Whenever pay quantities of material are determined by weighing, the scales shall be operated by a weighmaster licensed in accordance with the provisions of the California Business and Professions Code, Division 5, Chapter 7. The Contractor shall furnish a Public Weighmaster's certificate or certified daily summary weigh sheets. A representative of the Department may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.

When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the Engineer at the point of delivery of the material.

If material is shipped by rail, the car weights will be accepted provided that actual weight of material only will be paid for and not minimum car weight used for assessing freight tariff, and provided further that car weights will not be acceptable for material to be passed through mixing plants.

Vehicles used to haul material being paid for by weight shall be weighed empty daily and at such additional times as the Engineer may direct. Each vehicle shall bear a plainly legible identification mark. Vehicles may from time to time be required by the Engineer to have the weight of the material to be paid for verified by weighing the empty and loaded vehicle on such other scales as the Engineer may designate.

All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.

All materials which are specified for measurement by the cubic yard "measured in the vehicle" shall be hauled in vehicles of such type and size that the actual contents may be readily and accurately determined. Unless all vehicles are of uniform capacity, each vehicle must bear a plainly legible identification mark indicating its water level capacity. All vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. Loads hauled in vehicles not meeting the above requirements or loads of a quantity less than the capacity of the vehicle, measured after being leveled off as above provided, will be subject to rejection, and no compensation will be allowed for such material.

When material is to be measured and paid for on a volume basis and it is impractical to determine the volume by the specified method of measurement, or when requested by the Contractor in writing and approved by the Engineer in writing, the material will be weighed in accordance with the requirements specified for weight measurement and such weights will be converted to volume measurement for

payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be agreed to by the Contractor before such method of measurement of pay quantities will be adopted.

Quantities of material wasted or disposed of in a manner not called for under the Contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the Contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the Work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

The weight of all aggregate or other roadway material which is to be paid for on a weight basis, except imported borrow, imported topsoil, straw, fiber, aggregate subbases, aggregate bases or aggregate for cement treated bases, will be determined by deducting from the weight of material, the weight of water in the material at the time of weighing in excess of 3 percent of the dry weight of the material. When imported borrow, imported topsoil, or aggregate subbase is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of the material, the weight of water in the material at the time of weighing in excess of 6 percent of the dry weight of the material. When straw is being paid for on weight basis, the weight to be paid for will be determined by deducting from the weight of straw, the weight of water in the straw at the time of weighing in excess of 15 percent of the dry weight of the straw. When fiber is being paid for on a weight basis, the weight of water in the fiber at the time of weighing shall not exceed 15 percent of the dry weight of the fiber. No deduction will be made for the weight of water in fiber. The percentage of water in the material shall be determined by California Test 226. The weight of aggregate base and aggregate for cement treated bases which are to be paid for on a weight basis, will be determined as provided in Section 26, "Aggregate Bases," and Section 27, "Cement Treated Bases," respectively.

The weight of water deducted as provided in this Section 9-1.01 will not be paid for.

Full compensation for all expense, deemed as cost of the work, involved in conforming to the requirements specified in this Section 9-1.01 shall be considered as included in the prices paid for the materials being measured or weighed and no additional compensation will be allowed therefor.

9-1.015 Final Pay Quantities. When the estimated quantities for a specific portion of the Work are designated in the Contract as final pay quantities, said estimated quantities shall be the final quantities for which payment for such specific portion of the Work will be made, unless the dimensions of said portions of the Work shown on the plans are revised by the Engineer. If such dimensions are revised, and such revisions result in an increase or decrease in the quantities of such Work, the final quantities for payment will be revised in the amount represented by the changes in the dimensions. The estimated quantities for such specific portion of the Work shall be considered as approximate only and no guarantee is made that the quantities which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantities. No allowance will be made in the event that the quantities based on computations do not equal the estimated quantities.

When portions of an item have been designated in the Contract as final pay quantities, portions not so designated will be measured and paid for in accordance with the applicable provisions of these specifications and the special provisions.

In case of a discrepancy between the quantities designated in the Contract as final pay quantities and the quantity of the same item shown in the Engineer's Estimate, payment will be based on the final pay quantities shown on the plans.

9-1.02 (Blank)

9-1.03 Force Account Payment. When extra Work is to be paid for on a force account basis, the labor, materials and equipment used in the performance of such Work shall be subject to the approval of the Engineer and compensation will be determined as follows:

9-1.03A Work Performed by Contractor. The Contractor will be paid the direct costs for labor, materials and equipment used in performing the work determined as hereinafter provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," except where agreement has been reached to pay in accordance with Section 9-1.03B, "Work Performed by Special Forces or Other Special Services."

To the total of the direct costs for Work performed on a force account basis, computed as provided in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental," there will be added a markup of 15 percent to the cost of labor, 15 percent to the cost of materials, and 15 percent to the equipment rental.

The above markups shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically designated as cost or equipment rental in Sections 9-1.03A (1), "Labor," 9-1.03A (2), "Materials," and 9-1.03A (3), "Equipment Rental." The total payment made as provided above shall be deemed to be the actual cost of such Work and shall constitute full compensation therefor.

When extra Work to be paid for on a force account basis is performed by a Subcontractor, approved in accordance with the provisions in Section 8-1.01, "Subcontracting," an additional markup of 5 percent will be added to the total cost of said extra work including all markups specified in this Section 9-1.03A. Said additional 5 percent markup shall reimburse the Contractor for additional overhead, job site, home office and administrative costs, and no other additional payment will be made by reason of performance of the extra Work by a Subcontractor.

The additional 5 percent markup will be added once only, regardless of whether the work is performed by the Subcontractor or further subcontracted.

Full compensation for overhead costs for Work performed on a force account basis shall be considered as included in the markups specified above, and no additional compensation will be allowed therefor.

9-1.03A(1) Labor. The Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the Work. The cost of labor, whether the employer is the Contractor, subcontractor, or other forces, will be the sum of the following:

9-1.03A(1a) Actual Wages (Construction Work). The actual wages paid shall be limited to the following components: basic hourly rate, health and welfare, pension, vacation/holiday, and training.

9-1.03A(1b) Labor Surcharge (Construction Work). To the actual wages, as defined in Section 9-1.03A(1a), will be added a labor surcharge of 15%. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workers, other than actual wages as defined in Section 9-1.03A(1a) and subsistence and travel allowance as specified in Section 9-1.03A(1c).

9-1.03A(1c) Subsistence and Travel Allowance (Construction Work). The actual subsistence and travel allowance paid to such workers.

9-1.03A(1d) Cost of Labor (Non-Construction-Related Work). The cost of labor for non-construction-related Work (including design, surveying, utility coordination, permits, professional environmental services and similar aspects of the Work), whether provided by Contractor or a Subcontractor, will equal the sum of (1) actual wages (i.e. the base wage paid to the employee exclusive

of fringe benefits), plus (2) a labor surcharge of 40% on such amount, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the workers, in excess of actual wages, as well as for overhead.

9-1.03A(2) Materials. The City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials.

Only materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, Subcontractor or other forces, from the supplier thereof, except as the following are applicable:

9-1.03A(2a)- If a cash or trade discount by the actual supplier is offered or available to the purchaser, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.

9-1.03A(2b)- If materials are procured by the purchaser by any method which is not a direct purchase from and a direct billing by the actual supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual supplier as determined by the Engineer plus the actual costs, if any, incurred in the handling of such materials.

9-1.03A(2c)- If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.

9-1.03A(2d)- If the cost of such materials is, in the opinion of the Engineer, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in Section 9-1.03A(2a).

9-1.03A(2e)- If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof within 60 days after the date of delivery of the material or within 15 days after acceptance of the Contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such materials were available in the quantities concerned delivered to the location of the Work, less any discounts as provided in Section 9-1.03A(2a).

9-1.03A(3) Equipment Rental. The Contractor will be paid for the use of equipment at the rental rates listed for such equipment in the Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract, regardless of ownership and rental or other agreement, if such may exist, for use of such equipment entered into by the Contractor, except that for those pieces of equipment with a rental rate of \$10.00 per hour or less as listed in the Labor Surcharge And Equipment Rental Rates publication and which are rented from a local equipment agency, other than Contractor owned, the Contractor will be paid at the hourly rate shown on the rental agency invoice or agreement for the time used on force account work as provided in Section 9-1.03A (3a), "Equipment on the Work." If a minimum equipment rental amount is required by the local equipment rental agency, the actual amount charged will be paid to the Contractor.

If it is deemed necessary by the Engineer to use equipment not listed in said publication, a suitable rental rate for such equipment will be established by the Engineer. The Contractor may furnish any cost data which might assist the Engineer in the establishment of such rental rate. If the rental rate established by the Engineer is \$10.00 per hour or less, the provisions above concerning rental of equipment from a local equipment agency shall apply.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Operators of rented equipment will be paid for as provided in Section 9-1.03A(I), "Labor."

All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum ratings recommended by the manufacturer.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$500 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

Rental time will not be allowed while equipment is inoperative due to breakdowns.

9-1.03A(3a) Equipment on the Work. The rental time to be paid for equipment on the Work shall be the time the equipment is in operation on the extra work being performed, and in addition, shall include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location requiring no more time than that required to return it to its original location, except that moving time will not be paid for if the equipment is used at the site of the extra Work on other than such extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made if the equipment is used at the site of the extra Work on other than such extra Work.

The following shall be used in computing the rental time of equipment on the Work:

- (1) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.
- (2) When daily rates are listed, less than 4 hours of operation shall be considered to be 1/2 day of operation.

9-1.03A(3b) Equipment not on the Work. For the use of equipment moved in on the work and used exclusively for extra work paid for on a force account basis, the Contractor will be paid the rental rates listed in the State of California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract, or determined as provided in Section 9-1.03A (3) and for the cost of transporting the equipment to the location of the work and its return to its original location, all in accordance with the following provisions:

- (1) The original location of the equipment to be hauled to the location of the work shall be agreed to by the Engineer in advance.
- (2) The City will pay the costs of loading and unloading such equipment.
- (3) The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers.
- (4) The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.
- (5) The rental period shall begin at the time the equipment is unloaded at the site of the extra work,

shall include each day that the equipment is at the site of the extra work, excluding Saturdays, Sundays, and legal holidays unless the equipment is used to perform the extra work on such days, and shall terminate at the end of the day on which the Engineer directs the Contractor to discontinue the use of such equipment. The rental time to be paid per day will be in accordance with the following:

<i>Hours Equipment in Operation</i>	<i>Hours to be paid</i>
0	4
0.5	4.25
1	4.5
1.5	4.75
2	5
2.5	5.25
3	5.5
3.5	4.75
4	6
4.5	6.25
5	6.5
5.5	6.75
6	7
6.5	7.25
7	7.5
7.5	7.75
8	8
Over 8	Hours in operation

The hours to be paid for equipment which is operated less than 8 hours due to breakdowns, shall not exceed 8 less the number of hours the equipment is inoperative due to breakdowns.

(6) When hourly rates are listed, less than 30 minutes of operation shall be considered to be 1/2 hour of operation.

(7) When daily rates are listed, payment for 1/2 day will be made if the equipment is not used. If the equipment is used, payment will be made for one day. The minimum rental time to be paid for the entire rental period on an hourly basis shall not be less than 8 hours or, if on a daily basis, shall not be less than one day.

(8) Should the Contractor desire the return of the equipment to a location other than its original location, the City will pay the cost of transportation in accordance with the above provisions, provided

such payment shall not exceed the cost of moving the equipment to the Work.

(9) Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the work: in any other way than upon extra work paid for on a force account basis.

When extra Work, other than Work specifically designated as extra Work in the Contract Documents, is to be paid for on a force account basis and the Engineer determines that such extra Work requires the Contractor to move on to the Work equipment which could not reasonably have been expected to be needed in the performance of the Contract, the Engineer may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following additional conditions:

The Engineer shall specifically approve the necessity for the use of particular equipment on such Work, Contractor shall establish to the satisfaction of the Engineer that such equipment cannot be obtained from a normal equipment source or sources and those of the Subcontractors,

The Contractor shall establish to the satisfaction of the Engineer that the proposed equipment rental rate for such equipment from the proposed source is reasonable and appropriate for the expected period of use.

The Engineer shall approve the equipment source and the equipment rental rate to be paid by the City before the Contractor begins work involving the use of said equipment.

9-1.03A(3c) Owner-Operated Equipment. When owner-operated equipment is used to perform extra Work to be paid for on a force account basis, the Contractor will be paid for the equipment and operator, as follows:

Payment for the equipment will be made in accordance with the provisions in Section 9-1.03A(3), "Equipment Rental."

Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the Contractor to other workers operating similar equipment already on the Project or, in the absence of such other workers, at the rates for such labor established by collective bargaining agreements for the type of worker and location of the Work, whether or not the owner operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein, in accordance with the provisions in Section 9-1.03A(1b), "Labor Surcharge."

To the direct cost of equipment rental and labor, computed as provided herein, will be added the markups for equipment rental and labor as provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03A(3d) Dump Truck Rental. Dump truck rental shall conform to the provisions in Sections 9-1.03A(3), "Equipment Rental," 9-1.03A(3a), "Equipment on the Work," and 9-1.03A(3b), "Equipment not on the Work," except as follows:

Fully maintained and operated rental dump trucks used in the performance of extra Work paid for on a force account basis will be paid for at the same hourly rate paid by the Contractor for use of fully maintained and operated rental dump trucks in performing contract item Work.

In the absence of contract item Work requiring dump truck rental, the City will establish an hourly rental rate to be paid. The Contractor shall provide the City with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks.

The provisions in Section 9-1.03A(1), "Labor," shall not apply to operators of rented dump trucks.

The rental rates listed for dump trucks in the Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates shall not apply.

To the total of the rental costs for fully maintained and operated dump trucks, including labor, there will be added a markup of 15 percent. An additional markup of 5 percent will be added by reason of performance of the Work by a Subcontractor. No separate markup will be made for labor.

The provisions in Section 9 1.03A(3c), "Owner Operated Equipment," shall not apply to dump truck rentals.

9-1.03B Work Performed by Special Forces or Other Special Services. When the Engineer and the Contractor, by agreement, determine that a special service or an item of extra Work, cannot be performed by the forces of the Contractor or those of any of the Subcontractors, such service or extra Work item may be performed by a specialist. Invoices for such service or item of extra Work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added 15 percent in lieu of the percentages provided in Section 9-1.03A, "Work Performed by Contractor."

9-1.03C Records. The Contractor shall maintain all records in such a manner as to provide a clear distinction between the direct costs of extra Work paid for on a force account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Engineer completed daily extra Work reports, on forms furnished by the City, for each day's extra Work to be paid for on a force account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces, except for charges described in Section 9-1.03B, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated.

Material charges shall be substantiated by valid copies of vendor's invoices. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should said vendor's invoices not be submitted within 60 days after the date of delivery of the material or within 15 days after the acceptance of the Contract, whichever occurs first, the City reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of Work less any discounts as provided in Section 9-1.03A (2a).

Said daily extra work reports shall be signed by the Contractor or the Contractor's authorized representative.

The Engineer will compare his/her records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit by the City.

The Contractor's cost records pertaining to Work paid for on a force account basis shall be open to inspection or audit by representatives of the City, during the life of the contract and for a period of not

less than 3 years after the date of acceptance thereof, and the Contractor shall retain such records for that period. Where payment for materials or labor is based on the cost thereof to forces other than the Contractor, the Contractor shall make every reasonable effort to insure that the cost records of such other forces will be open to inspection and audit by representatives of the City on the same terms and conditions as the cost records of the Contractor. If an audit is to be commenced more than 60 days after the acceptance date of the Contract, the Contractor will be given a 10 day notice of the time when such audit is to begin.

9-1.03D Payment. Payment as provided in Sections 9-1.03A, "Work Performed by Contractor," and 9-1.03B, "Work Performed by Special Forces or Other Special Services," shall constitute full compensation to the Contractor for performance of Work paid for on a force account basis and no additional compensation will be allowed therefor.

9-1.04 (Blank)

9-1.05 (Blank)

9-1.06 Partial Payments. The City, once in each month, shall cause an estimate in writing to be made by the Engineer. The estimate shall include the total amount of Work done to the time of such estimate, and, for Design-Build Task Orders, the value thereof based on the agreed-upon Schedule of Values. The estimate shall also include any amounts payable for mobilization.

The City shall retain 10 percent of such estimated value of the Work done, except that at any time after 50 percent of the Work has been completed, if the Engineer finds that satisfactory progress is being made, the City may reduce the total amount being retained from payment pursuant to the above requirements to 5 percent of the total estimated value of said Work and may so reduce the amount retained from any of the remaining partial payments to 5 percent of the estimated value of such work. In addition, on any partial payment made after 95 percent of the Work has been completed, the City may reduce the amount withheld from payment pursuant to the requirements of this Section 9-1.06, to such lesser amount as the Engineer determines is adequate security for the fulfillment of the balance of the Work and other requirements of the Contract (but in no event will said amount be reduced to less than 125 percent of the estimated value of the Work yet to be completed as determined by the Engineer). Such reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the City: the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing him/her to give such consent must either accompany the document or be on file with the City.

The Engineer may at any time and in the Engineer's sole discretion reinstate the retention at the full 10 percent of the value of the Work performed upon notice to the Contractor. The Contractor shall immediately repay to the City all amounts paid to the Contractor in excess of the 10 percent retention. If the Contractor fails to repay the amount due within a reasonable time, the City may, in addition to all of the other remedies available to it, withhold such amount from future partial payments made to the Contractor.

The City shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to

be made when, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or the total value of the Work done since the last estimate amounts to less than \$5,000.

No such estimate or payment shall be construed to be an acceptance of any defective Work or improper materials.

Attention is directed to the express prohibition against payment to unlicensed contractors contained in Public Contract Code Section 10164, the provisions of which are set forth in Section 7-1.01C, "Contractor's Licensing Laws."

The estimates of the Engineer shall be final and conclusive evidence of the amount of Work performed by the Contractor under this Contract, and shall be taken as full measure of compensation to be received by the Contractor.

Before any partial payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the Work.

The Contractor shall maintain and provide to the City, with each partial payment request, certified payrolls for all of its employees and those employees of Contractor's Subcontractors.

9-1.065 Payment of Withheld Funds. The Contractor may substitute securities for any moneys withheld by the City to ensure performance under this Contract, provided that substitution of securities shall not be allowed in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal statutes, regulations or policies, or both, do not allow the substitution of securities. At the request and expense, as cost of the work, of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank as the escrow agent, the City shall then pay such withheld moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.

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

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

The escrow agreement used to implement this Section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY

DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between City of San Jose whose address is _____, hereinafter called "Owner," _____ whose address is _____ hereinafter called "Contractor" and _____ whose address is _____ hereinafter called "Escrow Agent"

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

(1) Pursuant to Section 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Design-Build Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract").

Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All Terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor and Escrow Agent and shall be deemed cost of the work.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account accompanied by written authorization from Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) and (6), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest set forth above.

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

On behalf of the Owner

Title

Name

Signature

Address

On behalf of the Contractor

Title

Name

Signature

Address

On behalf of Escrow Agent

Title

Name

Signature

Address

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

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

Owner

Contractor

Title

Title

Name

Name

Signature

Signature

9-1.07 (Blank)

9-1.07A (Blank)

9-1.07B (Blank)

9-1.08 (Blank)

9-1.09 (Blank)

9-1.10 (Blank)

END OF SECTION

PART 1 - GENERAL

1.01 SUMMARY

- A. This Section includes general requirements related to the work to be performed on the airport site and is complimentary to the requirements specified in the Special Provisions, Standard Specifications and Standard Plans.
- B. This Section includes the following procedures:
 - 1. Special coordination procedures.
 - 2. Operational requirements.
 - 4. Phasing/Sequencing requirements.
 - 5. Periodic Phasing Plans.
 - 6. Contractor's use of premises.
 - 7. Special requirements.
 - 8. Temporary signage.
 - 9. Work Hours Restrictions
 - 10. Temporary shutdown of utilities
- C. Related Sections:
 - 1. Section 01 54 00 – Airport Security Requirements
 - 2. Section 01 59 60 – Airport Operational Safety Requirements
 - 3. Others as applicable.

1.02 REFERENCES

- A. Federal Aviation Administration "Federal Aviation Regulations," (Available from FAA)
- B. Transportation Security Administration (TSA)
- C. City of San Jose Department of Public Works Standard Specifications, Dated July 1992 (commonly referred to as "Standard Specifications" throughout this Section).
- D. City of San Jose Department of Public Works Standard Plans, Dated July 1992 (commonly referred to as "Standard Plans" throughout this Section).

1.03 SUBMITTALS

- A. Submittal requirements are to be determined during Project Programming.

1.04 SPECIAL COORDINATION PROCEDURES

- A. All coordination communications between the CONTRACTOR and the following parties will be through the CITY:
 - 1. Mineta San José International Airport
 - 2. U. S. Customs and Border Protection (CBP)
 - 3. U. S. Citizenship and Naturalization Services
 - 4. Individual Airlines
 - 5. Individual Concessionaires and Tenants
 - 6. Federal Aviation Administration (FAA)
 - 7. Transportation Security Administration (TSA)
- B. Conduct operations so that annoyance and inconvenience to patrons, visitors and operating personnel will be held to an absolute minimum. Work or activity which affects Airport operations or public on roadways or in buildings shall be done only during hours designated by CITY. This may require that Work or activity be done during odd hours, at night and on weekends or holidays. Work or activity includes shutdowns of utilities and other Airport functions.
- C. Limit operations to areas on which Work under Contract is being performed. Keep all equipment, supplies and delivery of materials within designated staging areas. All use or occupancy shall be subject to prior approval by CITY. Should such use or occupancy prove objectionable in any way, modify arrangements so as to eliminate the objection.
- D. Prior to the start of construction, meet with CITY and become thoroughly familiar with rules and regulations pertaining to hazards to flying and also with control of vehicular traffic on Airport roads. Plan Work so that no unnecessary hazards to aircraft will be created. Advise CITY of all hazards created by CONTRACTOR's operations.

1.05 OPERATIONAL REQUIREMENTS

- A. San Jose International Airport will be in continuous operation 24 hours a day during the entire construction period. Cooperate with the CITY to facilitate and minimize conflict with Airport operations.
- B. Schedule all work that affects airport operations at least 30 days in advance and submits plans for this work to the CITY for approval. Schedule shall include dates, hours of operation, type of equipment, work area, planned personnel/equipment movements and deliveries.

- C. San Jose International Airport Normal Hours of Passenger Service Flight Operations: 6:30 A.M. until 11:30 P.M. daily, seven days per week, but normal Passenger Service Parking Operations extend well beyond these times. Also, planes may arrive and depart at any time and therefore parking would similarly be affected.
- D. Airport Daily Peak Periods of Operations: Coordinate construction operations as required due to Airlines scheduling requirements, peak times for roadway congestion, and similar Airport Operations constraints.
- E. Peak Seasonal Airport Dates: The airport's peak dates of operation will take precedent over the Contractor's work hours. Peak Seasonal Airport Dates are designated as the Wednesday before Thanksgiving until the Monday following Thanksgiving and other dates as may be identified by the CITY.
- F. Public Restroom Facilities are open to the public from 5:30 A.M. until 11:30 P.M. daily, seven days per week subject to airlines peak periods of operations. However, Contractor's personnel are prohibited from using public restroom facilities.

1.06 PHASING/SEQUENCING REQUIREMENTS

- A. All Airport operations shall be maintained throughout the construction process. Contractor shall submit initial phasing plans to Airport Operations and San José Fire Department for review and approval. The plans must demonstrate procedures in which emergency egress and security will be maintained during construction.
- B. Parking Garage - Schedule construction operations to allow parking areas, including stalls, ramps, turn-arounds and access aisles where work is not currently taking place, to remain in full service during normal scheduled operational hours. Do not perform any construction operation prior to receiving approval from the CITY.
- C. Curbside - Schedule construction operations to allow queueing activities related to ground transportation functions where work is not currently taking place, to remain in full service during normal scheduled operational hours. Do not perform any construction operation prior to receiving approval from the CITY.

1.07 PERIODIC PHASING PLANS

- A. Submittal requirements are to be determined during Project Programming.
- B. Each month concurrent with the CONTRACTOR's Application for Payment, and as a requirement for the Application for Payment to be considered for payment, the CONTRACTOR shall submit the Periodic Phasing Plan to the CITY. The Phasing Plan will indicate the CONTRACTOR's next calendar (thirty days) work in graphic and written format.
- C. The CITY may provide site plan and survey templates when available. Submittal of CAD files shall be in accordance with City of San Jose, Mineta San José International Airport Procedure, SJC-ACM-AIMS-2000, Electronic Data Interchange (EDI) Standards. The

Phasing Plan will be a progress update of the CONTRACTOR's Laydown Plan and shall, at a minimum, address the following:

1. Show all normal public, Airline Tenant and Airport circulation impacts, the need for temporary facilities, security impacts, equipment locations.
2. Indicate any creation of temporary hazardous conditions such as excavations, fuel storage, welding, lifts and cranes for unloading materials, and pavement cutouts near walking areas.
3. Show all Temporary Facilities that will be in use during the next thirty (30) days.
4. Identify dates during the next thirty (30) days when utility interruptions are anticipated.
5. Equipment placement, haul routes, access routes, safety concerns, parking, material staging areas, significant areas of work, note temporary signage, etc...

1.08 CONTRACTOR'S USE OF PREMISES

A. Access to Work Areas.

1. Parking Area: Confine construction operations within movable barricades designating Construction Areas.
2. Access Roads: Confine activities within barricades or limits designating haul roads.

B. Access to Public Facilities:

1. Provide adequate restroom and break facilities within the job site and staging areas as appropriate.
2. Employees required by this Contract are not authorized to use any of the following public facilities except as specifically authorized by the Airport:
 - a. Public restrooms.
 - b. Airport eating facilities.
 - c. Boarding gate hold rooms.
 - d. Other public areas of the terminal.

1.09 SPECIAL REQUIREMENTS

- A. All construction activities shall be scheduled with the City Project Manager and subject to Escort Requirements and Airport approval. All construction materials and equipment shall remain within approved Construction Area at all times unless approved in writing by the CITY.
- B. The following activities shall be limited to the hours between 11:30 P.M. until 4:30 A.M., subject to Escort Requirements, Airport approval and Arrival/Departure schedules. All

construction materials and equipment shall remain within approved Construction Area at all times unless approved in writing by the CITY.

1. All activities of high noise, dust, and smell within the existing facility.
2. All associated activities related to terrazzo/concrete pouring and finishing within the existing facility.
3. All associated activities related to building demolition and hauling of debris within the existing facility.
4. All Hot Work activities within the existing facility.
5. All associated activities related to steel and large material deliveries.
6. Movement of Construction Equipment: movement of hoisting equipment, cranes, mobile construction sheds, heavy construction equipment, trucks, and other large construction equipment.
7. All associated activities related to utility shutdowns.
8. All associated activities related to Fire Alarm/Fire Suppression System shutdown, testing, or modification.
9. Any other construction activity identified by the Airport as post curfew work.

1.10 TEMPORARY SIGNAGE

- A. The CONTRACTOR shall supply any temporary signage necessary for preservation of public safety and maintenance of general Airport operations during the course of the work. Submit a Temporary Sign Plan for City review and approval a minimum of seven (7) calendar days prior to fabrication.

1.11 TEMPORARY SHUTDOWN OF UTILITIES

- A. CITY may approve utility shut downs of short durations (4 hours or less) during "non-working hours (11:30 P.M.- 4:30 A.M.)" requiring them with a minimum of at least 2 weeks in advance of start of construction activity.
- B. Shut downs of long durations will require back-up generators, etc. The Airport emergency generators are not available for use during long term shut downs.
- C. The CONTRACTOR shall submit a Method of Procedure (MOP) plan for approval by the CITY prior to the implementation of the shutdown.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

END OF SECTION

PART 1 - GENERAL

1.01 SUMMARY

- A. This Section describes protection of work and property required during construction.

1.02 RELATED SECTIONS

- A. Section 01 35 00 – Airport Special Requirements
- B. Section 01 59 60 – Airport Operational Safety Requirements

1.03 REFERENCE STANDARDS

- A. 49 CFR 1542.
- B. SJIA Rules and Regulations.

1.04 REQUIREMENTS

- A. Under the provisions of 49 CFR 1542, it has been determined that employees of the Airport, Airport tenants, contractors, and air carriers who have access to the controlled areas of the Airport, are in positions where their actions can have a critical impact on the safety and security of the traveling public.
- B. Therefore, it is understood and agreed that if the work, storage or entry areas provide access to the aircraft ramps, taxiways, runways or any other restricted areas of the Airport, the CONTRACTOR shall, at his own expense and cost, take whatever steps are reasonably necessary to prevent or deter persons and vehicles from unauthorized access to such areas. The CONTRACTOR shall take such further actions as may be necessary because of the nature of the work, to insure continuing compliance with all applicable regulations relative to Airport security.
- C. No claim for additional compensation shall be considered if the Aviation Security Level (AVSEC) of the Airport is increased by decree of the TSA/DOT.
- D. The San Jose Police Department – Airport Division, under advice of TSA or Airport Operations personnel can and will arrest and levy fines on individuals and companies for violations of security regulations.
- E. Security Plan: As part of the CONTRACTOR's mobilization, a Security Plan shall be required.
 - 1. A statement that all parts of the Airport Security Program (ASP) apply except as amended in the CONTRACTOR's Security Plan.
 - 2. The starting and ending dates of the Project.

3. The name, address and phone number of the CONTRACTOR.
 4. A list of 24 hours a day – 7 days a week emergency contact name(s) and phone number(s).
 5. A brief description of the Project.
 6. The names of CONTRACTOR employees to be badged, the type of badges to be requested, and a statement that there will be no unbadged or unescorted workers in the Project work area(s).
 7. A description of the planned access points to the secure area(s) and security measures that will be taken at the access point(s).
 8. Other information that affects the existing Airport Security Plan.
 9. A 100 square inch photocopy of the company vehicle logo to be displayed on all vehicles that will be unescorted on the AOA. This will include General and Subcontractor vehicles.
 10. A detailed description of any security fences, gates or other equipment the CONTRACTOR intends to utilize to meet security requirements on the Airport.
- F. The Airport Planning and Development Division has examples of Security Plans and can assist the CONTRACTOR in assembling the plan. The document shall be on company letterhead and signed by a responsible officer of the company. It will be reviewed by Airport Operations and the TSA.
- G. The Security Plan shall not be in force until the Plan is approved by the Airport Security Coordinator (ASC) and TSA. The CONTRACTOR shall submit this plan to the CITY at least 60 days prior to the expected start of work in accordance with the requirements of RFP.

1.05 ACCESS TO SECURED AREAS

- A. Contractors, subcontractors, their employees, vendors, truckers and other persons who are required to perform work in the secured areas of the Airport, shall either have been issued an Airport security badge or (be) escorted by someone who has Airport security clearance and badge. This specifically includes trucks bringing materials into or out of the controlled areas.
- B. All vehicles entering the AOA may be subject to inspections before access is granted. These inspections may include, but are not limited to; passenger compartments, cargo or storage compartments, vehicle contents and personnel.

1.06 RESTRICTION OF CERTAIN ITEMS IN THE STERILE AREA

- A. Any prohibited item (Contact San Jose International Airport for the latest list) that must be taken into the Sterile Area (defined as the area inside the terminal behind the security checkpoint) during hours when it is open to the public will be subject to the following:
 - 1. No prohibited item shall be introduced into the Sterile Area unless the person carrying such an item has the tools escorted by Airport approved contract security company. All prohibited items shall be removed prior to the opening of the Sterile Area unless prior arrangements are made. The CONTRACTOR shall make arrangements in advance to arrange for any required escort. The CONTRACTOR shall be responsible for the cost of hiring an Airport approved contract security guard if work with prohibited tools is performed in the Sterile Area during hours when it is open to the public.
 - 2. A temporary barrier shall be constructed to effectively remove the work area from the Sterile Area. Any such barrier shall be approved by the ASC and require a Security Plan prior to being placed into service.

1.07 SECURITY/IDENTIFICATION BADGES

- A. All persons employed by the CONTRACTOR or subcontractor who require unescorted access to the Airport controlled areas shall have a security badge from the Airport and may be required to undergo a fingerprint based background check and security training prior to a badge being issued. Security badges shall be worn on the employee's outermost garment and above the waist at all times when in the controlled area(s).
- B. Airport security badges are not transferable or assignable. The security badges shall not be modified or altered in any way, and shall be safeguarded at all times.
- C. Lost/stolen security badges shall be immediately reported to the Airport Operations Center (AOC) at 408-277-5100.
- D. Return all identification badges immediately upon expiration of holder's contribution to the Work. Return all identification badges to Airport within twenty-four hours upon receipt of written notice from the Airport. Failure to return identification badges after receipt of written notice will subject the CONTRACTOR to a one hundred-dollar (\$100.00) fine per badge.

1.08 PROCEDURE TO OBTAIN AIRPORT SECURITY BADGES

- A. General procedure: Upon award of the Contract, the CONTRATOR shall submit on the appropriate forms to the CITY, a list of individuals who will be authorized by the CONTRACTOR to accept responsibility for signing security badge applications. The CONTRACTOR shall also complete appropriate forms to identify the individuals that will require security badges.

- B. The Airport sponsor will meet with the CONTRACTOR to review badging procedures before badge applications are accepted. The Airport will not verify or sign for sub-contractors.
- C. 49 CFR 1542.209 requires that all applicants for SIDA badges submit to and successfully pass a fingerprint-based Criminal History Records Check (CHRC) and/or Security Threat Assessment (STA) prior to issuance of a SIDA badge. CHRC and/or STA results are generally available within five (5) business days; however, the Airport does not have the ability to control the timing or receiving results and shall not be responsible for delays.
- D. Security Badge Application: . Appointments may be scheduled by going to <https://www.flysanjose.com/badging-office> An appointment is required for all Badging activities except for the replacement of a damaged/broken badge.
- E. Due to the high volume of appointments in a day, we are unable to assist customers on a walk in basis outside of the reasons listed above. The CONTRACTOR will be assessed a \$50.00 fee if an employee does not show up for a scheduled appointment. An Appointment is required for the following reasons:
- **New Badge-** New Applicants that need to start the Badging Process
 - **Testing-** All bi-annual testing appointments.
 - **Lost Badges-** To replace a Lost Badge. PRIORITY
 - **Swapping Tenants-** To change the tenant sponsorship from one tenant to another.
 - **Legal Name Change-** To legally change the name of the applicant on the badge

We do understand that specific types of appointments cannot wait until the next available appointment. Those appointments listed as Priority (see above) will receive precedence and we will do our best to schedule these appointments either the same or the following business day. When scheduling an appointment please make sure to select the appropriate appointment. Failure to select the proper appointment may result in the applicant having to reschedule their appointment. Applications take a minimum of 48 hours to process.

- F. Security Badge Training: The TSA has mandated that all persons who require unescorted access to the restricted areas of the Airport shall undergo security training. The required security training is determined by badge access requested by Tenant. Depending on the number of tests required, testing may take from 30 minutes to 2 ½ hours. Please allow enough time to complete all required tests. Applicant must pass the training by successfully answering a series of questions at the end of each section of the training in order to obtain a badge.

If the applicant requires a translator, the Authorized Signatory must provide a letter on company letterhead requesting a translator and identifying the person providing the translating services. San Jose Airport does not provide a translator. It is the responsibility of the company to provide a translator. All translators must currently have a SJC airport badge of equivalent access as the person they are translating for. Due to the additional time required to translate, please make sure to identify the need for translating services when

scheduling their appointment for testing. Please allow an additional 30-60 minutes per test for translating.

- G. Badging: After successful completion of the SIDA training class and CHRC, the badge will be issued by the Badging Office during business hours. The applicant shall bring two forms of identification. One form of identification shall be a verifiable picture identification issued by a county, state or federal agency. Examples of the identification are a current California Driver's License or Identification Card, U.S. passport, or military identification.
- H. Return of badges and employers' obligation to notify Airport of termination of an employee: The Airport Operations Center (AOC) shall be notified verbally within 15 minutes of the termination of an employee, so that the active status of the security badge can be suspended. The 24-hour contact number for the AOC is (408) 277-5100. Badges of terminated employees shall be retrieved and returned to the Badging Office within one day after termination.
- I. Lost or stolen badges: The AOC shall be notified verbally within 15 minutes that a security badge has been lost or stolen. Written notification shall reach the Badging Office within 8 hours of the verbal notice. There is a fee for the replacement of lost badges.
- J. Return of Badges on Contract Completion: Badges shall be returned to the Airport upon contract completion. A One Hundred Dollar (\$100) fee will be assessed against the retention for any security badge not returned.

1.09 SECURITY VIOLATIONS

- A. Three Strikes: SJPD-AD and Airport Operations will issue Three Strikes citations to badged individuals for security violations. Multiple security violations shall result in the individual being required to retake the SIDA class or the revocation of the SIDA Badge.
- B. Administrative Citations: SJPD-AD and Airport Operations will issue Administrative Citations to badged individuals for the violation of San Jose Municipal Codes concerning Airport Security. The fines for Administrative Citations shall be paid by the individual and range from \$100 to \$1,000. Administrative Citations will be issued for but not limited to the following offenses:
 - 1. Piggybacking or tailgating
 - 2. Allowing someone to piggyback/tailgate
 - 3. Propping a door/gate and leaving the area
 - 4. Not waiting for a vehicle gate to close after entering/exiting

1.10 VEHICLE MEDIA PROGRAM

- A. All CONTRACTOR vehicles that traverse between the public roadways and the Airport AOA and may be parked unattended in the AOA, shall have the company logo registered with the Badging Office.
- B. The Badging Office shall provide the applicable registration form(s) and issue the appropriate parking permit(s) for these vehicles. Vehicles found to be in non-compliance with vehicle permit requirements are subject to citation and towing at the CONTRACTOR's expense.

1.11 VEHICLE PARKING RESTRICTIONS

- A. Vehicles will be restricted from parking within an Airport-approved distance of a terminal building where passengers load unless they have been inspected and cleared. CONTRACTOR will arrange to have vehicle inspections performed by making arrangements directly with the Airport Approved contract Security Company. CONTRACTOR vehicles that enter the construction site on public roads and pass through inspection points established by the Airport will not have to be re-inspected. These restrictions currently only affect vehicle parking outside the AOA on the public portion of the Airport roadways. Vehicles within the AOA and SIDA will be subject to inspection as they enter through the guarded vehicle gates and will not require re-inspection by the CONTRACTOR.
- A. The CONTRACTOR shall not impact public access to or regular public traffic circulation serving the terminals or concourse areas. CONTRACTOR shall not mix service, delivery, or inter-city truck type traffic with the public traffic.

1.12 AIRPORT ACCESS GATE CONTROL

- A. The CONTRACTOR shall only have access to those gates needed to perform their job duties. All gate access will need to be approved by the Airport prior to granting access. If any access gate needs to be propped open for a long period of time an Airport Approved Security Guard will be required to monitor the access gate. The CONTRACTOR will be responsible for the cost of the guard.
- B. Vehicle Identification:
 - 1. Do not permit more than one (1) vehicle per trade at the job site unless otherwise authorized in writing by the Airport.
 - 2. All vehicles authorized access to airport-restricted areas shall conform to Airport Security requirements and to the following:
 - a. Be owned or hired by the CONTRACTOR or Subcontractor.
 - b. Be insured under company policy.

- c. Be properly identified and registered with the Airport badging office. Magnetic signs are acceptable.

1.13 PERSONS UNDER ESCORT

- A. All persons under escort shall remain within sight and sound of the individual providing escort.
- B. While within the SIDA, all escorted individuals shall display “Escort Required” badges. These badges can be obtained from the CITY. Any escorted individuals within the SIDA not displaying an “Escort Required” badge will be removed from the SIDA and a Three Strike citation issued to the escorting individual.

1.14 WORK AFFECTING SECURITY EQUIPMENT

- A. If the Project involves the installation, modification, relocation, or removal of any component of the Airport’s Automated Access Control System (AACS) or closed circuit television system (CCTV), the CONTRACTOR agrees to contact the Airport Security Coordinator (ASC) no later than 30 days before start of project and hire only companies authorized by Airport Operations to perform the work.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

END OF SECTION

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PART 1 - GENERAL

1.01 SUMMARY

- A. This Section includes general operational safety requirements of the Mineta San Jose International Airport (SJIA) to be observed by the CONTRACTOR to minimize disruption of normal aircraft operations and to avoid situations that compromise the airport's operational safety.
- B. The requirements specified in this Section are complimentary to other requirements specified elsewhere in these Special Provisions.

1.02 RELATED SECTIONS

- A. Section 01 35 00 - Airport Special Requirements
- B. Section 01 54 00 – Airport Security Requirements

1.03 REFERENCE STANDARDS

- A. General: Comply with the requirements specified in the referenced standards specified herein.
- B. Federal Aviation Administration (FAA) Advisory Circulars as specified herein.
 - 1. AC 150/5210-20 – Announcement of Availability – National Fire Protection Association (NFPA) Aircraft Familiarization Charts Manual
 - 2. AC 150/5300-13, Airport Design Standards-Site Requirements for Terminal Navigational Facilities
 - 3. FAA Form 7460-1 – Notice of Proposed Construction or Alteration
- C. Federal Aviation Regulations (FAR):
 - 1. FAR Part 139 – Certification and Operations: Land Airports serving Certain Air Carriers
 - 2. FAR Part 157 – Notice of Construction, Alteration, Activation, and Deactivation of Airports
- D. SJIA Rules and Regulations.
- E. CITY OF SAN JOSE Department of Public Works "Standard Specifications", dated July 1992

1.04 SUBMITTALS

- A. Refer to RFP.

1.05 GENERAL REQUIREMENTS

- A. The “Airport’s Movement Area” as referenced herein, is defined by the FAA under AC 150/5210-20 as the runways, taxiways, and other areas of an airport that aircraft use for taxing, takeoff, and landing, exclusive of loading ramp and parking areas, and that are under the control of an Air Traffic Control Tower (ATCT).
- B. The Contractor shall, prior to entry into the Airport’s Movement Area, inform the CITY and Managers (Airport Group of Supervisors) On Duty (MOD) of planned activity in the Airport's Movement Area including tasks, duration, and personnel planned for such activity.

1.06 SPECIAL COORDINATION PROCEDURES

- A. All coordination and communication between the CONTRACTOR and the following parties will be through the CITY:
 - 1. Norman Y Mineta San José International Airport (SJIA)
 - 2. Federal Aviation Administration (FAA)
 - 3. Transportation Security Administration (TSA)

1.07 OPERATIONAL REQUIREMENTS

- A. The CONTRACTOR, Subcontractors, and CONTRACTOR’s and Subcontractors’ employees, who operate a ground vehicle on any portion of the Air Operations Area (AOA) at SJIA shall be familiar with the following:
 - 1. SJIA rules and regulations.
 - 2. SJIA procedures for ground vehicle operations.
 - 3. The consequences of non-compliance with the SJIA rules and regulations and procedures for ground vehicle operations.
 - 4. Movement Area Operating Permit Program.
- B. Roads used as CONTRACTOR routes may be used by other airport vehicles. The CONTRACTOR shall not interfere with such other airport vehicle traffic and shall yield to emergency vehicles along any of the airport or public roads.

1.08 EQUIPMENT HEIGHT REQUIREMENT

- A. Notice of proposed construction shall be submitted to the appropriate FAA airports district office for review prior to the placement of construction equipment on airports. The guiding criteria involving FAR Part 139 Certificated Airports and Grant Agreement Airports is that all Plans and Specifications require direct coordination with the appropriate Airports district, field, or regional office.

- B. FAR Part 157 also requires prior notice to construct, realign, alter, or activate any runway and landing area or associated taxiway for any project that is non-Federally funded.

1.09 CONSTRUCTION IN PROXIMITY OF NAVIGATIONAL AIDS

- A. Construction activity in the vicinity of navigational aids requires special consideration. Particular attention shall be given to stockpiling materials as well as to the movement and parking of equipment that may interfere with line-of-sight from the tower or interfere with electronic emissions. Refer to AC 150/5300-13, Airport Design Standards--Site Requirements for Terminal Navigational Facilities, current edition, for critical areas of NAVAIDS.

1.10 CONSTRUCTION, LAYDOWN, AND STORAGE AREA

- A. Stockpiled Material: Extensive stockpiled materials will not be permitted within the construction activity areas defined in the preceding four sections. Stockpiled material shall be constrained in a manner to prevent movement as a result of aircraft blast or wind. Material shall not be stored near aircraft turning areas or movement areas. Laydown areas shall not obstruct or interfere with fire access lanes and/or access to building facilities.
- B. Open trenches, excavations, and stockpiled material at the construction site shall be prominently marked at all times with orange flags and lighted with flashing yellow light units (acceptable to the CITY) during hours of restricted visibility and/or darkness. Under no circumstances shall flare pots be used near aircraft turning areas.

1.11 BARRICADE REQUIREMENTS

- A. Provide barricades as required to prevent entry to construction areas and to protect adjacent properties from damage from construction operations.
- B. Low-Level Barricades:
 - 1. CONTRACTOR shall provide Low-Level Barricades as required within the AOA to demarcate construction areas, drop-offs in excess of three inches, non-compacted soil shoulders, and closed pavement.
 - 2. Low-Level Barricades shall be constructed from 6-inch by 6-inch timbers, 8 feet long, and painted Orange and White. Barricades shall be prominently marked at all times with Orange flags and with Orange flashing lights during hours of restricted visibility and darkness.
 - 3. Sandbags shall be used to weight the Low-Level Barricades against jet blast.
 - 4. Barricades shall be spaced eight feet apart, end-to-end, in most locations. The CITY may specify closer spacing in some locations (i.e. intersections, high-traffic locations).
 - 5. CONTRACTOR shall designate personnel to straighten Low-Level Barricades lines as requested by the CITY.

1.12 TRAFFIC REGULATIONS

- A. Regulate traffic as required by the CITY OF SAN JOSE Department of Public Works "Standard Specifications", dated July 1992. Applicable articles for airport access gate control and escort are contained in this Section. Submit the Traffic Plan as required.
- B. Personal Vehicles: All construction personnel's private vehicles are restricted from operation in the AOA.
- C. Airport will provide parking areas at no cost for Construction personnel use. Contractor will coordinate parking locations and permits with Airport Operations staff.
- D. Provide flagmen as needed to maintain safe vehicular traffic.

1.13 MISCELLANEOUS SAFETY REQUIREMENT

- A. Open-flame welding or torch-cutting operations shall be prohibited unless adequate fire and safety precautions are provided and have been approved by the CITY. All vehicles shall be parked and serviced behind the construction restriction line and in an area designated by the CITY.
- B. FOREIGN OBJECT DEBRIS (FOD): CONTRACTOR shall implement and continuously maintain an active program of containment and regular cleanup of construction debris, as addressed in the SJIA Safety Requirements.
- C. Construction materials that may be subject to jet blast from aircraft shall be tied down.
- D. Temporary blast walls may be required to deflect jet blast upward and away from the construction site.
- E. Fire extinguishers shall be required at the construction site and at all locations where welding is performed. No welding, either open flame or arc, will be allowed unless a fully charged fire extinguisher of the appropriate size and type is within ten feet of the welding operation. CONTRACTOR shall comply with all fire codes.
- F. Use of explosives is strictly prohibited unless stated otherwise.
- G. CONTRACTOR shall comply with SJIA's Safety Requirements and Environmental Protection Agency regulations regarding fuel spills. CONTRACTOR shall notify the SJIA Airport Communications Center in accordance with the requirements in the SJC Ramp Traffic Regulations. Copies of this document are available in the Airport badging office.
- H. Signal lights and barricades shall be required at any airside fences and jet blast walls, as well as adjacent to any nighttime open excavations.
- I. No visitors shall be permitted on site until they have signed in on the form provided by the CITY.
- J. CONTRACTOR's Safety Plan shall be submitted to the CITY for review.

- K. CONTRACTOR shall submit and maintain a Severe Weather/Disaster Plan. Plan shall be in place within 30 days of Award of Contract. The Application for Payment for Mobilization will not be considered until the Severe Weather/Disaster Plan Submittal is approved by the CITY. Plan shall be updated as the work progresses and new conditions occur.
- L. Dust control shall be as specified in Section 10, "Dust Control," of the Standard Specifications and Special Provisions. An aggressive and effective dust control program is expected and required given that construction will be performed on an operating airport and in the vicinity of operating aircraft. CONTRACTOR shall take direction from the CITY whenever the dust control program is not to the satisfaction of the CITY. At least one full water truck and operator shall be available for immediate dispatch whenever any condition or activity that could cause dust exists. Dust control during other than working hours shall be provided to the satisfaction of the CITY.

1.14 CLEANING REQUIREMENTS

- A. Establish an active ongoing Cleaning Program to eliminate any foreign objects that may cause damage to aircraft or cause personal injury to other persons.
- B. The standard of cleanliness for active runways, taxiways, and ramp areas is defined by the Airport and does not permit any construction debris or dirt.
- C. Immediately clean any debris tracked or dropped on AOA or haul routes to eliminate hazard. Only an End of Workday cleanup will not suffice.
- D. Any debris generated by this Project that is removed by the Airport will be at the CONTRACTOR's expense.
- E. Provide covered containers for deposit of waste materials from equipment, debris, and rubbish. Containers will only be allowed in approved locations as indicated on the approved Monthly
- F. The CONTRACTOR shall provide vacuum truck sweepers to maintain clean and clear roadway and hard surface areas at all times as directed by the CITY.

PART 2 – PRODUCTS

Not Used.

PART 3 – EXECUTION

Not Used.

END OF SECTION

APPENDIX 4

COST PROPOSAL

Design Builder's Entity Fees

- A. Profit and Overhead ⁽¹⁾ as a percentage of the Design-Builder's cost of design and construction _____
- B. General Conditions ⁽²⁾ as a percentage of the Design-Builder's cost of design and construction valued at \$____ million _____
- C. Project Management / Construction Management ("PM/CM") ⁽³⁾ as a percentage of the Design-Builder's cost of design and construction valued at \$____ million _____
- D. Design Fees as a percentage of the Design-Builder's cost of Construction _____
- E. Contingency as a percentage of the Design-Builder's cost design and construction _____
- F. Escalation as a percentage of the Design-Builder's cost of construction only _____

Notes:

1. Overhead is Regional and Corporate offices General and Administrative costs but excludes Project Site office overhead.
2. General Conditions include all Project Site overheads and all direct supervision. However it excludes all PM/CM which represents the cost of all core management functions.
3. PM/CM core management cost that is excluded from General Conditions.

List line items that cost contribute to General Conditions Cost and Construction Management Costs for the Design Build Entity

	General Conditions
1.	
2.	
3.	
4.	
5.	
6.	
	Construction Management
1.	
2.	
3.	
4.	

1. Named Subcontractor Fees

Contractor Name: _____

- A. Profit and Overhead ⁽¹⁾ as a percentage of the Subcontractor's cost of design and construction _____
- B. General Conditions ⁽²⁾ as a percentage of the Subcontractor's cost of design and construction valued at \$____ million _____
- C. Project Management / Construction Management ("PM/CM") ⁽³⁾ as a percentage of the Subcontractor's cost of design and construction valued at \$____ million _____
- D. Design Fees as a percentage of the Subcontractor's cost of Construction _____
- E. Contingency as a percentage of the Subcontractor's cost design and construction _____
- F. Escalation as a percentage of the Subcontractor's direct cost of construction only _____

Notes:

1. Overhead is Regional and Corporate offices General and Administrative costs but excludes Project Site office overhead.
2. General Conditions include all Project Site overheads and all direct supervision. However it excludes all PM/CM which represents the cost of all core management functions.
3. PM/CM core management cost that is excluded from General Conditions.

List line items that cost contribute to General Conditions Cost and Construction Management Costs for the Subcontractor

	General Conditions
1.	
2.	
3.	
4.	
5.	
6.	
	Construction Management
1.	
2.	
3.	
4.	

2. Named Subcontractor Fees

Contractor Name: _____

- A. Profit and Overhead ⁽¹⁾ as a percentage of the Subcontractor's cost of design and construction _____
- B. General Conditions ⁽²⁾ as a percentage of the Subcontractor's cost of design and construction valued at \$____ million _____
- C. Project Management / Construction Management ("PM/CM") ⁽³⁾ as a percentage of the Subcontractor's cost of design and construction valued at \$____ million _____
- D. Design Fees as a percentage of the Subcontractor's cost of Construction _____
- E. Contingency as a percentage of the Subcontractor's cost design and construction _____
- F. Escalation as a percentage of the Subcontractor's direct cost of construction only _____

Notes:

1. Overhead is Regional and Corporate offices General and Administrative costs but excludes Project Site office overhead.
2. General Conditions include all Project Site overheads and all direct supervision. However it excludes all PM/CM which represents the cost of all core management functions.
3. PM/CM core management cost that is excluded from General Conditions.

List line items that cost contribute to General Conditions Cost and Construction Management Costs for the Subcontractor

	General Conditions
1.	
2.	
3.	
4.	
5.	
6.	
	Construction Management
1.	
2.	
3.	
4.	

APPENDIX 5

(Intentionally Omitted)

APPENDIX 6

(Intentionally Omitted)

APPENDIX 7

NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS

Statement of Purposes

It is the Policy of the City of San Jose that **no discrimination or preferences** shall be permitted in the subcontracting of the City of San Jose construction contracts. Studies have demonstrated that there has been a pattern of discrimination against certain minority groups and women by contractors in the subcontracting of public works contracts. All contractors shall fully comply with Chapter 4.08 of the San Jose Municipal Code and shall not discriminate against or grant preferential treatment to any subcontractor on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the performance of the City of San Jose contracts. Any contractor who so discriminates or gives preferences shall be deemed not to be a responsible bidder in accordance with City of San Jose Charter Section 1217.

SECTION I -- REQUIREMENT

These provisions, entitled, **“NONDISCRIMINATION / NONPREFERENTIAL TREATMENT APPLICABLE TO CONTRACTS FOR PUBLIC WORKS CONSTRUCTION PROJECTS** are incorporated in and made part of the Special Provisions.

In addition, each bidder must - as part of its “PROPOSAL TO CITY OF SAN JOSE” for this project - declare under penalty of perjury that in listing subcontractors in its bid it has not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin. See, PROPOSAL TO CITY OF SAN JOSE.

SECTION II -- CONFLICT WITH APPLICABLE FEDERAL OR STATE LAW

In the event that a particular City public works contract is funded or required to be approved in whole or in part by the State or Federal government and any provision contained herein is inconsistent with any applicable state or federal statutes, rules or regulations, orders or controlling policies pertaining to such funding or approval, to the extent that any such provision is inconsistent, it shall not apply to the contract.

SECTION III -- VIOLATION OF SECTION

Be aware that any Prime Contractor who discriminates or gives preferences is in violation of Chapter 4.08 of the San Jose Municipal Code. Any such violation, in addition to all other remedies set forth in the Municipal Code, is further subject to the provisions of the San Jose Municipal Code, Chapter 4.10 of Title 4, Debarment of Contractors From City Contracts

APPENDIX 8

CONTRACT PROVISIONS IMPLEMENTING CHAPTER 4.08 OF THE SAN JOSE MUNICIPAL CODE

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether Contractor or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

3. Failure to Comply With Nondiscrimination Provisions.

If the Compliance Officer determines that the Contractor has not complied with the nondiscrimination or nonpreference provisions of this Agreement, the City may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

4. Subcontracts.

Contractor shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the Contractor has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the Contractor or other governmental agency are substantially the same as those imposed by the City.

APPENDIX 9

(Intentionally Omitted)

APPENDIX 10

CONTRACT PROVISIONS FOR PREVAILING WAGES

PREVAILING WAGES

Attention is called to the fact that this project is a public work as defined in the California Labor Code. As such, not less than the general prevailing rate of per diem wages and the general prevailing rates for holiday and overtime work shall be paid on this project. Contractors shall be responsible for compliance with all prevailing wage provisions found in California Labor Code Sections 1720 through 1861.

Copies of the General Prevailing Wage Determinations (DIR Wage Index 2018-1) made by the California Director of Industrial Relations in effect for this project and accompanied by a City of San Jose cover sheet are available at the City's Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San Jose CA 95113-1905. All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-535-8430.

Alternate workweek schedules that allow employees to work more than eight (8) hours per day without overtime pay are **not permitted** on public works construction contracts. **Please see attached DIR May 10, 2007 IMPORTANT NOTICE TO AWARDDING BODIES AND INTERESTED PARTIES REGARDING OVERTIME ON PUBLIC WORKS.**

Effective January 2, 2002, a Congestion Zone Fee (CZF) is required to be paid to each Ironworker [refer to Ironworker Master Agreement]. The CZF is currently \$9.00 per worker/per day. The CZF is to be included on the contractors' certified payroll reports under the Travel & subsistence column. Failure to pay the CZF will result in a prevailing wage violation requiring the contractor to make restitution to the affected worker(s). Additionally, liquidated damages will be assessed.

The appropriate craft classification for welding is **Ironworker [DIR Wage Index Page 2]**.

The appropriate craft classification for operating directional boring machine, bobcat, forklift, pilot car and skip loader (up to and including ½ cubic yard) is **Operating Engineer [DIR Wage Index Pages 39, 40A, 42]**. **Please see Page 48 – DIR July 15, 2002 NOTICE REGARDING ADVISORY SCOPE OF WORK FOR THE NORTHERN CALIFORNIA LABORERS' GENERAL PREVAILING WAGE DETERMINATION.**

Installation of draperies, blinds, shades and awnings under a construction contract is subject to prevailing wage requirements. The appropriate craft classification is **Laborer Group 3 [DIR Wage Index Pages 49-50]**.

The appropriate craft classification for on-going construction clean-up is **Laborer Group 3 [DIR Wage Index Pages 49-50]**.

The appropriate craft classifications for tree trimming and tree removal are: **Laborer Construction Specialist and Laborer Group 3 [DIR Wage Index Pages 49-50]**.

The appropriate craft classification for final construction clean-up is **Laborer Group 4 [DIR Wage Index Pages 49-50]**.

Stator Rewinder

San Jose Living Wage rates are higher than the California general prevailing wage rates for the Stator Rewinder craft. Per San Jose City Council Policy, the San Jose Living Wage rates shall apply to the Stator Rewinder classifications.

The Living Wage rates for the period July 1, 2017 through June 30, 2018 are:

Living Wage With Health Benefits	Living Wage Without Health Benefits
\$20.57	\$21.82

The Living Wage rates for the period July 1, 2018 through June 30, 2019 are:

Living Wage With Health Benefits	Living Wage Without Health Benefits
\$21.73	\$22.98

The appropriate craft classifications for **streetlight and traffic signal projects and parking lots** are:

- Installation of poles, pull ropes, all conductors, signal display/fire preemption/traffic camera/service/special electrical equipment, luminaries, splicing of conductors and installation of loop conductors is **Electrician: Inside Wireman, Technician [DIR Wage Index Page 145]**
- General labor work, installation of conduit **under direct supervision of Electrician: Inside Wireman, Technician**, installation of pull boxes and assisting in placing concrete is **Laborer: Group 3. Laborers are not allowed to install, pull or handle conductors.**
- Operating boom truck, Bobcat, backhoes, concrete saws, pavers, boring machines, augers and rollers is **Operating Engineer (Heavy and Highway Work) [DIR Wage Index Page 39]**
- Placing, floating and finishing concrete is **Cement Mason [DIR Wage Index Page 53]**

Attached is an Informational Only Holiday Schedule for the construction trades. Please note that not all DIR classifications are shown. Please refer to the DIR website at <http://www.dir.ca.gov/oprl/PWD/index.htm> for holidays by classification.

Please note the following classifications are not allowed on City of San Jose public works construction contracts:

Electrical Utility Lineman
Pole Restoration & Treatment
Stator Rewinder

Stator Rewinder Helper (First 6 Months)
Stator Rewinder Helper (After 6 Months)

Laborer and Related Classifications

Group 7 – Stage 1 (1st 6 months)
Stage 2 (2nd 6 months)
Stage 3 (3rd 6 months)

Teamster (Applies Only to Work on the Construction Site)

Group 8 (Trainee)
Step I – 1st 1,000 Hours
Step II – 2nd 1,000 Hours
Step III – 3rd 1,000 Hours
Landscape Maintenance Laborer
Tree Maintenance (Laborer)
Carpet, Linoleum
Floor Covering Handler Less Than 3 Years
Floor Covering Handler Trainee, First 3 Months
Floor Covering Handler Trainee, Second 3 Months
Electrician
Material Handler, Fourth Six Months
Material Handler, Third Six Months
Material Handler, Second Six Months
Material Handler, First Six Months
Plumber
Underground Utility Tradesman
Landscape Tradesman I
Landscape Tradesman II
Construction Tradesman (Year 2)
Construction Tradesman (Year 3)
Construction Tradesman (Year 4)
Construction Tradesman (Year 5)
Water Well Driller
Pump Installer
Helper

In the performance of this Agreement:

I. Standards of Responsibility: Prevailing Wages (Municipal Code 4.10.200)

The city requires in all of its procurement procedures that all persons who submit bids, proposals or offers to enter into a contract with the city to do so truthfully and in good faith, and shall not attempt to mislead the city with respect to the following including, but not limited to, records regarding the nature or quality of the work performed under the contract, payroll records, classification of employees on payroll records, and payment of prevailing wages where called for by the contract.

II. Labor Standards

Please refer to Special Provisions – Labor Standards set forth in Section 7-1.01A.

Holiday Schedule for DIR Wage Determination 2017-2 (Santa Clara County)

P 1 of 2

Please Note - Not all DIR trades are shown - Please refer to DIR website

This is FYI ONLY. PLEASE CHECK HOLIDAYS AS LISTED IN DIR 2017-2

Please see Additional Holidays for classifications with *

TRADE	New Year's Eve	New Year's Day	MLK Day	Presidents' Day	Cesar Chavez Day	Good Friday	Memorial Day	Independence Day	Labor Day	Columbus Day	Veteran's Day	Thanksgiving Day After Thanksgiving	Christmas Eve	Christmas Day After Christmas
Ironworker		x		x			x	x	x			x		x
Metal Roofing		x	x	x		x	x	x	x			x		x
Asbestos/Heat/Frost Insul Mechanic		x		x		x	x	x	x triple pay			x		x
Asbestos/Hazard Material Handler		x		x			x	x	x			x		x
Asbestos Removal (Laborer)		x		x			x	x	x			x		x
Bldg Const Inspector/Field Soil Material Tester		x		x			x	x	x			x		x
Carpenter/Drywall/Lather		x	x	x			x	x	x			x		x
Cement Mason		x	x	x			x	x	x			x		x
Elevator Constructor		x					x	x	x		x	x		x
Laborer		x		x			x	x	x			x		x
Modular Furniture Installer		x	x	x			x	x	x			x		x
Operating Engineer		x		x			x	x	x			x		x
Slurry Seal Worker		x		x			x	x	x			x		x
Teamster		x		x			x	x	x			x		x
Traffic Control/Lane Closure & Hwy Improvement Painter		x		x			x	x	x			x		x

Additional holidays by Classification: DDO = Designated Days Off

*Carpenters/Drywall/Lather - 4 DDO: 05/25/18; 08/31/18; 12/24/18; 12/31/18

Holiday Schedule for DIR Wage Determination 2017-2 (Santa Clara County)

P 2 of 2

Please Note - Not all DIR trades are shown - Please refer to DIR website

This is FYI ONLY. PLEASE CHECK HOLIDAYS AS LISTED IN DIR 2017-2

Please see Additional Holidays for classifications with *

TRADE	New Year's Eve	New Year's Day	MLK Day	Presidents' Day	Cesar Chavez Day	Good Friday	Memorial Day	Independence Day	Labor Day	Columbus Day	Veteran's Day	Thanksgiving	Day After Thanksgiving	Christmas Eve	Christmas	Day After Christmas
Bricklayer/Tender		x		x			x	x	x			x	x		x	
Carpet Layer		x	x	x			x	x	x			x	x		x	
Electrician: Inside Wireman & Comm System		x	x	x			x	x	x		x	x	x		x	
Field Surveyeer		x		x			x	x	x			x	x		x	
Glazier		x	x	x			x	x	x			x	x		x	
Marble Mason/Finisher		x	x	x			x	x	x			x	x		x	
Painter		x	x	x			x	x	x			x		x	x	
Taper		x	x	x			x	x	x			x		x	x	
Plasterer		x	x	x			x	x	x			x			x	
Plasterer Tender		x	x	x			x	x	x			x		x	x	
Underground Pipefitter		x		x			x	x	x			x	x		x	
Plumber/Steam Fitter/HVAC	x	x	x	x		x	x	x	x	x	x	x	x	x	x	
Plumber: Service & Repair		x		x			x	x	x			x	x		x	
Fire Sprinkler	x	x	x	x			x	x	x			x	x	x	x	
Roofer		x		x			x	x	x			x	x		x	
Sheet Metal Worker		x	x	x		x	x	x	x			x	x		x	x
Sheet Metal Decking & Siding		x		x			x	x	x			x	x		x	
Tile Finisher/Setter		x		x			x	x	x			x	x		x	

Additional holidays by Classification: DDO = Designated Days Off

*Carpet Layer - 6 DDO: 11/10/17, 12/22/17, 03/30/18, 05/25/18, 06/15/18, 08/31/18, 11/12/18, 12/24/18

*Electrician: Inside Wireman & Comm/System - 5 DDO: Not updated in DIR 2017-2

*Glazier - 9 DDO: 11/10/17, 11/24/17, 12/22/17, 02/16/18, 03/30/18, 05/25/18, 06/15/18 (no further updates)

*Marble Mason/Finisher - 2 Black Fridays: Fridays before Memorial Day & Labor Day

*Painter - 8 DDO: 11/10/17, 11/24/17, 02/16/18, 03/30/18, 05/25/18, 06/15/18, 08/31/18, 11/12/18, 11/23/18, 12/31/18

*Taper - 7 DDO: 09/01/17, 11/10/17, 11/24/17, 12/29/17, 03/30/18, 05/25/18, 06/15/18

AI

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

*Plumber - DDO: 1st Friday in August 08/03/18

*Fire Sprinklers - 4 DDO: DIR 2017-2 not updated for 2018

APPENDIX 11

(Intentionally Omitted)

APPENDIX 12

(Intentionally Omitted)

Bond Number: _____

CONTRACTOR'S BOND FOR FAITHFUL PERFORMANCE

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, a _____, as Principal, and _____ incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto the CITY OF SAN JOSE, a municipal corporation of the State of California, in the sum of _____ and /100 DOLLARS (\$ _____), for the payment thereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:
WHEREAS, the above bounden Principal is about to enter into a certain contract with the City of San José for the following:

the award of which said contract was made to said Principal by the City of San José on

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he/she shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____

day of _____, 20____.

PRINCIPAL

SURETY

Legal Company Name

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

Address _____

Telephone _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San José on the _____ day of

_____, 20____.

By: _____

Deputy

APPENDIX 14

(Intentionally Omitted)

Bond Number: _____

CONTRACTOR'S PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California, (hereinafter designated as "Public Entity"), is about to enter into a certain contract with _____, a _____, as Principal, namely, "Contract for: _____", for the work hereinafter briefly described, to wit: Specifications for _____ and more fully described in and required by said contract, the award of which said Contract was made to said Principal by the City of San José on _____.

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract.

NOW, THEREFORE, we, the Principal and _____ incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ and /100 DOLLARS (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to any work or labor performed or materials supplied by any such claimant, which said work, labor or materials are covered by the said contract and any amendments, changes, change orders, additions, alterations, or modifications thereof, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and their Subcontractors, pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of their claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, modification, rescission or attempted rescission, herein mentioned.

It is further stipulated and agreed that no final settlement between the Public Entity and the Contractor with reference to the work, shall abridge the right of any beneficiary hereunder whose claims may be unsatisfied.

This bond is executed and delivered to comply with requirements of the City of San José, and to comply with the provisions of Title 15, Chapters 5 and 7 of Part 4, Division 3 of the Civil Code of the State of California.

SIGNED AND SEALED this _____ day of _____, 20____.

PRINCIPAL

SURETY

Legal Company Name

By: _____

By: _____

Title: _____

Title: _____

By: _____

Title: _____

Address _____

Telephone _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Approved by the City Attorney of the City of San José on the _____ day of

_____ 20____.

By: _____

Deputy

APPENDIX 16

(Intentionally Omitted)

APPENDIX 17

(Intentionally Omitted)

APPENDIX 18

Application and Certification for Payment

APPENDIX 19

Designation of Initial Representatives

City Representatives

1. Rodney Rapson, Division Manager, Public Works
2. Judy M. Ross, A.A.E., Assistant Director of Aviation, Airport Department

Additional Representatives designated in writing by the above two City Representatives.

Design Builder Representatives

1. Project Manager
2. Other Representatives so designated by the Design Builder

APPENDIX 20

DESIGN-BUILD COSTS TO BE REIMBURSED

The Design-Build Contract issued to the Design-Builder shall be paid based upon the Design-Build Lump Sum (Fixed) Price, as more fully described in the Schedule of Values, for the Work performed by the Design-Builder, including the Design-Builder's overhead and profit, but in no case in excess of the Lump Sum (Fixed) Price agreed to by the City and the Design-Builder at the time of the executing the Contract, unless adjusted by approved change orders during the Contract performance.

However, In the event of any additional work or changed work that is performed on a time & material, not to exceed (NTE) reimbursable Cost of the Work basis, the Cost of the Work payable to the Design-Builder is described as follows:

The term "Cost of the Work" shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Appendix 4 and 20

20.1 CONSTRUCTION WORKER LABOR COSTS

20.1.1 Wages, burdens and fringes of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops. Wages, burdens & fringes are to be at actual cost and are fully auditable.

20.1.2 NOT USED

20.1.3 Wages, salaries, burdens and fringes of the Design-Builder's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments, training, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, IT Charges, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 20.1.1 through 20.1.5.

20.1.4. These costs shall be based upon Design-Builder's actual and auditable cost and will include all insurance modifiers, scheduled credits, premium discounts and other actual cost modifications. Unless expressly provided for in the Contract, bonuses and other discretionary compensation are specifically excluded from these costs. Wages, burdens & fringes are to be at actual cost and are fully auditable. No other costs are to be included as a payroll burden or fringe amount or other charge based on payroll. All other costs are to be billed at actual and auditable cost by the Design-Builder (i.e. safety, wages or costs of other personnel, etc.).

- 20.1.5 Workers compensation at the State workers compensation rate at the Design-Builder's actual and audited cost.
- 20.1.6 For purposes of calculating burdens and fringes in this Section, they shall include all actual payroll burdens, including, payroll taxes, health and welfare, all union benefits, medical insurance, life insurance, disability insurance and 401k and pension costs.

20.2 SUBCONTRACT COSTS

- 20.2.1 Payments made by the Design-Builder to Subcontractors and consultants in accordance with the requirements of the contracts.
- 20.2.2 Except for self-performed work performed by persons directly employed by Design-Builder as to be specifically approved by the City, Design-Builder shall not enter into any subcontract, contract, agreement, purchase order or any other arrangement of any kind ("Arrangement") for the furnishing of any portion of the materials, services, equipment rented for use on the project, equipment, tools, or any portion of the Work with any party or entity if such party or entity is an "Affiliated Entity", as defined below, unless such Arrangement has been approved in writing by the City, after full written disclosure by the Design-Builder to the City of such affiliation or relationship and all details relating to the proposed Arrangement. Disclosure by the Design-Builder to and agreement by the City, if agreed by the City, shall be in advance of the Design-Builder entering into any Agreement with any "Affiliated Entity". The term "Affiliated Entity" means any entity related to or affiliated with or having common ownership or management with the Design-Builder or with respect to which the Design-Builder has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Design-Builder; any holder of issued and outstanding shares of, or the holder of any interest in, the Design-Builder; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Design-Builder or any entity owned by the contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, or agent or shareholder.

At the City's sole discretion, the City shall not reimburse the Design Builder for any cost associated with any Arrangement with any Affiliated Entity, as defined above, unless the City has received full disclosure from the Design-Builder and given written approval of the Arrangement prior to the Design-Builder entering into any Arrangement.

20.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- 20.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- 20.3.2 Costs of materials described in the preceding Section 20.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the

completion of the Work or, at the City's option, shall be sold by the Design-BUILDER; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

20.3.3 Temporary utilities, including, but not limited to, power, fuel and water used during start-up and testing.

20.3.4 Design-BUILDER's General Conditions expenses. These General Conditions expenses include jobsite supervision, temporary jobsite offices, safety, travel, office equipment and supplies temporary latrines.

20.3.5 Design-BUILDER's Project Management/Construction Management expenses. These expenses include estimating, value engineering, constructability reviews and scheduling.

20.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

20.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Design-BUILDER at the site and used in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Design-BUILDER. Cost for items previously used by the Design-BUILDER shall mean fair market value. City shall participate in the decision to purchase or rent the machinery equipment. If City decides that such items should be purchased, these items will be the property of City and will be returned to and retained by the City after completion of the work.

20.4.2 Rental, repair, operational maintenance, fuel, oil and gas charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Design-BUILDER at the site, whether rented from the Design-BUILDER or others, and costs of transportation, installation, repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Other than specifically noted herein, rental rates of Design-BUILDER's own equipment shall not exceed eighty five percent (85%) of the current AED Manual charges, without Owner's prior written approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the equipment when first put into service less the depreciated fair market value when removed from service. Operating Costs (per AED), if any, are to be billed at actual cost.

20.4.3 Costs of removal of debris from the site.

20.4.4 Reproduction costs, costs of telegrams, facsimile' transmissions and long-distance telephone calls, mobile phones and service, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

20.5 MISCELLANEOUS COSTS

- 20.5.1 That portion directly attributable to this Contract of premiums for insurance and bonds, including, but not limited to, general liability, umbrella, professional and pollution insurance premiums. (If charges for self-insurance are to be included, specify the basis of reimbursement) All insurance and bond costs are to be at actual and auditable cost inclusive of all premium adjustments, credits, and / or rebates.
- 20.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.
- 20.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Contract Documents to pay.
- 20.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 20.7.2.
- 20.5.5 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the City set forth in the Contract Documents.

20.6 OTHER COSTS

- 20.6.1 Other costs incurred in the performance of the Work if and to the extent pre-approved in writing by the City.
- 20.6.2 Profit and overhead, General Conditions, and Design as described in Appendix 4 and Section 12.2.1.4.
- 20.6.3 Costs associated with implementation of Design-Builder's Safety & Health Program. These costs include the costs for training, incentives, awards and celebrations (as approved in advance by the City) that are associated with the program and are a normal part of such programs on Design-Builder's other projects in the region, and the cost of pre-employment, post-accident and random substance abuse screening.

20.7 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs that are incurred by the Design-Builder:

- 20.7.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 20.7.2 In repairing or correcting damaged or nonconforming Work executed by the Design-Builder or the Design-Builder's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the City set forth in the Contract Documents of the Design-Builder or the Design-Builder's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Design-Builder, or the failure of the Design-Builder's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from

insurance, Subcontractors or suppliers. However, in the event that the cause of damaged work is indeterminable, repair costs for such damage may be recovered from the contingency.

20.8 COSTS NOT TO BE REIMBURSED

The Cost of the Work shall not include:

- 20.8.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections 20.1,2 and 20.1.3.
- 20.8.2 Expenses of the Design-Builder's principal office and offices other than the site office, except as specifically provided in this Appendix 20.
- 20.8.3 Overhead and general expenses, except as may be expressly included in Appendix 4 and 20.
- 20.8.4 The Design-Builder's capital expenses, including interest on the Design- Builder's capital employed for the Work.
- 20.8.5 Rental costs of machinery and equipment, except as specifically provided in Section 20.4.2.
- 20.8.6 Except as provided in Section 20.7.2, costs due to the negligence of the Design-Builder or to the failure of the Design-Builder to fulfill a specific responsibility to the City set forth in the Contract Documents.
- 20.8.7 Except as provided in Section 20.6.1, any cost not specifically and expressly described in this Appendix 20.
- 20.8.8 Costs which would cause the Guaranteed Maximum Price, as adjusted by change orders, to be exceeded.
- 20.8.9 Bonuses and other discretionary compensation.

EXHIBIT C

SOLE SOURCE RESOLUTION AND CONTACT LISTING

The City Council adopted Resolution No. 78012 on December 13, 2016, approving the “sole sourcing” of the below items. Accordingly, bidders should prepare their respective Proposals based on the “sole sourcing” of the below items.

A. Fire Alarm and Sprinkler System Programming Controls: BGR Group

BGR Group
Juan Sanchez
408-673-8075
info@theBGRgroup.com

B. Door Security Access Controls: Stanley Security

Stanley Security
Diane Camporeale
National Account Manager
47225 Fremont Blvd.
Fremont, Ca 94538
O: 510-252-5677 C: 510-772-1097
Diane.Camporeale@sbdinc.com I www.stanleysecurity.com

C. Video Surveillance: G4S Secure Integration

G4S Secure Integration
Howard Akuda
Project Manager
(cell) 408-205-8771
howard.roppiyakuda@usa.g4s.com
www.g4stechnology.com

D. Intercom/Public Address/Paging System: Com-Net Software

Com-Net Software
Neil Braccini
Account Executive
937-859-6323 (o) Ext 236
937-389-0543 (c)
NBraccini@comnetsoftware.com

E. Common Use Passenger Processing Systems: Amadeus

Amadeus
Richard Calderon
407-370-4664 ext. 5963
916-280-9641
Richard.CALDERON@amadeus.com

F. Airfield Lighting Control System: ADB Safegate

ADB Safegate
Jim Taylor
977 Gahanna Parkway
Columbus, OH 43230
(614) 357-2608
Jim.taylor@adbsafegate.com

G. Lighting and HVAC System Controls: Delta Controls
Emcor Services/Mesa Energy System
Steve Shwayka
Director, Automation Estimating
(510) 755-0929
steve_shwayka@emcorgroup.com

Exhibit C
Sole Source Resolution

RES. NO. 78012

RESOLUTION NO. 78012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE NORMAN Y. MINETA SAN JOSE AIRPORT TO "SOLE-SOURCE" CERTAIN PRODUCTS AND/OR SERVICES AS PART OF ANY FUTURE CAPITAL IMPROVEMENT PROGRAM PROJECT AT THE AIRPORT THAT EXPANDS CERTAIN EXISTING SYSTEMS BASED ON A FINDING THAT SOLE SOURCING IS NEEDED TO MATCH PRODUCTS ALREADY IN USE

WHEREAS, the City of San José (City") owns and operates the Norman Y. Mineta San José International Airport ("Airport"); and

WHEREAS, pursuant to California Public Contracts Code Section 3400, the City may, upon making certain findings, draft bid specifications for public works contracts that limit the bidding to one specific company or that call for a designated product by a specific brand or trade name ("Sole-Source Specifications") in order to match other products or services completed and in use; and

WHEREAS, the Airport installed a number of critical systems and related services ("Existing Systems and Services") that were competitively procured as part of certain previous Capital Improvement Program ("CIP") projects; and

WHEREAS, the Airport has numerous future CIP projects ("Future CIP Projects") that will involve the expansion of the Existing Systems and Services, and the City desires to make findings that it is necessary for the Future CIP Projects' bid documents to contain Sole Source Specifications so that the expansion matches the Existing Systems and Services currently in use at the Airport;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

Section 1. Fire Alarm and Sprinkler Systems – Programming Controls:

- A. With respect to the Future CIP Projects involving an expansion of the fire alarm and sprinkler systems, the San José City Council hereby adopts the following facts.
- The Airport has one integrated fire alarm and sprinkler system that operates throughout the terminal zone.
 - The existing programming control equipment for the system is manufactured by Siemens.
 - The services needed to program and operate the system are currently provided by Siemens.
 - In order to best ensure the proper functioning of this critical system, future system expansions need to use equipment that matches existing equipment.
 - In order to best ensure the proper functioning of this critical system, the programming services needed to fully integrate an expansion into the existing system should be provided by whoever is currently providing such services on the system existing at the time of expansion.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the fire alarm and sprinkler systems to match the existing systems.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the existing fire alarm and sprinkler systems:
- **Products:** Siemens programming control equipment to be manufactured by Siemens.
 - **Services:** System integration and programming services provided by Siemens or other vendor providing these services to the Airport at the time of the expansion.

Section 2. Door Security Access Controls:

- A. With respect to the Future CIP Projects involving an expansion of the door security access controls, the San José City Council hereby adopts the following facts.
- The Airport has one integrated door security access control system that operates campus-wide.
 - In accordance with the Airport Security Plan, the door access control system must provide continuous, uninterrupted coverage and reporting for Airport security staff.
 - The system must also be able to communicate with the Airport Operations Center.
 - The services needed to properly program and operate the system are currently being provided by Stanley Security.
 - In order to best ensure the proper functioning of this critical system, future system expansions need to use equipment that is compatible with the C-Cure 9000 software and any future upgrades.
 - In order to best ensure the proper functioning of this critical system, the programming services needed to fully integrate an expansion into the existing system should be provided by whoever is currently providing such services on the system existing at the time of expansion.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the door security access controls to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the door security access controls:
- **Products:** Equipment must be compatible with the C-Cure 9000 software and any upgrades to the software.
 - **Services:** System integration and programming services provided by Stanley Security or other vendor providing these services to the Airport at the time of the expansion.

Section 3. Security Camera System:

- A. With respect to the Future CIP Projects involving an expansion of the security camera system, the San José City Council hereby adopts the following facts.
- The Airport has one integrated security camera system that operates campus-wide.
 - In accordance with the Airport Security Plan, the security camera system must provide continuous, uninterrupted coverage and operability for Airport security staff.
 - The services needed to properly program and operate the system are currently being provided by G4S.
 - In order to best ensure the proper functioning of this critical system, future system expansions need to use equipment that is compatible with the FLIR software and any future upgrades.
 - In order to best ensure the proper functioning of this critical system, the services needed to fully integrate an expansion into the existing system should be provided by whoever is currently providing the programming services on the system existing at the time of expansion.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the security camera system to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the security camera system:
- **Products:** Equipment is required to be compatible with the FLIR software and any future upgrades to the software.
 - **Services:** System integration and programming services provided by G4S or other vendor providing these services to the Airport at the time of the expansion.

Section 4. Intercom/Public Address/Paging System:

- A. With respect to the Future CIP Projects involving an expansion of the intercom/public address/paging system, the San José City Council hereby adopts the following facts.

- The Airport has one integrated intercom/public address/paging system throughout the Airport that uses zones for maximum effectiveness.
 - The current system is a proprietary system provided by Signature Technologies, Com-Net Software, a SITA company.
 - In order to best ensure the proper functioning of this system, future system expansions need to use equipment that matches equipment provided by Signature Technologies, Com-Net Software, a SITA company.
 - In order to best ensure the proper functioning of this system, the programming services needed to fully integrate an expansion into the existing system should be provided by whoever is currently providing such services on the system existing at the time of the expansion.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the intercom/public address/paging system to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the intercom/public address/paging system:
- **Products:** System equipment to be manufactured by Signature Technologies, Com-Net Software, a SITA company.
 - **Services:** System integration and programming services provided by Signature Technologies, Com-Net Software, a SITA company, or other vendor providing these services to the Airport at the time of the expansion.

Section 5. Common Use Passenger Processing Systems:

- A. With respect to the Future CIP Projects involving an expansion of the common use passenger processing systems, the San José City Council hereby adopts the following facts.
- The Airport operates under common use technology campus-wide to allow the Airport to assign various assets to airline tenants on an as needed basis.
 - This common use technology operates systems for passenger processing for managing ticket counter resources, assigning aircraft gate resources,

processing passenger common use self-service functions, displaying flight information, baggage information, gate information and managing other ancillary devices.

- The current system programming is provided by AirlT, an Amadeus Company.
 - It would be impractical and inefficient to have multiple common use technologies in place at the Airport.
 - In order to best ensure the proper functioning of this system, future system expansions need to use equipment that matches existing equipment provided that is compatible with the AirlT, an Amadeus Company, software and any future upgrades.
 - In order to best ensure the proper functioning of this system, services needed to fully integrate an expansion into the existing system should be provided by whoever is currently providing the programming services on the system existing at the time of the expansion.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the common use passenger processing systems to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the common use passenger processing systems:
- **Products:** Equipment is required to be compatible with the AirlT, an Amadeus Company, software and any future upgrades to the software.
 - **Services:** System integration and programming services provided by AirlT, an Amadeus Company, or other vendor providing these services to the Airport at the time of the expansion.

Section 6. Airfield Lighting Control System:

- A. With respect to the Future CIP Projects involving an expansion of the airfield lighting control system, the San José City Council hereby adopts the following facts.
- The airfield light control system is a unique and a critical system to Airport/Airfield operations.

- The system equipment must be certified by the Federal Aviation Administration.
 - Malfunctions in this system could potentially lead to interruptions in aircraft landings and takeoffs.
 - In order to best ensure the proper functioning of this critical system, the services needed to fully program and integrate an expansion into the existing system should be provided by whoever is currently providing the programming services on the system existing at the time of the expansion.
 - Liberty Systems is currently providing these services for the existing system.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the airfield lighting control system to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the airfield lighting control system:
- **Products:** Power and control solutions for airfield lighting equipment and navigational aids to be manufactured by Liberty Systems.
 - **Services:** System integration and programming services provided by Liberty Systems or other vendor providing these services to the Airport at the time of the expansion.

Section 7. Lighting Controls and Heating Ventilation, Air Conditioning (HVAC) Controls:

- A. With respect to the Future CIP Projects involving an expansion of the lighting controls and heating ventilation, air conditioning (HVAC) controls, the San José City Council hereby adopts the following facts.
- The lighting and HVAC controls were selected and implemented in previous capital projects.
 - The system controls all lighting and HVAC within the terminal buildings and is operated in a central location.
 - The system controls are proprietary and it is impractical to have multiple, different system controls in the terminal building.

- The current proprietary system uses Delta Controls, which programming services are provided through certified Delta Controls distribution partners and is restricted to certified vendors from specific regional locations.
 - In order to best ensure the proper functioning of this system, future system expansions need to use controller equipment that matches existing controller equipment provided by Delta Controls.
 - In order to best ensure the proper functioning of this system, the programming services needed to fully integrate an expansion into the existing system is required to be provided by Delta Controls certified distribution partners.
- B. Based on the above facts, the San José City Council determines that there is a need for future expansions of the lighting controls and heating ventilation, air conditioning (HVAC) controls to match the existing system.
- C. Based on the above determination, the San José City Council hereby authorizes use of the following sole source specifications as part of any future expansions of the lighting controls and heating ventilation, air conditioning (HVAC) controls:
- **Products:** Lighting and HVAC system controls to be manufactured by Delta Controls.
 - **Services:** System integration and programming services provided by a certified partner of Delta Controls or other certified original equipment manufacturer partner providing this to the Airport at the time of the expansion.

ADOPTED this 13th day of December, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, JIMENEZ, KHAMIS, M.
NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ, ROCHA;
LICCARDO.
NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

Exhibit D

Exemplar Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, and any retroactive or tail coverage as specified herein, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors except arising out of or caused by the sole negligence of City. The cost of such insurance shall be included in the Contractor's bid or proposal. Sufficient evidence of ability to secure insurance meeting the minimum insurance requirements may be required by the City prior to award.

D-1 Contractor's Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001 including.
 - a. Products and completed operations coverage.
 - b. Blanket contractual liability coverage, to the extent permitted by law.
 - c. Broad form property damage coverage.
 - d. Severability of interest.
 - e. Personal injury coverage.
2. The coverage provided by Insurance Services Office form number CA 0001 covering Business Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Contractor's Pollution Liability Insurance, a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance includes coverage for all operations, completed operations, and professional services (without exclusion for asbestos or lead).
5. Professional Liability Errors & Omissions for all professional services.
6. Builders Risk Insurance for "all risk" or special form causes of loss.

There shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

D-2 Minimum Limits of Insurance

Contractor shall provide coverage the greater of either limits as set forth in Contractor's policy(ies) or:

1. Commercial General Liability: \$25,000,000 each occurrence/aggregate limit for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Business Automobile Liability: \$5,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Contractor's Pollution Liability Insurance: \$2,000,000 per contamination incident. Policy shall at a minimum cover on-site and off-site liability including third-party injury and property damage claims, transportation, clean-up costs, as a result of pollution conditions arising from Contractor's or its contractor's operations and completed operations. Policy shall have three years tail coverage, if canceled and non-renewed, within three years after the expiration or earlier termination of the Contract.
5. Professional Liability (Errors and Omissions Coverage) of \$2,000,000 per claim/ aggregate limit with three years tail coverage, if canceled and non-renewed, within three years of completion of the project.
6. Builders Risk Insurance for "all risk" or special form causes of loss. for limits equal to 100% of the completed value of contract, with coverage to continue until final acceptance of the Work by the City. At the discretion of the City, the requirement for such coverage may include additional protection for Earthquake and/or Flood. The City shall be added as a loss payee on such policy.

D-3 Deductibles and Self-Insured Retentions

No deductible or self-insured retention shall exceed \$100,000, be more than ten percent of limits required, or be more than is specified in the scope or limits of insurance, unless the Contractor can, to the satisfaction of the City Risk Manager, (1) make a financial showing of ability to meet minimum deductibles/claims in the event of a claim, (2) reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or (3) procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D-4 Other Insurance Provisions

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

1. Commercial General Liability and Business Automobile Liability only:

- a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors. Additional insured endorsements provided must at least be as broad as or equivalent to:
 - i. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together).
 - ii. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
 - iii. Umbrella or excess policy limits will be allowed in excess of \$2 each occurrence so long as the policy follows form in scope and limits to the Commercial General Liability Policy.
- b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the contractor's insurance and shall not contribute with it. Any excess or umbrella policies to meet Contractor's insurance obligations shall be endorsed to follow form for the City, its officials, employees, agents and contractors.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state waiver of subrogation against the City, its officials, employees, agents and contractors.

3. Builders Risk

Coverage shall be endorsed to include the City as a loss payee.

4. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. If required as a policy provision, Contractor shall take all affirmative steps to notify insurer of this obligation and secure any needed special endorsement to meet this contractual obligation.

The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

D-5 Duration

1. All policies and limits shall be in full force and effect on or before the inception of the contract with proof of coverage
2. Commercial General Liability, Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of three (3) years after completion of work under this CONTRACT.
3. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date work commenced under this CONTRACT.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, CONTRACTOR must purchase an extended reporting period equal to or greater than three (3) years after completion of work under this CONTRACT.

D-6 Acceptability of Insurance

Insurance is to be placed with insurers of an A.M. Best's Rating of A, VII or greater. Any self insurance programs or programs not otherwise meeting this requirement must be approved by the City's Risk Manager.

D-7 Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Contractor shall furnish City and each other additional insured evidence of continuation of such insurance at final payment and three years thereafter.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance
Risk Management
200 East Santa Clara St., Floor T-14
San Jose, CA 95113-1905

D-8 Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

FORM 1

LOCAL AND SMALL BUSINESS PREFERENCE

City of San Jose Request for Contracting Preference for Local and Small Businesses			
<p>Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.</p> <p>In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (<i>regardless of where they are located</i>) of your firm is 35 or fewer.</p> <p>There are two ways in which the preference can be applied. In procurements where price is the determinative factor (<i>i.e. there are not a variety of other factors being considered in the selection process</i>) the preference is in the form of a credit applied to the dollar value of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.</p> <p>In procurements where price is not the determinative factor such, as an RFP, typically a variety of factors are evaluated to determine which proposal best meets the City's needs. In procurements such as these, a qualified LBE will be given 5% and a qualified SBE will be given an additional 5% of the total points in the scoring.</p>			
The following determinations have been made with respect to this procurement: (for official use only)			
Type of Procurement	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
Type of Preference	<input type="checkbox"/> Price is Determinative	<input checked="" type="checkbox"/> Price is Not Determinative	
Amount of Preference	LBE preference = 2.5% of Cost SBE preference = 2.5% of Cost	LBE preference = 5% of Points SBE preference = 5% of Points	
In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.			
Business Name			
Business Address			
Telephone No.		Email	
Type of Business	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)
<p>*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE</p> <p>In order to qualify as an LBE you must provide the following information:</p> <p>Current San Jose Business Tax Certificate Number </p> <p>Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County: </p>			
<p>**SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE</p> <p>In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your entire business --NOT just local employees, or employees working in the office address given above.</p> <p>Please state the number of employees that your Business has: </p>			
<p>Based upon the forgoing information I am requesting that the Business named above be given the following preferences (<i>please check</i>): <input type="checkbox"/> Local Business Enterprise <input type="checkbox"/> Small Business Enterprise</p>			
I declare under penalty of perjury that the information supplied by me in this form is true and correct.			
Executed at:	, California		
Date:			
Signature			
Print name			

CERTIFICATION

Proposing Firm Name:			
Address:			
Telephone:			
Facsimile:			
Email:			
Contact person name and title:			

PROPOSER REPRESENTATIONS

1. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal.
2. Proposer additionally certifies that neither Proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local governmental agency.
3. Proposer acknowledges that all requests for deviations, exceptions, and approved equals are enclosed herein and that only those deviations, exceptions, and approved equals included in the RFP document or permitted by formal addenda are accepted by the City.
4. Proposer did not receive unauthorized information from any City staff member or City Proposer during the Proposal period except as provided for in the Request for Proposals package, formal addenda issued by the City, or the pre-proposal conference.
5. Proposer hereby certifies that the information contained in the proposal and all accompanying documents is true and correct.
6. Please check the appropriate box below:

☐ If the proposal is submitted by an individual, it shall be signed by him or her, and if he or she is doing business under a fictitious name, the proposal shall so state.

☐ If the proposal is submitted by a partnership, the full names and addresses of all members and the address of the partnership, the full names and addresses of all members and the addresses of the partnership, the full names and addresses of all members and the address of the partnership shall be stated and the proposal shall be signed for all members by one or more members thereof.

☐ If the proposal is submitted by a corporation, it shall be signed in the corporate name by an authorized officer or officers.

☐ If the proposal is submitted by a limited liability company, it shall be signed in the corporate name by an authorized officer or officers.

☐ If the proposal is submitted by a joint venture, the full names and addresses of all members of the joint venture shall be stated and it shall be signed by each individual.

By signing below, the submission of a proposal with all accompanying documents shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and that they have read and understand the RFP.

Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Complete additional signatures below as required per # 6 above	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	
Authorized Representative Name (sign name):	
Authorized Representative Signature (print name):	
Authorized Representative Title (print title):+	

FORM 2
MINIMUM QUALIFICATIONS
CPMS 8895 – INTERIM FACILITY – FOUR (4) GATES

PART I: MINIMUM REQUIREMENTS FOR QUALIFICATION

This Part I is the first step in evaluating the DB Entity. It seeks information about various members of the Design-Build Team, and consists of questions that must be answered correctly or the DB Entity will be disqualified.

NOTE: DB Entity will be immediately disqualified if the answer to any of questions 1 through 4 is “No”.

1. Does the General Contractor possess a valid and current California contractor’s license for this PROJECT for which the DB Entity intends to submit a proposal?

☐ Yes ☐ No

2. Is the DB Entity able to obtain (or has) insurance in the limits stated in Exhibit D?

☐ Yes ☐ No

Provide a notarized declaration from the Insurance Company or from the broker/agent stating that the DB Entity is able to obtain or has insurance in the limits stated in Exhibit D for this construction PROJECT. Either provide the declaration or include the following notarized statement in the last paragraph of the declaration:

“The undersigned declares under penalty of perjury that the above statements submitted are true and correct and that this declaration was executed in State: _____,
County: _____,

on _____.”
(date)

(Name and Title, printed or typed)

(Signature)

3. Does the General Contractor have current workers’ compensation insurance coverage as required by the Labor Code or is it legally self-insured pursuant to Labor Code section 3700 et. seq.?

☐ Yes ☐ No

4. Is the DB Entity able to obtain performance and payment bonds for the PROJECT, which is expected to involve a construction contract of up to \$50,000,000 (Fifty Million Dollars).

☐ Yes

☐ No

Provide a notarized statement from the Surety Company stating the amount of bonding currently available to the DB Entity for this construction contract. Either provide a declaration or include the following in the last paragraph of the declaration.

"The undersigned declares under penalty of perjury that the above statements submitted are true and correct and that this declaration was executed in State: _____, County: _____,

on _____."
(date)

Name of bonding company/surety: _____

Name of surety agent: _____

Agent's address: _____

Agent's telephone number: _____

(Name and Title, printed or typed)

(Signature)

NOTE: The preceding notarized statement must be from the surety company, not an agent or broker.

NOTE: DB Entity will be immediately disqualified if the answer to any of questions 5 through 11 are "Yes".

5. Has any contractor license held by the General Contractor or any of the proposed DB Team members been revoked or suspended without a successful appeal for reinstatement, within the 5 years immediately before the issuance of this RFP?

☐ Yes

☐ No

6. Within the 5 years immediately before the issuance of this RFP, has a surety firm completed a contract or paid for completion of a contract on behalf of the General Contractor or any member of the DB Team?
- ☐ Yes ☐ No
7. Within the 5 years immediately before the issuance of this RFP, has the General Contractor or any member of the DB Team been debarred for any reason by the City of San José or any other public agency?
- ☐ Yes ☐ No
8. Within the 5 years immediately before the issuance of this RFP, has the General Contractor or any member of the DB Team been ineligible to bid on or be awarded a public works contract pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?
- ☐ Yes ☐ No
9. At any time during the 5 years immediately before the issuance of this RFP, has the General Contractor or any member of the DB Team or any of its owners or officers been convicted of a crime involving the procurement, awarding or performance of a government contract?
- ☐ Yes ☐ No
10. Has any professional license, credential or registration held by any Architect who will provide services to the PROJECT been revoked or suspended at any time in 5 years immediately before the issuance of this RFP?
- ☐ Yes ☐ No
11. Has any professional license, credential or registration held by any Engineer who will provide services to the PROJECT been revoked or suspended at any time in the 5 years immediately before the issuance of this RFP?
- ☐ Yes ☐ No

NOTE: DB Entity will be immediately disqualified if the answer to any of questions 12 through 16 are "No".

12. Do all architects and engineers who are expected to work on the PROJECT possess current California professional licenses for the services which they intend to provide?
- ☐ Yes ☐ No

13. By submitting an PROPOSAL in response to this RFP, does the DB Entity make a binding commitment that the contractors at every tier will use a “skilled and trained workforce” to perform all work on the PROJECT that falls within an “apprenticeable occupation” in the building and construction trades, or has the DB Entity attached evidence to it PROPOSAL that the DB Entity has entered into a project labor agreement incorporating such requirements, as set forth in Public Contract Code Section 22164(c)?

☐ Yes, the DB Entity will use a “skilled and trained workforce”

☐ Yes, the DB Entity has entered into a project labor agreement (include such evidence in this Part I of your PROPOSAL)

☐ No

14. Does the Lead Architectural Firm meet the experience requirements for this PROJECT as set forth in Part III of this RFP, entitled “Minimum Project Experience Requirements.”

☐ Yes

☐ No

15. Does the General Contractor meet the experience requirements for this PROJECT as set forth in Part III of this RFP, entitled “Minimum Project Experience Requirements.”

☐ Yes

☐ No

NOTE: For question 16, the DB Entity will be immediately disqualified if the three-year average EMR exceeds 1.00.

16. Experience Modification Rate (EMR)

A. Required EMR Rate for the General Contractor *that has performed work in California:*

List the General Contractor’s EMR (California workers’ compensation insurance) for each of the past three premium years; calculate the three-year average:

	Year	EMR
Most recent available year		
Previous year		
Year prior to previous year		
Three-year average EMR:		

B. Required EMR Rate for the General Contractor *that has not performed work in California:*

If the General Contractor has not performed work in California during at least the three most recent years, list below the General Contractor’s **Interstate** Experience Modification Rate for each of the past three premium years; calculate the three-year average. **Attach to the PROPOSAL** documentation clearly showing the General Contractor’s **Interstate** Experience Modification Rate

for each of the past three premium years.

Note: Leave the following table empty if you have performed work in California during the three most recent years.

	Year	Interstate EMR
Most recent available year		
Previous year		
Year prior to previous year		
Three-year average EMR:		

NOTE for questions 17 through 18: The average total recordable injury and illness rate (also known as OSHA Incidence Rate) and average lost work rate (also known as the Lost Workday Incidence Rate) for the most recent three-year period must not exceed the applicable statistical standards for its business category. As an alternative, a DB Entity may be deemed to have an acceptable safety record in those categories if the DB Entity is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code. Should none of these requirements be met, then the DB Entity will be immediately disqualified.

17. List the General Contractor's total recordable injury/illness rate for each of the past three premium years, and include the applicable statistical standard for that year of the appropriate category; calculate the three-year average.

	Year	Average total recordable injury/illness rate	Applicable statistical standard for that year	Applicable business category (describe category)
Most recent available year				
Previous year				
Year prior to previous year				
Three-year average:				

18. List the General Contractor's lost work rate for each of the past three premium years, and include the applicable statistical standard for that year of the appropriate category; calculate the three-year average.

	Year	Lost work rate	Applicable statistical standard for that year	Applicable business category (describe category)
Most recent available year				
Previous year				
Year prior to previous year				
Three-year average:				

19. Is your firm a party to an alternative dispute resolution system as described in Section 3201.5 of the Labor Code?

☐ Yes

☐ No

If "yes," attached a separate page describing how your firm is a party to an alternative dispute resolution system.

-End of Part I -

PART II: SCORED QUESTIONS

A. SCORED QUESTIONS FOR THE GENERAL CONTRACTOR

Provide the following information about the General Contractor that will construct the PROJECT. If the General Contractor is itself the DB Entity, then provide all information requested as it relates to the DB Entity itself.

- A-1. How many years has the General Contractor been licensed in California under their present business name and license number?

☐ 10 years or more ☐ 8-9 years ☐ 6-7 years ☐ 5 years or less

- A-2. Is the General Contractor currently the debtor in a bankruptcy case?

☐ Yes ☐ No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed. Failure to provide this information may result in immediate DB Entity disqualification.

- A-3. Was the General Contractor in bankruptcy at any time during the 5 years immediately before the issuance of this RFP?

Note: This question refers *only* to a bankruptcy action that was *not* described in answer to question 2, above.

☐ Yes ☐ No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued. Failure to provide this information may result in immediate DB Entity disqualification.

Note: Failure to provide an explanation for "yes" answer to Questions A-4 to A-14 may result in immediate DB Entity disqualification.

- A-4. At any time in the 5 years immediately before the issuance of this RFP has the General Contractor been assessed and paid liquidated damages of more than \$50,000 on a construction contract with either a public or private owner?

☐ Yes ☐ No

If "yes," explain on a separate page. Identify all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

- A-5. Has the General Contractor ever defaulted on a construction contract?

☐ Yes ☐ No

If "yes," explain on a separate page.

- A-6. In the 5 years immediately before the issuance of this RFP has the General Contractor been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

☐ Yes ☐ No

If "yes," explain on a separate page. State the name of the organization debarred, the name of the person within your firm who was associated with that organization, the year of the event, the owner of the project, and the basis for the action.

NOTE: The following two questions refer only to disputes between contractors and owners of projects. You need not include information about disputes with suppliers, other contractors, or subcontractors. You need not include information about "pass-through" disputes in which the actual dispute is between a subcontractor and a project owner.

- A-7. In the 5 years immediately before the issuance of this RFP has any construction project owner or subcontractor on a construction project made a claim in excess of \$50,000 against the General Contractor wherein the claim resulted in a lawsuit, arbitration, mediation and/or some other sort of formal dispute resolution?

☐ Yes ☐ No

If "yes," on a separate page identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

- A-8. In the 5 years immediately before the issuance of this RFP has the General Contractor made any claim in excess of \$50,000 against a project owner or a subcontractor on a construction project wherein the claim resulted in a lawsuit, arbitration, mediation and/or some other sort of formal dispute resolution?

☐ Yes

☐ No

If "yes," on a separate page identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

- A-9. At the time of submitting this PROPOSAL, does the General Contractor, or any first- or second-tier subcontractor or supplier that the General Contractor anticipates using on this PROJECT, currently have an unresolved Stop Notice filed on any City of San José or other public agency projects?

☐ No

☐ Yes, one unresolved Stop Notice

☐ Yes, two or more unresolved Stop Notice

If "yes," explain on a separate page. Identify the year of the event, the owner, the project and the detailed explanation for the stop notice.

- A-10. In the 5 years immediately before the issuance of this RFP has any insurance carrier, or any form of insurance, refused to renew the insurance policy for the General Contractor?

☐ Yes

☐ No

If "yes," on a separate page provide the name of the insured, name the insurance carrier, the form of insurance, the year of the refusal, and the exact reason for the refusal to renew.

- A-11. During the 5 years immediately before the issuance of this RFP, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public or private construction project when one was required?

☐ Yes

☐ No

If yes, provide details on a separate page indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

- A-12. Has the General Contractor ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any private or public agency or entity?

☐ Yes ☐ No

If "yes," explain on a separate page, including identifying who was found liable or guilty, the court and case number, the name of the public entity, the civil or criminal verdict, the date and the basis for the finding.

- A-13. Has the General Contractor ever been convicted of a crime involving any federal, state, or local law related to the procurement of a construction contract or construction?

☐ Yes ☐ No

If "yes," explain on a separate page, including identifying who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.

- A-14. Has the General Contractor ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

☐ Yes ☐ No

If "yes," identify on a separate page the person or persons convicted, the year, the court (the county if a state court; the district or location of the federal court), the case number, the crimes, and the grounds for conviction.

- A-15. Has CAL OSHA or any other state agency cited and assessed penalties against the General Contractor for any "serious," "willful" or "repeat" violations of its safety or health regulations in the 5 years immediately before the issuance of this RFP?

NOTE: If General Contractor has filed an appeal of a citation, and the state's Occupational Safety and Health Appeals Board has not yet ruled on the appeal, General Contractor need not include information about it.

☐ Yes ☐ No

If "yes," attached a separate page describing all citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, and the amount of penalty paid, if any. If any citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision. Note, "serious," "willful" or "repeat" violations may deem a DB Entity disqualified.

- A-16. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against the General Contractor in the 5 years immediately before the issuance of this RFP?

NOTE: If General Contractor has filed an appeal of a citation and the Appeals Board has not yet ruled on the appeal, or if there is a court appeal pending, General Contractor need not include information about the citation.

☐ Yes ☐ No

If "yes," on separate page describe the citations, the party against whom the citation was made, date of citation, nature of the violation, project on which the citation was issued, owner of project, and the amount of penalty paid, if any. State the case number and date of any decision.

- A-17. In the 5 years immediately before the issuance of this RFP, has the EPA, any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either the General Contractor or the owner of a construction project on which the General Contractor was working?

NOTE: If an appeal of a citation has been filed and the Appeals Board has not yet ruled on the appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ Yes ☐ No

If "yes," on separate page describe the citations, the party against whom the citation was made, date of citation, nature of the violation, project on which the citation was issued, owner of project, and the amount of penalty paid, if any. State the case number and date of any decision.

- A-18. Does the General Contractor require documented safety meetings to be held for construction employees and field supervisors during the course of a project? (select one)

☐ No
☐ Yes, at least once a week
☐ Yes, every two weeks
☐ Yes, less than every two weeks

- A-19. Within the 5 years immediately before the issuance of this RFP, has there ever been a period when the General Contractor had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☐ No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

- A-20. In the 5 years immediately before the issuance of this RFP has the General Contractor been assessed

any penalties and/or liquidated damages in excess of \$15,000 due to the failure to pay prevailing wage or failure to submit Certified Payroll Reports?

☐ No

☐ Yes, one penalty has been assessed

☐ Yes, two or more penalties have been assessed

If "yes," explain on a separate page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

A-21. Does the General Contractor operate its own State-approved apprenticeship program?

☐ Yes

☐ No

If you answered "yes," **provide the following information on a separate page and insert in this Part IV of your PROPOSAL:**

- (a) Identify the craft or crafts in which you provided apprenticeship training in the past year.
- (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
- (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

A-22. At any time during the 5 years immediately before the issuance of this RFP, has a court or administrative body made a final determination that the General Contractor violated a provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices?

☐ Yes

☐ No

If "yes," provide on a separate page the date of the decision and attach a copy of the final decision to your PROPOSAL.

B. SCORED QUESTIONS FOR THE LEAD ARCHITECTURAL FIRM

Provide the following information about the Lead Architectural Firm that will design the PROJECT. If the Lead Architectural Firm is itself the DB Entity, then provide all information requested as it relates to the DB Entity itself.

B-1. How many years has the Lead Architect been licensed and practicing in California?

☐ 10 years or more ☐ 8-9 years ☐ 6-7 years ☐ 5 years or less

B-2. Is the Lead Architectural Firm currently the debtor in a bankruptcy case?

☐ Yes ☐ No

If "yes," please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

B-3. Was the Lead Architectural Firm in bankruptcy at any time during the 5 years immediately before the issuance of this RFP?

Note: This question refers *only* to a bankruptcy action that was *not* described in answer to question B-2, above.

☐ Yes ☐ No

If "yes," please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court's discharge order, or of any other document that ended the case, if no discharge order was issued.

Note: Failure to provide an explanation for a "yes" answer to Questions B-4 to B-6 may result in immediate DB Entity disqualification.

B-4. In the 5 years immediately before the issuance of this RFP has the Lead Architect or the Lead Architectural Firm been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any project for any reason?

☐ Yes ☐ No

If "yes," explain on a separate page. State the name of the organization debarred, the year of the event, the owner of the project, and the basis for the action.

- B-5. In the 5 years immediately before the issuance of this RFP has there been any claim or dispute in excess of \$50,000 against the Lead Architect or the Lead Architectural Firm concerning its design work on a construction project that resulted in the filing of a lawsuit, an arbitration or mediation proceeding, or any other type of dispute resolution proceeding?

☐ Yes

☐ No

If "yes," on a separate page identify the claim(s)/dispute(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim and form of dispute resolution involved, the court in which the case was filed (if a lawsuit was filed) and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

- B-6. In the 5 years immediately before the issuance of this RFP has the Lead Architect or the Lead Architectural Firm made any claim in excess of \$50,000 in any lawsuit, arbitration or mediation proceeding, or any other type of dispute resolution proceeding, against a project owner concerning its design work or payment ?

☐ Yes

☐ No

If "yes," on a separate page identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim and the form of dispute resolution involved, the court in which the case was filed (if a lawsuit was filed) and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

- B-7. In the 5 years immediately before the issuance of this RFP has any insurance carrier refused to renew the insurance policy (including any part of an insurance policy) for the Lead Architect or the Lead Architectural Firm, based on non- payment or losses?

☐ Yes

☐ No

If "yes," on a separate page provide the name of the insured, name the insurance carrier, the form of insurance and the year of the refusal.

- B-8. Within the 5 years immediately before the issuance of this RFP has there ever been a period when the Lead Architectural Firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate page.

☐ No

If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years.

- B-9. Has the Lead Architect or the Lead Architectural Firm ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any private or public agency or entity?

☐ Yes

☐ No

If "yes," explain on a separate page, including identifying who was found liable or guilty, the court and case number, the name of the agency or entity, the civil or criminal verdict, the date and the basis for the finding.

- B-10. Has the Lead Architect or the Lead Architectural Firm ever been convicted of a crime involving any federal, state, or local law related to work performed as an architect or an architectural firm?

☐ Yes

☐ No

If "yes," explain on a separate page, including identifying who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.

- B-11. Has the Lead Architect or the Lead Architectural Firm ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

☐ Yes

☐ No

If "yes," identify on a separate page the person or persons convicted, the year, the court (the county if a state court; the district or location of the federal court), the case number, the crimes, and the grounds for conviction.

- B-12. Has the California Department of Consumer Affairs, or an equivalent agency in any other state, taken any disciplinary action against the Lead Architect or the Lead Architectural Firm?

☐ Yes

☐ No

If "yes," please explain on a separate page.

– End of Part II –

PART III: MINIMUM PROJECT EXPERIENCE REQUIREMENTS

The DB Entity must submit all project experience information in accordance with the instructions that follow. Failure to meet the submittal or experience requirements listed below for submitted past projects will deem the DB Entity as disqualified.

A. GENERAL CONTRACTOR AND LEAD ARCHITECTURAL FIRM CONSTRUCTION AND DESIGN EXPERIENCE REQUIREMENTS

The DB Entity must identify at least three (3) Completed Similar Projects by the General Contractor and/or the Lead Architectural Firm in the format prescribed by the *Project Data Sheets*, provided immediately following this part.

Completed Similar Projects identified on the Project Data Sheets *must* meet the following minimum requirements:

1. At least two (2) of the Completed Similar Projects must have been for both design and construction services.
2. At least two (2) of the Completed Similar Projects must be terminal projects for a medium or large hub, or comparable size airport as Mineta San Jose International Airport.
3. At least one (1) of the Completed Similar Projects must be a project in which the DB Entity held a prime role as the General Contractor with an alternative project delivery model such as Design Build, Progressive Design-Build, Design-Assist, Construction Manager at Risk, or Construction Manager-General Contractor.
3. The projects must have met the requirements for being a Completed Similar Project within the 10 years immediately before the issuance of this RFP.
4. The Project Value for each Completed Similar Projects must be over \$25 million dollars if the Contract was held solely by an individual entity. Alternatively, Proposer portion of the Contract held through a JV Agreement must have been greater than \$25 million.

Any project identified on a Project Data Sheet that does not meet the above minimum requirements or the requirements for being a Completed Similar Project will *not* count towards the DB Entity's minimum required number of Completed Similar Projects; however, the CITY *may* consider the project in determining whether to pre-qualify a DB Entity.

In addition to the above minimum requirements, the information you provide about each Completed Similar Project should demonstrate that the DB Entity has the qualifications and experience needed to develop and implement the PROJECT. Each Project Data Sheet should include the following.

The CITY's assessment of project experience will also include, but is not limited to, reference checks from owners. Names and references must be current and verifiable.

Projects will be reviewed in the order presented (i.e. any project beyond the third project will not be read nor considered).

Project 1 – FORM 2 – PART III - Qualifying Project Data

Project Name:	
Project Data Sheet for:	<input type="checkbox"/> General Design-Build Entity <input type="checkbox"/> Principle Architectural Firm <input type="checkbox"/> Other (including JV)
Name of Proposer Member	
Project Name	
Project Location	
Project Owner	
Project Owner Contact	<i>Provide current Owner contact name(s) agency, address, phone number, and email. The owner contact is the person who you believe is best qualified to answer interview questions about the project.</i>
Completed Project Date	<i>Date that the qualified this as a Completed Similar Project .</i>
Project Value	<i>Project Value.</i>
Responsible Firm(s) and Role	<i>Provide the name of each responsible firm and role.</i>
Project Manager	<i>Provide name of principle Project Manager</i>
On-site Project Manager	<i>Name of Project Manager On-site.</i>
Project Superintendent	<i>Name of project Superintendent</i>
Project Delivery Method	<i>Identify the project delivery method (ie: design-build, construction manager at risk, construction manager-general Design-Build Entity)</i>
Scope of Services	<i>Describe the scope of services related to all phases of project delivery. In the description, clearly identify how the project qualifies as a Completed Similar Project and otherwise meets the minimum experience requirements.</i>
Original Contract Value	<i>Provide the contract amount at time of executing the contract.</i>
Final Contract Amount	<i>Provide final contract amount: Briefly explain in one sentence the difference between the final contract amount and the original contract amount, and provide additional information below.</i>
Original Schedule Completion Date	<i>Provide the scheduled completion date at time of entering into the contract. Explain in one sentence if actual or project completion date differs from original scheduled completion date and provide additional information below.</i>
Relevancy to Project in this RFP	<i>Provide how this project is applicable and relevant to the Project. The description should demonstrate how the project meets the minimum qualifications in this RFP.</i>

Project 2 – FORM 2 – PART III - Qualifying Project Data

Project Name:	
Project Data Sheet for:	<input type="checkbox"/> General Design-Build Entity <input type="checkbox"/> Principle Architectural Firm <input type="checkbox"/> Other (including JV)
Name of Proposer Member	
Project Name	
Project Location	
Project Owner	
Project Owner Contact	<i>Provide current Owner contact name(s) agency, address, phone number, and email. The owner contact is the person who you believe is best qualified to answer interview questions about the project.</i>
Completed Project Date	<i>Date that the qualified this as a Completed Similar Project.</i>
Project Value	<i>Project Value.</i>
Responsible Firm(s) and Role	<i>Provide the name of each responsible firm and role.</i>
Project Manager	<i>Provide name of principle Project Manager</i>
On-site Project Manager	<i>Name of Project Manager On-site.</i>
Project Superintendent	<i>Name of project Superintendent</i>
Project Delivery Method	<i>Identify the project delivery method (ie: design-build, construction manager at risk, construction manager-general Design-Build Entity)</i>
Scope of Services	<i>Describe the scope of services related to all phases of project delivery. In the description, clearly identify how the project qualifies as a Completed Similar Project and otherwise meets the minimum experience requirements.</i>
Original Contract Value	<i>Provide the contract amount at time of executing the contract.</i>
Final Contract Amount	<i>Provide final contract amount: Briefly explain in one sentence the difference between the final contract amount and the original contract amount, and provide additional information below.</i>
Original Schedule Completion Date	<i>Provide the scheduled completion date at time of entering into the contract. Explain in one sentence if actual or project completion date differs from original scheduled completion date and provide additional information below.</i>
Relevancy to Project in this RFP	<i>Provide how this project is applicable and relevant to the Project. The description should demonstrate how the project meets the minimum qualifications in this RFP.</i>

Project 3 – FORM 2 – PART III - Qualifying Project Data

Project Name:	
Project Data Sheet for:	<input type="checkbox"/> General Design-Build Entity <input type="checkbox"/> Principle Architectural Firm <input type="checkbox"/> Other (including JV)
Name of Proposer Member	
Project Name	
Project Location	
Project Owner	
Project Owner Contact	<i>Provide current Owner contact name(s) agency, address, phone number, and email. The owner contact is the person who you believe is best qualified to answer interview questions about the project.</i>
Completed Project Date	<i>Date that the qualified this as a Completed Similar Project.</i>
Project Value	<i>Project Value.</i>
Responsible Firm(s) and Role	<i>Provide the name of each responsible firm and role.</i>
Project Manager	<i>Provide name of principle Project Manager</i>
On-site Project Manager	<i>Name of Project Manager On-site.</i>
Project Superintendent	<i>Name of project Superintendent</i>
Project Delivery Method	<i>Identify the project delivery method (ie: design-build, construction manager at risk, construction manager-general Design-Build Entity)</i>
Scope of Services	<i>Describe the scope of services related to all phases of project delivery. In the description, clearly identify how the project qualifies as a Completed Similar Project and otherwise meets the minimum experience requirements.</i>
Original Contract Value	<i>Provide the contract amount at time of executing the contract.</i>
Final Contract Amount	<i>Provide final contract amount: Briefly explain in one sentence the difference between the final contract amount and the original contract amount, and provide additional information below.</i>
Original Schedule Completion Date	<i>Provide the scheduled completion date at time of entering into the contract. Explain in one sentence if actual or project completion date differs from original scheduled completion date and provide additional information below.</i>
Relevancy to Project in this RFP	<i>Provide how this project is applicable and relevant to the Project. The description should demonstrate how the project meets the minimum qualifications in this RFP.</i>

– End of Part III –

PART IV: FINANCIAL

A. FINANCIAL INFORMATION

DB Entity shall provide and attach the following in a sealed envelope attached to its RFP submittal:

1. A copy of the DB Entity's most recent certified financial statements including the balance sheet, statement of cash flows, and notes to the financial statements.

In the event that the DB Entity is a partnership or joint venture (whether formed or intended to be formed), provide the above financial information for all general partners or members.

Fill in the information below for the three full fiscal years immediately preceding the date the City issued this RFQ. In the event that the DB Entity is a partnership or joint venture (whether formed or intended to be formed), provide the information below for all general partners or members.

Current Assets: \$ _____

Current Liabilities: \$ _____

Total Net Worth: \$ _____

Current Ratio (Assets/Liabilities): _____

Working Capital (Current Assets - Current Liabilities): \$ _____

2. Financial Capability Evaluation:

The DB Entity's financial capability will be evaluated based on the financial statements using the following criteria:

- a. Profitability and growth
- b. Solvency
- c. Financial efficiency
- d. Market strength
- e. Bond, credit, and other ratings

- End of Part IV -

FORM 2: SCORING MATRIX

A. PART I: MINIMUM REQUIREMENTS FOR QUALIFICATION

This part seeks information about various members of the Design-Build Entity, and consists of pass/fail questions. This is the first step in rating the Design-Build Entity. A Design-Build Entity that “fails” any one of the questions 1-20 listed in Part I will be disqualified (except with respect to questions 19 and 20 to the extent the DB Entity is a party to an alternative dispute resolution system as identified in Question 20).

PART II: SCORED QUESTIONS

PART II.A. SCORED QUESTIONS FOR THE GENERAL CONTRACTOR

The maximum possible score for Part II.A. is 140. A minimum score of 105 must be attained or the General Contractor will be rated as not qualified which in turn disqualifies the Design-Build Entity.

Question #	Quantity	Yes	No	Score
A-1	<i>10 yrs + = 10 pts</i> <i>8 to 9 yrs = 6 pts</i> <i>6 to 7 yrs = 3 pts</i> <i>5 yrs or less = 0 pts</i>	N/A	N/A	
A-2	N/A	0	10	
A-3	N/A	0	10	

Question #	Quantity	Yes	No	Score
A-4	<i>0-1 Projects = 10 pts</i> <i>2 Projects = 3 pts</i> <i>More than 2 Projects = 0 pts</i>	N/A	N/A	
A-5	N/A	0	5	
A-6	N/A	0	10	
A-7	<i>5 pts for 0 or 1 instance</i> <i>3 pts for 2 instances</i> <i>0 pts for more than 2 instances</i>	N/A	N/A	
A-8	N/A	N/A	5	
A-9	<i>5 pts for 0 or 1 instance</i> <i>3 pts for 2 instances</i> <i>0 pts for more than 2 instances</i>	0	5	
A-10	N/A	0	5	
A-11	N/A	0	10	
A-12	N/A	-5	5	
A-13	N/A	-10	5	
A-14	N/A	-10	5	

Question #	Quantity	Yes	No	Score
A-15	N/A	0	5	
A-16	N/A	0	5	
A-17	N/A	0	5	
A-18	10 pts for at least once a week 5 pts for every two weeks 0 pts for less than every two weeks	N/A	N/A	
A-19	N/A	0	5	
A-20	5 pts for 0 instance 3 pts for 1 instances 0 pts for more than 1 instance			
A-21	N/A	N/A	N/A	
A-22	N/A	0	5	
Total Score (Disqualified if less than 105)				

– End of Part II –

PART III. SCORED QUESTIONS FOR THE LEAD ARCHITECTURAL FIRM

The maximum possible score for Part II.B. is 80. A minimum score of 60 must be attained or the Lead Architectural Firm will be rated as not qualified which in turn disqualifies the Design-Build Entity.

Question #	Quantity	Yes	No	Score
B-1	<i>10 yrs + = 10 pts</i> <i>8 to 9 yrs = 6 pts</i> <i>6 to 7 yrs = 3 pts</i> <i>5 yrs or less = 0 pts</i>	N/A	N/A	
B-2	N/A	0	10	
B-3	N/A	0	10	
B-4	N/A	0	5	
B-5	N/A	0	5	
B-6	N/A	0	5	
B-7	N/A	0	5	
B-8	N/A	0	5	
B-9	N/A	-5	5	
B-10	N/A	-10	5	
B-11	N/A	-10	5	

Question #	Quantity	Yes	No	Score
B-12	<i>N/A</i>	0	10	
Total Score (Disqualified if less than 60)				

– End of Part III –

FORM 2 INTERVIEW QUESTIONNAIRE SCORING

Reference Contact will be attempted for all three referenced projects. Contact must be made for at least two of the three referenced projects. The maximum possible score for this Part is 100 for each referenced project. A minimum score of 60 for at least two projects must be attained for the General Contractor and/or the Lead Architectural Firm. Any two of the three projects rated below 60 will be rated as not qualified which in turn disqualifies the Design-Build Entity.

DB ENTITY TEAM MEMBER: _____

PROJECT: _____

Please review the following statements and select the point level that best reflects your experience with the DB Entity Team Member on the project in question.

Scored Statements:

1. **SUPERVISION & PERSONNEL:** Throughout the project, the personnel had sufficient experience with the project type to generally coordinate the work and provided the supervision necessary to maintain the critical path schedule, to resolve multi-trade conflicts ahead of critical path activities and to avoid the need for the Owner to reject work more often than would reasonably be expected for a project of this type and size.

0 points = The DB Entity Team Member consistently failed to meet this standard.

10 points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

2. **SCHEDULE:** Throughout the project, the DB Entity Team Member generally adhered to the project schedule pursuant to the contract requirements. When required by Owner requested changes or unforeseen conditions, the DB Entity Team Member provided reasonable proposals to minimize or eliminate impacts to the critical path schedule.

0 points = The DB Entity Team Member consistently failed to meet this standard.

10 points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

3. **CHANGE ORDERS:** Throughout the project, the DB Entity Team Member generally submitted

estimates in a timely manner to perform change order work, and such submittals contained reasonable and readily verifiable time, material and labor estimates. Furthermore, throughout the project, the DB Entity Team Member integrated the change order work into the existing work so as to minimize disruptions to the approved schedule and to the quality of the work.

0 points = The DB Entity Team Member consistently failed to meet this standard.

10 points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

4. PAYMENT OF SUBCONTRACTORS/SUPPLIERS: Which of the following statements most correctly describes the number of stop notices and/or mechanics liens on the project:

0 points = Throughout the project, there were 10 or more cases of subcontractors and/or suppliers submitting stop notices and/or mechanics liens due to lack of timely payment.

10 points = 5 to 9 cases

15 points = 2 to 4 cases

20 points = no more than 1 case

SCORE _____

5. PROJECT CLOSE OUT (for General Contractor and Principal Engineering Firm): The DB Entity Team Member generally submitted Operation & Maintenance manuals, completed as-built drawings, provided training, and performed all punch-list and warranty item work, all in the manner required by the construction contract.

0 points = The DB Entity consistently failed to meet this standard. 10

points = The DB Entity marginally met this standard.

20 points = The DB Entity consistently met/exceeded this standard.

SCORE _____

GRAND TOTAL: _____

Maximum Points is 100 Points

– End of Reference Check Scoring –

FORM 2: OWNER REFERENCE INTERVIEW QUESTIONNAIRE

**** NO ACTION ON THE DB ENTITY'S PART IS NECESSARY. THESE QUESTIONS ARE INCLUDED IN THE PACKAGE GIVEN TO THE DB ENTITY FOR INFORMATION ONLY.**

For at least two (2) of the Completed Similar Projects identified in Part III, the CITY will use the following questions to interview the Owner Reference you identified in Part III – Project Data Sheet as being the best persons to answer these questions. The CITY reserves the right to disqualify a project for consideration where the contact person given demonstrates a lack of knowledge regarding the specifics of the project in question and/or the DB Entity's performance on that project.

PROJECT INFORMATION

DB Entity Team Member:

Project:

Contact Name:

Contact

Company\Entity:

Email:

GENERAL PROJECT BACKGROUND

Please give a brief description of the project and any unique challenges or restrictions placed on the DB Entity Team Member (i.e. phasing of the work, accelerated schedule, etc.)

DB ENTITY TEAM MEMBER: _____

PROJECT: _____

Please review the following statements and select the point level that best reflects your experience with the DB Entity Team Member on the project in question.

Scored Statements:

1. **SUPERVISION & PERSONNEL:** Throughout the project, the personnel had sufficient experience with the project type to generally coordinate the work and provided the supervision necessary to maintain the critical path schedule, to resolve multi-trade conflicts ahead of critical path activities and to avoid the need for the Owner to reject work more often than would reasonably be expected for a project of this type and size.

0 points = The DB Entity Team Member consistently failed to meet this standard. 10

points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

2. **SCHEDULE:** Throughout the project, the DB Entity Team Member generally adhered to the project schedule pursuant to the contract requirements. When required by Owner requested changes or unforeseen conditions, the DB Entity Team Member provided reasonable proposals to minimize or eliminate impacts to the critical path schedule.

0 points = The DB Entity Team Member consistently failed to meet this standard. 10

points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

3. **CHANGE ORDERS:** Throughout the project, the DB Entity Team Member generally submitted estimates in a timely manner to perform change order work, and such submittals contained reasonable and readily verifiable time, material and labor estimates. Furthermore, throughout the project, the DB Entity Team Member integrated the change order work into the existing work so as to minimize disruptions to the approved schedule and to the quality of the work.

0 points = The DB Entity Team Member consistently failed to meet this standard. 10

points = The DB Entity Team Member marginally met this standard.

20 points = The DB Entity Team Member consistently met/exceeded this standard.

SCORE _____

4. **PAYMENT OF SUBCONTRACTORS/SUPPLIERS:** Which of the following statements most correctly describes the number of stop notices and/or mechanics liens on the project:

0 points = Throughout the project, there were 10 or more cases of subcontractors and/or suppliers submitting stop notices and/or mechanics liens due to lack of timely payment.

10 points = 5 to 9 cases

15 points = 2 to 4 cases

20 points = no more than 1 case

SCORE _____

5. PROJECT CLOSE OUT (for General Contractor and Lead Architectural Firm): The DB Entity Team Member generally submitted Operation & Maintenance manuals, completed as-built drawings, provided training, and performed all punch-list and warranty item work, all in the manner required by the construction contract.

0 points = The DB Entity consistently failed to meet this standard. 10

points = The DB Entity marginally met this standard.

20 points = The DB Entity consistently met/exceeded this standard.

SCORE _____

GRAND TOTAL: _____

(Max. 100 Points)

FORM 3
PROPOSER'S QUESTIONNAIRE

PART I: DB ENTITY INFORMATION & CERTIFICATION

The DB Entity must provide all of the following information to be considered for further review. The DB Entity must also sign this form, certifying that the statements and information contained in this Proposal are complete and accurate and that the submittal contains no false or deliberately misleading information.

By signing this form, the DB Entity acknowledges that receipt of this submittal by the CITY does not constitute either a direct or implied guarantee that the CITY will determine the DB Entity meets the Minimum Qualifications for the PROJECT. By signing this form and submitting this Proposal, the DB Entity further agrees to be bound by the procedures and conditions as described in the accompanying RFP. The DB Entity is the entity that will execute the Design-Build Contract.

The certification is to be signed under penalty of perjury by the DB Entity, the entity that will execute the DB Contract. If the DB Entity is a partnership or joint venture, the certification shall be signed by the general partners or joint venture members.

If the legal entity constituting the DB Entity has not yet been formed, questions referring to the DB Entity should be answered as if the DB Entity has been formed.

A. EXECUTION & CERTIFICATION OF INFORMATION:

Complete and attach FORM 3 **Attachment 1 Proposer Form** to your Proposal. FORM 3 Attachment 1 is a certification that all information set forth in this PROPOSAL is provided under penalty of perjury by the DB Entity and, if a partnership or joint venture, its general partners or joint venture members.

B. GENERAL INFORMATION:

1. Legal Name of DB Entity: _____

2. Address of DB Entity: _____

3. Name/Title of Contact Person for this PROPOSAL: _____

(Contact person does not need to be an owner. The contact person should be sufficiently knowledgeable to respond to any questions CITY may have regarding the PROPOSAL.)

4. Contact Person's Email: _____

5. Contact Person's Phone Number: _____

6. DB Entity is: ☐ a Corporation ☐ a Partnership
☐ a Sole Proprietorship ☐ a Joint Venture
☐ Other legal entity (specify): _____

7. DB Entity Date of formation or incorporation: _____

8. Formed/Incorporated under the laws of which state: _____

C. ORGANIZATIONAL DOCUMENTS

If the DB Entity is a privately held corporation, Limited Liability Company, Partnership, Joint Venture, or other legal entity:

- Provide a copy of the organizational documents or agreement committing to form the DB Entity.
- Indicate all shareholders, partners or members who will perform work on the PROJECT.

- End of Part I -

PART II: DB TEAM INFORMATION

The DB Entity must provide all of the following information regarding the DB Team members:

A. INFORMATION ABOUT THE GENERAL CONTRACTOR

1. Name of General Contractor: _____

2. Address of General Contractor: _____

3. Name/Title of Contact Person for this Proposal: _____

(Contact person does not need to be an owner. The contact person should be sufficiently knowledgeable to respond to any questions CITY may have regarding the Proposal.)

4. Contact Person's Email: _____

5. Contact Person's Phone Number: _____

6. General Contractor's Date of formation or incorporation: _____

7. Formed/Incorporated under the laws of which state: _____

8. General Contractor is a (*select one and provide requested information*): Corporation

☐ provide information in Table 8a

☐ Sole proprietorship – provide information in Table 8b

☐ Joint Venture, Partnership or Other legal entity – provide information in Table 8c

Table 8a

General Contractor is a Corporation

Columns 1-4: Provide all the following information as of the date of this RFP for each person who is either of the following: (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

Columns 5-6: For each person you list, identify every construction firm the person has been associated with as an owner, general partner, limited partner or officer at any time during the 5 years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Name of Person or Entity	Position In General Contractor	Years with General Contracto	% Ownership in General	Previous Construction Firm(s)	Dates of Participation with Previous
CEO:					
President:					
Secretary:					
Treasurer:					
10% Stock Owner:					
10% Stock Owner:					

Table 8b

General Contractor is a Sole Proprietorship

Columns 1-2: Provide all the following information as of the date of this RFP.

Columns 3-4: Identify every construction firm the business owner has been associated with as an owner, general partner, limited partner or officer at any time during the five years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4
Owner's Name	Years as Owner	Previous Construction Firm(s)	Dates of Participation with Previous Firm(s)

Table 8c

General Contractor is a Joint Venture, Partnership or Other Legal Entity (other than a corporation)

Columns 1-4: Provide all the following information as of the date of this RFP for each person who owns 10 percent or more the General Contractor.

Columns 5-6: For each person you list, identify every construction firm the person has been associated with as an owner, general partner, limited partner or officer at any time during the five years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Name of Person or Entity	Position With General Contractor	Years with General Contractor	% Ownership in General Contractor	Previous Construction Firm(s)	Dates of Participation with Previous Firm(s)

9. Has there been any change in ownership of the General Contractor at any time during the 3 years immediately before the date upon which this RFP was issued?

NOTE: A corporation whose shares are publicly traded is not required to answer this question but must check the "Publicly Traded" box.

☐ Yes. *Explain answer on a separate page* ☐ No ☐ Publicly Traded

10. Is the General Contractor a subsidiary, parent, holding company or affiliate of another construction or design firm?

NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

☐ Yes. *Explain answer on a separate page* ☐ No

11. Are any corporate officers, partners or owners connected to any other design or construction firms?

NOTE: Include information about other firms if an owner, partner, or officer of your firm holds a similar position in another firm.

☐ Yes. *Explain answer on a separate page* ☐ No

12. State the General Contractor's gross revenues for each of the last 3 full fiscal years immediately before the date upon which this RFP was issued:

Fiscal Year:	Gross Revenues:
	\$ _____
	\$ _____
	\$ _____

13. List all license numbers, classifications and expiration dates of the California contractor's licenses held by the General Contractor, including any licenses or registration with the California Department of Industrial Relations required in accordance with SB 854:

License Number	Trade Classification	Date Issued	Expiration Date

14. If any of your firm's license(s) are held in the name of a corporation or partnership, list below the names of the qualifying individual(s) listed on the California State Licensing Board (CSLB) records who meet(s) the experience and examination requirements for each license.

15. Has the General Contractor changed names or license numbers in the 5 years immediately before the date upon which this RFP was issued?

☐ Yes. *Explain answer on a separate page
and include reason(s) for the change.*

☐ No

16. Has any owner, partner or, for corporations, officer of your firm operated a construction firm under any other name in the 5 years immediately before the date upon which this RFP was issued?

☐ Yes. *Explain answer on a separate page
and include reason(s) for the change.*

☐ No

17. Provide surety information for General Contractor for this PROJECT:

Surety's Name: _____
Name of Surety's Agent: _____
Agent's Address: _____

Agent's Telephone No.: _____

18. Provide the information below for all other sureties that have written bonds for the General Contractor during the 5 years immediately before the date upon which this RFP was issued.

Surety's Name	Surety's Address	Coverage Period

B. INFORMATION ABOUT THE LEAD ARCHITECTURAL FIRM

1. Is the Lead Architectural Firm different from the General Contractor? No; proceed to

☐ Question 12

☐ Yes; answer all questions below

2. Name of Lead Architectural Firm: _____

3. Address of Lead Architectural Firm: _____

4. Name of Lead Architect: _____

a. License Number: _____

b. Years in Practice: _____

c. Email: _____

d. Phone Number: _____

5. Date of formation or incorporation: _____

6. Formed/Incorporated Under the laws of which state: _____

7. Lead Architectural Firm is a (select one and provide requested information):

☐ Corporation – provide the information in Table 8a

☐ Sole proprietorship – provide the information in Table 8b

☐ Joint Venture, Partnership or Other legal entity – provide the information in Table 8c

Table 8a

Lead Architectural Firm is a Corporation

Columns 1-4: Provide all the following information as of the date of this RFP for each person who is either of the following: (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock. Attach additional pages if necessary.

Columns 5-6: For each person you list, identify every engineering firm the person has been associated with as an owner, general partner, limited partner or officer at any time during the 5 years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Name of Person or Entity	Position in Lead Architectural Firm	Years with Lead Architectural Firm	% Ownership in Lead Architectural Firm	Previous Engineering Firm(s)	Dates of Participation with Previous Firm(s)
CEO:					
President:					
Secretary:					
Treasurer:					
10% Stock Owner:					
10% Stock Owner:					

Table 8b

Lead Architectural Firm is a Sole Proprietorship

Columns 1-2: Provide all the following information as of the date of this RFP.

Columns 3-4: Identify every engineering firm the business owner has been associated with as an owner, general partner, limited partner or officer at any time during the 5 years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4
Owner's Name	Years as Owner	Previous Engineering Firm(s)	Dates of Participation with Previous Firm(s)

Table 8c

Lead Architectural Firm Is A Joint Venture, Partnership, Or Other Legal Entity (Other Than A Corporation)

Columns 1-4: Provide all the following information as of the date of this RFP for each person who owns 10 percent or more the Lead Architectural Firm.

Columns 5-6: For each person you list, identify every engineering firm the person has been associated with as an owner, general partner, limited partner or officer at any time during the 5 years immediately before the date upon which this RFP was issued. *For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.*

Attach additional pages if necessary.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Name of Person or Entity	Position With Lead Architectural Firm	Years with Lead Architectural Firm	% Ownership in Lead Architectural Firm	Previous Engineering Firm(s)	Dates of Participation with Previous Firm(s)

8. Has there been any change in ownership of the Lead Architectural Firm at any time during the 3 years immediately before the date upon which this RFP was issued?

NOTE: A corporation whose shares are publicly traded is not required to answer this question but must check the "Publicly Traded" box.

☐ Yes. *Explain answer on a separate page* ☐ No ☐ Publicly Traded

9. Is the Lead Architectural Firm a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

☐ Yes. *Explain answer on a separate page* ☐ No

10. State the Lead Architectural Firm's gross revenues for each of the last 3 fiscal years immediately before the date upon which this RFP was issued:

Fiscal Year:	Gross Revenues:
	\$ _____
	\$ _____
	\$ _____

11. Has the Lead Architectural Firm changed names in the past 5 years immediately before the date upon which this RFP was issued?

☐ Yes. *Explain answer on a separate page* ☐ No

And include reason(s) for the change.

12. Provide the following information for the engineers and architects from the Lead Architectural Firm who will be designing the PROJECT: *(attach additional pages if necessary)*

Name of Engineer/Architect	Discipline	License Number	Years in Practice

C. INFORMATION ABOUT THE OTHER DESIGN FIRM(S), IF ANY

For each of the Other Design Firms, if any, that will be part of the DB Team, provide the information requested below.

1. Other Design Firm No. 1:

a. Name of Other Design Firm: _____

b. Element of Design to be Performed: _____

- c. Provide the following information for each engineer and architect of this Other Design Firm who will be providing material design services for this PROJECT (*attach additional pages if necessary*):

Engineer/Architect	Discipline	License Number	Years in Practice

2. **Other Design Firm No. 2:**

a. Name of Other Design Firm: _____

b. Element of Design to be Performed: _____

Provide the following information for each engineer and architect of this Other Design Firm who will be providing material design services for this PROJECT (*attach additional pages if necessary*):

Engineer/ Architect	Discipline	License Number	Years in Practice

NOTE: Attach additional pages for additional Design Firms if necessary.

- End of Part II -

FORM 3 - ATTACHMENT 1: PROPOSER FORM

CERTIFICATION:

The undersigned is/are a legally authorized representative(s) of the DB Entity, and hereby declare that I am/ we are submitting this Statement of Qualifications; I am/we are duly authorized to sign this Proposal on behalf of the above-named firm; and I/we have read all the answers herein and know all of their contents and that all information set forth in this Proposal and all attachments hereto are, to the best of my/our knowledge, true, accurate and complete as of its submission date.

The undersigned certifies and declares under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed in

_____ County, California, on _____
(Date)

DB ENTITY SIGNATURE(S):

Note: the DB Entity shall be the entity that will execute the Design-Build Contract. No Proposals shall be accepted which has not been signed in ink in the appropriate space below:

1. If DB Entity is an **INDIVIDUAL**, sign here (*include a notarized affidavit attesting to the authenticity of said signature*):

Signature: _____ Date: _____

Typed Name and Title: _____

2. If DB Entity is a **PARTNERSHIP or JOINT VENTURE**, all general partners or members shall sign here (include a notarized affidavit attesting to the authenticity of said signatures):

Partnership/JV Name (type or print) _____

Signature: _____ Date: _____

Member/Partner of the Partnership

Member/Partner's Typed Name and Title: _____

Signature: _____

Partner/Member of the Partnership

Date: _____

Member/Partner's Typed Name and Title: _____

Signature: _____ Date: _____

3. If DB Entity is a **CORPORATION**, the duly authorized officer (s) shall sign as follows: The undersigned certify that they are respectively:

_____ and _____
Title Title

of the corporation named below; that they are designated to sign this Form by resolution (*attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization*) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said

CORPORATION:

Corporation Name (type or print) _____

By: _____ Date: _____

Title: _____

By: _____ Date: _____

Title: _____

4. If DB Entity is an **OTHER legal entity**, an authorized representative of the entity shall sign here (include a notarized affidavit attesting to the authenticity of said signatures):

Entity name _____

By: _____ Date: _____

Title: _____

5. If the DB Entity is a firm that has not yet been formed, all entities and other parties proposed to comprise such DB Entity shall sign here (include a notarized affidavit attesting to the authenticity of said signatures), the individual signatories making the certification described above on behalf of such entities/parties:

Proposed DB Entity Name (type or print) _____

Signature: _____ Date: _____

On Behalf of Proposed Member/Partner Name (type or print) Signatory for

Proposed Member/Partner's Typed Name and Title:

Signature: _____ Date: _____

On Behalf of Proposed Member/Partner Name (type or print) Signatory for

Proposed Member/Partner's Typed Name and Title:

- End of FORM 3 - Attachment

FORM 4
EXCEPTIONS TO THE EXEMPLAR

Proposer Firm Name _____

Name _____ Title _____

Signature _____ Date signed _____

☐ We take no exceptions to EXHIBIT B – EXEMPLAR STANDARD CONTRACT.

or

☐ We take exception(s) to EXHIBIT B – EXEMPLAR STANDARD CONTRACT outlined below:

FORM 5
INSURANCE ACKNOWLEDGEMENT

Proposer Firm Name _____

Name _____

Title _____

Signature _____

Date signed _____

- ☐ We acknowledge that we will provide proof of insurance according to Exhibit D Exemplar Insurance Requirements of the Request for Proposals if Proposer is one of the top 10 GC1 ranked Proposers.

Form 6 Price Proposal

The Proposer shall provide its Rough Order of Magnitude Price Proposal for the items listed below, in accordance with Section 10 of this RFP. The Price Proposal below shall be inclusive of all labor, equipment, materials, management and supervision, professional and other management services associated with implementing the Design Build Work. The Price Proposal evaluation methodology is outlined in Section 10. The terms set forth herein are further defined and described in the Exhibit B Exemplar Standard Contract.

Design Build Rough Order of Magnitude Price \$ _____

Words: _____

(if any conflict between the Price figures and the words, the words govern)

Cost Breakdown as a Percentage of the DB Rough Order of Magnitude Price Above:

- A. Profit and Overhead ⁽¹⁾ as a percentage of the Design Builder's cost of design and construction:
_____ %
- B. General Conditions ⁽²⁾ as a percentage of the Design Builders cost of design and construction valued at \$ _____ : _____ %
- C. Project Management/Construction Management ("PM/CM") ⁽³⁾ as a percentage of the Design Builder's Design and construction valued at \$ _____ : _____ %
- D. Design Fees as a percentage of the Design Builders cost of Construction: _____ %
- E. Contingency as a percentage of the Design Builders cost of design and construction:
_____ %
- F. Escalation as a percentage of the Design Builders cost of construction only: _____ %

Total (Must add up to 100%) 100 %

Name of Proposer: _____

Name of Designated Signatory: _____

Signature: _____

Title: _____

Date: _____

NOTE: The above signed Price Proposal shall be accompanied by evidence of authority of the officer to sign for the Shortlisted Proposer.

Notes:

- (1) Overhead is Regional and Corporate offices General and Administrative cost but excludes Project Site office overhead.
- (2) General Conditions includes all Project Site overheads and all direct supervision. However, it excludes all PM/CM which represents the cost of all core management functions.
- (3) PM/CM core management cost that is excluded from General Conditions.

Form 7
RFP Checklist

Due Date: **June 1, 2018**

Label: David French
 CIP Procurement Manager
 City of San Jose
 CPMS 8895 Interim Facility – Four Gates

Envelope 1 – Required Forms

Received

Report for Labor Peace.....		<input type="checkbox"/>
Form 1 Local and Small Business Preference.....		<input type="checkbox"/>
Certification Form Certification.....		<input type="checkbox"/>
Form 2 Minimum Qualifications		<input type="checkbox"/>
Form 3 Proposer Questionnaire.....		<input type="checkbox"/>
Joint Venture Agreement (if applicable).....		<input type="checkbox"/>
Form 4 Exceptions to Exhibit B Exemplar Standard Contract.....		<input type="checkbox"/>
Form 5 Insurance Acknowledgement.....		<input type="checkbox"/>
Electronic Submission - One USB Drive of entire submittal.....		<input type="checkbox"/>

Envelope 2 - Technical Proposal

Tab A	Cover Letter.....	<input type="checkbox"/>
Tab B	Experience and Qualifications.....	<input type="checkbox"/>
Tab C	Project Team (Individuals).....	<input type="checkbox"/>
Tab D	Subcontractors.....	<input type="checkbox"/>
Tab E	Project Approach.....	<input type="checkbox"/>
Tab F	Design Narrative.....	<input type="checkbox"/>
Tab G	Design Renderings.....	<input type="checkbox"/>
Tab H	Scheduling and Phasing.....	<input type="checkbox"/>
Tab I	Safety and Security Approach.....	<input type="checkbox"/>