

**DOCUMENT 00700**

**GENERAL CONDITIONS**

**July 2008 Edition**



**City & County of San Francisco**  
**Department of Public Works**

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**DOCUMENT 00700**  
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## **GENERAL CONDITIONS (July 2008)**

### **ARTICLE 1 - GENERAL**

#### **1.01 DEFINITIONS**

- A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents (as defined in Paragraph 1.02), it shall have the meaning set forth in this Paragraph 1.01. References to related Paragraphs or Documents are provided for convenience but not to exclude other Paragraphs or Documents where such terms may be used. The colon (":") is employed in this Paragraph as a symbol for "shall mean". A colon also may be employed in these General Conditions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows.
1. Accepted, Approved: Accepted or approved, or satisfactory for the Work, as determined in writing by the City, unless otherwise specified. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Contractor, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Conditions. In no case shall the City's approval be interpreted as a release of Contractor from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the City's right under the Contract.
  2. Addenda: Refer to Document 00200.
  3. Agreement: The Agreement or Contract between the City and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made part thereof as provided

herein. The Contract is fully executed upon certification by the Controller of the City and County of San Francisco as to the availability of construction funds. Refer to Document 00520 for Agreement Form.

4. Alternate Bid Item: A Bid item that may be added to or deducted from the Total Bid Price to meet Project construction budget requirements.
5. Application for Payment: Written request submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9.
6. Approved Equal: Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the City Representative. The burden of proof of equality is the responsibility of Contractor. Refer to Division 1 for procedures for proposing substitutions.
7. Bid, Bid Documents: Refer to Document 00200 – Instructions to Bidders.
8. Bidding Requirements: The Documents listed in Document 00010 (Table of Contents) under the heading “Bidding Requirements.”
9. Bonds: Bid, performance and payment (labor and materials) bonds and other instruments of security acceptable to the City. Refer to Paragraph 10.02 and Documents 00430 and 00610 for Bond forms.
10. By Others: Work on this Project that is outside the scope of Work to be performed by Contractor under this Contract, but that will be performed by the City, other contractors, or other means and at other expense.
11. Change Order: A written instrument prepared by the City issued after the effective date of the Agreement and executed in writing by the City and Contractor,

stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; (iii) the extent of the adjustment in the Contract Time, if any; and (iv) an amendment to any other Contract term or condition. Refer to Article 6.

12. Change Order Request (COR): Refer to Paragraph 6.03.
13. City: The City and County of San Francisco, California, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. The term "Owner" means the City and its authorized agent or representative.
14. City Representative: The authorized on-Site representative of the City, as identified at the pre-construction conference convened by the City, in the performance of on-Site inspection and administration of the Contract. All liaison between the City and Contractor shall be directed through the City Representative.
15. Claim: A written demand by Contractor for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the requirements of the Contract Documents. Refer to Paragraph 13.02.
16. Clarification: A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an extension of Contract Times unless requested by Contractor and approved by the City in accordance with the Contract Documents. Refer to Article 6.
17. Code: Code or codes in force under this Contract. Wherever reference is made to Code, that reference shall be construed to mean the codes, laws or orders specified in the Contract Documents.

18. Commission: Refers to the Contract awarding authority for City departments with boards or commissions (i.e., the San Francisco Public Utilities Commission, the San Francisco Recreation and Park Commission, the San Francisco Port Commission, the San Francisco Airport Commission, or the Board of Directors of the San Francisco Municipal Transportation Agency, as appropriate). Refer to Document 00520.
19. Contract: Refer to “Agreement.”
20. Contract Documents: Refer to Paragraph 1.02.
21. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by the City to Contractor for the performance of the Work under the Contract Documents. Refer to Document 00520.
22. Contract Time(s): The number of successive days as stated in Document 00802 to: (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final acceptance as evidenced by the City’s issuance of written acceptance as required by section 6.22(K) of the San Francisco Administrative Code.
23. Contracting Requirements: Refer to Paragraph 1.02.
24. Contractor: The person or entity with whom the City has executed the Agreement and identified as such therein and referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "Contractor" means Contractor or its authorized representative.
25. CPM: Refers to the critical path method scheduling technique.
26. Day: Reference to “day” shall be construed to mean a calendar day of 24 hours, unless otherwise specified.

27. Default: Refer to Paragraph 14.01.
28. Deficiency List: The list provided by the City identifying Items that shall be corrected or completed before the City considers the Work Substantially Complete. Refer to Paragraph 9.07.
29. Delivery: In reference to an item specified or indicated shall mean to unload and store with proper protection at the Site. Refer to Paragraph 9.03 for delivery to another (off-Site) location.
30. Department Head: The contracting officer for the Contract (i.e., the General Manager of the San Francisco Public Utilities Commission, the Director of the Department of Public Works of the City and County of San Francisco, the Executive Director of the Port of San Francisco, the General Manager of the San Francisco Recreation and Parks Department, the Director of Transportation of the San Francisco Municipal Transportation Agency, or the Director of the San Francisco International Airport, as appropriate), acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Document 00520.
31. Designated, Determined, Directed: Required by the City, unless otherwise specified.
32. Differing Conditions: Refer to Paragraph 3.03.
33. Division: A grouping of sections of the Specifications describing related construction products and activities. Refer to Document 00010 – Table of Contents for a listing of Division and section numbers and titles.
34. Document: Refers to the sections and forms in Division 0. Refer to Document 00010 – Table of Contents for a listing of the Documents.

35. Drawings: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
36. Effective Date of the Agreement: The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed by the last of the two parties to sign, or when the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.
37. Field Order: A written order issued by the City which provides instructions or requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Article 6.02.
38. Final Completion: The date of written acceptance of the Work by the City, issued in accordance with section 6.22(K) of the San Francisco Administrative Code, when the Contract has been fully performed, including all punch list items, and when all contractual and administrative requirements have been fulfilled.
39. Force Account Work: Change Order Work to be paid for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07.
40. Furnish: Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to Supply and Deliver to the Site.
41. General Requirements: Refer to Paragraph 1.02.
42. Indicated: Shown or noted on the Drawings or written in the Specifications.

43. Install: Apply, connect or erect items for incorporation into the Project; Furnishing or Supplying is not included. The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
44. Installer: A person engaged by Contractor, its Subcontractor or Lower-Tier Subcontractor for performance of a particular element of construction at the Site, including installation, erection, application and similar required operations. It is a requirement that installers be experienced in the operations they are engaged to perform.
45. Item: A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.
46. Lower-Tier Subcontractor or Supplier: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish materials or equipment to be incorporated in the Work by Contractor, Subcontractor or Lower-Tier Subcontractor, as applicable.
47. Modification: A document incorporating one or more Change Orders approved by the City.
48. Non-conforming Work: Work that is unsatisfactory, faulty, defective, or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referred to in the Contract Documents; or Work that has been damaged prior to Final Completion.
49. Notice of Default: Refer to Paragraph 14.01.

50. Notice of Potential Claim: Refer to Paragraph 13.02.
51. Notice of Substantial Completion: The written notice issued by the City to Contractor acknowledging that the Work is Substantially Complete as determined by the City. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve Contractor from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.
52. Notice to Proceed: The written notice issued by the City to Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Contract Time.
53. Owner: Refer to "City."
54. Paragraph: A paragraph under an Article of these General Conditions. Refer to "General Conditions–Table of Contents" for a listing of Article and Paragraph numbers and titles.
55. Partial Utilization: Right of the City to use a portion of the Work prior to Substantial Completion of the Work.
56. Project: Refer to "Work".
57. Project Manual: The bound written portion of the Contract Documents prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which consists of the Documents and Specification sections and may include schedules, is contained in the Document 00010 – Table of Contents.
58. Proposed Change Order (PCO): A document prepared by the City requesting a quotation of cost or time from Contractor for additions, deletions or revisions in the Work initiated by the City or Contractor.

59. Provide: Furnish and Install or Supply and Install complete in place at the Site.
60. Punch List/Final Completion: A list prepared by the City identifying Items to be corrected or completed by Contractor prior to Final Completion.
61. Punch List/Substantial Completion: A list prepared by the City identifying Items to be corrected or completed by Contractor before the City considers the Work Substantially Complete.
62. Reference Documents: Refer to Document 00200 – Instructions to Bidders and Document 00300 for identification of Reference Documents, if any.
63. Regular Working Hours: 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays. Refer to Paragraph 3.02 and Document 00813 – Specific Project Requirements.
64. Request for Information (RFI): A document prepared by Contractor or the City requesting information from one of the parties regarding the Project or Contract Documents.
65. Request for Substitution: A request from Contractor in accordance with the conditions specified in Division 1 to substitute an Item, type of construction, or process indicated in the Contract Documents with another item, type of construction or process that shall be equal in all respects to that so indicated. Refer to Paragraph 3.11 and Document 00498 for Request for Substitution form.
66. Required: In accordance with the requirements of the Contract Documents.
67. Resident Engineer: See "City Representative."
68. Site: Geographical location of the Project as indicated elsewhere in the Contract Documents.

69. Specifications: The portion of the Project Manual comprising Division 1 through Division 16 and listed in Document 00010 - Table of Contents, consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services.
70. Specified: Written in the Contract Documents.
71. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Contractor if so provided in the Supplementary Conditions or specified in the General Requirements (Division 1).
72. Substantial Completion: The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, issued by the agency having jurisdiction over the Work so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.
73. Supplementary Conditions: The part of the Contract Documents that amends, deletes or modifies these General Conditions. The Supplementary Conditions are set forth in Document 00800.
74. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.
75. Supply: Refer to "Furnish."

- 76. Total Bid Price: Refer to Document 00200 – Instructions to Bidders.
- 77. Unavoidable Delay: Refer to Paragraph 7.02.
- 78. Unilateral Change Order: A written Change Order to Contractor issued after the effective date of the Agreement in accordance with Paragraph 6.05.
- 79. Unit Price Work: Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.
- 80. Work: The performance by Contractor of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, providing all labor, services, and documentation required by the Contract Documents. References in the Contract Documents to “Work” may be to items of Work. Refer to Paragraph 1.03.

**1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS**

- A. The Contract Documents form the entire Contract for the construction of the Work, and consist of the following:
  - 1. the Drawings, Project Manual, and all Addenda thereto;
  - 2. the Agreement, the Bonds, and other documents listed in the Agreement;
  - 3. Change Orders, Unilateral Change Orders, and Field Orders issued after execution of the Contract; and
  - 4. all provisions of the Bid Documents, as defined in Document 00200, not in conflict with the foregoing.
- B. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier or a person or entity other than the City and Contractor.

- C. The Contracting Requirements and the General Requirements contain information necessary for completion of every part of the Project and are applicable to each section of the Specifications.
  - 1. The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Document 00700) and the Documents as listed under Contracting Requirements in the Table of Contents (Document 00010).
  - 2. The General Requirements include all Documents in Division 1, and govern the execution of the Work of all sections of the Specifications.
  - 3. Where items of Work are performed under subcontracts, each item shall be subject to the Contracting Requirements and General Requirements.

**1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS**

- A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents will be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the City and/or County where the Project is located.
- B. The intent of the Contract Documents is to describe and provide for a functionally complete and operational Project (or part thereof) to be constructed in accordance with the Contract Documents. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Contractor with no change in the Contract Sum or Contract Time.
- C. Arrangement and titles of Drawings, and organization of the Specifications into Divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing

the extent of Work to be performed by any trade. Contractor may arrange and delegate its Work in conformance with trade practices, but Contractor shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The City assumes no responsibility to act as arbiter to establish subcontract limits between portions of the Work.

- D. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.
- E. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be submitted to the City for approval. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.
- F. In the event of a conflict in the Contract Documents regarding the quality of a product, Contractor shall request Clarification from the City as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.
- G. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. If rerouting, i.e.

relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences, results in a total linear footage which exceeds 125% of the indicated route if the structural interferences did not exist, then Contractor will be compensated for the amount in excess of 125% under the provisions for Change Orders of Article 6. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work; shall be performed in such sequence and manner as to avoid conflicts; shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.

- H. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, Contractor shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.
- I. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- J. When there is a conflict between existing on-Site conditions and information indicated on the Drawings, other than Differing Conditions as defined in Paragraph 3.03, the existing condition shall govern. Contractor shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Contractor should have known of such conflicts based on its reasonable

investigation of the Site prior to submitting its Bid in accordance with the requirements of Document 00200.

- K. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive.

#### **1.04 AMENDMENT OF CONTRACT DOCUMENTS**

- A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
  - (i) Change Order, or
  - (ii) Unilateral Change Order.
  
- B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order; (ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 2.01.

#### **1.05 PRECEDENCE OF CONTRACT DOCUMENTS**

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):
  - 1. Modifications in inverse chronological order, and in same order as specific portions they are modifying.
  - 2. Executed Agreement.
  - 3. Addenda.
  - 4. Division 1.
  - 5. The Documents (Bidding and Contracting Requirements).
  - 6. Divisions 2 through 16.

7. Contract Drawings.

- B. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):
1. Written numbers over figures, unless obviously incorrect.
  2. Figured dimensions over scaled dimensions.
  3. Large-scale Drawings over small-scale Drawings.
  4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.
  5. Detail Drawings govern over general Drawings.
  6. Drawing with highest revision number prevails.

**1.06 REUSE OF CONTRACT DOCUMENTS**

- A. The Contract Documents were prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. Any unauthorized use of the Contract Documents is at the sole liability of the user.

## **ARTICLE 2 - CITY'S RESPONSIBILITIES AND RIGHTS**

### **2.01 ADMINISTRATION OF THE CONTRACT**

- A. The City shall administer the Contract as described in the Contract Documents. Reference is made to Division 1 for administrative requirements and procedures.
- B. The Department Head will designate in writing an authorized representative with limited authority to act on behalf of the City. The City may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with the City's Charter and codes. These changes will be communicated to Contractor in writing. Contractor assumes all risks and consequences of performing work pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.
- C. The review, approval, or other action taken by the City upon Contractor's submittals such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Contractor from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.01, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City's action will be taken with such reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Division 1, to permit adequate review. Approval of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Contractor's obligation. Contractor shall be responsible to provide engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of such approvals, from obtaining

a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

## **2.02 INFORMATION AND SERVICES**

- A. The City's survey information, such as monuments, property lines, and reports describing physical characteristics, legal limitations and utility locations for the Site are available upon request as Reference Documents.
- B. The City shall apply and pay for the building permit if required for the Work and shall pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Contractor in accordance with Paragraph 3.06.
  - 1. The City's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

## **2.03 RIGHT TO STOP THE WORK**

- A. In the event of material breaches of the Contract by Contractor, the City may order Contractor to stop the Work, or a portion thereof, until the cause for such order has been eliminated. Any such order to stop the Work shall be in writing and shall be signed by the City Representative. Unless otherwise agreed to by the City, the Contract Time will not be extended as a result of an order to stop the Work.
- B. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or other person or entity.
- C. Reasons for ordering Contractor to stop the Work, or a portion thereof, include but are not limited to the following:
  - 1. Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents; or

2. Contractor fails to carry out Work in accordance with the Contract Documents; or
3. Contractor disregards the authority of the authorized City Representative; or
4. Contractor disregards the laws and regulations of a public body having jurisdiction over the Project; or
5. Contractor violates in any substantial way any provisions of the Contract Documents; or
6. Contractor fails to maintain current certificates of insurance on file with the City; or
7. original Contract Work is proceeding but will be modified by a pending Change Order.

#### **2.04 RIGHT TO CARRY OUT THE WORK**

- A. In the event that Contractor fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies.
- B. In such case the City will deduct all costs of such corrections, including the costs of City staff and consultants, from amounts due Contractor. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Contractor shall reimburse the City.

#### **2.05 AUDIT**

- A. The City shall have the right to examine, copy and audit all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, estimates, records, contracts, escrow bid documents, bid cost data, schedules, subcontracts, job cost reports, and other data, including computations and projections, of Contractor, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (i) a Change Order Request; (ii) Force

Account Work; or (iii) a Contract Claim. In the event that Contractor is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

- B. Upon written notice by the City, Contractor immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05A for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five-days' notice of the examination and/or audit. The City may take possession of the records and materials noted in subparagraph 2.05A by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Contractor shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.
- C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.
- D. The City may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three years after final payment under this Contract.
- E. Failure by the Contractor to make available any of the records or materials noted in subparagraph 2.05A or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.
- F. Contractor shall insert a clause containing all the provisions of this Paragraph 2.05 in all subcontracts of

Subcontractors, Lower-Tier Subcontractors and Suppliers  
for this Contract over \$10,000.

**2.06 NO WAIVER OF RIGHTS**

- A. None of the following shall operate as a waiver of any provision of this Contract or of any power herein reserved by the City or any right to damages herein provided:
  - 1. inspection by the City or its authorized agents or representatives; or
  - 2. any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
  - 3. any extension of time; or
  - 4. any position taken by the City or its authorized agents or representatives.

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## **ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES**

### **3.01 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS**

- A. The Contract Documents are not complete in every detail but show the purpose and intent only, and Contractor shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appear in the Contract Documents, instructions or work performed by others.
- B. Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Contractor shall be responsible for the accuracy of such dimensions and determinations.
- C. Contractor shall carefully review the appropriate portions of the Contract Documents a minimum of 30 days in advance of the Work to be executed for the express purposes of checking for any manifest errors, omissions, discrepancies or ambiguities. Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Contractor's untimely review of the Contract Documents.
- D. Contractor shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI reply as to the procedure to be followed. If Contractor proceeds with any such Work without receiving such Clarification or RFI reply, it shall be responsible for correcting all resulting damage and Non-conforming Work.
- E. Contractor shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and field conditions and to implement and administer a Request for Information (RFI) system throughout the

Contract Time in accordance with the requirements of Division 1. Contractor shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Contractor's RFIs where the answer could reasonably be found by reviewing the Contract Documents.

- F. Prior to start of Work, Contractor and the City Representative shall visit the site and adjacent properties as necessary to document existing conditions. Contractor shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions determined by the site survey as indicated in Division 1.

### **3.02 SUPERVISION OF THE WORK**

- A. Unless there are specific provisions in the Contract Documents to the contrary, Contractor shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Contractor shall be solely responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Contractor, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- B. Contractor shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper sequence and without delay of materials, devices, or provisions for future Work.
- C. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or contractors, then Contractor shall require the Subcontractor to:
  - 1. coordinate its Work with the dependent work;
  - 2. provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
  - 3. supply and install items to be built into dependent work of others;
  - 4. make provisions for dependent work of others;

5. examine dependent drawings and specifications and submittals;
  6. examine previously placed dependent work;
  7. check and verify dependent dimensions of previously placed work;
  8. notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
  9. not proceed with its Work until the unsatisfactory dependent conditions have been corrected.
- D. Contractor shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing herein contained shall be taken to relieve Contractor of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.
- E. Contractor shall at all times permit the City, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; (ii) subject them to inspection at all such places; and (iii) reject if the Work does not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8.
- F. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the City of such desire and request and obtain the City's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the City may make the necessary arrangement for testing and inspection.

- G. If Contractor receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.
  
- H. During all disputes or disagreements with the City, Contractor shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing.

### **3.03 UNFORESEEN OR DIFFERING CONDITIONS**

- A. Under section 7104 of the California Public Contract Code, if any of the following conditions are encountered at the Site, Contractor shall promptly, and before such conditions are disturbed, notify the City in writing.
  - 1. Material that Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing Law.
  - 2. Subsurface or latent physical conditions at the Site differing materially from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.
  - 3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract Documents.
  
- B. Contractor's written notice shall inform the City as to how such conditions affect its Work and recommend methods to overcome such conditions.
  
- C. Differing Conditions shall not include:

1. All that is indicated in or reasonably interpreted from the Contract Documents or Reference Documents;
  2. All that could be seen on Site;
  3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Reference Documents.
  4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Reference Documents.
- D. The City will promptly investigate the conditions reported in Contractor's written notice, and will issue a written report of findings to Contractor.
- E. Only if the City determines, in its sole discretion, that the conditions reported do materially so differ, or do involve hazardous waste, or do cause a decrease or increase in Contractor's scope of Work, will the City issue a Change Order as provided in Article 6 of these General Conditions, and/or a time extension as provided in Article 7 of these General Conditions, as appropriate.
- F. Should Contractor disagree with the City's determination, Contractor shall submit a written Notice of Potential Claim to the City as provided in Paragraph 13.02 of these General Conditions. In the event of such disagreement, Contractor shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.
- G. Contractor shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

### **3.04 SUPERINTENDENTS**

- A. Contractor shall at all times be represented at the Site by Contractor's competent project manager or superintendent whom it has authorized in writing to make decisions and

receive and carry out any instructions given by the City. Contractor will be held liable for the faithful compliance with such instructions. Prior to the issuance of Notice to Proceed, Contractor shall inform the City in writing of the names, addresses and telephone numbers of its key personnel whom it has authorized to act as its representatives at the Site and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Contractor is a joint venture, it shall designate only one such representative.

- B. The City reserves the right to reject Contractor's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.05A. The City shall be given written notice of, and shall have the right to approve, replacement of Contractor's project manager, superintendents and foremen.

### **3.05 LABOR, MATERIALS AND EQUIPMENT**

- A. Contractor shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification Contractor shall discharge from the Work and replace at no additional cost to the City an employee, Subcontractor or Supplier used on the Work who, in the City's sole judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent or member of the public; or (iii) is refusing to carry out the provisions of the Contract.
- B. In order that the City can determine whether Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work and materials, Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

- C. Before ordering materials, equipment, or performing Work, Contractor shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work as specified in Paragraph 3.01. If a discrepancy exists, Contractor shall notify the City immediately and request the City to clarify the intended design. Upon commencement of a particular item of Work, Contractor shall be responsible for dimensions related to such item of Work.
- D. All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged materials and equipment to the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Contractor shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.
- E. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work in accordance with Division 1.
- F. In the event that Division 1 does not require a field office for the City Representative, Contractor shall provide adequate separate sanitary facilities at the Site for the City Representative.

### **3.06 PERMITS, FEES AND NOTICES**

- A. Contractor shall pay all utility charges for temporary connections to the Work.

- B. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits (other than the building permit), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work.
  - 1. Contractor shall coordinate and obtain all permits prior to starting Work for which permits are required.
  - 2. The City will reimburse Contractor for reasonable costs incurred for obtaining permits that are not specified in the Contract Documents to be obtained at Contractor's expense.
  
- C. Pursuant to section 832 of the California Civil Code, Contractor shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work.
  
- D. Contractor shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Contractor shall timely deliver, post and maintain all notices required by such permits. Contractor shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Contractor's failure to coordinate or comply with the conditions of such excavation permits, Contractor shall pay all costs, assessments, fines, and penalties resulting therefrom.
  
- E. If Contractor observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, Contractor shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate amendment.

- F. If Contractor performs Work it knows, or reasonably should have known, to be contrary to the Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Contractor shall assume responsibility for such Work and shall bear all costs of correction.
- G. Contractor shall keep the permits, an approved set of Drawings and Specifications, and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.
- H. Contractor shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. Contractor shall notify the City Representative and the City's testing agency or special inspector in accordance with Article 8, so that the appropriate City representatives and inspectors will be present at these inspections.
- I. Contractor shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.
- J. Contractor shall submit to the City Representative as a condition precedent to Final Completion signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

### **3.07 RECORD DOCUMENTS**

- A. Contractor shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed, all in accordance with the Specifications.

Additionally, record documents shall conform to the requirements specified in Division 1.

- B. Contractor shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.07A. The City shall have the right to withhold 25 percent of progress payments due Contractor until Contractor has complied with this Paragraph 3.07.
- C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to Substantial Completion.

### **3.08 CONTRACTOR'S DAILY REPORT**

- A. Contractor shall complete, and submit to the City on the next day, consecutively numbered daily construction reports in accordance with Division 1.
- B. In addition, whenever Force Account Work is in progress, Contractor shall complete and submit to the City detailed written daily Force Account Work reports as provided under Paragraph 6.07.

### **3.09 PROGRESS AND SUBMITTAL SCHEDULES**

- A. Prior to commencing Work, Contractor shall submit to the City for review the following schedules:
  - 1. a cost-loaded base line construction schedule for the Work which shall use, unless otherwise specified in Division 1, the critical path method (CPM), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various stages of the Work, including all milestones and special constraints specified in the Contract Documents; and
  - 2. a preliminary submittal schedule, coordinated with the progress schedule in accordance with the requirements of Division 1, listing shop drawings,

product data, samples, work descriptions, subcontractor qualifications, and field samples and indicating the times for submitting, reviewing, and processing such submittals.

- B. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Contractor shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.09A. Contractor shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.
- C. No progress payments will be made to Contractor until the schedules are submitted and are acceptable to the City.
- D. Contractor shall adhere to the base line construction schedule accepted by the City in accordance with subparagraph 3.09B and as may be adjusted during the performance of the Work. Contractor shall submit to the City for acceptance proposed revisions or adjustments in the base line construction schedule. Proposed adjustments in the base line construction schedule that will change the Contract Times shall be submitted to the City in accordance with Paragraph 7.02.
- E. Acceptance of base line construction and submittal schedules by the City will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from its full responsibility therefor.
- F. Contractor shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03. All updates shall be submitted to the City for the City's acceptance; if rejected, Contractor shall correct and resubmit updates to the satisfaction of the City before a pending application for payment is approved.
  - 1. Each progress schedule update shall continue to show all Work activities including those already completed and those of changed Work.

2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates activities were actually started and completed and the actual percent complete of activities.
  3. Contractor's submission of progress schedule updates, reports, curves or narratives, or the City's acceptance of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or milestone dates or modify or limit, in any way, Contractor's obligations under this Contract.
  4. Contractor waives its rights to time extensions based on changed Work if Contractor has failed to meet its obligations to provide monthly schedule updates as specified herein.
- G. Early Completion Schedule: If Contractor submits a base line schedule that shows a completion time that is earlier than the Contract Time as specified in Document 00802, the "float time" shall belong to the Project. Contractor shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float time."

### **3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- A. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review or approval of Contractor's submittals by the City is subject to the limitations stipulated in Paragraph 2.01.
- B. Contractor shall review, approve, stamp, and submit to the City as specified in Division 1 shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Contractor that

are not required by the Contract Documents may be returned without action.

- C. By approving and submitting shop drawings, product data, samples and other submittals, Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.
- D. Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples and other submittals until the respective submittal has been received, reviewed and approved by the City and returned to Contractor. Such Work shall be in accordance with approved submittals. Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.
- E. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Contractor.
- F. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Contractor has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.
  - 1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.
  - 2. For resubmitted shop drawings, product data, samples and other submittals, Contractor shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.

- G. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

### **3.11 SUBSTITUTIONS**

- A. Consistent with section 3400 of the California Public Contract Code, Contractor, within 10 calendar days after the date of the Award, shall submit for approval to the City a properly completed Request for Substitution (refer to Document 00498) for each material, article or equipment that it proposes to substitute in place of, and as the equal, of a material, article or equipment specified in the Contract Documents by trade name or by the names of any particular patentee, manufacturer or dealer. Failure to submit said Request for Substitution form within the 10-day period will be deemed adequate and reasonable grounds for refusal by the City to consider any subsequent proposed substitutions.
- B. The requirements for obtaining approval of substitutions shall be as specified in Division 1.

### **3.12 USE OF SITE**

- A. Contractor shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.
- B. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. Contractor shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with section 832 of the California Civil Code. Contractor shall

obtain all such permits, rights-of-way and easements at no cost to the City.

- C. Contractor is responsible for providing all surveying services necessary to complete the work including, but not limited to: (i) providing lay-out of all improvements identified in the Contract Documents; (ii) establishing elevations; (iii) maintaining surveying controls; and (iv) providing survey support to all trades. Survey information, such as monuments and property lines, are available from the City Survey Division. The City, at its own cost, reserves the right to spot check elevations and lay-out to ensure compliance with the Contract Documents.
- D. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.
- E. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part of the Work or adjacent property to stresses or pressures that will endanger it.
- F. Contractor shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

### **3.13 ACCESS TO WORK**

- A. During the performance of the Work, the City and its authorized representatives or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Work, the shops where any part of

such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any materials for use in the Work are being, or are to be, manufactured.

### **3.14 CUTTING AND PATCHING**

- A. Contractor shall be responsible for performing, in accordance with the requirements of the Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.
- B. Contractor shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Contractor shall not withhold from the City Contractor's consent to cut or otherwise alter the Work.

### **3.15 CLEANING UP AND REMOVING DEBRIS**

- A. Contractor shall keep the Site and surrounding area, including public areas immediately adjacent to the Site such as temporary pedestrian walkways and sidewalks, free from accumulation of excess materials, rubbish, graffiti, and debris.
  - 1. Contractor shall perform such clean up and removal in accordance with the requirements of the Specifications.
  - 2. Prior to Substantial Completion Contractor shall remove from and about the Site excess materials, rubbish, Contractor's tools, construction equipment, and machinery and shall perform final cleaning as specified in accordance with the requirements of the Specifications.
  - 3. Removal and disposal of such excess materials, rubbish, and other debris shall conform to applicable laws and regulations.

- B. If Contractor fails to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Contractor under the Contract.
- C. Contractor shall salvage and deliver to the City removed equipment, appurtenances and other materials that are not reused in the Work and indicated by the City to be salvaged. Contractor shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

### **3.16 ROYALTIES AND PATENTS**

- A. Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.
- B. Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.
- C. To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the City and all its officers and employees connected with the Project, other parties designated in Document 00805, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including

attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or does not have the lawful right to sell the same.

1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract.

D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's sole expense and at no cost to the City, (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (2) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

### **3.17 WARRANTY**

A. Contractor warrants and guarantees to the City that materials and equipment provided under the Contract will be first-class in quality and new, that the Work will be free from defects and of the quality specified, and that the Work will conform to the requirements of the Contract Documents.

1. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract Documents.

- B. Contractor's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear.
  - 1. Testing shall not be construed as operation.
- C. Contractor shall deliver warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Substantial Completion.
- D. The warranty provisions of this Paragraph 3.17 are separate and additional to the provisions for correction of Non-conforming Work as specified in Article 8.

### **3.18 TAXES**

- A. Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening.
- B. Earned Income Credit (EIC) Forms. San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.
  - 1. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Contract becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract.
  - 2. Failure to comply with any requirement contained in subparagraph 3.18B.1 shall constitute a material breach by Contractor of the terms of this Contract. If,

within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Contract or applicable Law.

3. Any Subcontract entered into by Contractor shall require the Subcontractor to comply, as to the Subcontractor's Eligible Employees, with each of the terms of this Paragraph 3.18.
4. Capitalized terms used in this Paragraph 3.18 and not defined in Paragraph 1.01 shall have the meanings assigned to such terms in Chapter 12O of the San Francisco Administrative Code.

### **3.19 INDEMNIFICATION**

- A. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other parties designated in Document 00805, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- B. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion termination, suspension, cancellation or rescission of the Work or this

Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.

- C. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.
- D. On request, Contractor shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all costs that may be incurred by the City and all indemnified parties specified in subparagraph 3.19A, including reasonable attorney's fees.
- E. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.
- F. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

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## **ARTICLE 4 - SUBCONTRACTORS**

### **4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- A. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with the governing regulations regarding subcontracts and section 6.21 of the San Francisco Administrative Code. Section 6.21 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.
  
- B. Contractor shall not employ a Subcontractor, Supplier or other person or entity that the City has determined unqualified or non-responsible. The City may give written notice of such determination prior to award of the Contract or at any time during the Contract Time, and upon receipt thereof Contractor shall provide replacement with a qualified person or entity. The City shall have the right of approval and shall not be responsible for added costs to Contractor, if any, of employing such replacement person or entity.

### **4.02 SUBCONTRACTUAL RELATIONS**

- A. Contractor shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Contractor by the applicable terms and conditions of the Contract Documents, in the same manner Contractor is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractor and Lower-Tier Suppliers. All Subcontractors and Suppliers shall be given copies of the contract documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, shall have identified written terms and conditions of their proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the

same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

#### **4.03 ASSIGNABILITY OF SUBCONTRACTS**

- A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under the following conditions:
  - 1. the City terminates the Contract for cause under provisions of Article 14;
  - 2. the City requests such assignment; and
  - 3. the surety providing the performance bond for the Project fails to timely fulfill its obligations under the performance bond.
- B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

#### **4.04 SUCCESSORS AND ASSIGNS**

- A. Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.
- B. All transactions with Subcontractors will be made through Contractor, and no Subcontractor shall relieve Contractor of any of its liabilities or obligations under the Contract.
- C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Contractor shall remove such Subcontractor immediately upon written request of the City, and shall request approval of a replacement Subcontractor to perform the Work at no added cost to the City.
- D. The Contract shall not be assigned except upon the approval of the City.

**ARTICLE 5 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**

**5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

- A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as included in Contractor's Bid price and no direct or additional payment will be made therefor.
  
- B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work not indicated in the Contract Documents or underway at the time of advertising for Bids materially increases Contractor's costs, then Contractor may submit a Change Order Request therefor in accordance with Paragraph 6.03.
  
- C. If the City gives Contractor written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Contractor is already performing Work, Contractor shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Contractor shall provide the City Representative written notice when cleanup and demobilization has been completed. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Contractor shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.

- D. If Contractor requires access to a location where another contractor is performing work, Contractor shall request such access in writing from the City Representative. The City Representative will provide written notice to Contractor when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Contractor shall have full access and shall commence or resume its operations in that location.
  
- E. If Contractor believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01C or 5.01D above, it shall comply with the notification requirements of Paragraph 7.02.
  
- F. When it is necessary for Contractor and another contractor or utility owner to work in the same location at the Site, each party shall assume the following mutual responsibilities for the benefit of the other party at no additional cost to the City:
  - 1. both parties shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location;
  - 2. both parties shall add the other party as an additional insured under their respective liability policies;
  - 3. the party seeking to use portions of the construction Site of the other party to perform its work shall pay all direct costs incurred by the other party to accommodate its operations; and
  - 4. if Contractor claims that delay or additional cost is involved because of such action by the City, Contractor shall make such Claim by the procedures as provided in Paragraph 13.02.
  
- G. The City shall not be a party to any of the agreements between multiple contractors and shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Contractor agrees to indemnify and hold the City harmless for all claims or losses that Contractor or the other contractors may incur as a result of

their inability to successfully obtain work areas under the control of one of the parties.

## **5.02 COORDINATION**

- A. Contractor shall afford other contractors and the City reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.
- B. Notice of Conflicting Conditions: Where Contractor's Work is adjacent to or placed on top of that of another contractor, Contractor shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Contractor proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.
  - 1. The foregoing does not apply to latent defects. Contractor shall report to the City latent defects in another contractor's work promptly upon discovery.
- C. Contractor shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract as directed.
- D. Any difference or conflict that may arise between Contractor and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.
- E. If so directed by the City, Contractor shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the

work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Contractor may submit a Change Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

- F. At any time during the progress of the Work, the City may, by providing reasonable notice, require Contractor to attend any conference of any or all of contractors engaged in the Work.
- G. If the City determines that Contractor is failing to coordinate its Work with the work of other contractors as directed, the City may upon 72 hour written notice:
  - 1. withhold any payment otherwise owed under the Contract until Contractor complies with the City's directions; or
  - 2. direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or
  - 3. terminate any and all portions of the Contract for Contractor's failure to perform in accordance with the Contract.

### **5.03 CLEAN UP RESPONSIBILITIES**

- A. Contractor and other contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.
- B. In the event of conflicts the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct from the amount due Contractor under the Contract the cost of said clean up as the City determines equitable.

**ARTICLE 6 - CLARIFICATIONS AND CHANGES IN THE  
WORK**

**6.01 GENERALLY**

- A. The City may, at any time between the Notice to Proceed and Final Completion and without notice to Contractor's surety, order additions, deletions, or revisions in the Work by Change Order or Field Order. Contractor shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents.
- B. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Contractor performs work that is not required by the Contract Documents as amended, modified, or supplemented in writing.
- C. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Contractor provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Contractor of additional, undisputed amounts.
- D. Failure by the Contractor to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Contractor arising out of such Clarification or Change Order.

**6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS**

- A. Should there appear to Contractor to be a discrepancy in the Contract Documents, should questions arise as to the meaning or intent of the Contract Documents, or should the City's comments on submittals returned to Contractor appear to Contractor to change the requirements or scope of the Contract Documents, Contractor shall submit a Request for Information ("RFI") to the City promptly in accordance with Division 1. Contractor shall coordinate and schedule its Work to provide the City sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.
- B. The City shall issue a reply to the RFI within 15 days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work. If additional time is needed to issue the reply, the City will, within the 15-day reply period, notify the Contractor of the longer reply period.
- C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Contractor and shall be promptly executed by Contractor. The City's right to Clarify any element of the Contract Documents shall not be construed to entitle Contractor to a modification of the Contract Sum or a change in the Contract Time.

**6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS**

- A. COR Initiation: Should the City's Clarification or other written directive, in the opinion of Contractor, materially exceed or change the requirements of the Contract Documents, Contractor shall submit to the City a written Change Order Request (COR) within 7 days of receipt of the Clarification or other written directive. A COR shall reference the Clarification or other written directive and the relevant Specification and Drawings. A COR shall also include a cost proposal and/or a time adjustment

proposal, as a good faith estimate of any additional compensation or time associated with the affected Work, documented in accordance with subparagraphs 6.03E and 6.03F, below. Failure to submit a timely, documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work.

- B. COR Review: The City will review the COR. Within 15 business days after receipt of the COR, together with the required supporting documentation, the City shall render its determination in writing. If the City does not issue a determination within the 15 business day period, the COR is deemed rejected. If the City requires additional time to issue a determination, it shall notify the Contractor of the same in writing, within the initial 15 business day period.
- C. PCO Initiation: The City may initiate a change in the Work by issuing a Proposed Change Order (PCO). A PCO will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Specifications, and will request from Contractor a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Contractor shall not submit a COR for the same Work addressed in the City's PCO.
- D. PCO Quotation Time Period: Contractor shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within 10 days after receipt of a PCO. If Contractor fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the 10-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Contractor to proceed with the Work on a Force Account basis or issue a Unilateral Change Order instructing Contractor to proceed with the PCO Work based on the City's estimate of the cost and/or time adjustment.
- E. COR and PCO Cost Proposal Requirements: The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall

be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for Contractor.

1. At a minimum, Contractor shall provide the following documentation to the City in support of Contractor and Subcontractor cost proposals:
  - a. material quantities and type of products;
  - b. labor breakdown by trade classification, wage rates, and estimated hours;
  - c. equipment breakdown by make, type, size, rental rates, and equipment hours; and
  - d. taxes, insurance and bonds.

F. COR and PCO Time Adjustment Proposal Requirements: If Contractor asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Contractor shall provide the following documentation to the City in support of any Contractor and Subcontractor time adjustment proposals:

1. Contractor shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the Change Order Work on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and most current City-approved progress schedule network, with appropriate logic so that a true analysis of critical path can be made.
2. Failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.

#### **6.04 CHANGE ORDERS**

A. Execution of Change Orders: When the City and Contractor agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a

Change Order to formally implement the changed Work. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

- B. Release of Claims: Contractor shall agree to the terms and conditions of Change Orders and to release the City from claims for additional compensation or time relating to the undisputed amount of the change in the Work.
  - 1. If Contractor fails to provide timely documentation of delay to the City as described in subparagraph 6.03F.1, which shall be sufficient to entitle Contractor to a time extension pursuant to paragraph 7.02, Contractor shall execute the Change Order without being granted any extension of time.
  - 2. Contractor shall not condition or qualify any Change Order with a reservation of rights to seek at a later time additional Contract Amount or Time for the changed Work addressed in the Change Order.
  
- C. Change Orders issued under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Contractor under the provisions of the Contract Documents, nor shall they relieve or release Contractor's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Contractor shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Times that is required to be given to its sureties by the provisions of any bond.

#### **6.05 UNILATERAL CHANGE ORDERS**

- A. General: When time does not allow for a Change Order to be negotiated through the PCO process, or when the City and Contractor are unable to agree on the cost or time required to complete the change in the Work described in a PCO, the City may issue a Unilateral Change Order instructing Contractor to proceed with a change in the Work based on the City's estimate of cost and time to

perform the change in the Work. Upon receipt of a Unilateral Change Order, Contractor shall proceed with the ordered Work.

- B. Protest: Should Contractor disagree with any terms or conditions set forth in a Unilateral Change Order, Contractor shall submit, within 7 days of receipt of the Unilateral Change Order, a Change Order Request (COR) in accordance with the requirements of Paragraph 6.03. If a COR is not submitted as required, Contractor waives all rights to additional compensation for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order.
  
- C. Claim Notification: Contractor waives all costs exceeding the City's estimate for the Unilateral Change Order Work unless Contractor submits a written Notice of Potential Claim in accordance with the requirements of Paragraph 13.02. Said Notice shall be submitted no later than 7 days after occurrence of one of the following, whichever occurs first:
  - 1. Contractor submits an invoice for completion of the Unilateral Change Order Work; or
  - 2. upon Contractor's receipt of written notice from the City that the City considers the Work completed.

#### **6.06 COST OF THE CHANGE ORDER WORK**

- A. Direct Cost Defined: Direct cost shall mean the sum of the following directly required for the performance of the Work under the Change Order.
  - 1. Labor. Labor rates shall not exceed those prevailing wages required to be paid under the Contract Documents plus any actual payments by the employer for its workers' health and welfare, pension, vacation and similar purposes that do not exceed the charges of the local governing trade organizations for the trades employed. The costs for all supervision, including general superintendents and foremen, shall be in the markup defined herein. Working foremen will be considered a direct cost of the Work only if the individual is on the Site physically installing Work

under the Change Order. Contractor shall furnish to the City within 30 days of the date of the Notice to Proceed, using the form provided by the City, a breakdown of Contractor's and Subcontractors' hourly payroll rates and labor burden for each trade used on the Project, including apprentice levels.

a. Labor Surcharge. The Labor Surcharge shall be as set forth in the California Department of Transportation official labor surcharges which is in effect on the date upon which the extra work is accomplished and which schedule is incorporated by reference as though set fully herein. That surcharge is to compensate the contractor for all of its costs: under the Federal Insurance Contributions Act ("FICA"); for federal and state unemployment taxes; for any and all other payroll taxes imposed by federal, state and local laws and ordinances; and for its cost of workers' compensation insurance and any and all forms of liability insurance. For projects insured under an Owner Controlled Insurance Policy ("OCIP"), the labor surcharge shall be 50% of the Labor Surcharge set forth in the California Department of Transportation official labor surcharges which is in effect on the date upon which the extra work is accomplished.

2. Materials: The City will pay Contractor on Change Orders only for those materials furnished by Contractor and directly required for performing the Change Order. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Contractor, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order. If a trade discount by an actual Supplier is available to Contractor, it shall be credited to the City. If the materials are obtained from a Supplier or source owned wholly or in part by Contractor, payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term

"trade discount" includes the concept of cash discounting.

3. Equipment: Payment for equipment costs on Change Orders will be made at the lesser of the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: (i) "Labor Surcharge and Equipment Rental Rates," published by Caltrans Publications, 1900 Royal Oaks Drive, Sacramento, California 95815; or (ii) "Cost Reference Guide for Construction Equipment," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Contractor's control through direct ownership, leasing, renting, or other method of acquisition. Daily, weekly, or monthly rates shall be used, whichever are lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.
  - a. The actual time to be paid for equipment shall be the time the equipment is in productive operation on the Work under the Change Order. In the event that use of hourly rental rates is appropriate in computing the rental of equipment, any time less than 30 minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-work days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. No mobilization or

demobilization will be allowed for equipment already on the Site.

- b. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment are included as part of Contractor's markup for overhead and profit as defined in subparagraph 6.06B.
- c. Payment to Contractor for the use of equipment as set forth herein shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Contractor incidental to the use of the equipment.
- d. Costs of equipment not listed in the publications specified in subparagraph 6.06A.3 shall be based on actual rental invoices. Copies of all invoices shall be provided as support documentation with each PCO cost proposal.

**B. Costs Included as Part of Markup for Overhead and Profit:**

All Change Order costs not specifically listed in subparagraph 6.06A as direct costs shall be included in the markup for overhead and profit. No separate allowance or itemization for overhead costs shall be allowed. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:

1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.
2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service at the Site, long-distance telephone calls, fax machines,

computers and software, internet and e-mail services, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1,000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to all regulatory requirements including compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs.

3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.
  4. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.
- C. Contractor's Markup for Overhead and Profit: The following limitations shall apply to Contractor's markup for overhead and profit on all Change Orders:
1. For Work performed by Contractor, the markup shall equal a maximum of 15 [have we decided on a new number?] percent of its direct costs, as defined herein.
  2. For Work performed by a Subcontractor, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein. Contractor shall receive a maximum 5 percent markup on the Subcontractor's total cost.
  3. For Work performed by a Lower-Tier Subcontractor or Supplier, the markup shall equal a maximum of 15 percent of its direct costs, as defined herein. Contractor and Subcontractor shall each receive a 5 percent markup on the total cost of their respective Lower-Tier Subcontractors.
  4. In no case shall the sum of the individual markups applied to a Change Order exceed 25 percent, regardless of the number of Subcontractor tiers involved in performing the Work.

5. For Change Orders that result in a net decrease in direct costs for Work performed by Contractor or a Subcontractor, the City shall receive a credit based on the actual net decrease in direct costs plus 10 percent of the direct cost credit amount. Neither Contractor nor the Subcontractor shall receive a markup on their respective Lower-Tier Subcontractors to administer the credit Change Order.
  6. When both additions and credits are involved in any one Change Order, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units.
- D. Bond and Insurance Costs: Only the actual cost of insurance and bond premiums, with no markup for overhead and profit required because of the Change Order, will be allowed.
- E. Costs Not Included in the Work: Contractor shall be solely responsible for determining which of its subcontractors receive Change Orders. No additional compensation will be provided Contractor for the cost of its subcontractors to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such subcontractors. Such costs shall be considered normal business costs, which are contractually determined between Contractor and its subcontractors prior to Bid, and such costs shall be included in Contractor's Total Bid Price.
- F. Records: Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Contractor.

## **6.07 FORCE ACCOUNT WORK**

- A. General: When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs itemized in subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.
1. The City will direct Contractor to proceed with the Work on a Force Account basis, and the City will establish a “not to exceed” budget.
  2. All requirements regarding direct costs and markup for overhead and profit provided in Paragraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.
  3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.
- B. Notification and Verification: Contractor shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the day that the Work is performed. Contractor will not be compensated for Force Account Work if Contractor fails to provide timely notice to the City before commencing the Force Account Work. In addition, Contractor shall notify the City when the cumulative costs incurred by Contractor for the Force Account Work equal 80 percent of the budget pre-established by the City. Contractor will not be compensated for Force Account Work exceeding the “not to exceed” budget amount if Contractor fails to provide the required notice before exceeding 80 percent of the Force Account budget.
- C. Reports: Contractor shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force

Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Contractor's authorized representative shall complete and sign the report. Contractor will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.

- D. Records: Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.
- E. Agreement: If Contractor and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor's signed written reports shall be discontinued and all previously signed reports shall become invalid.

#### **6.08 UNIT PRICE WORK**

- A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Division 1, and the Contract Sum will be adjusted based on the actual quantities of Work performed.
  - 1. Each unit price on the Schedule of Bid Prices shall include an amount considered by Contractor to cover

Contractor's markup for overhead and profit as defined in Paragraph 6.06.

- B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25 percent, the Work in excess of 125 percent of such estimated quantity will be paid for by adjusting the unit price Bid therefor as follows:
1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. The actual unit cost will be determined based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Contractor with the payments made for 125 percent of the quantity indicated on the Schedule of Bid Prices, plus markup for overhead and profit as provided in Paragraph 6.06.
  2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125 percent of the quantity as indicated on the Schedule of Bid Price is less than \$5,000 at the unit price Bid therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that an adjustment will be made if Contractor submits a Change Order Request (COR) in accordance with the requirements of Paragraph 6.03.
  3. At the City's option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.
- C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75 percent of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless Contractor submits a COR in accordance with Paragraph 6.03. If Contractor so requests, the quantity of said Item performed will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price Bid therefor.
2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75 percent of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price Bid therefor.
3. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

**6.09 DELETED ITEMS**

- A. Should any Bid Item be deleted in its entirety, the Contract Sum shall be reduced by the amount Bid for that Bid Item.
- B. If the City issues written notice of deletion of a Bid Item after the commencement of such Work or after Contractor has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Contractor because it is unnecessary due to actual Site conditions, payment will be made to Contractor for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.
- C. Contractor shall not be compensated for costs incurred after receipt of the City's written notice deleting the Bid Item.
- D. Materials ordered by Contractor prior to the City's issuance of a notice of deletion and paid for by the City

shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, the material shall be returned and Contractor will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

## **ARTICLE 7 - TIME**

### **7.01 PROGRESS AND COMPLETION**

- A. Contractor shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the City and shall diligently and continuously prosecute the Work to its completion.
- B. No demolition, removal, or reconstruction Work at the Site shall be started until Contractor has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and specific authorization has been issued by the City for Work to start. A progress schedule submitted by Contractor and accepted by the City in accordance with the requirements of the Contract Documents shall be the basis for determination of the date on which Work at the Site may start.
- C. The continuous prosecution of the Work by Contractor shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.
- D. The Work of this Contract shall be brought to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in Document 00802, from and after the official start date established in the written Notice to Proceed.
  - 1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.

2. During the time between Substantial Completion and Final Completion, Contractor shall complete the punch list work, but Contractor shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.
  3. Final Completion is a condition precedent to final payment. The City will issue final payment to Contractor acknowledging that the Project is complete and the Work is acceptable to the City.
  4. The limits of Contract Time as specified in Document 00802 shall not be affected by the acceptance of any of the Alternate Bid Items included in the Contract Documents provided that said Alternate Bid Items were incorporated into the Contract within the number of months after the date of the Order of Award of the Contract specified on Document 00400.
  5. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.02.
- E. Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Contractor shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.
- F. Contractor shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.
- G. If, in the opinion of the City, Contractor has fallen behind schedule according to Contractor's most current and City-approved update of the progress schedule submitted as set

forth in Paragraph 3.09, or if Contractor delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Contractor shall take some or all of the steps as follows to improve its progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:

1. increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
  2. increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;
  3. reschedule activities to achieve maximum practical concurrence of accomplishment of activities;
  4. expedite delivery of materials and equipment such as by airfreight;
  5. accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and
  6. any other means deemed appropriate by the City.
- H. The City may direct Contractor to take steps enumerated in subparagraph 7.01G for the convenience of the City and if Contractor is not at fault. Should the City Representative direct Contractor to take measures previously described, the City will reimburse Contractor for reasonable costs of complying.
- I. Should Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default and terminate the Contract for cause as set forth in Paragraph 14.01.

## 7.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays: Pursuant to section 6.22H.2.c of the San Francisco Administrative Code and for the purposes of the Contract Documents the term Unavoidable Delay shall mean an interruption of the Work beyond the control of Contractor that could not have been avoided by Contractor's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.09, Contractor shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

1. Contractor will be entitled to a non-compensable time extension only for the following types of Unavoidable Delay: acts of God; acts of the public enemy; adverse weather conditions; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material; fuel shortages; freight embargoes; accidents; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Project; the prevention by the City of Contractor from commencing or prosecuting the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's Subcontractors or Lower-Tier Subcontractors; the prevention of Contractor from commencing or prosecuting the Work because of failure of the City to furnish the necessary materials, when required by the Contract Documents and when

requested by Contractor in the manner provided in the Contract Documents; and inability to procure or failure of public utility service.

- a. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.
  - b. In addition, Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Contractor-caused delay under any and all applicable provisions of the Contract Documents.
2. Contractor shall be entitled to a compensable time extension for an Unavoidable Delay caused by a Change Order initiated or caused by the City, provided such Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Contractor-caused delay or other type of Unavoidable Delay as previously defined. All other types of Unavoidable Delay shall not entitle Contractor to a compensable time extension.

3. Contractor shall be entitled to a non-compensable time extension in the event a City-caused delay is concurrent with either a Contractor-caused delay or a non-compensable Unavoidable Delay.
- B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:
1. any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor; or
  2. any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or
  3. any delay caused by the untimely review by Contractor of the Contract Drawings and Specifications pursuant to subparagraph 3.01C; or
  4. any delay resulting from the City responding to Contractor-generated RFIs in accordance with subparagraph 6.02B; or
  5. any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.
- C. Adverse Weather Delays:
1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Contractor shall make every effort to continue work under prevailing conditions. Such efforts by Contractor shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.
  2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Contractor made efforts to work during adverse

weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Contractor is prevented by adverse weather or conditions from proceeding with at least 75 percent of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and Contractor will be granted a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, Contractor shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.
4. Adverse weather shall mean rain, windstorm, flood, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Contractor to be detrimental to the progress of the Work. Contractor shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

<u>Month</u>	<u>Rain Days</u>
January	3
February	3
March	2
April	1
May	0
June	0
July	0
August	0
September	0
October	1
November	1
December	3

- a. Contractor's progress schedule shall incorporate prudent allowance for the anticipated number of days of inclement weather specified herein.
- b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Document 00802) is predicated on the

- anticipated number of days of inclement weather specified herein.
- c. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.
  - d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Contractor has requested a time extension because of adverse weather.
  - e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Contractor has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22H.2.d of the San Francisco Administrative Code, Contractor shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. The City may take steps to prevent the occurrence or continuance of the delay, and the City may determine to what extent Substantial Completion is delayed thereby.
2. Said notice shall constitute an application for an extension of time only if it requests such time extension, sets forth Contractor's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and

meets all requirements for a Notice of Potential Claim as set forth in subparagraph 13.02A, including the requirement that such Notice be submitted to the City within 7 days of the event which the Contractor contends affected the performance of the Work.

3. The City's determination of whether an extension of time will be granted will be based on Contractor's demonstration to the City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.
4. If Contractor does not submit a notice as set forth in subparagraph 7.02D.2, above, Contractor thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Contractor understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the City.

E. Extensions of Time:

1. In the event it is deemed necessary by the City to extend the time for completion of the Work to be done under these Contract Documents beyond the specified limits of Contract Time specified in the Contract Documents, such extensions shall in no way release any guarantees or warranties given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision.
2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.
3. The length of any extension of time shall be limited to the extent that the commencement, prosecution and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22H.2.d of the San Francisco Administrative Code.
4. Extensions of time that cumulatively extend the Contract Time in excess of 10 percent of the original contract duration shall be subject to approval of the

- Mayor (or the Mayor's designee) or the Commission (or the Commission's designee), as appropriate.
5. In no event shall such extensions of time be granted subsequent to the date of Final Completion.
  6. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests which the City is entitled.
  7. Should Contractor, any subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Paragraph 7.02, Contractor and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.
  8. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.

### **7.03 LIQUIDATED DAMAGES**

#### **A. Determination of Damages:**

1. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.

2. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.
- B. Agreed Amount of Damages: It is understood and agreed by Contractor and City that if all the Work specified or indicated in the Contract Documents is not completed within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, actual damages will be sustained by the City in the event of and by reason of such delay.
1. Contractor and City agree that the amount of liquidated damages set forth in Document 00802 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Document 00802 for Substantial Completion (as such date may be modified in accordance with the Contract Documents).
  2. Contractor and City agree that the amount of liquidated damages set forth in Document 00802 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Document 00802 for completing the punch list of remedial Work and achieving Final Completion (as such date may be modified in accordance with the Contract Documents).
  3. It is therefore agreed that Contractor shall pay such amount of liquidated damages as specified in Document 00802, and in case such amount is not paid, Contractor agrees that the City may deduct the amount therefor from any money due or that may become due Contractor under the Contract.

C. Payment of Damages:

1. Should Contractor become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments as provided in Paragraph 9.05 which would otherwise be due or become due Contractor until the liability of Contractor has finally been determined.
2. The City shall have the right to use and apply such retained percentages, in whole or in part, to reimburse the City for all liquidated damages due or to become due to the City. Any remaining balance of such retained percentages shall be paid to Contractor only after discharge in full of all liability incurred by Contractor.
3. If the retained percentage is not sufficient to discharge all such liabilities of Contractor, Contractor and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full.
4. Should the retention of moneys due or to become due to Contractor be insufficient to cover such damages, Contractor shall pay forthwith the remainder to the City.

## **ARTICLE 8 - INSPECTION AND CORRECTION OF WORK**

### **8.01 UNCOVERING OF WORK**

- A. No Work shall be covered until inspected by the City or other public authorities having jurisdiction.
- B. If any part of the Work is covered prior to inspection by the City or other public authorities having jurisdiction, Contractor shall, upon written request by the City, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently replace it at no additional cost to the City and without change in the Contract Times.
- C. Should the City or other public authorities having jurisdiction wish to re-inspect a portion of the Work that has been covered, Contractor shall uncover it upon written request. If the Work conforms to the requirements of the Contract Documents, the City will pay the costs of uncovering and replacement; if the Work does not conform to the requirements of the Contract Documents, Contractor shall pay said costs, including related disruptions and delays.

### **8.02 TESTS AND INSPECTIONS**

- A. All testing and inspection of the Work required by the Contract Documents shall be arranged and paid for by Contractor through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.
- B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or other agency having jurisdiction shall be performed at the City's expense. Contractor shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 2 working days notice, excluding weekends and City

holidays, of when and where such special inspections are required so the City may arrange for the appropriate City representatives and inspectors, and representatives from public other authorities having jurisdiction, to be present to perform the necessary inspections or tests.

1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.
- C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.
- D. If such procedures for testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Contractor shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.
1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.
  2. Contractor shall bear all costs thereof, including reimbursement to the City for the City's additional

testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Contractor, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.

- E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Contractor from Contractor's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.
- F. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Contractor and furnished to the City in accordance with the Specifications.
- G. If observation or testing is required outside the nine Bay Area counties, and does not take place at the Site or within a 100-mile radius of the Site, Contractor shall reimburse the travel-related costs, including transportation, lodging, meals, long-distance telephone calls and facsimile transmittals, and associated expenses of the City without adjustment to the Contract Sum.
- H. Contractor shall provide promptly all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.
  - 1. The City reserves the right to charge to Contractor any additional cost of inspection or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.

### **8.03 CORRECTION OF NON-CONFORMING WORK**

- A. The City shall have the sole and unfettered authority to disapprove or reject Non-conforming Work. Upon receipt of written notification thereof from the City, Non-conforming Work shall be removed from the Site and replaced promptly by Contractor with Work that conforms to the Contract Documents, regardless of when the Non-conformance is determined. Contractor shall pay all claims, costs, losses, and damages, including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services, of removal and replacement including but not limited to all costs of repair or replacement of work of others.
  
- B. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:
  - 1. to imply acceptance of such Non-conforming Work or materials; or
  - 2. as barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
  - 3. to relieve Contractor from the responsibility of correcting Non-conforming Work or materials.
  
- C. If Contractor fails to correct Non-conforming Work or proceed with corrections within 5 days of the date of written notification from the City, the City may correct the Non-conforming Work in accordance with Paragraph 2.04 or may remove it and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of such removal and storage within 7 days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Contractor's account for the excess proceeds of such sale, if any. The City will deduct from Contractor's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs

and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Contractor shall reimburse the City.

#### **8.04 CORRECTION PERIOD**

- A. Contractor shall repair or replace Non-conforming Work or damage resulting from such Non-conforming Work promptly at no additional cost to the City, whether due to:
- (i) faulty materials or workmanship; or
  - (ii) defective installation by Contractor of materials or equipment manufactured by others; or
  - (iii) disturbance of, or damage to, City improvements by Contractor's operations contrary to the Specifications; or
  - (iv) other failure to conform to the requirements of the Contract Documents. Such repair or replacement shall commence within 5 days of the date of the City's written notification of occurrence of such Non-conforming Work and shall forthwith be diligently prosecuted to completion during the following correction periods, or such longer period of time as may be prescribed by laws and regulations or by the terms of any applicable guarantees required elsewhere in the Contract Documents, as applicable:
1. any time during construction of the Work; or
  2. one year following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of the surface Work or in surface improvements of the City such as building superstructures, pavements, curbs, walks, tracks, walls, stairways, poles, mechanical and electrical equipment, materials, appurtenances and accessories, or other surface structures; or
  3. two years following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of subsurface Work or in subsurface improvements of the City not included in the Work, such as building foundations, sewers, side sewers, culverts, other drainage structures, pipes, valves, conduits, conductors, or other subsurface structures.

- B. This requirement to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced Items.
- C. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.
- D. The remedies provided for in this Paragraph 8.04 shall not be restrictive but shall be cumulative and shall be in addition to all other legal remedies the City may possess with respect to latent defects or frauds.

**8.05 ACCEPTANCE OF NON-CONFORMING WORK**

- A. If, in the sole and unfettered judgment of the City, it is undesirable or impractical to replace any defective or Non-conforming Work, the Contract Sum shall be reduced by such amount as the City or its authorized representatives deem equitable, or Contractor shall rebate moneys previously paid by the City.

## **ARTICLE 9 - PAYMENTS AND COMPLETION**

### **9.01 CONTRACT SUM**

- A. Payment to Contractor at the Contract Sum shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Contractor for any purpose incidental to performing and completing the Work.
  
- B. Whenever the Contract Documents specify that Contractor is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Contractor's Total Bid Price.

### **9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK**

- A. Within 30 days after receipt of Order of Award notification, or as otherwise specified in Division 1, Contractor shall submit a detailed cost breakdown of its Bid covering the lump sum Items, including Alternate Bid Items selected by the City, by classification in accordance with the Construction Specifications Institute's 16-division MasterFormat and coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum Items. No progress payments will be made on account of lump sum Items until the City has reviewed and accepted Contractor's schedule of values.
  - 1. The specific format, detail and submittal requirements for the schedule of values shall be as specified in Division 1 or as directed by the City to facilitate and clarify progress payments to Contractor for completed Work.
  - 2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the

lump sum price Bid therefor under the Bid Item named in Document 00400.

- B. The total cost of performing each lump sum Item, including all labor, material, equipment, fixed cost elements, incidental expenses, and overhead and profit, shall be shown on Contractor's schedule of values. All budgeted costs and manpower shown on the progress schedule shall be allocated to direct cost Bid Items.
  - 1. Unless otherwise provided in the Contract Documents, Contractor's overhead, profit, insurance, bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal Contractor's Total Bid Price.
  
- C. The City will review and return Contractor's schedule of values with comments. Contractor shall make all corrections requested by the City and resubmit for approval.
  - 1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Contractor's schedule of values.
  - 2. Contractor's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Contractor's Bid amount to component parts of the Work.
  
- D. Upon concurrence by the City, a written formal approval of Contractor's schedule of values will be issued. If the City later determines that the schedule of values is insufficient or incorrect, an adjustment shall be made as specified in subparagraph 9.02C.

**9.03 PROGRESS PAYMENTS AND RETENTION**

- A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Contractor and pursuant to the Contract Documents as follows.
  
- B. On the 25th day of each month, Contractor shall submit to the City for review an Application for Payment, on a form

approved by the City and signed by Contractor, covering the Work completed by Contractor as of the date of the Application and accompanied by such supporting documentation as specified in Division 1.

1. The monthly value of lump sum Work shall be estimated by Contractor pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Contractor's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.
  2. Progress payments on account of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices Bid by Contractor, adjusted as specified in Paragraph 6.08 for the actual quantities of Work performed.
  3. Progress payments on account of allowances named in Document 00400 shall be made for such sums as may be acceptable to the City and including costs as specified in Division 1. Prior to final payment, an appropriate Change Order will be issued as directed by the City Representative to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Sum will be adjusted accordingly.
  4. Except as provided in subparagraph 9.03I, no allowance will be made for materials or equipment not incorporated into the Work.
- C. The Application for Payment shall identify the amount of Contractor's total earnings to date.
- D. Monthly progress payment amounts to Contractor shall be based upon completed Work or percentages of Work completed prior to the end of the payment period. A detailed payment application procedure will be transmitted to Contractor by the City following the formal approval of the schedule of values.

- E. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Contractor as specified in Division 1. Submission of acceptable monthly progress schedule updates for same period as the Application for Payment shall be a condition precedent to making progress payment Applications. No partial progress payment shall be made to Contractor until all cost information requested by the City is submitted and reviewed.
- F. As soon as practical after estimating the progress of the Work, the City will pay to Contractor in a manner provided by law an amount equal to 90 percent of the value, based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.05.
1. When the City determines that the Work is 50 percent or more complete, that Contractor is making satisfactory progress, and that there is no specific cause for greater withholding, the City, at its sole option and discretion and upon the written request of Contractor, may (a) release part of the retention to the Contractor so that the amount held in retention by the City, after release to Contractor, is reduced to not less than 5 percent of the total value of the labor and materials furnished, and the City shall proceed to retain 5 percent of any subsequent progress payment under the contract; or (b) continue to hold the already withheld retention amount, up to 5 percent of the total contract price, and shall not deduct further retention from progress payments.
  2. When the City determines that the Work is 98 percent or more complete, the City may reduce retention funds to an amount equal to 200 percent of the estimated value of work yet to be completed, provided that the contract is free of offsets by the City and is free of stop notices, forfeitures, and other charges.

3. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls and San Francisco Human Rights Commission program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in San Francisco Administrative Code section 6.22(J)(6).
- G. No inaccuracy or error in said monthly estimates shall operate to release Contractor or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.
- H. In accordance with the provisions of section 22300 of the California Public Contract Code, Contractor will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract under the following conditions:
1. At the request and expense of Contractor, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Contractor which are equivalent to the amount withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Contractor. Upon satisfactory completion of the Project and all Work under the Contract, the securities shall be returned to Contractor.
  2. Contractor shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.
  3. Contractor shall enter into an escrow agreement with the City Controller according to Document 00630 ("Escrow Agreement for Security Deposits in Lieu of Retention"), specifying the amount of securities to be deposited, terms and conditions of conversion to cash

in case of default of Contractor, and termination of escrow upon completion of the Contract.

- I. Pursuant to section 6.22J of the San Francisco Administrative Code, payment for material or equipment procured by Contractor but stored on or off the Site and not incorporated in the Project will not be allowed, subject to the following exception:
  1. The City will make payment for material or equipment procured by Contractor and not incorporated in the Project if the material or equipment is (i) unique to the Project; and (ii) either stored on the Site or at an off-Site location approved in advance and in writing by the City. Should the City agree to make payment for such material or equipment, all of the following shall apply:
    - a. Contractor shall submit to the City proof of off-Site material purchases, including bills of sale, invoices, or other documentation warranting that Contractor has received the materials free and clear of all liens, charges, security interests, and encumbrances.
    - b. Title to stored material shall be vested in the City at time of delivery to the Site or off-Site warehouse.
    - c. Contractor shall obtain a negotiable warehouse receipt, endorsed over to the City, for material stored in an off-Site warehouse. No payment will be made until endorsed receipts are delivered to the City.
    - d. Contractor, at no additional cost to the City, shall insure stored material against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the City Representative naming the City as additional insured. Insurance shall not be cancelable for at least 30 days and cancellation shall not be effective until certificate thereof is given to the City.
    - e. Contractor shall furnish to the City written consent from Contractor's sureties approving the advanced payment for materials stored off Site.

- f. The maximum prepayment allowed by the City shall be 75 percent of the fair market value of the item being considered. The City shall be the sole judge of fair market value.
  - g. Contractor shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work.
  - h. Stored materials shall be available for inspection by the City.
  - i. Contractor shall deliver stored materials to the Site.
  - j. After delivery of stored materials to the Site, if any inherent or acquired defects are discovered therein, such defective material shall be removed and replaced with suitable materials at no additional cost to the City.
  - k. In the event of loss of or damage to paid materials, Contractor shall be responsible for replacing the lost or damaged materials at its own cost and shall be responsible for all delays incurred on the Project as a result of such loss or damage.
  - l. Nothing in this subparagraph 9.03I shall relieve Contractor of its responsibility for incorporating materials in the Work that conform to the requirements of the Contract Documents.
- J. The granting of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.
- K. It is mutually understood and agreed that the City may withhold from any payment otherwise due Contractor such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

1. If any payment or portion of payment is withheld by the City, Contractor will be notified in writing of the cause(s) of such action.
- L. Only Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Contractor shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.
- M. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the City for the applicable time period. Certified payrolls shall be prepared pursuant to Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.
1. Contractor shall submit certified payrolls to the City electronically via the City-selected Project Reporting System ("PRS"), an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier will be assigned a log-on identification and password to access the PRS.
  2. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
  3. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their

designated representatives must attend the PRS training session.

4. Contractor shall comply with the requirements of this subparagraph 9.03M at no additional cost to the City.
5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.

#### **9.04 PAYMENT AUTHORIZATION**

- A. The City will, after receipt of Contractor's Application for Payment, approve such amount as the City determines is properly due.
- B. Payment will be issued by the City based on the City's determination that the Work has progressed satisfactorily to the point stated in the application for payment. Payment will not be a representation that the City has:
  1. inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or
  2. reviewed Contractor's means, methods, techniques, sequences or procedures of construction; or
  3. ascertained how or for what purpose Contractor has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.

#### **9.05 WITHHOLDING PAYMENT**

- A. The City may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself if, in the City's judgment, the determination required by subparagraph 9.04B cannot be made. If the City does not authorize payment in the amount of the application, the City will notify Contractor of the reasons for withholding payment. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a

payment previously issued, for one or more of the following reasons:

1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.
2. Third party claims have been filed, or there is reasonable evidence indicating probable filing of such claims.
3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
4. The Contract Sum has been reduced by Change Orders.
5. Damage has occurred to the City or another contractor.
6. The City determines that the Work will not be completed within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.
7. The City determines that Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01A).
8. The City determines that Contractor fails to submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.
9. The City determines that Contractor fails to submit timely progress schedules, revised schedules, schedule updates and reports in accordance with the Contract Documents.
10. The City determines that Contractor fails to maintain timely updated Contract Documents or record documents.
11. The City determines that Contractor fails to submit certified payroll records in accordance with the Contract Documents.
12. The City determines that Contractor fails to comply with any other requirements of the Contract Documents.

## 9.06 PARTIAL UTILIZATION

- A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, the City may make a written request for Contractor to permit the City to take possession of and use the Work, or a part thereof, at no additional cost to the City. When so used, maintenance and repair due to ordinary wear and tear caused by the City will be made at the City's expense. The use by the City of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.
- B. Such partial utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.
- C. If Contractor agrees that such part of the Work is Substantially Complete, Contractor shall notify the City in writing and request a joint inspection of that part of the Work. Within 7 days from receipt of Contractor's written notification, Contractor and the City shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record its status of completion.
- D. Partial utilization of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- E. Contractor shall perform final cleaning of such partially utilized Work as specified in the Division 1 when directed to do so by the City.

## 9.07 SUBSTANTIAL COMPLETION

- A. Contractor shall notify the City in writing when Contractor considers that the Work is Substantially Complete and request that the City inspect the Work and prepare a Notice of Substantial Completion. Completion of start-up services and submittal of warranties, guarantees, and record documents shall be a condition precedent to requesting an inspection for Substantial Completion. Attached to Contractor's request for a Substantial Completion inspection shall be a preliminary list of items to be completed or corrected before Final Completion.
- B. Within 2 working days from receipt of Contractor's written notification, the City will make an inspection to determine whether the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Contractor with a Punch List/Substantial Completion that lists all Items that shall be corrected or completed before the City considers the Work Substantially Complete.
- C. Once Contractor has completed all items on the Punch List/Substantial Completion, Contractor shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in subparagraph 9.07B. Contractor shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.
- D. As a condition precedent to Substantial Completion, Contractor shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other equivalent agency having jurisdiction over the Work in the event that such temporary occupancy permit or equivalent permit is necessary for the City to utilize the Work for the purposes for which it is intended.

- E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.
- F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Contractor (i) a Punch List/Final Completion identifying deficient items to be corrected by Contractor prior to Final Completion; and (ii) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.

**9.08 FINAL COMPLETION AND FINAL PAYMENT**

- A. When Contractor considers all Work complete, including all items of Work on the Punch List/Final Completion and all closeout requirements, Contractor shall notify the City in writing.
- B. Within 2 working days of receipt of Contractor's written notice, the City will verify whether all Punch List/Final Completion items are completed. If the City finds that any of the Punch List/Final Completion items are not complete, the City will notify Contractor in writing. Contractor shall promptly take actions necessary to complete such Punch List/Final Completion items.
- C. Once Contractor completes all items on the Punch List/Final Completion, Contractor shall notify the City in writing and request a second inspection. If the City finds the Punch List/Final Completion items are still not complete, Contractor shall be responsible for all costs for conducting such additional inspections incurred by the City and its consultants before Final Completion. All such costs of the City and its consultants shall be deducted from progress payments owed Contractor.
- D. After Contractor has completed to the satisfaction of the City all Punch List/Final Completion items and close-out requirements in accordance with the Contract Documents, the City will issue a written certificate of acceptance as

required by section 6.22(K) of the San Francisco Administrative Code stating that the Work is acceptable, and Contractor may submit the final application for payment.

- E. The remaining value of the Work performed under this Contract, if unencumbered, shall be paid within 35 days after the date of the Final Completion, except that the City may withhold from the final payment an amount not to exceed 200 percent of the cost of Non-conforming or unacceptable Work and amounts assessed as liquidated damages. Acceptance by Contractor of said final payment shall constitute a waiver of all Claims against the City arising under the Contract Documents. As a condition precedent to final payment, Contractor shall furnish a "release" pursuant to the following subparagraph 9.08F.
- F. Contractor and each assignee under any assignment in effect at the time of final payment shall, if required by the City, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in form and substance satisfactory to, and containing such exemptions as may be found appropriate by the City, discharging the City and the City's consultants, and their directors, officers, members, employees, agents and authorized representatives of all liabilities, obligations and Claims arising under this Contract.

## **ARTICLE 10 - INSURANCE AND BONDS**

### **10.01 INSURANCE REQUIREMENTS**

- A. Contractor shall purchase and maintain in force throughout the Contract Time such liability and other insurance as provided in Document 00805.

### **10.02 PERFORMANCE BOND AND PAYMENT BOND**

- A. At the time of execution of the Contract, Contractor shall file with the City the following bonds using the form provided in Document 00610:
  - 1. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and
  - 2. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").
- B. Said Performance Bond shall cover all corrective Work required during the correction period pursuant to Paragraph 8.04, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.
- C. Corporate sureties issuing these bonds and Bid bonds as specified in Document 00200 shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.

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## **ARTICLE 11 – LABOR STANDARDS**

### **11.01 PREVAILING WAGES**

- A. It is hereby understood and agreed that all provisions of section 1770 et seq. of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.
  
- B. It is hereby understood and agreed that all provisions of sections 6.22E and 6.22F of the San Francisco Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:
  - 1. Contractor shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
  - 2. Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
  - 3. Contractor shall keep or cause to be kept an accurate record showing the name, place or residence, occupation, and per diem pay, of each person engaged in the execution of the Work, and every subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives.
  - 4. Should Contractor, or any Subcontractor who shall undertake the performance of any part of the Work

herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Contractor and the Subcontractor shall jointly and severally forfeit, to the City back wages due plus the penal sum of \$50 per day for each laborer, worker or mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid the highest general prevailing rate of wages. The City, when certifying any payment which may become due under the terms of the Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture or forfeitures as so certified.

5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five days (Monday-Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Contractor or any Subcontractor who violates this provision shall forfeit to the City back wages due plus the penal sum of \$50 per day for each laborer, mechanic or artisan employed for each calendar day or portion thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more than the days and hours specified herein.
- C. A copy of the most current highest general prevailing wage rates will be posted at the Site by the City, and such highest prevailing wage rate determinations made at the time of the advertisement for Bids are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in

prevailing wage rates that may occur during the Contract Time.

1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.
2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 972-8628 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

## **11.02 CERTIFIED PAYROLLS**

- A. Certification of Payroll Records: Contractor shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.
  1. The payroll records shall be certified and shall be submitted electronically to the City as set forth in Paragraph 9.03M. In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job site office of Contractor on the following basis:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.
    - b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.
    - c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall

- not be provided access to such records at the job site office of Contractor.
- d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.
2. Any copy of payroll records made available for inspection as copies and furnished upon request to the public or any public agency by the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of Contractor shall not be marked or obliterated.
  3. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.
  4. In the event that Contractor receives a written notification of noncompliance with section 1776, Contractor shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to the City, forfeit \$25 for each day, or a portion thereof, of non-compliance, for each worker, until strict compliance is effected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the Contract Sum.
  5. Contractor is solely responsible for compliance with section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

### **11.03 APPRENTICES**

- A. Contractor and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and

San Francisco Administrative Code, section 6.21(O). Contractor shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.

1. Contractor shall comply with all requests by the City to provide proof that Contractor and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.
  2. Contractor shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.
  3. Section 1777.5 shall not apply to contracts of general contractors involving less than thirty thousand dollars (\$30,000) and less than twenty working days, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five working days.
- B. Should Contractor fail to comply with the apprenticeship requirements of section 1777.5, Contractor shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- C. Contractor, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City. The City reserves the right to demand such evidence upon request.
- D. Under California Public Contract Code section 6109, Contractor or Subcontractors who are ineligible to bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

1. Any contract for the Project entered into between Contractor and a debarred subcontractor is void as a matter of law.
2. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred subcontractor by Contractor.
3. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to work on the Project.

#### **11.04 LABOR STANDARDS ENFORCEMENT**

- A. In accordance with Administrative Code section 6.22(E)(7) and section 6.24, Contractor further acknowledges and agrees as follows:
  1. Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter and Chapter 6 of the San Francisco Administrative Code.
  2. Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.
  3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.
  4. Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's prevailing wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer.
  5. The Labor Standards Enforcement Officer may audit such records of Contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by

the Charter and this Chapter on public works contractors.

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## **ARTICLE 12 - SAFETY**

### **12.01 PRECAUTIONS AND PROGRAMS**

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties or damages which result from Contractor's failure to comply with applicable health and safety laws and regulations during performance of the Work.
- B. Contractor shall designate in writing a responsible competent person of Contractor's organization at the Site as Project safety representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a day, 7 days a week by telephone or other approved means.
- C. In the event Contractor encounters on the Site material Contractor believes to be hazardous that may present a substantial danger to persons or property exposed thereto in connection with the Work, Contractor shall stop Work in the area affected promptly and before disturbing the conditions believed to be hazardous, notify the City in writing in accordance with the requirements of Paragraph 3.03. The Work in the affected area shall not be resumed thereafter except by written notification of the City.
- D. Contractor shall perform all Work relating to hazardous materials as required by the Contract Documents.
  - 1. Should hazardous materials be encountered that were not indicated in the Contract Documents and not contemplated to be part of the Work at the time that Bids were received, Contractor shall be given an adjustment in the Contract Sum and Contract Time as specified in Paragraph 3.03.

## 12.02 PERSONS AND PROPERTY

- A. Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:
  - 1. all persons on the Site or others who may be affected by the Work;
  - 2. the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.
  
- B. Contractor shall give notices pursuant to California Civil Code section 832 and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
  
- C. Contractor shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, AT&T, Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.
  
- D. Contractor shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.
  
- E. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, such as posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying owners and

users of adjacent sites, underground facilities and utilities of Contractor's operations.

- F. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.
- G. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.
- H. In the event of damage or loss to property referred to in the previous subparagraphs, whether caused by Contractor, its Subcontractors or Lower-Tier Subcontractors, Contractor shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Contractor are in addition to Contractor's obligations under Paragraph 3.19 of these General Conditions.
- I. Pursuant to section 6705 of the California Labor Code, excavation for trenches 5 feet or more in depth shall not begin until Contractor has received acceptance from the City of Contractor's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Contractor's shoring plan shall be submitted in accordance with the requirements of the Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If Contractor's shoring plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and sealed by an engineer retained by Contractor

who is registered as a civil or structural engineer in the State of California. The City's acceptance of Contractor's shoring plan shall not be construed to relieve Contractor of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.

- J. Contractor shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect its Work and materials and fully or partially completed work of the City or separate contractors from damage due to construction operations, the action of the elements, the carelessness of its subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Completion of the Work. Should improper Work of any trade be covered by another contractor and damage or defects result, Contractor shall make the whole Work affected good to the satisfaction of the City and without expense to the City.

### **12.03 SAFETY PERMITS**

- A. A California industrial safety permit shall be obtained and paid for by Contractor if the following occurs:
  - 1. the construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
  - 2. the demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
  - 3. the excavation of a trench 5 feet deep or deeper into which a person must descend.
- B. Contractor shall obtain and pay for all other required safety permits.

### **12.04 EMERGENCIES**

- A. In emergencies affecting the safety or protection of persons or property at the Site, Contractor shall act promptly to prevent threatened damage, injury or loss. Contractor shall give prompt written notice to the City if Contractor believes that, due to the nature of the emergency or circumstances related thereto, any

significant changes in the Work or variations in the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Contractor in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

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**ARTICLE 13 - CONTRACT AND GOVERNMENT CODE  
CLAIMS**

**13.01 NOTICE OF POTENTIAL CLAIM**

- A. If, during the course of the Project, the Contractor disputes any directive, determination (including determination of delay), Proposed Change Order, Unilateral Change Order, payment, or other act by the City impacting or potentially impacting the performance of the Work (collectively, "potential claim events"), the Contractor shall submit to the City a Notice of Potential Claim. The Contractor shall submit such Notice within 7 days of the potential claim event. The Notice shall describe the potential claim event, provide a good faith estimate of any impact, and reference any relevant provisions of the Contract Documents and any schedules with sufficient specificity for the City to review the matter. Failure to submit a timely, properly documented Notice of Potential Claim shall constitute a waiver of any claim arising out of such potential claim event.
1. The requirements of subparagraph 13.01A, above, apply regardless of whether or not the disputed item underlying a potential claim event has been or will be submitted to a Dispute Review Board or Dispute Resolution Advisor for resolution.

**13.02 CONTRACT CLAIM**

- A. General Contract Claim Requirements. No later than 45 days after submitting a timely Notice of Potential Claim to the City in accordance with subparagraph 13.01A, Contractor may submit a Contract Claim for additional compensation or time based on any disputed item (i) respecting the true value of any Work performed or any changes in the Work which Contractor may be required to perform; and/or (ii) regarding time extensions; and/or (iii) respecting the amount of payment to Contractor during the performance of the Contract; and/or (iv) regarding the performance of obligations by any party. The Contract Claim shall be the Contractor's sole and exclusive administrative remedy for additional compensation or

time associated with its performance of the Work under the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Contractor as to any claims relating to its performance of the Work under the Contract and a failure to exhaust its administrative remedies.

1. The time requirement for submitting a Contract Claim set forth in subparagraph 13.02A, above, is extended in accordance with Document 00803/DRB or Document 00803/DRA, as applicable, if:
  - a. the parties have established a Dispute Review Board or Dispute Resolution Advisor for the Project; and
  - b. the disputed item underlying a potential claim event has been submitted to the Dispute Review Board or the Dispute Resolution Advisor for resolution in accordance with Document 00803/DRB or Document 00803/DRA, as applicable.

**B. Contract Claim Certification Requirement:**

1. Contractor, under penalty of perjury, shall submit with the Contract Claim certification by Contractor and its Subcontractor(s), as applicable, that:
  - a. the Claim is made in good faith;
  - b. supporting data are accurate and complete to the best of Contractor's and/or Subcontractor's knowledge and belief; and
  - c. the amount requested accurately reflects the Contract adjustment for which Contractor believes the City is liable.
2. An individual or officer who is authorized to act on Contractor's behalf shall execute the certification.
3. In regard to a Claim or portion of a Claim by a Subcontractor, Contractor shall fully review the Subcontractor's Claim and shall certify the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Claim, under penalty of perjury, in the same manner the Contractor would certify its own claim under the foregoing subparagraph 13.02B(1). The City will not consider a direct claim

by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.

4. Contractor hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Contractor as to the subject Claim.
5. Contractor further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Contractor may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

C. Format of a Contract Claim:

1. The Contractor shall document its Contract Claim in the following format:
  - a. Cover letter and certification.
  - b. Narrative Summary of Claim merit and amount, and clause under which the Claim is made.
  - c. List of documents relating to Claim:
    - 1) Specifications
    - 2) Drawings
    - 3) Clarifications/RFIs
    - 4) Correspondence
    - 4) Schedules
    - 5) Other
  - d. Chronology of events and correspondence.
  - e. Analysis of Claim merit.
  - f. Analysis of Claim cost (money and time).
  - g. Attachments:
    - 1) Specifications
    - 2) Drawings
    - 3) Clarifications/RFIs
    - 4) Correspondence
    - 5) Schedules
    - 6) Other

D. Additional Requirements for Contract Claims Regarding Time Extensions:

1. All Contract Claims regarding time extensions shall include, in addition to all other applicable requirements of this Article 13, an analysis of the delays impacting the as-built critical path. The as-built critical path shall be determined by (1)

comparing the late dates for schedule activities indicated within the Contractor's "as-planned" CPM schedule (as approved by the City) with the actual dates for the same activities, and then (2) determining the longest path through the as-built schedule using the Contractor's originally-approved as-planned activity to activity logic. The "as-built" CPM shall reflect the exact manner in which the Project was actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic).

2. The City will not review or consider any Contract Claim regarding time extensions based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project.

E. Procedure For Review of a Contract Claim:

1. The City shall review only a timely, certified, and properly documented Contract Claim.
2. The City shall respond to a Contract Claim in writing, within 45 days of receipt of such Claim. In its response, the City shall either grant or deny the Claim in whole or in part. If the City does not respond to a Claim within the 45-day period, the Claim is deemed denied in its entirety.
3. Within 10 days of the date of the City's response or expiration of the 45-day period, whichever is earlier, the Contractor may request review of the Contract Claim and the City's response by the Department Head. The request must be in writing, directed to the Department Head and copied to the Resident Engineer. Failure by the Contractor to make a timely request to the Department Head, copied to the Resident Engineer, shall constitute acceptance by the Contractor of the City's original response.
4. Upon a timely and proper request, the Department Head, or his/her designee (other than personnel assigned to the Project), shall review the relevant documents, meet with the Contractor and City personnel assigned to the Project, and confirm or revise the City's response to the Contract Claim. The

Department Head, or his/her designee, shall issue such determination within 60 days of the date of the request for review. The determination by the Department Head, or his/her designee, shall constitute the final administrative determination of the City. If the Department Head takes no action on a request for review within the 60-day period, the City's original response shall constitute the final administrative determination by the City.

**13.03 GOVERNMENT CODE CLAIM**

- A. The administrative procedure under this Article 13 shall not operate to toll, waive, or excuse Contractor's compliance with the Government Code Claim requirements under California Government Code section 900, *et seq.*, and San Francisco Administrative Code Chapter 10. For the purposes of this Contract, the City and the Contractor hereby agree that any action at law against the City arising out of or relating to Contractor's performance of the Work shall accrue on the date of Substantial Completion.

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**ARTICLE 14 - TERMINATION OR SUSPENSION OF THE  
CONTRACT**

**14.01 NOTICE OF DEFAULT; TERMINATION BY THE  
CITY FOR CAUSE**

- A. Grounds for Default. Contractor is in Default of the Contract if Contractor:
1. refuses or fails to supply enough properly skilled workers, adequate and proper materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
  2. is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
  3. refuses or fails in a material way to replace or correct Work not in conformance with the Contract Documents; or
  4. repeatedly fails to make prompt payment due to Subcontractors or for labor; or
  5. materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any public authority having jurisdiction; or
  6. intimidates or sexually harasses a City employee, agent, or member of the public; or
  7. is otherwise in material breach of any provision of the Contract Documents.
- B. Notice of Default. When any of the above grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Contractor. The City shall provide a copy of any Notice of Default to the Contractor's surety.
1. The Notice of Default shall identify the ground(s) for Default and provide the Contractor with a 14-day cure period to complete necessary corrective Work and/or actions.
  2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Contractor or its

subcontractors/suppliers, Contractor shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently the corrective Work and/or actions. The City, after accepting Contractor's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Contractor's surety.

- C. Termination for Cause. If Contractor fails to completely cure the Default either (i) within the 14-day cure period set forth in the Notice of Default; or (ii) within the agreed-upon cure period set forth in an amended Notice of Default, the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Contractor and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:
1. take possession of the Site and use any materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to complete the Project;
  2. accept assignment of subcontracts and agreements pursuant to Paragraph 4.03; and
  3. finish the Work by whatever reasonable method the City may deem expedient.
- D. When the City terminates the Contract for one of the grounds set forth in subparagraph 14.01A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including all liquidated damages for delays, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to the City. The amount to be paid to Contractor or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.
1. Upon completion of all Work, Contractor shall be entitled to the return of all its materials which have not been used in the Work, its plant, tools, equipment

and other property provided, however, that Contractor shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

- E. If the City terminates the Contract for cause, and it is later determined that none of the grounds set forth in Paragraph 14.01A exist, then such termination shall be deemed a termination for convenience pursuant to Paragraph 14.03.

#### **14.02 SUSPENSION BY THE CITY FOR CONVENIENCE**

- A. The City may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.
- B. An adjustment shall be made as specified in subparagraph 7.02A for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment shall be made to the extent:
  - 1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
  - 2. that an equitable adjustment is denied under another provision of this Contract.

#### **14.03 TERMINATION BY THE CITY FOR CONVENIENCE**

- A. Pursuant to section 6.22L of the San Francisco Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Paragraph 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a notice of termination, and except as otherwise directed by the City, Contractor shall comply with all of the following requirements.
  - 1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Paragraph 14.03.
6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.
7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
  9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of Contractor and in which the City has or may acquire an interest.
- C. After receipt of a notice of termination, Contractor shall submit to the City its termination claim, in the form and with the certification the City prescribes. Such termination claim shall be submitted promptly, but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Contractor within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Claim at any time after such 3-month period or extension period. If Contractor fails to submit its termination Claim within the time allowed, the City may determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination. The City shall then pay to Contractor the amount so determined.
- D. Subject to the previous provisions of this Paragraph 14.03, Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to Contractor because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The Contract shall be amended accordingly, and Contractor shall be paid the agreed amount. Nothing following, prescribing the amount to be paid to Contractor in the event of failure of Contractor and the City to agree upon the whole amount to be paid to Contractor because of the termination of Work under this Paragraph 14.03, shall be deemed to limit, restrict, or otherwise determine or affect the amount

or amounts which may be agreed upon to be paid to Contractor pursuant to this subparagraph 14.03D.

- E. If Contractor and the City fail to agree, as subparagraph 14.03D provides, on the whole amount to be paid to Contractor because of the termination of Work under Paragraph 14.03, the City shall determine, on the basis of information available to the City, the amount, if any, due to Contractor by reason of the termination and shall pay to Contractor the amounts determined as follows:
1. For all Contract Work performed before effective date of the notice of termination, the total (without duplication of any items) of the following items:
    - a. The cost of such Work.
    - b. The cost of settling and paying Claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Contractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.
    - c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable. But, if it appears that Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.
  2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to Contractor shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor the fair value, as determined by

the City, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the City, or to a buyer as previously provided.

- F. Contractor shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the City makes under subparagraph 14.03E. But, if Contractor has failed to submit its termination Claim within the time provided and has failed to request extension of such time, it shall have no such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Contractor the following:
1. if there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or
  2. if a proceeding is initiated in a court of competent jurisdiction within the State of California, the amount finally determined in said proceeding.
- G. In arriving at the amount due Contractor under this clause there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Contract;
  2. any Claim which the City may have against Contractor in connection with this Contract; and
  3. the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the City.
- H. If the termination hereunder be partial, before the settlement of the terminated portion of this Contract, Contractor may file with the City a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination). Such equitable adjustment as may be agreed upon shall be made in the specified price or prices. Nothing contained herein shall limit the right of the City and Contractor to agree upon the amount or amounts to be

paid to the continued portion of the Contract when the Contract does not contain an established Contract price for the continued portion.

- I. Contractor understands and agrees that the foregoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

**END OF DOCUMENT**