

CONSTRUCTION CONTRACT

This contract is made and entered into on 1/13/21, by and between **PATRIOT CONTRACTING, INC.**, a **STATE OF CA CORPORATION**, with a business address at **4301 BETTENCOURT WAY, UNION CITY, CA 94587**, hereinafter called "CONTRACTOR," and **CITY OF STOCKTON**, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of **NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER (PROJECT NO. PW1724)**, hereinafter called "PROJECT," were regularly adopted by **Council Resolution No. 2020-12-15-1404**, on **December 15, 2020**; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by **Council Resolution No. 2020-12-15-1404**, on **December 15, 2020**.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

CONTRACTOR agrees:

1. **SCOPE OF SERVICES.** To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications adopted on **December 15, 2020**, by **Council Resolution No. 2020-12-15-1404**. The "contract documents," which include the bid documents, project plans, specifications, all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

2. **COMPENSATION.** To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefore at the prices specified in Exhibit A, attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton. Total compensation for services and reimbursement for costs shall not exceed **\$14,450,556.00**, or as otherwise mutually agreed to in a Contract Change Order.

3. **INSURANCE.** CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in Exhibit B, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements.

Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the CITY Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The

General CONTRACTOR shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the City.

4. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, protect, defend with counsel approved by City and at Contractor's sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, State, or municipal law or ordinance, or City Policy, by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Contractor to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Contractor under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Contractor to a greater extent than permitted under the public policy of the State of California, the parties agree that Contractor's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. Contractor shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Contractor for amounts paid in excess of Contractor's proportionate share of responsibility for the damages within 30 days after Contractor provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Contractor is not obligated to defend

or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Contractor shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, agents, employees, and volunteers from and against all claims, losses, expenses, and costs including, but not limited to, attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Contractor, regardless of whether such claim may be covered by any applicable workers compensation insurance. Contractor's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts.

The City's acceptance of the insurance certificates required under this Agreement does not relieve the CONTRACTOR from its obligation under this paragraph. The indemnification obligations of this section shall survive the termination of this agreement. Any exceptions to this language may result in a proposal being deemed non-responsive. CONTRACTOR/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. If any section, subsection, sentence, clause or phrase of this indemnification is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this indemnification.

5. STANDARD PLANS AND SPECIFICATIONS. The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.04B of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016, and the provisions of the issued project specifications.

The Director of Public Works will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

6. WORKING DAYS. It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by the CITY,

and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of EIGHT THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$8,300) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director of Public Works, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director of Public Works in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director of Public Works or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

7. CONFORMANCE TO APPLICABLE LAWS. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d)
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (Exhibit C). The purpose of this policy is to reaffirm the CITY’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

- i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- iii. The CONTRACTOR to whom the contract is awarded shall insure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

f. COMMUNITY WORKFORCE TRAINING AGREEMENT

Pursuant to the implementation of the Community Workforce Training Agreement (CWTA) adopted by the City Council on July 26, 2016, the successful bidder shall be required to comply with the provisions of CWTA. For any project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the project (EXHIBIT D).

CITY agrees:

8. COMPENSATION. To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety-five percent (95%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.

9. SECURITIES. Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

10. CHANGE ORDERS. CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be

determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.05A of the City of Stockton Standard Specifications and Plans as adopted by Council on September 27, 2016, by Resolution No. 2016-09-27-1213, effective September 27, 2016, or as otherwise amended by Council. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.05A, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

11. AUDITS. CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

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12. **WAIVER.** It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
ELIZA R. GARZA, CMC
CITY CLERK

for



By: *M. J. Mans...*

CITY:

By: *H. Black*
HARRY BLACK
CITY MANAGER

APPROVED AS TO FORM & CONTENT:
JOHN M. LUEBBERKE
OFFICE OF THE CITY ATTORNEY

By: _____
DEPUTY CITY ATTORNEY
Legistar 20-7564

By: *Kayhan Fatemi* Kayhan Fatemi, VP
Patriot Contracting Inc.
80-0230427
Tax Identification No.

NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER
PROJECT NO. PW1724BIDDING SCHEDULE

Each bidder shall bid each item, including all alternate bid(s). Failure to bid an item shall be just cause for considering the bid as non-responsive. Line item costs should include all Contractor's overhead and profit and indirect costs. Bids not presented on City forms shall be cause for considering the bid as non-responsive. The basis of contract award will be the lowest bidder for the bid item list.

BID ITEM LIST

Item	Description	Unit	Quantity	Unit price	Total Price
1	New Library and Community Center	LS	1	\$14,110,356	\$14,110,356.00
2	Bleachers	LS	1	\$55,000	\$55,000
3	Gym Divider Curtain	LS	1	\$45,000	\$45,000
4	Lime Soil Stabilization	LS	1	\$127,700	\$127,700
5	Controlled Breakers	LS	1	\$45,000	\$45,000
6	Integrally Colored Aggregate Paving	LS	1	\$25,000	\$25,000
7	Outdoor Equipment Support Allowance	LS	1	\$7500	\$7500
8	Landscape Maintenance Period	LS	1	\$35,000	\$35,000

TOTAL BID \$14,450,556.00

Unit Prices per Specifications Section 01 22 00 - Unit Prices

UNIT PRICE NO. 1: Excavation and recompaction of existing soil beyond extent called for on Drawings.

TWENTY FIVE & 00 Dollars (\$ 25.00) per cubic yard excavated.

UNIT PRICE NO. 2: Import and placement of Imported Non-Expansive Engineered Fill.

NINETY EIGHT & 00 Dollars (\$ 98.00) per cubic yard imported.

UNIT PRICE NO. 3: Import and placement of imported topsoil.

ONE HUNDRED TWENTY & 00 Dollars (\$ 120.00) per cubic yard imported.

UNIT PRICE NO. 4: Vapor Control for Flooring.

NINETEEN HUNDRED & 00 Dollars (\$ 1900.00) per 1,000 SF of concrete surface to be treated.

UNIT PRICE NO. 5: Disposal of native earthwork materials offsite.

FIFTY TWO & 00 Dollars (\$ 52.00) per cubic yard exported.

BIDDER'S NAME Patriot Contracting



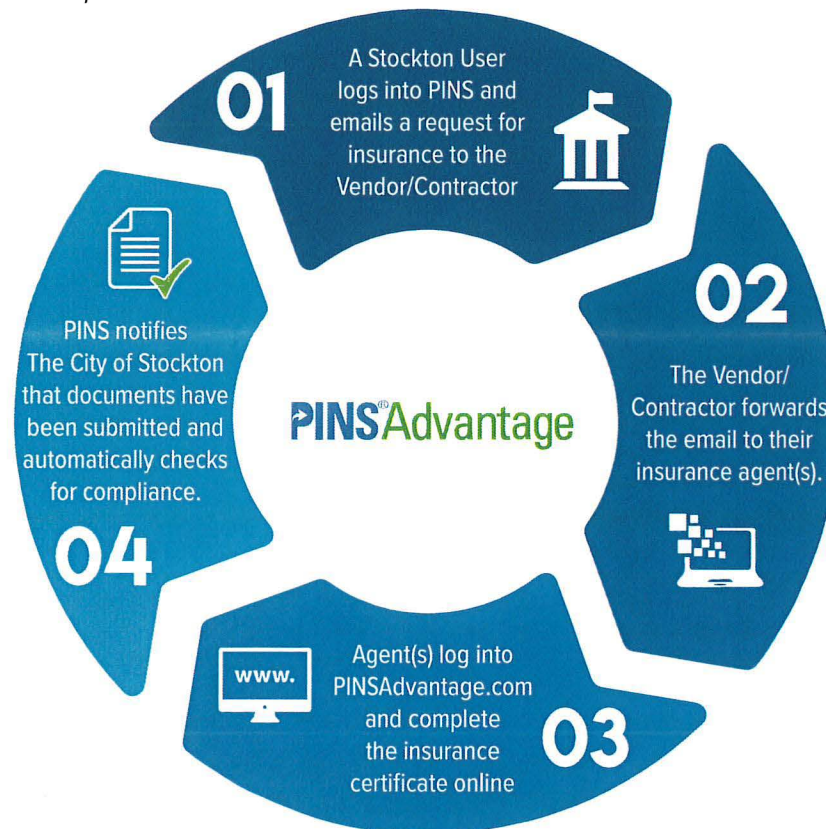
The City of Stockton is now using www.PINSAdvantage.com to track Insurance Certificates and all related documents.

WHAT IS THE PROCESS?

The PINS system starts with **The City of Stockton**. A **Stockton User** logs into PINS and emails a request for proof of insurance to the **Vendor/Contractor**. The **Vendor/Contractor** forwards the request email to their **Insurance Agent(s)**. The **Insurance Agent(s)** logs into www.PINSAdvantage.com and completes the insurance certificate online.

Note: Vendors will receive the insurance request email from: no-reply@pinsadvantage.com

Thank you for your compliance!



PINS[®]Advantage

www.pinsadvantage.com

+ 1 626 844 1838

NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for five (5) years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City, at its sole discretion, may purchase the coverage required and the cost will be paid by the contractor.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

Limits of Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

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

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City of Stockton as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City of Stockton, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City of Stockton's site.

Claims Made Policies – (Note – applicable only to professional and/or pollution liability)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

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

Verification of Coverage

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

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Contractors shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as additional insureds all parties to this contract. Contractor shall include the following language in their agreement with Subcontractors: Subcontractors hired by Contractor agree to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request. Contractor shall provide proof of such compliance and verification to the City upon request.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond (or Labor and Material bond)
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to one hundred percent (100%) of the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

Hold Harmless:

To the fullest extent permitted by law, Contractor shall hold harmless, defend, and indemnify City of Stockton and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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CITY MANAGER ADMINISTRATIVE DIRECTIVE**

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.

C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made a term or condition of employment; or
2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
 - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
 - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
 - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.

B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.

C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

- E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.
- F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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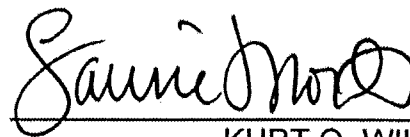
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



**KURT O. WILSON
CITY MANAGER**

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COMMUNITY WORKFORCE AND TRAINING AGREEMENT FOR THE CITY OF STOCKTON

INTRODUCTION/FINDINGS

The purpose of this Agreement is to promote efficiency of construction operations performed for and within the City of Stockton and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects subject to this Agreement, and to support the efforts of the City to increase employment opportunities for workers who reside in Stockton, to help increase training and employment opportunities for the City's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools.

WHEREAS, the City adopts a five-year Capital Improvement Plan that identifies the public projects necessary to maintain and improve the physical properties of the City, including buildings, parks, entertainment venues, golf courses, utility systems, the transportation system and other facilities; and

WHEREAS, the City undertakes and anticipates undertaking many of the projects identified in the current and proposed Capital Improvement Plan and other City public works projects that involve significant construction costs in excess of threshold set forth in this Agreement; and

WHEREAS, the City Council has determined that the successful and cost-effective completion of these Capital Improvement Plan projects and other major City public works projects is of the utmost importance to the City and its taxpayers and the residents it serves; and

WHEREAS, the City has determined that applying the same Agreement to the Capital Improvement Plan and other public works construction projects that exceed the threshold set forth in this Agreement during the term of this Agreement will provide efficiencies for the City and its contractors; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those workers represented by Unions affiliated with the San Joaquin Building and Construction Trades Council ("the Council") and employed by contractors and subcontractors who are signatory to agreements with said labor organizations; and

WHEREAS, it is recognized that projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

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WHEREAS, the interests of the general public, the City and the Contractor(s)/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption due to labor disputes; and

WHEREAS, the Contractor(s)/Employer(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the construction projects subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the parties to this Agreement; and

WHEREAS, unemployment rates in Stockton have been consistently higher than in California as a whole and statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate; and

WHEREAS, due to the lack of jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic, increased pollution, and other serious environmental impacts; and

WHEREAS, because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the day; and

WHEREAS, absentee parents and unsupervised youth can result in increased problems for families, communities, and the City as a whole; and

WHEREAS, the contracts for the construction of the projects will be awarded in accordance with the applicable provisions of the California State Public Contract Code and state, local and federal laws and regulations; and

WHEREAS, the City has the absolute right to select the lowest responsive and responsible bidder for the award of construction contracts on the projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Capital Improvement Plan projects and other major City public works projects that will be subject to this Agreement; and

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

- 1.1 **"Agreement"** means this Community Workforce and Training Agreement.
- 1.2 **"City"** means the City of Stockton and its public employees, including managerial personnel.

1.3 "Contractor(s)/Employer(s)" or "Contractor" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and has entered into a contract with the City or Project Manager or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by the City and which incorporate this Agreement.

1.4 "Construction Contract" means a contract awarded by the City for public work within the meaning of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.

1.5 "Project" means any construction project of the City whose value as determined by the higher of the engineer's estimate of the total cost of the project or the actual cumulative bid amounts submitted by the contractor or contractors awarded the Construction Contracts for the Project, exceeds one million dollars (\$1,000,000). By mutual consent of the City and the Council, this threshold amount may be reduced to an amount not below two hundred and fifty thousand dollars (\$250,000) after one year from the effective date of this Agreement.

1.6 "Union" or "Unions" means the San Joaquin Building and Construction Trades Council, AFL-CIO ("the Council") and any other labor organization, including those affiliated with the Council, signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organization whose names are subscribed hereto and who have through their officers executed this Agreement ("Local Unions").

1.7 "Stockton Resident" means a resident of the City of Stockton as defined by Stockton Municipal Code Section 3.68.095(I)(3).

1.8 "Local Area Resident" means any Stockton Resident or any individual domiciled within the boundaries of San Joaquin County according to the criteria set forth in Stockton Municipal Code Section 3.68.095(I)(3) for Stockton Residents.

1.9 "Project Manager" means the business entity or City employee designated by the City to oversee all phases of construction on the Project.

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft union signatory hereto, which shall be on file with the City.

1.11 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch List" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Project may be completed in phases and Completion of any such phase may occur prior to Completion of the Project.

ARTICLE II
SCOPE OF AGREEMENT

2.1 **Parties:** The Agreement shall apply and is limited to the City and all Contractor(s)/Employer(s) performing construction contracts on the Project, including surveying and on-site testing and inspection where such work is traditionally covered by a Master Agreement with a Union, and the Council and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 **Project Description:** The Agreement shall govern the award of all Construction Contracts identified by the City as part of the Project. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Project. Should the City suspend or remove any individual contract from the Project and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.11 of this Agreement.

2.3 **Covered Work:** This Agreement covers, without limitation, all site preparation, surveying, on-site construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures, modular furniture installations, and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, on-site soils and material inspection and testing, and demolition of any existing structures required to be performed to complete the Project. This Agreement shall apply to any start-up, calibration, commissioning, performance testing repair, and operational revisions to systems and/or subsystems for the Project performed after completion, unless it is performed by City employees. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This Agreement covers all onsite fabrication work over which the City or any Contractor(s)/Employer(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.) This Agreement also covers all off-site work, including fabrication traditionally performed by the Unions, that is part of the Project, provided such off-site work is covered by a current "Master Agreement" or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement. The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be considered Covered Work; however, the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud shall be covered by the terms and conditions of this Agreement. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of a written request or as required by bid specifications.

2.4 Exclusions from Covered Work

2.4.1 The Agreement shall be limited to construction work on the Project and is not intended to, and shall not affect or govern the award of public works contracts by the City which are not a part of the Project.

2.4.2 The Agreement shall not apply to a Contractor's/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative and management personnel.

2.4.3 This Agreement shall not apply to work by employees of the City.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, City or other governmental bodies or their contractors; or by public or private utilities or their contractors that is not part of the Project.

2.4.5 This Agreement shall not apply to the Project where the Agreement is prohibited by state or federal law or where the express conditions for the receipt of non-de minimis state or federal funding prohibit the City from applying this Agreement to the Project.

2.5 Project Labor Disputes: All Project labor disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor(s)/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement shall be subject to resolution by the Grievance Committee and the Grievance and Arbitration Procedure set forth in Article XII.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transit Lodge ("NTL") Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBBW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XII, XIII of this Agreement shall apply to such work.

2.7 Award of Contracts. It is understood and agreed that the City has the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement.

ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 This Agreement shall be included as a condition of the award of Construction Contracts for the Project. By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, the Contractor(s)/Employer(s) agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.3 At the time that any Contractor(s)/Employer(s) enters into a subcontract with any subcontractor providing for the performance of a Construction Contract, the Contractor(s)/Employer(s) shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing, to be bound by each and every provision of this Agreement prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.4 This Agreement shall only be binding on the signatory parties hereto, their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Master Agreements of the Local Unions having jurisdiction over the work on the Project, incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Master Agreement shall prevail.

ARTICLE IV
WORK STOPPAGES, STRIKES, SYMPATHY
STRIKES AND LOCKOUTS

4.1 The Unions, City and Contractor(s)/Employer(s) agree that for the duration of the Project:

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(1) There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, hand billing, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor(s)/Employer(s) on any other project. It shall not be considered a violation of this Article if labor is withheld by a Union due to lack of payments to a Trust Fund or failure to make payroll on the Project. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor(s)/Employer(s) on projects other than the Project.

(2) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor(s)/Employer(s) covered by the Agreement.

(3) If a Master Agreement between a Contractor(s)/Employer(s) and the Union expires before the Contractor(s)/Employer(s) completes the performance of a Construction Contract for work covered under this Agreement and the Union or Contractor(s)/Employer(s) gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike the Contractor(s)/Employer(s) on said contract for work covered under this Agreement and the Union and the Contractor(s)/Employer(s) agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union and Contractor(s)/Employer(s). If the new or modified Master Agreement reached between the Union and Contractor(s)/Employer(s) provides that any terms of the Master Agreement shall be retroactive, the Contractor(s)/Employer(s) agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on the Project within seven (7) days after the effective date of the new or modified Master Agreement.

4.1.1. Notification: If the City contends that any Union has violated this Article, it will notify in writing (including email) the Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Senior Executive of Council will immediately use his/her best efforts to cause the cessation of any violation of this Article. The Senior Executive of the Union will immediately inform the membership of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

(1) A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or, William Riker, as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article XII. Notice to the arbitrator shall be

by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to the City, to the Council and to the involved Local Union if a Union is alleged to be in violation.

(2) Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

(3) The arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(4) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

(5) Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2 of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex-parte*. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

(6) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

(7) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

ARTICLE V
PRE-CONSTRUCTION CONFERENCE

5.1 The Project Manager shall convene a pre-construction conference to be held at least fourteen (14) days prior to the commencement of each construction phase, at a time and location mutually agreeable to the Council. Such conference shall be attended by a representative each from the participating Contractor(s)/Employer(s) and Union(s) and the Project Manager.

5.2 Review Meetings: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the City, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction. The City and the Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

ARTICLE VI
NO DISCRIMINATION

6.1 The Contractor(s)/Employer(s) and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII
UNION SECURITY

7.1 The Contractor(s)/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees performing work covered by this Agreement shall, as a condition of employment on or before the eighth (8th) cumulative day of employment on the Project, be responsible for the payment of the applicable periodic working dues and fees uniformly required for union membership in the Local Union that is a signatory to this Agreement for the duration of his or her employment on the Project. Nothing in this Agreement is intended to prevent any non-union employees from joining the Local Union.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII
REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Local Unions ("Job Referral System"). Such Job Referral System shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require

equal employment opportunities and non-discrimination. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 The Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s)/Employer(s) for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor(s)/Employer(s), the Contractor(s)/Employer(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s)/Employer(s). Recognizing the special needs of the Project and the acute shortage of skilled craftspeople, the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

8.5 The parties to this Agreement support the development of increased numbers of skilled construction workers from the City of Stockton and San Joaquin County. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, Local Area Residents, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

ARTICLE IX **WAGES AND BENEFITS**

9.1 All Contractors/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate Local Unions.

9.2 By signing this Agreement, the Contractor(s)/Employer(s) adopts and agrees to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds established by such appropriate local agreements. The Contractor(s)/Employer(s) authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s)/Employer(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the City to the extent such Master

Agreement is not inconsistent with this Agreement. All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining entity and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.

9.4 During the period of construction on this Project, the Contractor(s)/Employer(s) agrees to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining entity on the effective date as set forth in the applicable agreement. The Unions shall notify the Contractor(s)/Employer(s) in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

9.5 Holidays: Holidays shall be in compliance with the applicable Schedule A agreement.

ARTICLE X
EMPLOYEE GRIEVANCE PROCEDURE

10.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

ARTICLE XI
COMPLIANCE

11.1 It shall be the responsibility of the Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Employers on the Project. The City shall monitor and enforce compliance with the prevailing wage requirements of the state and Contractors'/Employers' compliance with this Agreement.

ARTICLE XII
GRIEVANCE ARBITRATION PROCEDURE

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or City on its own behalf, or on behalf of an employee whom it represents, or a contractor on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in this Section 12.1 may be extended by mutual written agreement of the parties.

12.2 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or City, or his/her designee, or the representative of the employee, and the representative of the involved Contractor(s)/Employer(s) shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after the meeting to resolve the dispute in Step 1, the International Union Representative and the Contractor(s)/Employer(s) involved shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. In the event that these representatives are unable to resolve the dispute after its referral to Step 2, either involved party may submit it within three (3) business days to the Grievance Committee, which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Grievance Committee), to confer in an attempt to resolve the grievance. The Grievance Committee shall be comprised of two (2) representatives of the City; and one (1) representative of the Project Manager, and three (3) representatives of the San Joaquin Building & Construction Trades Council. If the dispute is not resolved within such time (five (5) business days after its referral or such longer time as mutually agreed upon) it may be referred within five (5) business days by either party to Step 3.

Step 3: If the grievance is not settled in Step 2 within five (5) business days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties are unable to agree on an arbitrator, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. If any of the arbitrators listed below or in Article 4 is no longer working as a labor arbitrator at the time of selection, the City and the Council shall mutually agree to a replacement. In addition, the City and the Council may mutually agree to add additional arbitrators to those listed below.

1. William Riker
2. Barry Winogard
3. Thomas Angeko
4. Robert Hirsch
5. William Engler

12.3 The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator. The decision of the Arbitrator shall be

final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.4 The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE XIII **WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

13.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

13.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and City will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

**ARTICLE XIV MANAGEMENT
RIGHTS**

14.1 The Contractor(s)/Employer(s) shall retain full and, exclusive authority for the management of their operations, including the right to direct their workforce in their sole discretion. Except as provided by Section 2.3 and by the lawful manning provisions in the applicable Master Agreement, no rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees.

**ARTICLE XV
HELMETS TO HARDHATS**

15.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

15.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans and members of the National Guard and Reserves interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

15.3 Nothing in this Article shall be interpreted to preclude any Contractor(s)/Employer(s) that is not signatory to a Master Agreement to utilize an alternative plan or program for recruiting, training and facilitating construction industry employment opportunities for military veterans and members of the National Guard and Reserves. Before utilizing such alternative program on the Project, such Contractor(s)/Employer(s) shall provide the City with a description of such plan or program.

**ARTICLE XVI
DRUG & ALCOHOL TESTING**

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 The Parties agree to recognize and use the Substance Abuse Program contained in each applicable Union's Schedule A.

ARTICLE XVII
TERM SAVINGS CLAUSE

17.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or work in question.

17.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor(s)/Employer(s), the unions will no longer be bound by the provisions of Article IV.

ARTICLE XVIII
LOCAL HIRE, PRIORITY APPRENTICE AND WORKFORCE
DEVELOPMENT PROGRAM

18.1 The objective of the City in creating this Local Hire, Priority Apprentice and Workforce Development Program is to enhance and encourage employment opportunities for Stockton residents and to enable effective construction career pathways for Local Area Residents through California State approved Joint Apprenticeship Programs. To that end, as part of the Agreement, the City establishes goals for the hiring, training and retention of Local Area Residents.

18.2 Local Hire. The City establishes the following Local Hire goals and commitments:

18.2.1 The parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the applicable Union, qualified and available, Local Area Residents for Project work. The parties agree to a goal that Stockton residents shall perform a minimum of 50% of the hours worked on the Project by the Contractors' total construction workforce. In the event that a sufficient number of Stockton residents are not available to fulfill the 50% local hire requirement, the next tier of residents shall come from anywhere in San Joaquin County. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of Stockton resident workers and in utilizing their hiring hall procedures to facilitate this 50% goal.

18.2.2 The parties also recognize and support the City's commitment to provide opportunities for participation on the Project to Stockton businesses through the City's Local Business Preference Ordinance. In furtherance of this commitment, the parties agree that such

Stockton contractors and subcontractors awarded work on the Project may request by name, and the Local Union will honor, referral of persons who have applied to the Local Union for Project work, and who demonstrate the following qualifications:

- (1) possess any license required by state or federal law for the Project work to be performed;
 - (2) have worked a total of at least two thousand (2,000) hours in the construction craft during the prior two (2) years;
 - (3) were on the Contractor's active payroll for at least ninety (90) out of the one hundred and twenty (120) calendar days prior to the contract award;
 - (4) have the ability to perform safely the basic functions of the applicable trade;
- and
- (5) are Stockton residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

18.2.3 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall and comply with Article VII before commencing Project work. If there is any question regarding an employee's eligibility under Section 18.2, the City, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

18.3 Priority Apprenticeship and Workforce Development

18.3.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s)/Employer(s) shall employ apprentices of a California State approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

18.3.2 The parties agree to a goal that 50% of apprentices employed on the Project shall be residents of the City of Stockton or other Local Area Residents. In achieving this goal, at-risk youth who reside in the following zip codes within the City of Stockton, shall be given priority in the apprenticeship recruitment process: 95202, 95203, 95204, 95205, and 95206. If sufficient numbers of Stockton residents are not available, then a good faith effort will be made by the Unions to utilize residents of San Joaquin County. All apprentices referred to Contractors under this

Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs. Subject to any legal restrictions, the parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft hours worked on the Project unless an applicable Master Agreement provides for a greater percentage. The Unions agree to cooperate with the Contractors in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with the provisions of the applicable Master Agreement.

18.3.3 The Contractors and Unions shall make good faith efforts to reach the apprenticeship goals set forth in this Section 18.3 through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the Contractors and community based organizations to achieve these goals. At least annually, the Unions and the City will each conduct a Community Career Fair to provide at-risk youth, veterans and others an opportunity to learn about each craft and the process for entering their apprenticeship program.

18.4 Good Faith Efforts. A Contractor or subcontractor must take the following good faith steps to demonstrate that it has made every effort to reach the Local Hire, Priority Apprenticeship and Workforce Development Program goals of the City. The Contractor or subcontractor shall attend scheduled Pre-Job meetings held under this Agreement and shall submit written workforce projections and projected work hours on a craft-by-craft basis.

18.4.1 Within seven (7) calendar days after Notice to Proceed, the Contractor or subcontractor shall meet with the Unions and the City to present its plan for reaching the Local Hire, Priority Apprenticeship and Workforce Development Program goals.

18.4.2 The Contractor or subcontractor shall notify the Project Manager of the City by U.S. Mail or electronic mail if a Union hiring hall cannot, upon request by the Contractor or subcontractor, dispatch Local Area Residents to the Project. It shall be the responsibility of the Contractor or subcontractor to retain all evidence of such good faith efforts.

18.4.3 The Contractor or subcontractor may use the "Name Call", "Rehire" or other available hiring hall procedures to reach the goals of this Article XVIII.

18.5 Enforcement, Compliance and Reporting

18.5.1 Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this Article. At a minimum, the monthly reports must include: 1) data on Stockton and Local Area Residents work hour utilization on the Project and Local Area Residents; and 2) documentation showing any requests made to the Union dispatchers for Stockton residents and the Union's response to the request.

18.5.2 The City staff shall monitor the operation of the Local Hire, Priority Apprenticeship and Workforce Development Program and shall consider allegations of non-compliance with the goals stated in this Article. If there is a determination by the City that a Contractor or subcontractor has not complied with the goals or demonstrated good faith efforts to

do so, the City and the Contractor or subcontractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

18.5.3 For any Project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements of this Article shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the Project.

**ARTICLE
XIX TERM**

19.1 This Agreement shall become effective 30 days after the day the City Council takes action to authorize its execution, and it shall continue in full force and effect for a period of three (3) years, at which time this Agreement may be considered for extension or renewal. The terms of this Agreement shall apply to any Project that is bid or solicited after the effective date and before the expiration of this Agreement. The Agreement shall continue to apply to any Project subject to this Agreement until the completion of all Covered Work on the Project.

CITY OF STOCKTON

[Signature]
Name: KURT O. WILSON
Title: CITY MANAGER

Date: 8/24/16

ATTEST:

By: [Signature]
BONNIE PAIGE, CITY CLERK



APPROVED AS TO FORM

By: [Signature]
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: [Signature]
DANIEL CARDOZO

Title: ATTORNEY AT SAN JOAQUIN BTC

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL

Name:
Title:

Date: _____

do so, the City and the Contractor or subcontractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

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CITY OF STOCKTON

Name: KURT O. WILSON
Title: CITY MANAGER

Date: _____

ATTEST:

APPROVED AS TO FORM

By: _____
BONNIE PAIGE, CITY CLERK

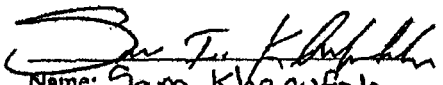
By: _____
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: _____
DANIEL CARDOZO

Title: _____

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL


Name: Sam Kharoufeh
Title: Secretary/Treasurer

Date: 8/24/16

UNIONS

Daniel P. Chivello
Electrical Workers # 595.

Paul
Sheet Metal Workers # 104

Mark L. Sloan
Boilermakers # 549

[Signature]
Cement Masons # 400

[Signature]
District Council # 16

[Signature]
Heat & Frost Insulators & Asbestos # 16

[Signature]
Iron Workers # 378

Miguel Siqueira
Underground Utility/Landscape #355

Joseph B. Torack
Sign & Display # 510

[Signature]
Operative Engineers # 1

[Signature]
Northern California Carpenters Regional Council on behalf of itself and its affiliated local Unions

[Signature]
Plasterers and Cement Masons # 300

[Signature]
Plumbers and Pipefitters # 442
ON BEHALF OF BUSINESS MANAGER SHAWN
COVERELL, OWNER NEW RICH WATER
Road Sprinkler Fitters # 669

[Signature]
Roofers and Water proofers # 81

[Signature]
Iron Workers # 118

[Signature]
Laborers #73

[Signature]
Teamsters #439

Addendum A

CITY OF STOCKTON COMMUNITY WORKFORCE AND TRAINING AGREEMENT

AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor, including construction material trucking company/entity, (CONTRACTOR) on the City of Stockton Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Community Workforce and Training Agreement (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements designated in the applicable Schedule A as set forth in Article IV of this AGREEMENT.
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.
- (6) This Agreement to be Bound constitutes a subscription agreement to the extent of its terms. However, the undersigned agrees to execute a separate Subscription Agreement(s) or contributing employer agreement for Trust Funds when such Trust Fund(s) requires such document(s).

Date: _____

Name of Contractor

(Name of Contractor Representative)

(Authorized Officer & Title)

CSLB # or Motor Carrier Permit



City of Stockton

Master

2020-12-15-1404 P

File Number: 20-7564

File ID: 20-7564

Type: Consent

Status: Agenda Ready

Version: 1

Reference:

In Control: City
Council/Successor
Agency to the
Redevelopment
Agency/Public
Financing
Authority/Parking
Authority
Concurrent

File Created: 12/17/2020

File Name:

Final Action:

**Title: Contract Title: Construction Contract for the Northeast Stockton
Library and Community Center, Project No. PW1724**

Notes:

Sponsors:

Enactment Date:

Attachments: Contract Routing Form and CM Memo, Construction
Contract, Council Documents

Enactment Number:

Contact:

Hearing Date:

Drafter: Chyerle.Leach@stocktonca.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	12/17/2020	AS - Procurement Team	Delegated	
1	2	12/21/2020	John Driscoll	Delegated	
1	3	12/22/2020	Susan Garcia	Delegated	
1	4	12/23/2020	JAlford	Delegated	
1	5	12/23/2020	AS - Procurement Team	Approve	12/25/2020
Notes: JMA					
1	6	12/23/2020	clawson	Delegated	
Notes: Delegated: Out Of Office					
1	7	12/24/2020	narbios	Approve	12/26/2020
1	8	1/6/2021	Matthew Braley	Escalated	1/5/2021
1	9	1/6/2021	troland	Delegated	
1	11	1/11/2021	troland	Delegated	
1	12	1/12/2021	Matthew Braley	Approve	1/13/2021
1	13	1/12/2021	Esther Gilliland	Delegated	
1	14	1/12/2021	Taryn Jones	Approve	1/14/2021
1	15	1/12/2021	Esther Gilliland	Delegated	
Notes: Leisel, I have bonds for Taryn to sign when she comes in next time. Please make reference in prolaw. Thanks					
1	16	1/12/2021	LHart	Delegated	
Notes: Leisel, I have bonds for Taryn to sign when she comes in next time. Please make reference in prolaw. Thanks					
1	17	1/12/2021	MColon	Approve	1/14/2021
Notes: Leisel, I have bonds for Taryn to sign when she comes in next time. Please make reference in prolaw. Thanks					
1	20	1/12/2021	Patty Vasquez	Approve	1/14/2021
Notes: printed					
1	21	1/13/2021	Courtney Christy	Approve	1/15/2021
Notes: Advancing sequence - already with Clerk's office and signed by CM. -MK					
1	23	1/13/2021	Miranda Komanee	Approve	1/15/2021

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File 20-7564

Contract Title: Construction Contract for the Northeast Stockton Library and Community Center, Project No. PW1724

Vendor/Other Party: Patriot Contracting, Inc.

Contract Amount: \$14,450,556.00

Contract Start Date:

Contract End Date: 12-31-22

Term:

Construction - 2 years

City Contract Type (select one):

Original Amendment Change Order Grant Subdivision Agreement
Other

Council Approval Required? Yes/No (if No, provide account #):

Council approval required for contracts over: **\$75,000** for Fiscal Year:
Motion/Resolution/Ordinance #: 2020-12-15-1404 **Must be attached:**
x

Required Documents

The following documents shall be submitted with the signed contract when required:

Business License Required? Yes/No Business License #: 21-00139576
Bonds Required? Yes/No
Insurance Required? Yes/No
Notary Required? Yes/No
Recordation Required? Yes/No

Mandatory Routing Order

1 DEPARTMENT: Public Works
Department Head Approval: Jodi Almassy
Date: 12-16-20
Project Mgr: Mohammad Sadiq ext: 8299
Staff: Chyerle Leach ext: 8818
Notes: Staff C McFarland

2 PROCUREMENT
Approved by Name/Signature: Jennifer Alford
Date: 12/23/20
Notes:

3 VENDOR/OTHER PARTY
Signed originals on: 11-10-20
Notes:

4 RISK SERVICES
Insurance approved on: 1/12/21 by: Matt Braley
Bonds approved on: 1/12/21 by: MB
RM #: 21-344
Notes: Original bonds routing separately

5 CITY ATTORNEY

Approved as to Form/Content on: 01/12/21 by: Taryn Jones

Notes: Logged into Prolaw, forwarded to CM on 1/12/21 by lh -
BONDS are with Esther. TNJ to sign upon arrival to office 1-13 or 1/14.

6 CITY MANAGER

Signed by City Manager on:

Notes:

7 CITY CLERK

City Clerk attested on: 1/13/21

Returned PDF to dept. on: 1/13/21

by: MKomanee

OB #:

Notes:

8 ORIGINATING DEPARTMENT: Public Works

Copy of contract to be retained by department. Original on file in the Clerk's office.

Requisition #.

Copy sent to vendor on:

by:

Copy of contract sent to Purchasing on:

by:

Notes:

9 PROCUREMENT:

Purchase Order #.

PUR #.

EZ Text Search

File ID: 20-7564 ID Type: Consent Status: ATS Review

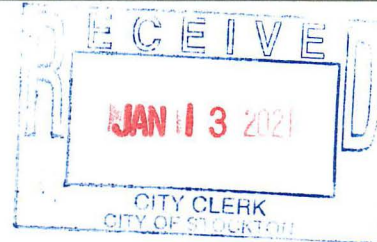
In Control: City Council/Successor Agency to the Redevelopment Agency/Public Fin

Title: Contract Title: Construction Contract for the Northeast Stockton Library and Community Center, Project No. PW1724

File Created: 12/17/2020

Agenda Date: 12/28/2020

Final Action:



Staff Report Attachments (3) Associations Details Approval Tracking (23)

Requester: Chyerle Leach

Seq #	Approver Name	Due Days	Action Type	Email Template	Status	Due Date	Action	Action Date	Escalation Date	Notes
01	AS - Procurement Team	2	Approver	Individual Review Request	Delegated		Delegate	12/17/2020 9:47 ...		No
02	John Driscoll	2	Approver	Individual Review Request	Delegated		Delegate	12/21/2020 6:50 ...		No
03	Susan Garcia	2	Approver	Individual Review Request	Delegated		Delegate	12/22/2020 3:04 ...		No
04	Jennifer Alford	2	Approver	Individual Review Request	Delegated		Delegate	12/23/2020 12:3...		No
05	AS - Procurement Team	2	Approver	Individual Review Request	Approved	12/25/2020	Approve	12/23/2020 4:45 ...		Yes
06	Cheryle Lawson	2	Approver	Individual Review Request	Delegated		Delegate	12/23/2020 4:45 ...		Yes
07	Nancy Arbos	2	Approver	Individual Review Request	Approved	12/25/2020	Approve	12/24/2020 8:58 ...		No
08	Matthew Braley	8	Approver	Individual Review Request	Escalated for Inaction	1/5/2021	Extend Due Date	1/6/2021 12:14 AM	1/6/2021	No
09	Theresa Roland	1	Approver	Individual Review Request	Delegated		Delegate	1/6/2021 8:30 AM		No
10	Matthew Braley	2	Approver	Individual Review Request	Escalated for Inaction	1/8/2021		1/9/2021 12:14 AM	1/9/2021	No
11	Theresa Roland	1	Approver	Individual Review Request	Delegated		Delegate	1/11/2021 8:15 AM		No
12	Matthew Braley	2	Approver	Individual Review Request	Approved	1/13/2021	Approve	1/12/2021 11:00 ...		No
13	Esther Gilliland	2	Approver	Individual Review Request	Delegated		Delegate	1/12/2021 11:10 ...		No
14	Taryn Jones	2	Approver	Individual Review Request	Approved	1/14/2021	Approve	1/12/2021 11:46 ...		No
15	Esther Gilliland	2	Approver	Individual Review Request	Delegated		Delegate	1/12/2021 11:57 ...		Yes
16	Leisel Hart	2	Approver	Individual Review Request	Delegated		Delegate	1/12/2021 1:18 PM		Yes
17	Magda Colon	2	Approver	Individual Review Request	Approved	1/14/2021	Approve	1/12/2021 2:17 PM		Yes
18	Leisel Hart	0	FYI	FYI Notification	Notified - FYI			1/12/2021 2:17 PM		No
19	Magda Colon	0	FYI	FYI Notification	Notified - FYI			1/12/2021 2:17 PM		No
20	Patty Vasquez	2	Approver	Individual Review Request	Review Requested	1/14/2021				No
21	Courtney Christy	2	Approver	Individual Review Request						No
22	City Clerk	0	FYI	FYI Notification						No
23	Miranda Komane	2	Approver	Individual Review Request						No

Approver Name: Patty Vasquez

Action Type: Approver

Email Template: Individual Review Request

Due Days: 2

- Home
- Files
- Agendas
- Minutes
- Search
- Exit

CONTRACT ROUTING FORM

Contract Number _____
(For Clerk's Use)

CITY CONTRACT TYPE (select one)

- Original Amendment/Change Order Grant
- Subdivision Agreement Other _____

CONTRACT INFORMATION Contract Amount: \$ 14,450,556.00

Contract Title: Construction Contract for the Northeast Stockton Library and Community Center, Project No. PW1724
 Vendor/Other Party: Patriot Contracting, Inc.
 Contract Start Date: _____ Contract End Date: 12-31-22 Contract Term: _____

COUNCIL APPROVAL REQUIRED? Yes No (provide account # if no) _____

Council approval required for contracts over \$ 75,000 for FISCAL YEAR: 20-21
 Motion/Resolution/Ordinance No: 2020-12-15-1404 Must be Attached

REQUIRED DOCUMENTS (The following documents shall be submitted with the signed contract when required):

- Business License Required? Yes No Business License No. 21-00139576
- Bonds Required? Yes No
- Insurance Required? Yes No
- Notary Required? Yes No Recordation Required? Yes No

Mandatory Routing Order

1 DEPARTMENT: Public Works
 DEPARTMENT HEAD APPROVAL [Signature] Public Works date: 12/16/2020
 Project Mgr: Mohammad Sadig ext: 8299 Staff: Chyerle Leach ext: 8818
 Forwarded to: Procurement on: _____ by: Chyerle Leach/C McFarland

2 PROCUREMENT
 Approved () Name/Signature: _____
 Forwarded to: Risk on: _____ by: _____

3 VENDOR/OTHER PARTY
 Signed () originals on: 11-10-20
 Forwarded to: COS on: 11-10-20 by: Patriot Contracting, Inc.

4 RISK SERVICES
 Insurance on: _____ by: _____ Bonds approved on: _____ by: _____
 Forwarded to: City Attorney on: _____ by: _____ RM #: _____

5 CITY ATTORNEY
 Approved as to Form and Content on: _____ by: _____
 Forwarded to: City Manager on: _____ by: _____

6 CITY MANAGER
 Signed by City Manager on: _____ Forwarded to: City Clerk on: _____ by: _____

7 CITY CLERK
 City Clerk attested on: _____ Returned () original(s) to dept. on: _____ by _____
 Retained () original(s) for City's file. Hard Copy on file? Yes No OB # _____

8 ORIGINATING DEPARTMENT: Public Works
 Requisition No. _____ Original sent to vendor on: _____ by: _____
Copy of contract to be retained by department. Original on file in the Clerk's office.
 Copy of contract sent to Purchasing on: _____ by: _____

9 PROCUREMENT: Purchase Order No. _____ PUR No. _____

MEMORANDUM

December 16, 2020

TO: Harry Black, City Manager

FROM: Jodi Almassy, Director
Public Works Department

SUBJECT: **NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER
(PROJECT NO. PW1724) – APPROVED BY CITY COUNCIL**

On December 15, 2020, the above item was approved by City Council by Resolution No. 2020-12-15-1404. The contents of this item remain the same, of which, no changes have been made since its adoption by City Council. With the action taken by the City Council, the City Manager is authorized to execute the attached document.



JODI ALMASSY, DIRECTOR
PUBLIC WORKS DEPARTMENT

DATE

12/16/2020

JLA:EA:WJ:JC:MS:cal

Attachments

Resolution No. 2020-12-15-1404

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS, AND AWARDING A CONSTRUCTION CONTRACT FOR THE NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER PROJECT

On June 25, 2020, the City Clerk of the City of Stockton opened, examined, and publicly declared the sealed proposals or bids offered for the Northeast Stockton Library and Community Center, Project No. PW1724; and

The project will construct a new library and community center on a 4.83-acre lot adjacent to Ronald E. McNair High School; and

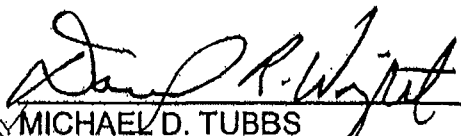
The new facility will be Leadership in Energy and Environmental Design Silver certified and consist of a library, gymnasium, multipurpose rooms, locker area with changing rooms, staff offices, outdoor fitness areas, minor frontage modifications adjacent to the site, and other on-site improvements; and

Patriot Contracting, Inc. is the lowest responsible bidder in the amount of \$14,450,556, and its bid is regular and responsive in all respects; now, therefore,

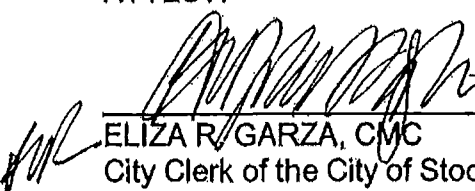
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council approves the plans and specifications for the Northeast Stockton Library and Community Center, Project No. PW1724.
2. The City Council awards a Construction Contract between the City of Stockton and Patriot Contracting, Inc., in the amount of \$14,450,556, and the City Manager is authorized and directed to execute same, a copy of which is attached as Exhibit 1 and incorporated by this reference.
3. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED December 15, 2020


MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:


ELIZA R. GARZA, CMC
City Clerk of the City of Stockton





City of Stockton

Legislation Text

File #: 20-7170, Version: 1

ADOPT RESOLUTION TO AWARD A CONSTRUCTION CONTRACT TO PATRIOT CONTRACTING, INC. FOR THE NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER PROJECT

RECOMMENDATION

It is recommended that the City Council adopt a resolution to:

1. Approve the plans and specifications for the Northeast Stockton Library and Community Center, Project No. PW1724.
2. Award a Construction Contract in the amount of \$14,450,556 to Patriot Contracting, Inc. of Gardena, CA, for the Northeast Stockton Library and Community Center, Project No. PW1724.

It is also recommended that the City Manager be authorized to take appropriate and necessary actions to carry out the purpose and intent of this resolution.

Summary

The Northeast Stockton Library and Community Center project site is located at 1461 Morada Lane, at the northwest corner of West Lane and Morada Lane (Attachment A). The project will construct a new library and community center on a 4.83-acre lot adjacent to Ronald E. McNair High School. Design was completed in April 2020, and the project was advertised for construction in May 2020. The project was included in the 2017-22 and 2019-24 Five-Year Capital Improvement Plans (CIP) and is funded by the Strong Communities Initiative (Measure M) and Public Facility Fees (PFF).

On June 25, 2020, the City received nine bids for this project. Patriot Contracting, Inc. was the apparent low bidder. The second low bidder, Zovich and Sons, Inc., dba Zovich Construction (Zovich Construction), submitted a bid protest against the apparent low bidder, Patriot Contracting, Inc. Public Works' staff and the City Attorney's Office reviewed the bid protest and determined that the protest was not warranted. Staff recommends Council approve the plans and specifications for the project and award a Construction Contract to the lowest responsible bidder, Patriot Contracting, Inc., in the amount of \$14,450,556. Construction is anticipated to begin in early 2021 and be substantially complete by December 2022.

DISCUSSION

Background

The Northeast Stockton Library and Community Center project site is located at 1461 Morada Lane, at the northwest corner of West Lane and Morada Lane (Attachment A - Vicinity Map). The project

will construct a new library and community center on a 4.83-acre lot adjacent to Ronald E. McNair High School. The new facility will be Leadership in Energy and Environmental Design (LEED) Silver certified and consist of a library, gymnasium, multipurpose rooms, locker area with changing rooms, staff offices, outdoor fitness areas, minor frontage modifications adjacent to the site, and other on-site improvements. The project was included in the 2017-22 and 2019-24 Five-Year CIPs and is funded by Measure M and PFF.

On August 21, 2018, Council adopted Resolution No. 2018-08-21-1401 to award a Professional Services Contract to Architectural Nexus, Inc. of Sacramento, CA, to design the library and community center. Design was completed in April 2020, and the project was advertised for construction in May 2020.

On September 29, 2020, Council adopted Resolution No. 2020-09-29-1108 to approve Notice of Exemption No. NOE32-20 under the California Environmental Quality Act and awarded a Professional Services Contract to Griffin Structures, Inc. of Santa Clara, CA, to perform construction management services for the project.

On July 26, 2016, Council adopted a Community Workforce and Training Agreement (CWTA). The CWTA became effective August 25, 2016, and applies to all Public Works projects over \$1 million that are bid after that date. On July 16, 2019, by Motion No. 2019-07-16-1403, Council extended the CWTA term to August 25, 2024. The CWTA was applied to this project as the construction cost is over \$1 million.

Present Situation

On June 25, 2020, nine bids were received with the following results:

<u>COMPANY NAME</u>	<u>BID AMOUNT</u>	<u>ADJUSTED BID AMOUNT</u> <u>(local preference applied)</u>
Patriot Contracting, Inc. (Gardena, CA)	\$14,450,556	\$14,450,556
Zovich and Sons, Inc. dba Zovich Construction (Brentwood, CA)	\$15,401,000	\$15,401,000
Thompson Builders Corp. (Novato, CA)	\$15,494,500	\$15,494,500
John F. Otto, Inc. (Sacramento, CA)	\$15,714,300	\$15,714,300
DL Faulk Construction, Inc. (Hayward, CA)	\$15,994,000	\$15,994,000
F&H Construction (Lodi, CA)	\$16,516,000	\$16,185,680

Sausal Corporation (Concord, CA)	\$16,823,100	\$16,823,100
Broward Builders, Inc. (Woodland, CA)	\$17,251,500	\$17,251,500
Katch Environmental, Inc. (Fresno, CA)	\$17,501,418	\$17,501,418
Engineer's Estimate	\$15,855,931	

The requirements of Stockton Municipal Code (SMC) section 3.68.090, Local Business Preference, apply to this project. F&H Construction is located in San Joaquin County and is entitled to a two percent bid preference. Application of the Local Business Preference has no effect on the bid order. The Local Employment Ordinance, SMC section 3.68.095, also applies to this contract.

The bid from Patriot Contracting, Inc., the apparent low bidder, is responsive and regular in all respects. Patriot Contracting, Inc. has the proper license to perform the work, and their bid is lower than the engineer's estimate.

On July 2, 2020, Zovich Construction, the second low bidder, submitted a bid protest against the apparent low bidder, Patriot Contracting, Inc. The protest requests the City to reject Patriot Contracting, Inc.'s bid on grounds that it was non-responsive, meaning the bid did not meet all the requirements of advertisement and the project bid proposal based on the following claims (Attachment B):

- The listed license classifications shown for Patriot Contracting, Inc. were inaccurate;
- The bid was not signed by an authorized representative;
- All "subcontractors" performing work on the project were not included on the list of subcontractors form; and
- Patriot Contracting, Inc. is not licensed or qualified to perform work (self-perform) for non-listed subcontractors.

Public Works' staff and the City Attorney's Office reviewed the bid protest in detail. There was extensive communication between all parties on hierarchy of applicable California Public Contract Code requirements and the project bid forms (Attachments C through K). It was ultimately concluded that Patriot Contracting, Inc. has the proper licenses for the project and the bid was signed by an authorized representative. Further, Patriot Contracting, Inc.'s bid complies with all bid requirements, including the subcontractor listing requirements per California Public Contract Code. The City Attorney's Office together with Public Works do not agree with Zovich Construction's bid protest to reject Patriot Contracting (Attachment L).

Staff recommends Council approve the plans and specifications for the project and award a Construction Contract to the lowest responsible bidder, Patriot Contracting, Inc., in the amount of \$14,450,556.

The project conforms with the City's General Plan, pursuant to California Government Code section 65402. Construction is anticipated to begin in early 2021 and be substantially complete by December 2022.

FINANCIAL SUMMARY

Funding for the Northeast Stockton Library and Community Center, Project No. PW1724, was approved with the adoption of the 2017-22 and 2019-24 CIPs. There is sufficient funding in the Strong Communities Account No. 083-3020-640 and the PFF Library Account No. 950-3020-640 to award a Construction Contract to Patriot Contracting, Inc. in the amount of \$14,450,556 for this project.

There is no additional impact to the City's General Fund or any other unrestricted fund as a result of taking the recommended actions.

Attachment A - Vicinity Map

Attachment B - Zovich Construction Bid Protest Letter dated July 2, 2020

Attachment C - Patriot Contracting Protest Response Letter dated July 6, 2020

Attachment D - Patriot Contracting Protest Response Letter dated July 22, 2020

Attachment E - Law Offices of Rafik Ayvazi Protest Response Letter dated July 30, 2020

Attachment F - City of Stockton Initial Bid Determination Letter dated August 17, 2020

Attachment G - Law Offices of Rafik Ayvazi Protest Response Letter dated August 19, 2020

Attachment H - City of Stockton Secondary Bid Determination Letter dated September 24, 2020

Attachment I - Patriot Contracting Protest Response Letter dated September 30, 2020

Attachment J - Law Offices of McInerney & Dillon Bid Protest Letter dated September 25, 2020

Attachment K - Patriot Contracting Protest Response Letter dated October 5, 2020

Attachment L - City of Stockton Final Bid Determination Letter dated October 15, 2020

SECTION 00 72 13 – SPECIAL PROVISIONS

ARTICLE 0.1 – GENERAL

1.0 The Articles herein delete, change, or add to the City of Stockton Standard Specifications as specifically related to this Project. If not specifically identified as “Delete” or “Change”, the Articles herein are additions to the Standard Specifications.

1.0.1 Delete the following Sections and/or Articles of the City of Stockton Standard Specifications:

1.0.1.1 Delete Article 5-1.02 Contract Components. Refer instead to Special Provisions Article 1 herein.

1.0.1.2 Delete Article 5-1.26 Construction Surveys.

1.0.1.3 Delete Section 19 through Section 100. Refer instead to the technical specification sections.

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ARTICLE 1 - GENERAL TERMS AND DOCUMENTS

1.1 LANGUAGE

1.1.1 USAGE. The following applies to the language used in these Contract Documents:

1.1.1.1 Absence of Modifiers. 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.

1.1.1.2 Any. "Any" is used in its inclusive sense, meaning "any and all" or "any and every".

1.1.1.3 As Shown, Etc. Where "as shown," "as indicated," "as detailed," or words of similar meaning are used, reference is made to the Drawings unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar meaning are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.1.1.4 Capitalization. Terms specifically defined in these Special Provisions are capitalized. Where these words are used without capitalization their meaning shall be the commonly accepted meaning for the context in which they are used.

1.1.1.5 Imperative Mood. Specifications and annotations on drawings are written in Imperative Mood and are to be interpreted as instructions to the Contractor. In the interest of brevity incomplete sentences are used. Omission of words or phrases such as "Contractor shall," "shall be," or words of similar meaning are used, are intentional. Omitted words or shall be supplied by inference.

1.1.1.6 Include. "Including" means "including but not limited to". "Include" is defined in the same non-limiting way.

1.1.1.7 Plural. Words in the singular shall include the plural whenever applicable or the context so indicates.

1.1.1.8 Provide. "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.1.1.9 Technical Terminology. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.1.1.10 Article, Paragraph. Use of Article, Sub-article, Paragraph, and Subparagraph numbers are references to the respective portion of these Special Provisions unless otherwise stated.

1.1.2 GENERAL DEFINITIONS. These words have the following meaning when capitalized:

1.1.2.1 The Authority Having Jurisdiction: The City of Stockton.

1.1.2.2 Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.2.3 Contract Documents. The Contract Documents are the printed (hard copy) version of the following: the Agreement Between Owner and Contractor (hereinafter the Agreement), City of Stockton Standard Specifications, Special Provisions, Conditions of the Contract For Construction, Drawings, Specifications, Addenda issued prior to bid, Instructions To Bidders, Advertisement for Bids, Bid Form, List of Subcontractors, Non-Collusion Affidavit, and Performance and Payment Bonds, other documents

listed in the Agreement, and modifications issued after execution of the Contract. Any electronic version of these documents may vary significantly from the printed version and are not part of the Contract Documents.

1.1.2.4 Drawings. Graphic and pictorial portions of the Contract Documents prepared by the Architect, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.2.5 Materials or Products. When used in the capitalized form "materials" or "products" means materials, products, equipment, and other physical objects to be incorporated into the Work.

1.1.2.6 Modification. A written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect.

1.1.2.7 Project. The total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate Contractors.

1.1.2.8 Project Manual. The volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

1.1.2.9 Site. The "site" refers to the grounds of the Project as described in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.2.10 Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.2.11 Submittal. When used in the capitalized form "Submittal" means product data, shop drawing, sample, or similar item or document required to be submitted to Architect for review.

1.1.2.12 Work. The term "work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.2 DOCUMENTS INCLUDED BY REFERENCE

1.2.1 GENERAL. Where the Contract Documents require compliance with referenced documents not bound with the Contract Documents, the referenced documents shall have full force and effect as though printed in the Specifications, except where the specific Contract Document requirements are more stringent or exceed the requirements of the reference documents.

1.2.2 STANDARDS. Any reference to a standard of any society, institute, association, utility or governmental authority is a reference to the organization's standards, which are in effect at the date of the Contractor's proposal. If applicable standards are revised prior to completion of any part of the Work, the Contractor may, if acceptable to Architect, perform such Work in accordance with the revised standards. Architect will furnish, upon request, information as to how copies of the standards referred to may be obtained.

1.2.3 MANUFACTURER'S REQUIREMENTS. Reference to manufacturer's instructions, directions, or requirements shall mean the printed literature furnished by the manufacturer for use of that manufacturer's product or material under conditions similar to those found in the Work. Quality shall meet or exceed descriptions and representations made in manufacturer's promotional literature.

1.2.4 LAWS. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

1.3 DOCUMENT INTERPRETATION AND CORRELATION

- 1.3.1 COMPLETE PROJECT.** The Contract Documents are intended to include all items required for the proper execution and completion of the Work by the Contractor. The Work shall include any related construction or service not specifically called for, but necessary to complete Work called for, if that related Work or service is commonly associated with the Work called for and its inclusion is reasonably inferable from the Contract Documents.
- 1.3.2 COMPLIMENTARY DOCUMENTS.** The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all. In general, the Drawings show dimensions, position and scope of construction; and the Specifications set forth the quality of products, materials, and execution. Any Work called for in the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both.
- 1.3.3 CONSISTENCY.** Work not particularly detailed, identified, graphically represented, or specified shall be the same as similar parts that are detailed, identified, graphically represented or specified.
- 1.3.4 DIMENSIONS.** Dimensions of Work shall not be determined by scale or rule or interpretation of electronic documents. Annotated dimensions shall be followed at all times. If Contractor believes that the annotated dimensions on drawings are not adequate for construction without scaling, contractor shall request clarification pursuant to Sub-Article 3.3.
- 1.3.5 SUBDIVISION OF WORK.** Organization of the Specifications into divisions, Sections, and Articles, or naming or numbering of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.4 DISCREPANCIES IN CONTRACT DOCUMENTS

- 1.4.1 DOCUMENT HIERARCHY.** In the event there is a discrepancy between any of the various Contract Documents the following rules shall apply in the order listed, without limiting Contractor's obligation to identify conflicts for resolution by the Architect in accordance with Sub-Article 3.3 and without limiting the Architect's right to interpret the documents:
- 1.4.1.1** Most recently released documents govern over previously released documents.
 - 1.4.1.2** The Owner's Standard Specifications and Special Provisions govern over all other Contract Documents except in matters pertaining to the scope or quality of the Work which shall be governed by the Drawings and Specifications.
 - 1.4.1.3** In case of discrepancy between the Drawings and Specifications, the Drawings shall govern in matters of quantity, the Specifications in matters of quality.
 - 1.4.1.4** Each Contract Document shall govern in that subject or purpose for which it was specifically or primarily prepared.
- 1.4.2 DISCREPANCIES WITHIN DOCUMENTS.** In case of discrepancy within the Drawings involving quantities or within the Specifications involving qualities, the greater quantity and the higher quality shall be provided. In the case of discrepancy within other documents, the more stringent requirement shall be applied.

1.5 USE OF DOCUMENTS

- 1.5.1 USE AND COPYRIGHTS.** The Drawings, Specifications and other documents prepared on behalf of the Owner by the Architect and the Architect's consultants, including those in electronic format, and copies thereof are the property of the Owner and are furnished to the Contractor for use solely with respect to this Project. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Submittal or distribution to meet official

regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

1.5.2 ELECTRONIC DOCUMENTS. Any electronic version of the Contract Documents may vary significantly from the printed version due to manual edits of the printed versions related to agency review, revisions or addenda, corruption of the electronic files or medium, or other causes. Electronic versions are not part of the contract documents. Any party attempting to make any use of electronic versions of contract documents on the Project shall assume full responsibility for any errors, omissions, or discrepancies with the Contract Documents therein.

1.6 WRITTEN NOTICE.

Any notice from one party to the other or otherwise under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose unless served by personal delivery to a designated representative for this Project of the party for which it was intended or unless delivered at, or sent by registered or certified mail to, the last business address of the party for which it was intended, known to the party giving notice.

1.7 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

1.8 SUCCESSORS AND ASSIGNS

The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

1.9 RIGHTS AND REMEDIES

1.9.1 DUTIES AND OBLIGATIONS CUMULATIVE. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

1.9.2 NO WAIVER. No action or failure to act by the Inspector, the Owner, the Architect or the Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

1.10 INTEREST

Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 2 - THE OWNER

2.1 DEFINITION

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate a project manager who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Paragraph 7.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's designated project manager.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 2.2.1 FINANCING AND FUNDING.** At the request of the Contractor, the Owner will, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.
- 2.2.2 PERMITS AND FEES. Except for permits and fees, including those required under Paragraph 3.2.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for use or occupancy of permanent structures or for permanent changes to existing facilities. TESTING LAB AND INSPECTION.** Pursuant to Article 6 of these Special Provisions, the Owner will select and pay an independent testing laboratory to conduct tests and inspections required under California Code of Regulations, Title 24.
- 2.2.3 NOT USED.**
- 2.2.4 SITE SURVEY.** When required by the scope of the Project, the Owner will furnish a legal description and a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys needed to perform the work shall be provided by the Contractor.
- 2.2.5 GEOTECHNICAL REPORTS.** Copies of such reports will be made available to the Contractor at no expense. Any such reports were generated for the purpose of aiding in the design of the project and are not a part of the Contract Documents. The Owner will make these documents available to the Contractor for reference only. Contractor is solely responsible for its conclusions drawn from them. The Contractor may conduct its own geotechnical investigations at the site. At the Owner's request, the Contractor shall make available to the Owner the results of any such investigation.
- 2.2.6 PROJECT INFORMATION.** Upon the request of the Contractor, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. Such information is not part of the contract documents and the Contractor is solely responsible for the conclusion drawn from such information. If any such information conflicts with information in the Contract Documents, or appears incorrect based upon Contractor's Site inspection or knowledge of the Project, Contractor shall notify the Architect per Sub-Article 3.3.
- 2.2.7 REASONABLE PROMPTNESS.** Information or services under Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

2.3 OWNER'S RIGHTS

- 2.3.1 STOPPING THE WORK.** If the Contractor fails to correct nonconforming Work, as required by Sub-article 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Article 13.
- 2.3.2 CARRYING OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 3 day period after receipt of written notice or the time period

expressly stated in the written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies without prejudice to other remedies the Owner may have. In such case, the Contractor will be back charged all costs associated with correcting such deficiencies, including compensation for additional professional and internally generated services and expenses made necessary by such default, neglect, or failure.

- 2.3.3 REMOVAL OF CONTRACTOR'S STAFF.** Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

ARTICLE 3 - THE CONTRACTOR

3.1 GENERAL

- 3.1.1 DEFINITION.** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 3.1.2 PERFORMANCE.** The Contractor shall perform the Work in accordance with the Contract Documents. Contractor shall do no additional work without Architect's clarifying instructions, approved Change Order or as otherwise set forth in Article 9.
- 3.1.3 OBLIGATIONS NOT CHANGED.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or Inspector, or by tests, inspections, or approvals required or performed by persons other than the Contractor.
- 3.1.4 USE OF SITE.** The Contractor shall confine 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.
- 3.1.5 ACCESS TO WORK.** The Contractor shall provide the Owner, the Architect, and Inspectors, access to the Work in preparation and progress wherever located. Contractor shall maintain site, including weatherization and dewatering, to allow performance of work and ready vehicular and pedestrian access to all portions of the site where work is scheduled.
- 3.1.6 WORKING HOURS.** Work shall be performed during regular working hours except in the event of an emergency. If required to keep project on schedule, work may be performed outside of regular working hours only with the advance written consent of the Owner.
- 3.1.7 FULL TIME SUPERINTENDENT.** The Contractor shall provide a competent, English-speaking superintendent and necessary assistants who shall be in attendance full-time at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.
- 3.1.8 DAILY CONSTRUCTION REPORTS.** The Contractor shall deliver daily reports, on forms pre-approved by the Owner, to the Owner's Project Inspector, which shall contain all of the following:
- 3.1.8.1** Names of project and contractor.
 - 3.1.8.2** Weather, temperature, and unusual site conditions.
 - 3.1.8.3** A brief description of the day's work activities, including location, and any unusual problems.
 - 3.1.8.4** A list of any unforeseen conditions and unanticipated delays.
 - 3.1.8.5** A description of any problems that might affect progress, which shall relate to the Project Schedule.
 - 3.1.8.6** Labor quantities, by trade, including subcontractors.

3.1.8.7 A list of all large equipment used on site, whether owned, leased, or rented.

3.1.9 VERIFIED REPORTS. The Contractor shall submit Verified Reports as defined in Sections 4 336 and 4 343(c), Group 1, Chapter 4, Part I, Title 24, California Code of Regulations.

3.2 PERMITS, CODES AND AGENCY REQUIREMENTS

3.2.1 PAYMENT. The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those identified as the Owner's responsibility in Sub-article 2.2. The Owner will reimburse the Contractor for permanent utility connection fees necessary for the completion of the Work. Proper documentation of fees shall be submitted through the Architect. No mark up shall be allowed the Contractor on these reimbursable charges. These reimbursable charges shall not be included in base bid.

3.2.2 COMPLIANCE. The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work. Specific duties of the Contractor shall be in accordance with Title 24 of the California Code of Regulations. Contractor shall fully comply with any and all reporting requirements of Education Code Sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.3 RESPONSIBILITY. Contractor shall take responsibility and shall require Subcontractors to take responsibility for knowledge of the requirements of building codes and of utility companies and other agencies with jurisdictional authority at the Site, which knowledge is pertinent to the proper execution of the Work of this Contract. Any Work shown in the contract document that is not in compliance with such requirements shall be treated as an Observed Discrepancy per Article 3.3.7. No work shall be performed that is in violation of any applicable building code.

3.3 PLANNING, SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 CONSTRUCTION MEANS AND METHODS. The Contractor shall plan, supervise, and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. If any portion of the Project is performed by other contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of its Work with that of the other contractors so as to avoid any impact on the Project Schedule pursuant to the requirements of Article 13.

3.3.2 EXAMINATION OF WORK ALREADY PERFORMED. The Contractor shall be responsible for examination of portions of Work already performed under this Contract or other contracts to determine if such portions are suitable to receive subsequent work of this contract.

3.3.3 ADVANCE NOTICE TO INSPECTORS. Contractor shall become familiar with testing and inspection requirements of the Contract Documents and notify Inspectors a sufficient time in advance of the work's readiness for required observation or inspection so that the Inspector may arrange for same.

3.3.4 REQUESTS FOR INFORMATION. An RFI is a written request for information submitted in the form required by the Contract Documents. If the contractor is unsure of the meaning or requirements of the Contract Documents, discovers an unforeseen condition as described in Article 10.1, or believes additional information is required for the proper performance of the Work, Contractor shall prepare an RFI asking the Architect for clarification or direction. The response to an RFI shall not be interpreted as change in the Work resulting in a change in Contract Sum or Contract Time.

3.3.5 UNDERGROUND UTILITIES. It shall be solely the responsibility of the Contractor to timely notify all public and private utilities serving the Site prior to commencing work. The Contractor shall notify and receive

clearance from any cooperative agency, such as Underground Service Alert. Refer to sub-article 10.1.9 regarding discovery of utility lines not shown in contract documents.

- 3.3.6 PLANNING AND REVIEW OF FIELD CONDITIONS AND CONTRACT DOCUMENTS:** The Contractor shall take responsibility for planning and coordinating the Work to be performed by the Contractor and its various subcontractors, including identifying and rectifying potential conflicts in scheduling, access, and final installed position of each portion of the Work and including the preparation of required coordination drawings. Before starting each portion of the Work, the Contractor, together with the subcontractors who will perform that portion of the Work shall review the Site to observe and take field measurements of conditions which may affect the Work, make such investigation as they deem necessary to fully understand those conditions, and carefully study and compare the various Drawings and other Contract Documents with each other and with observed site conditions relative to that portion of the Work. These planning obligations shall be performed early enough to allow reasonable time for a response from the Architect to any RFI related to planning that portion of the Work.
- 3.3.7 OBSERVED DISCREPANCY.** An Observed Discrepancy is defined as any existing or potential error, omission, inconsistency, ambiguity, violation of code requirements, lack of detail, or lack of explanation in the Contract Documents, or any inconsistency between the Contract Documents or the Record Drawings and site conditions, observed by the Contractor or its Subcontractors, material or equipment suppliers. Contractor shall require its Subcontractors, and material or equipment suppliers to immediately report all Observed Discrepancies. Contractor shall immediately report all Observed Discrepancies to Owner in an RFI. No Work that might be affected by an Observed Discrepancy shall be performed before receipt of Architect's response.
- 3.3.8 CLAIMS.** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner in response to the Contractor's RFI's pursuant to this Sub-Article 3.3, Contractor may make Claim as provided in Article 10. Claim may be in the form of a Proposed Change Order (PCO) pursuant to Article 9.
- 3.3.9 NON-COMPLIANCE.** If the Contractor or its Subcontractors, employees, or agents performs any Work under the Contract Documents, without complying with the requirements of this Sub-Article 3.3, and that Work is subsequently corrected to comply with the Contract Documents, code requirements, or to properly coordinate with or integrate into adjacent Work, Contractor shall bear all costs arising therefrom including, the cost of correction and related professional services and inspection.

3.4 LABOR AND MATERIALS

- 3.4.1 PROVISION.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall provide, and cause each Subcontractor to provide, competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.
- 3.4.2 PROTECTION OF WORK AND STORED MATERIALS.** The Contractor shall remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Contractor shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work and stored Materials, free from moisture damage or other degradation due to exposure.
- 3.4.3 TAXES.** The Contractor shall pay sales, use and similar taxes on the Work of the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.4.4 DISCIPLINE. The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 DOCUMENTS AND SAMPLES AT THE SITE

3.5.1 COPIES OF DOCUMENTS. The Contractor shall maintain at the Site for the Owner one applicable copy of Title 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Architect and the Owner's Inspector and shall be delivered to the Owner upon completion of the Work.

3.5.2 AS-BUILT REDLINE DRAWINGS. The Contractor shall prepare and maintain on a current basis an accurate and complete set of As-Built drawings showing underground utilities, including low voltage lines with indications of As-Built depth and location from buildings or other permanent surface features. The Contractor shall also record any change in location from that shown in the Contract Documents, of any significant building component or system which will be concealed from view. Inspector shall have the authority to determine which changes in location are to be recorded. The Contractor shall update the As-Built drawings weekly. The Project Inspector will verify that record drawings are up-to-date and if they are not, the Project Inspector will not approve the current pay request. The As-Built drawings shall be kept at the Site and available for inspection by the Owner and the Architect. On completion of the Work and prior to Application for Final Payment, the Contractor shall provide one complete set of Record Drawings to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.6 CUTTING AND PATCHING

3.6.1 SCOPE. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.6.2 CONSTRUCTION BY OTHERS. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching, excavating, or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. All cutting and patching shall be done promptly to avoid delay.

3.6.3 STRUCTURAL MEMBERS. New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect or allowed in the Contract Documents. Work done contrary to such authority is at the Contractor's risk, subject to replacement at its own expense and without reimbursement under the Contract.

3.6.4 SUBSEQUENT REMOVAL. Permission to patch any areas or items of nonconforming Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas of items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

3.7 CLEAN UP

3.7.1 CONTRACTORS RESPONSIBILITY. The Contractor shall keep the Site and surrounding area free from accumulation of waste material and rubbish caused by operations under the Contract. The Contractor shall remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.7.2 FAILURE TO CLEAN UP. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, and the cost thereof shall be backcharged to the Contractor.

3.7.3 ABANDONED PROPERTY. When directed by the Owner or the Architect, Contractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor. If the Contractor does not remove the tools, equipment, machinery, and materials within 14 days of being so directed, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate.

3.8 ROYALTIES, PATENTS AND COPYRIGHTS

3.8.1 PAYMENT AND INDEMNITY. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of copyrights and patent rights and shall hold the Owner and the Architect harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Contractor has reason to believe the required design, process, or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.8.2 ARCHITECTS REVIEW. The review by the Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

3.9 INDEMNIFICATION

3.9.1 GENERAL. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Architect, Architect's consultants, and their respective agents, employees, officers, and directors, from and against claims, damages, losses, and expenses (including, but not limited to attorneys' fees and costs including fees of consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Contractor's or its Subcontractor's use of the Site; the Contractor's or its Subcontractor's construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in Civil Code Section 2782.

3.9.2 NO LIMITATION. The Contractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property and death of any person; for breach of any warranty, express or implied; for failure of the Contractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

ARTICLE 4 - SUBCONTRACTORS

4.1 DEFINITIONS

4.1.1 SUBCONTRACTOR. A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

4.1.2 SUB-SUBCONTRACTOR. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

4.1.3 SPECIALTY CONTRACTORS. If a Subcontractor is designated as a "Specialty Contractor" as defined in Section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor's specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100, et seq.

4.2 SUBSTITUTION OF SUBCONTRACTORS

4.2.1 CONSENT OF OWNER. Contractor shall not substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid without written consent of Owner and only for those circumstances set forth under Public Contract Code Section 4107 or as otherwise provided by law.

4.2.2 REMOVAL OF SUBCONTRACTORS. The Owner may direct the Contractor to remove and replace a Subcontractor for any of the reasons described in Public Contract Code Section 4107, subdivision (a), or for failure to perform in compliance with the Contract Documents.

4.2.3 REPLACEMENT AT NO COST. Contractor shall replace any substituted or removed Subcontractor with a qualified Subcontractor acceptable to both the Owner and the Contractor with no increase in the Contract Sum or Time.

4.2.3.1 The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have 5 working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

4.2.3.2 Failure to file written objections pursuant to the provisions of this Paragraph 4.2.3 within the times specified herein shall constitute a waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

4.2.3.3 If written objections are filed, the awarding authority shall give 5 days notice to the Contractor and to the listed Subcontractor of a hearing by the awarding authority on the Contractor's request for substitution as provided in Public Contract Code Section 4107. The determination by the awarding authority shall be final.

4.2.4 SUBCONTRACTUAL RELATIONS. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where applicable, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

4.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that: 1) Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 17 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and 2) Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

4.4 PROVIDE SUBCONTRACTOR INFORMATION

Within 5 days of the date that the Owner executes the Agreement, the Contractor shall provide the Owner with a typed list of all subcontractors (including those which need not be listed in the Bid), which shall include the following information: business name and mailing address; telephone and facsimile numbers; contractor's license type and number; name of contact person and portion of Work to be performed.

4.5 PROVIDE SUBCONTRACTOR CONTRACTS

If requested by Owner, Contactor shall, within 5 days of request, provide Owner with copies of signed contracts with all subcontractor (including those which need not be listed in the Bid), copies of bid proposals from all accepted sub-bidders, and copies of any Subcontractor bonds required by the Contract Documents or by the Contractor.

4.6 INDEMNITY

Contractor shall require the following language in each subcontract: Subcontractor shall defend, indemnify, and hold harmless the Owner, the Architect, and the Architect's consultants, and their respective agents, employees, officers, and directors from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees and costs, (including consultants) arising out of or resulting from: performance of the Work (including, but not limited to) the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees. The Subcontractor, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in Civil Code Section 2782.

4.7 JOINT AND SEVERAL LIABILITY

In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

ARTICLE 5 - SUBMITTALS, DEFERRED APPROVALS, AND SUBSTITUTIONS

5.1 GENERAL

- 5.1.1 SHOP DRAWINGS.** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work which requires additional information to, or greater detail than, that shown in the Drawings to properly coordinate with related Work and to ensure compliance with specified requirements. Considering adjacent Work and field conditions, the shop drawings shall provide all information not shown in the contract documents but required for coordination with related Work and proper fabrication and installation, of the illustrated Work.
- 5.1.2 PRODUCT DATA.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work
- 5.1.3 SAMPLES.** Samples are physical examples of materials, equipment or workmanship identical to that being proposed for inclusion in the Work and establish standards by which the Work will be judged.
- 5.1.4 PURPOSE OF SUBMITTALS.** Shop Drawings, Product Data, Samples and similar submittals are referred to as Submittals and are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the specified requirements and the design concept expressed in the Contract Documents. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Owner without action.
- 5.1.5 DEFERRED APPROVAL.** A Deferred Approval is a portion of the Work that requires design by the Contractor before the Authority Having Jurisdiction's review process can be completed. A Deferred Approval consists of drawings, specifications, and/or calculations, prepared by, or under the supervision of, a qualified design professional, for approval by regulating agencies, at the expense of the Contractor. Once approved, a deferred approval will become part of the Contract Documents, but responsibility for design of that portion of the Work will remain with the Contractor.
- 5.1.6 NO WORK UNTIL APPROVAL.** The Contractor shall not perform any portion of the Work for which the Contract Documents require Submittal and review of Submittals until the respective Submittal review process is complete with final action is taken by the Architect.
- 5.1.7 OWNER'S PROPERTY.** All Submittals shall become the Owner's property.
- 5.1.8 CONTRACTOR RESPONSIBILITIES.** By approving and submitting a Submittal, Contractor represents that Contractor has verified that the Submittal is complete, and is not a substitution. Contractor further represents that Contractor has checked and coordinated the information contained in the submittals with related submittals and the requirements of the Contract Documents, has verified dimensions, and field conditions related thereto, or will do so in a timely manner to insure proper fitting of the work and avoidance of delay or additional costs. Contractor shall take responsibility for any delay or cost of professional services related to Submittals being returned for resubmittal and re-review, due to incompleteness, inaccuracy, or non-compliance with Contract Documents.
- 5.1.9 DEVIATIONS.** Application for deviations from the Contract Documents shall be in the form of an RFI, Substitution Request, or Change Order Request and shall not be made through the Submittal process. The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for errors, omissions, or deviations from requirements of the Contract Documents by the Architect's approval of Submittals, except for minor deviations documented as described in this Paragraph. Minor deviations necessary to resolve conflicts with manufacturers requirements, to accurately describe attributes of specified Materials, to properly integrate the specified Work into the Project, or similar deviations that would not affect Project quality, cost, or time, or conflict with adjacent Work, may be approved through the Submittal Process if the deviation is graphically highlighted in the Submittal and identified in writing with a description of the deviation.

5.2 SUBMISSION PROCESS

- 5.2.1 GENERAL.** Submittals shall be submitted in the format and number required in Division 1 of the specifications and in accordance with Contractor's progress schedule and the requirements of this Article.
- 5.2.2 SCHEDULE.** Contractor shall allow adequate time for preparation of Submittals, review and processing of subcontractor's Submittals and review by Owner, Architect and Architect's Consultants. Review times will vary depending on complexity and scope of Submittals and the potential for re-submittals. In any case, Contractor shall allow at least 30 days for Owner's Submittal review process. For Materials that must be purchased within the first 60 days of the contract time, request may be made for expedited review. Request for expedited review shall be in writing and shall include the all pertinent schedule information. Owner and Architect will make every reasonable effort to perform the expedited review in conformance with the schedule information provided.
- 5.2.3 CONTRACTOR REVIEW.** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Any Submittal that is incomplete, not marked as reviewed for compliance with the Contract Documents by the Contractor, or contains any deviation from the Contract Documents, except as allowed in Paragraph 5.1.9, may be returned without review.
- 5.2.4 ARCHITECT REVIEW.** The Architect will review and take appropriate action upon the Contractor's Submittals but only for the limited purpose of checking for general conformance with specified requirements and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, fitting with other Work, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsible of the Contractor as required by the Contract Documents. The Architect's action will be taken with such reasonable promptness, while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of the obligations under this Article or responsibility for errors in Submittals, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on Submittals when reviewed. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate acceptance of an assembly of which the item is a component.
- 5.2.5 REVIEW COMMENTS.** Contractor shall comply with Architects review comments. If resubmittal is required by Architect, the Contractor shall revise Submittal to respond to review comments and shall resubmit the required number of revised Submittals. Contractor shall direct specific attention in writing or on resubmitted Submittal to revisions other than those required by the Architect on previous submissions. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions. Professional services required for more than 1 re-review of required Submittals are subject to charge to the Contractor pursuant to Sub-article 10.4.
- 5.2.6 DEFERRED APPROVALS.** Deferred approvals shall be submitted and processed as described above with the additional requirement for the Contractor to obtain approval from regulatory agencies. Communication between the reviewing agencies and the Contractor shall be through the Architect. Contractor and Contractor's design professional shall meet with the reviewing agency and take all other steps necessary to obtain approval of their design. Contractor shall allow adequate time for agency review. Delay due to agency's review of a Deferred Approval shall be the responsibility of the Contractor. Contractor is responsible for all costs associated with deferred approvals, including changes in Work scope or schedule caused by agency requirements. The requirements of the regulating agencies on a deferred approval shall take precedence over any previously issued addenda, drawing or specification, with no change in contract sum or time. No progress payment will be approved on any Work subject to deferred approval until agency approval has been obtained.

5.3 SUBSTITUTIONS

- 5.3.1 GENERAL.** Unless the specifications state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form method,

or type of construction is indicated or specified by name, make, trade name or catalog number, with or without the words "or equal" such specification shall be deemed to be used for the purpose of facilitating description of material, process or article desired and shall be deemed to be followed by the words "or equal." Substitution requests that do not comply with the requirements of this Article may be rejected without review. Products proposed for substitution must equal in all respects to the specified product and have no adverse affect on project cost or schedule.

5.3.2 Substitution proposals will not be considered prior to receiving bids.

5.3.3 SIDE-BY-SIDE COMPARISON. Substitution requests must be in writing and include a comparison of the salient feature and properties of specified product with those of the proposed substitution. If detailing of related or adjacent work must change to accommodate the proposed substitution, those details must be included in the comparison.

5.3.4 AGENCY REVIEW. With the exception of deferred approvals, Products requiring specific approval from a regulatory agency regarding a structural, or other code requirement, may not be proposed for substitution until Contractor has obtained approval from the regulating agency of the Product for the intended use.

5.3.5 CONTRACTOR'S CERTIFICATION. By proposing a substitution the Contractor certifies the following: That Contractor has determined that the proposed substitution is equal or superior in all respects to that specified, including durability and cost of maintenance; that the Contractor will take responsibility for any project delays or increase the costs related to the substitution; and that the Contractor will coordinate the installation of the substitution, if accepted, making such changes as may be required for the Work to be complete in all respects.

5.3.6 NO SUBSTITUTION. The listings of products in the specifications for which no substitution is allowed are followed by the words "no substitution".

5.3.7 NO KNOWN EQUAL. Substitution requests for Products listed in the specifications, followed by the words "no know equal", will not be considered after bidding unless the specified product has been discontinued, is in conflict with other portions of the Work, or the substitution would result in a credit or otherwise provide a tangible benefit to the Owner. Such request must be made in a timely manner to allow reasonable time for review without causing delay of the Work.

5.3.8 OR EQUAL. Substitutions for Products listed in the specifications, followed by the words "or equal", will be considered within the time frame allowed for the submittal of the specified product, provided reasonable time is allowed for review.

5.4 OPERATION AND MAINTENANCE MANUALS

At completion of project, Contractor shall furnish 3 complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various Sections of the Specifications. The manuals shall be arranged by section number, consistent with the Project Manual, indexed, and placed in three-ring binders. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the Architect the Contractor shall certify that each manual is complete and accurate.

ARTICLE 6 - TESTING AND INSPECTION

6.1 GENERAL

6.1.1 INSPECTOR. The Inspector is the person or persons selected by the Owner to provide special inspections consistent with requirements of Title 24, Part 1 of the California Code of Regulations or a person or persons from the City of Stockton Public Works Department performing inspection as required by that agency.

6.1.2 NOT USED.

- 6.1.3 TESTING LAB.** The Testing Lab is that entity or entities selected by the Owner to perform testing and special inspections required under California Code of Regulations, Title 24. The provisions set forth for Testing Labs apply equally to Geotechnical Engineers providing inspection and testing services. Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Contractor.
- 6.1.4 ACCESS AND INFORMATION.** The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of work and character of materials. Contractor shall coordinate closely and require its Subcontractor to coordinate closely with inspector to facilitate thorough and complete inspection and testing.
- 6.1.5 SCHEDULING OF TESTS AND INSPECTIONS.** Contractor shall schedule tests and inspection in advance and notify the Inspector at least 7 days prior to scheduled test or inspection that the Inspector may make the necessary arrangements. Contractor shall coordinate timing, location, and provide access for testing and inspection.
- 6.1.6 PROMPT TESTING AND INSPECTION.** Properly scheduled and noticed tests and inspections shall be performed promptly to avoid unreasonable delay in the Work.
- 6.1.7 ADDITIONAL TESTING OR INSPECTION.** If the Inspector, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require testing beyond that required in the contract documents, Contractor shall schedule, coordinate, and provide access for the additional testing or inspection.

6.2 NOT USED

6.3 NOT USED

6.4 PAYMENT FOR TESTS AND INSPECTIONS.

Owner shall pay for testing and inspections performed by Inspector and Testing Lab except that the Contractor shall be backcharged for the following testing and inspection:

- 6.4.1 RETESTING OR RE-INSPECTION.** Testing or inspection required due to failure of portions of the Work to comply with requirements established by the Contract Documents.
- 6.4.2 WORK HOURS.** If inspection or testing is performed on Saturdays, Sundays, holidays, or before or after regular work hours during the week, the Contractor shall reimburse the Owner for all inspection costs incurred during such hours.
- 6.4.3 REMOTE TESTING OR INSPECTION.** Any costs of inspection or testing incurred outside of a 50 mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater.
- 6.4.4 PREMATURE TESTING.** In the event the Contractor requests any test or inspection for the Project and inspection or testing cannot be performed or is delayed.

6.5 UNCOVERING OF WORK

- 6.5.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS.** If a portion of the Work is covered contrary to the Inspector's request, the Owner's or Architect's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner's, Architect's and Inspector's observation and the Work replaced without change in the Contract Sum or Time.

ARTICLE 7 - THE ARCHITECT

7.1 GENERAL

- 7.1.1 DEFINITION.** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall include, where applicable, consultants under the Architect's direction and control.
- 7.1.2 MODIFICATION OF DUTIES.** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.
- 7.1.3 TERMINATION.** In the case of the termination of the Architect, the Owner shall appoint a new Architect. The status of the replacement Architect under the Contract Documents shall be that of the former Architect.

7.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

- 7.2.1 STATUS.** The Architect will provide administration of the Contract as described in the Contract Documents and will provide consulting and advise to the Owner during construction, until final payment is due, and from time to time during the warranty period, subject to agreement between Owner and Architect. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of The Agreement Between Owner and Architect. The Architect will have the responsibilities and authority established by law, including California Code of Regulations, Title 24.
- 7.2.2 SITE VISITS.** The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing, to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work Completed and to determine in general, if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on Site inspections to check quality or quantity of the Work. On the basis of its on-site observations, the Architect will keep the Owner informed of the progress of the Work.
- 7.2.3 NO CONTROL OVER CONSTRUCTION.** The Architect shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, or for safety precautions and programs in connection with the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work.
- 7.2.4 COMMUNICATIONS.** Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Architect. Where direct communication is necessary between the Owner and the Contractor, the Architect shall be promptly informed, and shall receive copies of all written communications. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor. Communication by and with separate contractors shall be through the Owner.
- 7.2.5 PAYMENT APPLICATIONS.** Pursuant to Article 11, based on the Architect's observations, the Contractor's Applications for Payment, the Architect will review and make recommendations to the Owner regarding the amounts due the Contractor on the Certificates for Payment.
- 7.2.6 REJECTION OF WORK.** In addition to the rights, duties, and obligations of the Inspector under Article 6, the Architect may reject Work which does not conform to the Contract Documents. When the Architect considers it necessary or advisable in order to achieve the intent of the Contract Documents, the Architect may recommend that the Owner require additional inspection or testing of the Work in accordance with Sub-article 6.5, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give

rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

- 7.2.7 INTERPRETATION.** The Architect will interpret the Contract Documents and decide matters concerning performance of the Work under the requirements of the Contract Documents. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor and will not show partiality to either. The Architect will not be liable for the result of interpretations or decisions so rendered in good faith.
- 7.2.8 RESPONSE TO RFI's.** The Architect will respond to RFI's with reasonable promptness, while allowing sufficient time in the Architect's professional judgment, to permit adequate review and evaluation of request. If the Architect's response will take longer than 14 calendar days, the Architect shall so notify the Contractor, with a copy to the Owner, estimating the time that will be required to respond. If the Architect's response to an RFI results in a change in the Work, then such change shall be effected by a written Change Order or Construction Change Directive.
- 7.2.9 ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS (ASI).** The Architect may from time to time issue supplementary instructions consistent with the Contract Documents to clarify the intent of the contract documents.
- 7.2.10 CHANGES.** The Architect will prepare Change Orders and Construction Change Directives and may authorize minor changes in the Work as provided in Article 9. Minor changes may be issue in the form of an ASI.

ARTICLE 8 - CONTRACT TIME AND SCHEDULE

8.1 DEFINITIONS

- 8.1.1 CONTRACT TIME.** Contract Time is the period of time, including approved adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- 8.1.2 COMMENCEMENT.** The date of commencement of the Work is the date established in the Agreement and stipulated in the notice to proceed regardless of the actions of the Contractor.
- 8.1.3 DAYS.** The term "day" as used in the Contract Documents shall mean working day unless otherwise specifically defined.
- 8.1.4 FINAL COMPLETION.** The date of Final Completion is the date established by the Notice of Completion recorded by the Owner at the County Offices.
- 8.1.5 SUBSTANTIAL COMPLETION.** The Date of Substantial Completion is the date certified by the City in accordance with Sub-article 11.8.
- 8.1.6 DELAY.** For the purposes of time extensions, change orders, and claims, a "delay" is a delay in the completion of the Project beyond the date set for Substantial Completion, or a delay that affects the critical path schedule in a way that cannot be mitigated by use of float or by a reasonable adjustment in the sequence of Work or manpower.

8.2 TIME OF COMPLETION

- 8.2.1 GENERAL.** Attention is directed to the provisions in Section 8-1.05, "Time," of the Caltrans Specifications and these Special Provisions. The contract for the performance of the Work and the furnishing of materials shall commence within ten (10) days from the Notice to Proceed date and shall be diligently prosecuted to

completion before the expiration of the working days specified in this section from the date of said commencement.

8.2.2 CONSTRUCTION PERIOD. The Contractor shall diligently prosecute the contract Work to completion within 360 working days. The days to finish the punch list, provided by the City, are included in the Original Working Days. Should the contractor choose to work on a Saturday, Sunday, or on a City Holiday recognized by the labor unions, the Contractor shall reimburse the City of Stockton the actual cost of engineering, inspection, testing, superintendent, and/or other overhead expenses, which are directly chargeable to the Contract. The approximate cost is \$100 per hour. Should such work be undertaken at the request of the City, reimbursement will not be required. Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various contract items of Work involved, and no additional compensation will be allowed therefore.

8.3 CONTRACTOR'S CONSTRUCTION SCHEDULE

8.3.1 GENERAL. The Contractor, within 10 days of being awarded the Contract, shall submit for the Owner's and the Architect's information a Critical Path Method (CPM) schedule for the Work in network format, showing anticipated beginning and ending dates for all critical path activities and the logical connection between and among such activities. The schedule shall provide for the expeditious and practical execution of the Work, and shall comply with this Article 8 any scheduling requirements of Division 1 of the Specifications.

8.3.2 BREAKDOWN. No item on Contractor's CPM schedule shall exceed 15 working days in duration, unless approved by the Owner.

8.3.3 LONG LEAD ITEMS. The Contractors and Subcontractors shall investigate and become aware of the amount of time required for the manufacture and delivery of all equipment and materials required to perform the Work under this Contract. Manufacture and delivery of long-lead items shall be shown separately on Schedule.

8.3.4 SUBMITTALS. Schedule shall show preparation, review and approval of Submittals, and Deferred Approvals, consistent scheduling requirements of Paragraph 5.2.2 and Division 1 of the specifications. If allowed review time is exceeded because submittals must be revised and resubmitted to obtain approval, any delay related to such re-submittal shall be the responsibility of the Contractor.

8.3.5 ANTICIPATED RAIN DAYS FOR PROJECT LOCATION. Anticipated rain days for the Stockton area are based on Western Regional Climate Center Data for Stockton, CA.

8.3.6 TIME EXTENSIONS FOR ADVERSE WEATHER. No time extension will be granted for anticipated rain days. Requests for time extensions for adverse weather must be documented by data substantiating that weather conditions were abnormal for the time of year, could not have been reasonably anticipated, and affected work on the critical path.

8.3.7 FAILURE TO PROVIDE SCHEDULE. Failure of the Contractor to provide proper CPM schedules as required by this Article may, at the sole discretion of Owner, constitute grounds to withhold, in whole or in part, progress payments to the Contractor, or to reject without consideration, any claim for a time extension.

8.4 PROGRESS AND COMPLETION

8.4.1 REASONABLE SCHEDULE. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.4.2 NO COMMENCEMENT WITHOUT INSURANCE. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 15 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

- 8.4.3 EXPEDITIOUS COMPLETION.** Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time. Contractor shall perform the Work in general accordance with the most recently submitted Schedule.
- 8.4.4 UPDATES, PROGRESS PAYMENTS.** Schedule shall be updated on a monthly basis, and at any significant change in the anticipated schedule of the Work, for review at the next regularly-scheduled site meeting with the Owner. Updated schedule shall be submitted with each application for payment.
- 8.4.5 FLOAT.** Either party responsible for an event or condition which delays the Project shall be entitled to take advantage of any remaining float in the Contractor's CPM Schedule.
- 8.4.6 THREE-WEEK LOOK-AHEAD SCHEDULE.** In addition to the monthly-updated CPM schedule, the Contractor shall prepare three-week look-ahead schedules and submit them to the Owner and Architect at the weekly site meetings. These schedules shall show all anticipated activities for each of the Work days within the 3 weeks immediately after the site meeting.
- 8.4.7 SCHEDULE CONSULTANT.** If Contractor falls more than 2 weeks behind the progression of Work shown on its original schedule, after use of contingency and adjustment for approved time extensions, the Owner may retain a scheduling consultant to prepare a recovery schedule for the Contractor's consideration, the cost to be deducted from the Contract balance. The Contractor shall cooperate with the scheduling consultant by providing all information requested, but shall not be bound to act in accordance with the schedule.

8.5 EXTENSIONS OF TIME, DELAYS, AND RELATED COSTS

- 8.5.1 GENERAL.** Contractor shall be granted reasonable time extension, by Change Order, for delays caused by Owner only pursuant to Paragraph 8.4.6 and for delays beyond the control of the Contractor only pursuant to Paragraph 8.4.7. Any costs incurred by the Contractor related to extensions of time shall be borne fully by the contractor except as specified in this Sub-article 8.4.6. Because the Contractor has the right and responsibility to schedule the Work as it sees fit to meet the Contract requirements, and because the Contractor has the opportunity to accelerate or decelerate the pace of the Work, increase or decrease manpower, and change the sequence of the Work at will, any delay shall be assumed to be the Contractor's responsibility unless determined otherwise. The burden of proof shall be borne by the Contractor in establishing that any delay is either outside Contractor's control or caused by others. Such proof of delay must be based on the accepted CPM schedules submitted by the Contractor with complete documentation of the CPM logic and actual time involved, and must show that the delay affects Work on the critical path in a way that cannot be made up by use of available "float" in the schedule, a change in sequence, or a reasonable increase in manpower.
- 8.5.2 DETERMINATION OF DELAY.** Determination of delay and reasonable time extensions shall be made by Architect, pursuant to Paragraph 7.2.7.
- 8.5.3 EARLY COMPLETION.** Owner and Contractor stipulate that the Time for Completion established in the Agreement is a reasonable time within which to perform the Work. Regardless of the cause of a delay, the Contractor shall not pursue any claim against the Owner for damages incurred as a result of Contractor's inability to complete its Work in a shorter period than the Contract Time.
- 8.5.4 INEXCUSABLE DELAYS.** "Inexcusable Delay" means any delay in Substantial Completion of the Work beyond the expiration of the Contract Time caused by the Contractor, its employees, Subcontractors, Sub-subcontractors or material suppliers. An inexcusable delay shall not entitle the Contractor to an extension of Contract Time or an increase in Contract Sum but will subject the Contractor to liquidated damages. Delays that could have been avoided by diligent planning or coordination by the Contractor, including allowing adequate time for submittal review or other response from Architect or Owner or timely notice by the Contractor to the Architect or Owner of potential delays are Inexcusable Delays.
- 8.5.5 LIQUIDATED DAMAGES.** Liquidated damages are those damages which the Owner would suffer in the event of delay in occupancy include providing alternative facilities for staff, disruption of business activities, the inability to provide the expected quality of service, and potential increases in transportation,

administrative, and staffing costs. Since it would be difficult to determine the actual value of the damages to the Owner resulting from a delay in occupancy, the Contractor and the Owner agree that the stated liquidated damages represent the parties' reasonable estimate of damages the Owner will incur if the Contractor fails to complete the Work within the time and in the manner provided for by the Contract Documents and that such liquidated damages do not constitute a penalty. Liquidated damages only represent damages pertaining to loss of use. The Owner retains the right to recover other actual and verifiable damages incurred as a result of a delay in Substantial Completion such as additional inspection or consultant costs.

8.5.5.1 Attention is directed to the provisions I Sectio 8-1.10, "Liquidated Damages," of the Caltrans Specifications and these Special Provisions. The Contractor shall pay liquidated damages to the City of Stockton in the amount of \$8,300 (eight thousand, three hundred dollars) per day for each and every calendar day that the Work, with the exception of the plant establishment and maintenance period, remains incomplete after expiration of the contract working days specified in these Special Provisions. Full compensation for conforming to the provisions of this section shall be considered as included in the prices paid for the various contract items of work involved, and no additional compensation will be allowed therefore.

8.5.6 COMPENSABLE DELAYS.

8.5.6.1 General. "Compensable Delay" means any delay in the Substantial Completion of the Work beyond the expiration of Contract Time caused by wrongful acts or negligence of the Owner or Architect, or direction to suspend the Work, or Changes in the Work due to an act or omission of the Owner or Architect, which is unreasonable under the circumstances involved and not within the contemplation of the Contractor. A time extension will be granted for compensable delays.

8.5.6.2 Cost. If any allowance for Owner caused time extensions has been exhausted, Contractor may make claim for only the following direct onsite costs related to a Compensable Delay: daily cost of superintendent and other supervisory staff on site daily for the duration of the Project and during the delay; costs of leased temporary facilities on Site and necessary to the Work during the delay, based on actual receipts from the time period being claimed; and similar documented onsite costs resulting solely from the delay. All other costs are defined as overhead and are covered in Change Order markups. The direct onsite costs may be marked up a maximum of 15% to cover extended overhead.

8.5.6.3 Partial Responsibility. If the Owner and Contractor both contribute to a delay, a time extension will be granted for the full period of that delay without any change in Contract Sum.

8.5.7 EXCUSABLE DELAYS. "Excusable Delay" means any delay beyond the Substantial Completion of the Work beyond the expiration of Contract Time due to causes beyond the control and without the fault or the negligence of the Contractor or Owner, including: acts of a public enemy; acts of a governmental, utility or other agency having jurisdiction at the site; fire; flood; epidemic; quarantine restriction; freight embargo; strike; unforeseen conditions, or adverse weather of an unusually severe nature. Owner and Contractor agree to waive claims against each other and to bear their own costs related to such delays. In the event of an excusable delay there will be no change in Contract Sum and the Contract Time shall be extended by the documented number of days the Project is actually delayed. See Paragraphs 8.2.5 and 8.2.6 for definition of adverse weather.

8.5.8 CONCURRENT DELAYS

8.5.8.1 If Excusable Delays and/or Compensable Delays occur concurrently, the maximum time extension shall be the number of days from the beginning of the first delay to the end of the delay which ever ends last.

8.5.8.2 If an Inexcusable Delay occurs concurrently with a Compensable Delay or an Excusable Delay, the Contract Time shall be extended by the number of days that the delays are concurrent without any change in Contract Sum for that period.

ARTICLE 9 - CHANGES IN THE WORK

9.1 GENERAL

- 9.1.1 METHODS OF EXECUTION.** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a Minor Change in the Work, subject to the limitations stated in this Article 9 and elsewhere in the Contract Documents.
- 9.1.2 AGREEING PARTIES.** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; a minor change in the Work may be ordered by the Architect alone. Change Orders, Construction Change Directives, and minor changes in the Work can only be prepared and issued by the Architect.
- 9.1.3 NO CHANGES WITHOUT AUTHORIZATION.** There shall be no extra Work or change in the Work, without an executed Change Order, Construction Change Directive, or order by the Owner for a minor change in the Work as herein provided. There shall be no change in the Contract Sum, or the Contract Time without an executed Change Order, or Construction Change Directive. The Contractor shall be responsible for any cost or delay associated with any extra work, or correction thereof, performed outside of the above stated Contract modification process.
- 9.1.4 PROMPT IMPLEMENTATION.** Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Changes in the Work shall be performed under applicable provisions of the Contract Documents. Special Provisions and Division 1 of the Specifications apply to all changes.
- 9.1.5 ACCOUNTING RECORDS.** With respect to portions of the Work performed as Change Orders and Construction Change Directives the Contractor shall maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

9.2 MINOR CHANGES

The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum, an extension of the Contract Time, if such change is consistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. **CHANGE ORDERS**

- 9.2.1 DEFINITION.** A Change Orders (CO) is a written instrument, prepared by the City, and signed by the Owner, the Contractor, and the Architect stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.
- 9.2.2 DETERMINING COSTS.** Methods used in determining adjustments to the Contract Sum may include those listed in Sub-article 9.8
- 9.2.3 CHANGE ORDERS FINAL.** All changes to Contract Sum and Contract Time related to a change in the Work shall be included in the same Change Order. Any time extensions caused by the change in Work shall be included. Any allowable costs or allowable time extensions not included shall be deemed waived.
- 9.2.4 WHEN EFFECTIVE.** Change Orders shall become effective when executed by the Owner, the Architect, and the Contractor. Change Orders are subject to approval by the **Owner**.

9.3 PROPOSED CHANGE ORDER (PCO)

- 9.3.1 DEFINITION.** A Proposed Change Order (PCO) is a written request prepared by the Contractor proposing a change in the Contract Sum or Contract Time. A PCO may be in response to an RFP, a claim per Article 8, or a recommendation to improve the quality of the Work or reduce the cost of the Work.

9.3.2 SCOPE. A PCO shall contain adequate information to enable Architect to perform a detailed evaluation of any proposed change in Contract Sum, Contract Time, or scope of Work. Costs shall be broken down into labor, material, equipment rental, and overhead and profit. Breakdown and detail shall be consistent with that required in Sub-article 9.9. Time requests must comply with Sub-article 9.7 and Article 8.

9.4 CONSTRUCTION CHANGE DIRECTIVES (CCD)

9.4.1 DEFINITION. A Construction Change Directive (CCD) is a written order prepared by the City and signed by the Owner, directing a change in the Work prior to agreement on adjustment, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly.

9.4.2 USE OF CONSTRUCTION CHANGE DIRECTIVE. A CCD shall be used in the absence of total agreement on the terms of a CO. A CCD may be used to begin construction on a change in the Work before the cost of the change has been determined.

9.4.3 PROMPT IMPLEMENTATION. Upon receipt of a CCD, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Contract Sum and the Contract Time or the method for determining them.

9.4.4 RECORDED AS CHANGE ORDER. A CCD signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

9.5 ADJUSTMENTS IN CONTRACT TIME

9.5.1 CRITICAL PATH. Time extension will not be allowed unless the Contractor can document that the Work of the Change Order was on the critical path of the project schedule, and was scheduled and performed so as to minimize the impact on the overall schedule.

9.5.2 INCLUSION WITH COSTS. Change Orders for additional cost shall include the change in Contract Time, if any, properly attributable to that change in the Work. The change in Contract Time shall be the number of days increase or decrease in the overall project schedule resulting solely from that change in the Work.

9.5.3 NO RESERVATION ALLOWED. In no event will the Contractor be allowed to reserve its rights to assert a claim for time extension related to a Change Order after approval of that Change Order unless the Owner agrees in writing to allow such reservation.

9.6 ADJUSTMENTS IN CONTRACT SUM

9.6.1 METHODS OF DETERMINING COST. The amount of the increase or decrease in the Contract Sum due to a change in the Work, if any, shall be determined in one or more of the following Methods:

9.6.1.1 Lump Sum. Mutual acceptance of a lump sum itemized and supported by sufficient substantiating data to permit evaluation.

9.6.1.2 Unit Price. Unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor.

9.6.1.3 Agreed Upon Method. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

9.6.1.4 Time-and-Materials. As provide in Sub-article 9.9.

9.6.2 ALLOWABLE COSTS. Unless otherwise provided in the Contract Documents, costs for the purposes of Change Orders shall be limited to labor, materials, equipment rental, and approved costs, as defined in Sub-article 9.9 plus overhead and profit per Paragraph 9.8.4.

9.6.3 COST RELATED TO TIME EXTENSIONS. If a change in Work results in an increase in Contract Time, the costs of extended Contract Time such as additional temporary facilities rental shall not be included in the Change Order. Costs for extended Contract Time will be reconciled at Project closeout. Any approved costs for extended Contract Time will be deducted from Liquidated Damages due Owner, if any. See Sub-article 8.4 for allowable costs for extension in Contract Time.

9.6.4 OVERHEAD AND PROFIT:

9.6.4.1 Definition. Overhead and profit includes profit and all costs of doing business including off-site office expense, bonds, insurance, Special Provisions, supervision, small tools, and all other expenses not specifically included in labor, material, and equipment rental, and approved other costs, as described in Sub-article 9.9.

9.6.4.2 Limits. Contractor's overhead and profit shall not exceed 15% of the sum of labor, materials, equipment rental, and approved costs for any work performed directly by the Contractor. Contractor's overhead and profit Contractor shall not to exceed 8% of labor, materials, rentals, and overhead and profit of any work performed by a Subcontractor. Subcontractors' overhead and profit shall not exceed 15% of labor, materials, and rentals on Work performed directly by Subcontractor. In the event a change involves the work of Sub-Subcontractors, Subcontractor's total overhead and profit shall not exceed 5% and Sub-subcontractors overhead and profit shall not exceed 10%.

9.6.4.3 Overhead and Profit on Credits. When both additions and credits are involved in a change, the allowance for overhead and profit shall be based on the net increase, if any, with respect to that change. The amount of credit to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost, without overhead and profit, except as follows: credits on RFP's issued in the first 21 days of Contract time shall include overhead and profit of 8% for Contractor and Subcontractors or documented overhead and profit from bid.

9.7 TIME-AND-MATERIALS METHOD

9.7.1 COSTS. Costs shall be determined by documentation of actual costs of labor, material, and equipment plus a percentage for overhead and profit per Paragraph 9.8.4.

9.7.2 LABOR. Labor will be the actual cost for wages paid to each worker for the work performed plus actual payments of payroll taxes, benefits, and other direct payroll burden paid. Payroll records shall be made available for documentation purposes. Labor classifications used shall be appropriate to the Work performed and are subject to approval of the Architect.

9.7.3 MATERIAL. Costs shall include taxes and delivery as documented by invoice. Only material actually incorporated into the Work or used in the performance of the Work will be included in costs. In absence of invoice, competitive market price at time of construction, as determined by Architect, shall be used. Materials used are subject to approval of Architect and or Inspector.

9.7.4 EQUIPMENT RENTAL. Costs shall include fuel and transportation costs as documented by invoice. In the absence of invoice, no payment for rental equipment will be made. No payment will be made for hand tools or small power tools or for power tools or equipment that are required to be on site to perform the original Work of the Contract at the time that the extra work is performed. Use of rental equipment is subject to approval of Inspector. Only rental time actually used and necessary for completion of extra Work, as determined by Inspector, will be included in costs.

9.7.5 APPROVED COSTS. Owner may approve other unusual or unforeseen costs not listed above on a case by case basis.

9.7.6 DAILY REPORTS BY CONTRACTOR:

9.7.6.1 General. At the close of each working day, the Contractor shall submit a daily report to the Inspector, on forms approved by the Owner, listing the following, together supporting documentation:

9.7.6.1.1 Labor. Show names of workers, classifications, and number of hours worked.

9.7.6.1.2 Materials. Describe and list quantities of materials used; provide delivery tags, packing lists or receipts.

9.7.6.1.3 Equipment Rental. Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation; provide delivery tags or receipts.

9.7.6.1.4 Other Costs. Describe in such detail as the Owner may require.

9.7.6.2 NOT USED.

ARTICLE 10 - CLAIMS AND DISPUTES

10.1 GENERAL

- 10.1.1 CLAIM.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract Documents. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 10.1.2 BACKCHARGE.** Backcharging is the process of withholding money otherwise due the Contractor in the amount of an expense or damage to Owner caused by the Contractor. If the amount of expense or damage is greater than the amount otherwise due the Contractor, Owner will invoice Contractor for the difference which shall be due upon resolution of claim.
- 10.1.3 TIME LIMITS ON CLAIMS.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims, by either party, must be made by written notice to both the Architect and the other party. If Contractor performs Work related to a claim prior to written notice of that claim for the cost of such Work, Contractor waives any right to assert such claim, except in the case of an emergency endangering life or property arising under Sub-article 14.4. Claims regarding Contract Sum or Contract Time are void if made after final payment.
- 10.1.4 CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim including mediation, or litigation, unless otherwise agreed to in writing, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract. However, Contractor shall not construct any Work related to the claim, if that construction could increase the amount of the claim, unless required to do so in writing by the Owner.
- 10.1.5 JUSTIFICATION.** If the Contractor believes additional cost or time is involved due to a written interpretation from the Architect, an order by the Owner to stop the Work other than as allowed by Paragraph 2.3.1, a written order for a minor change in the Work issued by the Architect, termination of the Contract by the Owner, the Owner's suspension of the Work, unknown condition, or other reasonable grounds, a claim shall be filed in accordance with the procedure established herein. Claims may be in the form of a PCO.
- 10.1.6 CLAIMS FOR COST.** Claims for construction related cost shall comply with Article 9. Claims for costs related to time extensions shall comply with Paragraph 10.1.7, below.
- 10.1.7 CLAIMS FOR TIME OR DELAY.** Claims for time extensions and related costs shall comply with Article 8, Paragraph 9.7 and Paragraph 9.8.3. In the case of a continuing delay, only 1 written notice of claim is necessary.
- 10.1.8 CLAIMS FOR ADVERSE WEATHER.** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the time of year, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The number of rain days that could reasonably be expected will be based on available historical weather data for the project location unless specifically enumerated in the Article 8.

10.1.9 CLAIMS FOR UNFORESEEN CONDITIONS.

10.1.9.1 Consistent with Public Contract Code Section 7104 and Government Code Section 4215, as set forth in subparagraphs 10.1.9.2, and 10.1.9.3, below, if Contractor encounters physical conditions at the Site which are concealed, and which differ materially from those indicated in the Contract Documents or record documents provided by Owner, or are unknown conditions of an unusual nature, or which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall immediately notify the Owner per Sub-article 3.3 before conditions are disturbed. The Owner will promptly investigate such conditions, and per Sub-article 7.2, make a written determination as to whether conditions were unforeseeable and require a change in the Work. If appropriate, Owner will issue a CCD to accommodate or correct the condition. Claims by either party in opposition to such Architect's determination must be made within 10 days after the Owner has given notice of the decision.

10.1.9.2 PUBLIC CONTRACT CODE SECTION 7104. Any public works Contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

10.1.9.2.1 That the Contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:

(1) Material that the 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 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 Work of the character provided for in the contract.

10.1.9.2.2 That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order under the procedures described in the Contract.

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

10.1.9.3 Government Code Section 4215. Government Code Section 4215 provides that the Owner assumes the responsibility for removal, relocation, and protection of utilities on the Site at the time of commencement of construction with respect to any such utility facilities which are not identified in the Drawings and Specification made part of the Contract Documents. The Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such Work.

10.1.10 CLAIMS FOR COSTS OF ADDITIONAL PROFESSIONAL SERVICES. If at any time prior to final payment, through no fault of its own, the Owner find it necessary to secure additional professional services for any purpose, due to any act or omission of the Contractor, the Contractor shall be Backcharged by the Owner for any costs incurred for any such services. Such Backcharging shall be independent from any other Owner remedies. Additional services shall include, but shall not be limited to, the following:

10.1.10.1 Services made necessary by the default of the Contractor, defects or deficiencies in the Work, or failure of the Contractor to perform according to any provision of the Contract Documents.

10.1.10.2 Services in connection with evaluating untimely requests by the Contractor or substitutions of products, materials, equipment, or evaluating requests for substitutions which require revisions to Drawings, Specifications, or additional documentation, and making subsequent revisions to Drawings, Specifications, and providing other documentation required. This provision will not apply to the situation where the specified item is no longer manufactured or available.

10.1.10.3 Services in connection with evaluating requests for substitution of Subcontractors proposed by the Contractor.

10.1.10.4 Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.

10.1.10.5 Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified Time of Completion.

10.1.10.6 Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.

10.1.10.7 Services in conjunction with more than 1 re-review of required submittals of Shop Drawings, Product Data, and Samples.

10.1.10.8 Services for processing an RFI when requested information is clearly shown in the Construction Documents or when an RFI is a request to deviate from the Contract Documents or is related to correcting a construction error.

10.1.10.9 Services in connection with more than 2 inspections for completion.

10.2 AUDITING PROCEDURES

10.2.1 OWNER RIGHT TO AUDIT. Upon written notice to Contractor, the Owner shall have the right to audit all records and documents of any nature whatsoever under the custody or control of the Contractor or Contractor's agents, Subcontractors, or representatives, which relate to the Project, including the bid phase. Contractor shall maintain these records for a period of 3 years after the Notice of Completion is issued and make them available to the Owner, the auditors or other representatives appointed by the Owner.

10.2.2 SUBCONTRACTORS. Contractor shall ensure that all Subcontractors maintain appropriate records relating to the Project. Contractor shall furnish records of any Subcontractors or other agents of Contractor to the Owner upon request. If the Owner requests records relating to a Subcontractor or other agent's involvement in the Project, such requests shall be processed through the Contractor. A Contractor's failure to abide by the provisions of this Article shall be deemed a material breach of the Contract and, upon the Owner's election, may be considered a default.

10.2.3 NOT USED.

10.3 REVIEW OF CLAIMS BY OWNER

10.3.1 DECISION OF OWNER. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Owner for action. A decision by the Owner shall be required as a condition precedent to mediation of a claim between the Contractor and the Owner as to all such matters arising prior to the date final payment is due. The decision by the Owner in response to a claim shall not be a condition precedent to mediation in the event: the position of Owner is vacant; the Owner has not received evidence or has failed to render a decision within agreed time limit; the Owner has failed to take action required under Paragraph 10.3.4 within 30 days after the claim is made; 45 days have passed after the Claim has been referred to the Owner; or the Claim relates to a Stop Notice Claim.

- 10.3.2 OWNER'S REVIEW.** The Owner will review claims and take one or more of the following preliminary actions within 14 days of receipt of a claim: request additional supporting data from the claimant; reject the claim in whole or in part, stating reasons for rejection; recommend approval of the claim by the other party; or suggest a compromise. The Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.
- 10.3.3 DOCUMENTATION IF RESOLVED.** If a claim has been resolved, the Owner will prepare or obtain appropriate documentation.
- 10.3.4 OWNER'S WRITTEN DECISION.** If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Owner or Architect, the Owner will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a claim by the Owner shall be final and binding on the parties but subject to dispute resolution per Sub-Articles 10.4 and 10.5 below. The Contractor, without delaying the job, shall proceed with all Work to be performed under the Contract consistent with Owner's decision without prejudice to a final determination of the dispute.

10.4 DISPUTE RESOLUTION OF CLAIMS OF \$375,000.00 OR LESS

- 10.4.1 GENERAL.** Notwithstanding any other provision herein, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code Section 20104, et seq. "claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the Owner.
- 10.4.2 SUBMISSION.** The Contractor shall submit its claim of \$375,000.00 or less to the Owner in writing, within the time frames established under Paragraph 10.1.3, but no later than before the final payment is made. The Owner shall respond within the time provided by statute. If the Contractor disagrees with the response or the Owner fails to respond within the time permitted, the Contractor shall notify the Owner of the disagreement in writing within 15 days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference as detailed in Sub-article 10.5 below. The Owner shall schedule a meet-and-confer conference within 30 days of the demand. If not resolved at the meet-and-confer conference, then the claim shall be submitted to mediation pursuant to the procedures set forth in Sub-article 10.5 below. If the dispute is not resolved at the mediation, the Contractor may initiate a civil action as set forth in Public Contract Code Section 20104 et seq.
- 10.4.3 TIME LIMITS NOT EXTENDED.** Nothing in Subdivision (a) of Public Contract Code Section 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for filing claims by the Contractor.

10.5 DISPUTE RESOLUTION OF CLAIMS IN EXCESS OF \$375,000.00

- 10.5.1 MEET AND CONFER CONFERENCE.** Following action by the Owner under Sub-article 10.3, the parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy. The party disputing the Architect's action shall give the other party written notice of the dispute. Within 10 days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 20 days of the disputing party's notice, or if the party receiving such notice will not meet within 10 days, either party may initiate mediation of the controversy as described below.
- 10.5.2 MEDIATION.** As a condition precedent to the initiation of litigation and subsequent to the fulfillment of the claims procedures established in Paragraph 10.8.1 of this Article, disputes in excess of a total value of \$375,000.00 shall first be submitted to mediation pursuant to the procedures set forth herein.

- 10.5.3 NEGOTIATIONS BEFORE MEDIATION.** Negotiations to resolve disputes before mediation is initiated are for settlement purposes only and are not binding.
- 10.5.4 AUTHORIZATION.** In the event of a dispute or issue that cannot be resolved by negotiation, the Owner and the Contractor agree to attempt to resolve the matter by mediation. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
- 10.5.5 INITIATION OF MEDIATION.** Either party may initiate mediation by notifying the other party or parties in writing.
- 10.5.6 REQUEST FOR MEDIATION.** A Request for mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those, if any, who will represent them in the mediation.
- 10.5.7 SELECTION OF MEDIATOR.** Within 14 days after execution of the Contract for Construction, the parties will meet-and-confer to select an appropriate mediator agreeable to all parties and 2 alternate mediators, who will serve for the entire project. If the parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by a recognized association such as the American Arbitration Association.
- 10.5.8 QUALIFICATIONS OF A MEDIATOR.** Any mediator selected shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Before accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another mediator.
- 10.5.9 VACANCIES.** If any mediator shall become unable or unwilling to serve, the First Alternate mediator shall be selected unless the parties agree otherwise.
- 10.5.10 REPRESENTATION.** Any party may be represented by persons of its choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the mediator.
- 10.5.11 TIME AND PLACE OF MEDIATION.** The mediator shall set the time of each mediation session. The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine. All reasonable efforts will be made by the parties and the mediator to schedule the first session within 30 days after initiation of mediation.
- 10.5.12 IDENTIFICATION OF MATTERS IN DISPUTE.** At least 10 days before the first scheduled mediation session, each party shall provide the mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator such memoranda may be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issue presented. The mediator may require each party to supplement such information.
- 10.5.13 AUTHORITY OF MEDIATOR.** The mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine. The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

- 10.5.14 PRIVACY.** Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.
- 10.5.15 CONFIDENTIALITY.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving as mediator shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial, or other proceedings: views expressed or suggestions made by the other party with respect to the possible settlement of the dispute; statements made by the other party in the course of the mediation proceedings; proposals made or views expressed by the mediator; and whether the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- 10.5.16 NO STENOGRAPHIC RECORD.** There shall be no stenographic record of the mediation.
- 10.5.17 TERMINATION OF MEDIATION.** The mediation shall be terminated: by the execution of a Settlement Agreement by the parties; by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.
- 10.5.18 EXCLUSION OF LIABILITY.** No mediator shall be a necessary party in judicial proceedings related to the mediation. No mediator shall be liable to any party for any act or omission in connection with any mediation conducted hereunder.
- 10.5.19 INTERPRETATION AND APPLICATION OF THESE MEDIATION PROVISIONS.** The mediator shall interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.
- 10.5.20 EXPENSES.** The expenses of witnesses for each party shall be paid by the party producing the witnesses. All other expenses of the mediation, including, required travel and other expenses of the mediator, the expenses of any witness called by the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by all parties to the mediation.

ARTICLE 11 - PAYMENTS AND COMPLETION

- 11.1 CONTRACT SUM.** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
- 11.2 SCHEDULE OF VALUES**
- 11.2.1 SUBMITTAL.** Within 10 days of the Date of Commencement, on forms approved by the Architect, Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, broken down in the detail specified in Division 1 of the specifications.
- 11.2.2 OWNER REVIEW.** The Owner shall review all submissions received pursuant to Paragraph 9.2 in a timely manner. The submitted schedule of values, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 11.3 APPLICATIONS FOR PAYMENT**
- 11.3.1 PROCEDURE.** On or before the date established in the Agreement, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be supported by the following or such portion thereof as Owner requires:
- 11.3.1.1** The percentage of completion of the Contractor's Work by line item.

- 11.3.1.2** The additions to and subtractions from the Contract Price and Time.
- 11.3.1.3** A summary of the retentions (each Application shall provide for retention, as set out in Article 11.6, of the amount due until completion of the Work of the Contractor and Final Acceptance thereof by Owner).
- 11.3.1.4** A certification that as-built drawings are current.
- 11.3.1.5** Updated schedules as required in Article 6 above.
- 11.3.1.6** Contractor's certification that all required insurance is in full force and effect.
- 11.3.1.7** The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract
- 11.3.1.8** The amount being requested with the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract and the balance that will be due to each of such entities after said payment is made.
- 11.3.1.9** A statement showing all payments made by the Contractor for labor and materials on account of the Work covered in the preceding Application for Payment.
- 11.3.1.10** A conditional waiver and release upon progress payment from each Subcontractor, covering the Work for the current pay period; and an unconditional waiver and release upon progress payment from each Subcontractor, covering the Work for which payment has been received at least 10 days previous.
- 11.3.1.11** Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time.

11.3.2 PAYMENT FOR MATERIALS AND EQUIPMENT. As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves, the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Architect and the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Contractor and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

11.3.3 WARRANTY OF TITLE. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

11.4 CERTIFICATES FOR PAYMENTS

11.4.1 APPROVAL OF APPLICATION FOR PAYMENT. The Architect will, within 7 days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 11.5.1.

11.4.2 ARCHITECT'S REVIEW. The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the

Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, reviewed construction means, methods, techniques, sequences or procedures, reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

11.5 DECISIONS TO WITHHOLD PAYMENT

11.5.1 REASONS TO WITHHOLD PAYMENT. The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner if, in the Owner's opinion, the representations to the Owner required by Paragraph 11.4.2 cannot be made. The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss due to:

11.5.1.1 Defective Work not remedied.

11.5.1.2 Unsatisfactory prosecution of the Work by the Contractor.

11.5.1.3 Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.

11.5.1.4 Reasonable doubt that the Work can be completed for the unpaid balance of Contract Sum or by the completion date.

11.5.1.5 Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, Shop Drawings, submittal schedules, Schedule of Values, Product Data and Samples, proposed product lists, executed Change Orders, and verified reports.

11.5.1.6 Breach of any provision of the Contract Documents.

11.5.1.7 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor.

11.5.1.8 The cost of professional services retained by the District in accordance with the provisions of Paragraph 10.1.10.

11.5.1.9 . Failure to pay Subcontractors or material suppliers.

11.5.1.10 Failure to pay prevailing wages, by the Contractor or any Subcontractor.

11.5.1.11 Stop Notices filed, unless the Contractor at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least 125% of the claim, in a form satisfactory to the Owner, which protects the Owner against such claims.

11.5.1.12 Liquidated damages assessed against the Contractor.

11.5.1.13 Damage to the Owner, another Contractor, or Subcontractor.

11.5.1.14 Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment.

11.5.2 REASONS FOR WITHHOLDING PROVIDED. Upon request of the Contractor whose payment is deferred, the Contractor shall be given a written copy of Owner's reasons for withholding payment.

11.5.3 PAYMENT AFTER CURE. When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due

to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

11.6 RETAINAGE

- 11.6.1 GENERAL.** Owner will retain 5% of approved payments to ensure performance under the Contract. The retention will be released once the project is completed.
- 11.6.2 SUBSTITUTION OF SECURITIES.** In accordance with Section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this Paragraph shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial Owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this paragraph shall be substantially similar to the form set forth in Public Contract Code Section 22300.

11.6.3 PAYMENT OF RETAINAGE.

11.6.3.1 At Final Completion. Pursuant to Public Contract Code Section 7107 the retainage, less any amounts disputed by the Owner or which the Owner has the right to withhold, shall be paid after approval by the Owner of the Architect's Certificate of Payment referred to in Paragraph 11.10.1, and after the satisfaction of the conditions set forth in Sub-article 11.10, and within 60 days after the acceptance of the Work and recording of the Notice of Completion by Owner. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the Owner and the Contractor pursuant to Public Contract Code Section 22300.

11.7 PROGRESS PAYMENTS

- 11.7.1 PAYMENTS TO CONTRACTOR.** Within 30 days after Owner has received an invoice, Contractor shall be paid a sum equal to 95% of the total certified for payment, less the aggregate of previous payments. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Contractor, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment.
- 11.7.2 PAYMENTS TO SUBCONTRACTORS.** No later than 10 days after receipt, pursuant to Business and Professions Code Section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 11.7.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION.** The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.
- 11.7.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT.** The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

- 11.7.5 PAYMENT TO SUPPLIERS.** Payment to material or equipment suppliers shall be treated in a manner similar to that provided in Paragraphs 11.7.2, 11.7.3 and 11.7.4.
- 11.7.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE.** An approved Request for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 11.7.7 JOINT CHECKS.** Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Contractor and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.
- 11.8 SUBSTANTIAL COMPLETION**
- 11.8.1 DEFINITION:** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
- 11.8.2 CONTRACTORS NOTICE:** When the Contractor considers, in consultation with the Inspector, that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, and the Inspector agrees that the Work is ready for inspection, the Contractor shall so notify the Owner in writing and include comprehensive list of minor items to be completed or corrected (Contractor's List). Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 11.8.3 INSPECTIONS: Upon receipt of the Contractor's list, the Owner, in the company of the Contractor, will make an inspection to determine whether the Work, or designated portion thereof, is** substantially complete. If the Owner's inspection discloses that the Work is not complete enough for efficient documentation of the Punch List, the Contractor will be notified of which items of incomplete Work are preventing a complete inspection. The Contractor shall, before requesting another inspection, complete or correct such items and all items on the Contractors List. The Contractor shall then submit a request for an additional inspection by the Owner and to determine Completion. If the Owner's inspection discloses that the Work is complete enough for efficient documentation of the final Punch List, the Owner will complete the inspection of the Work.
- 11.8.4 CERTIFICATE OF SUBSTANTIAL COMPLETION.** If the inspection confirms that the Work is substantially complete, the City will prepare a Punch List and a Certificate of Substantial Completion which shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the Punch List. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.
- 11.8.5 COMMENCEMENT OF WARRANTIES.** Warranties required by the Contract Documents shall commence on the date of acceptance of the Work by the Owner. Warranties are subject to extension per Article 12.
- 11.8.6 COMPLETION OF PUNCH LIST WORK.** Contractor shall, upon receipt of the City's Punch List, immediately initiate work on all items therein and complete the same within the time period allowed, not to exceed 30 days. Upon completion of the Work contained in the Punch List and any other non-conforming work discovered in the process, the Contractor shall notify the Owner and Architect that the Work is ready for final inspection and acceptance and shall submit to the Architect
- 11.8.7 WORK NOT COMPLETED.** Any Work remaining to be completed after date of Substantial Completion shall be completed within 30 days of that date. Owner reserves the right to either obtain quotes from other Contractors to complete any Work, or request the Architect to estimate the costs of construction by another Contractor to complete any Work. At the Owner's discretion, Owner may deduct from the final payment the value of the Work not completed within 30 days of Substantial Completion, based either on quotes from other

Contractors or on the Architect's estimate of costs to complete that Work plus a reasonable allowance for architectural, engineering, inspection, and project management services necessary to administer the completion of the Work plus a reasonable allowance for other expenses incurred in completion of the Work..

11.8.8 COSTS OF MULTIPLE INSPECTIONS. More than one request each under Paragraph 11.8.3 or 11.10.1 of the Owner or Architect to make inspections required resulting in Architect visiting Site, shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and withheld from remaining payments.

11.9 PARTIAL OCCUPANCY OR USE

11.9.1 OWNER'S RIGHTS. The Owner may occupy or use any completed or partially completed portion of the Work at any stage. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, reduction in amount per day of liquidated damages, and the commencement of warranties required by the Contract Documents. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the Owner as provided under Paragraph 11.8.

11.9.2 INSPECTION PRIOR TO OCCUPANCY OR USE. Immediately prior to such partial occupancy or use, the Owner, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

11.9.3 OCCUPANCY IS NOT ACCEPTANCE. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

11.10 FINAL COMPLETION AND FINAL PAYMENT

11.10.1 FINAL INSPECTION: Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. Upon acceptance of the Work of the Contractor as fully complete the Owner shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from Owner, pay the amounts due Subcontractors.

11.10.2 FINAL PAYMENT. Final payment shall be contingent on the following:

11.10.2.1 A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final waiver of all Stop Notices or a Stop Notice Release Bond from a surety acceptable to the Owner as defined by the Contract Documents, including a release of Stop Notice in recordable form, in connection with the Work obtained by Contractor from each person to receive a payment thereunder, which waivers of Stop Notice shall be in a form as approved by Owner.

11.10.2.2 The Contractor shall have made all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.

11.10.2.3 The Contractor shall insure that each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

11.10.2.4 The Contractor shall deliver to the Owner final As-Built Redline drawings with the Contractor's certification of their accuracy, all guarantees, operation and maintenance instructions for equipment and apparatus, and other close-out submittals required by the Contract Documents. The documents,

except the As-Built Redlines, shall be organized in a three-ring binder pursuant to the Contract Documents.

11.10.2.5 Architect shall have issued a Final Certificate of Payment.

11.10.2.6 The Contractor shall have removed all waste materials and rubbish from and about the Site, as well as all tools, construction equipment, machinery, surplus material, scaffolding equipment, and any other similar materials of the Contractor or any Subcontractor, shall have cleaned, all glass surfaces, and shall have left the Work broom clean, except as otherwise provided in the Contract Documents.

ARTICLE 12 - WARRANTY AND CORRECTION OF WORK

12.1 WARRANTY OF WORK

The Contractor warrants to the Owner and Architect that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be rejected by the Architect or the Owner. The Contractor's warranty does not cover damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

12.2 CORRECTION OF WORK

12.2.1 CORRECTION OF REJECTED WORK

The Contractor shall promptly correct Work rejected by the Architect or Owner or Work which does not conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 REMOVAL OF NONCONFORMING WORK. The Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner.

12.2.3 OWNER'S RIGHTS IF CONTRACTOR FAILS TO CORRECT. If the Contractor fails to correct nonconforming Work within a reasonable time after receiving notice from the Owner, the Owner may correct it in accordance with Paragraph 2.3.2.

12.2.4 COST OF CORRECTING THE WORK. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.3 CORRECTIONS AFTER SUBSTANTIAL COMPLETION

12.3.1 PROMPT NOTIFICATION AND CORRECTION. In addition to the Contractor's obligations under Sub-article 12.1, if within 1 year after the date for commencement of warranties established under Paragraph 11.8.5, or by terms of an applicable guarantee or warranty required by the Contract Documents, any Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall promptly notify the Contractor of the condition and the Contractor shall correct it promptly, unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor fails to correct the nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.3.2.

12.3.2 EXTENSION OF CORRECTION PERIOD. For Work requiring repair or discovered to not comply with Contract Documents after Substantial Completion, but before final completion, and for Work first performed after Substantial Completion, the 1 year correction period shall be extended by the period of time between Substantial Completion and the actual completion or correction of the Work. This obligation under this Paragraph 12.3.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.3.3 NO TIME LIMITATION. Nothing contained in this Sub-article 12.3, or in guarantees or warranties required in the Specifications, shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of 1 year period for correction of Work as described in Paragraph 12.3.1 relates only to the specific obligation of the Contractor to correct the Work and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.4 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, if removal and correction are not required to meet Code requirements. If the Owner accepts the nonconforming Work, the Contract Sum shall be reduced an appropriate and equitable amount to be determined by the Architect. Such reduction shall be effective whether or not final payment has been made.

ARTICLE 13 - PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PROGRAMS AND PRECAUTIONS

13.1.1 GENERAL. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

13.1.2 SAFETY PROGRAM. Contractor shall initiate a safety program and designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall conduct regularly scheduled meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the program. The safety program, in addition to normal legislative requirements of a safety program, will address the additional requirements to provide for the safety of anyone using the school site, to separate the construction area from the remaining school property, and to prohibit the use of school facilities by Contractor's employees unless specifically permitted otherwise.

13.1.3 MATERIAL SAFETY DATA SHEETS. The Contractor and each Subcontractor shall supply to their employees, and where site is occupied, to the Owner, copies of Material Safety Data Sheets (MSDS) for hazardous substances that may be used in the course of the Work, together with notice of actual hazardous substances to which employees may be exposed while performing Work and appropriate protective measures.

13.2 SAFETY OF PERSONS AND PROPERTY

13.2.1 RESPONSIBILITY AND PRECAUTIONS. The Contractor shall assume responsibility for and take continuous precautions for the safety of, and shall provide continuous protection to prevent damage, injury, or loss to:

13.2.1.1 Employees on the Work and other persons who may be affected thereby.

13.2.1.2 The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub subcontractors.

13.2.1.3 Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

13.2.1.4 Owner's property, and the property of others potentially affected by the execution of the Work.

13.2.2 REMEDY OF LOSS. The Contractor shall remedy any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner, to the Owner's property, or the property of others arising in connection with operations under the Contract Documents (other than damage or loss insured under property insurance required by the Contract Documents).

13.2.3 NOTICES AND REGULATIONS. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

13.2.4 SAFETY BARRIERS AND SAFEGUARDS. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

13.2.5 STRUCTURAL LOADING AND TEMPORARY CONSTRUCTION. The Contractor shall not impose loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the Work. The design of temporary construction, including, hoisting equipment, cribbing, shoring, barricades, walkways, scaffolding and temporary bracing, is solely the responsibility of the Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall obtain permits for, and procure any engineering or other design required for permits or to verify that temporary construction is adequate for the intended use and capable of safely accepting all loads that may be imposed upon them.

13.2.6 USE OF EXPLOSIVES OR OTHER HAZARDOUS METHODS. When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner at least 7 days before any detonation of explosives on site and before storing explosives or hazardous materials on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

13.3 HAZARDOUS MATERIALS

13.3.1 DISCOVERY OF HAZARDOUS MATERIALS. In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by Section 25117 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such material was generated by the Contractor or the Owner. The Work in the affected area shall not thereafter be resumed, without written agreement of the Owner and the Contractor. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless.

13.3.2 HAZARDOUS MATERIAL WORK LIMITATIONS. In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain a testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required to perform, without consent, any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

- 13.3.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY CONTRACTOR.** In the event the presence of hazardous materials on the Project Site is not caused by the Contractor, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Contractor for any additional costs incurred or Project delay in accordance with the applicable provisions of Article 9 herein. In addition, Owner shall defend, indemnify and hold harmless the Contractor and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material.
- 13.3.4 INDEMNIFICATION BY CONTRACTOR FOR HAZARDOUS MATERIAL CAUSED BY CONTRACTOR.** In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.
- 13.3.5 TERMS OF HAZARDOUS MATERIAL PROVISION.** The terms of this Hazardous Material provision shall survive the completion of the Work and/or any termination of this Contract.

13.4 EMERGENCIES

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Articles 8, 9, and 10.

13.5 TRENCH EXCAVATION

- 13.5.1 TRENCHES GREATER THAN 5 FEET.** Pursuant to Labor Code Section 6705, if the Contract Sum exceeds \$25,000.00 and involves the excavation of any trench or trenches 5 feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. Contractor shall have such plan prepared or reviewed and approved by a civil or structural engineer registered in the state of California at the Contractor's expense.
- 13.5.2 NO TORT LIABILITY OF OWNER.** Pursuant to Labor Code Section 6705, nothing in this Sub-article 14.5 shall impose tort liability upon the Owner or any of its employees.
- 13.5.3 NO EXCAVATION WITHOUT PERMITS.** The Contractor shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

ARTICLE 14 - INSURANCE AND BONDS

- 14.1.1 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS.** The Contractor shall name, on any policy of insurance required by the Standard Specifications, the Architect as additional insured. Contractor shall require Subcontractors to name the the Architect as additional insured. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

14.2 WAIVER OF SUBROGATION

The Owner, the Architect, and the Contractor each waive (to the extent permitted by law) any right to recover against the other for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by either the Owner, or any Contractor.

The provisions of this Sub-article 14.2 are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

ARTICLE 15 - MISCELLANEOUS PROVISIONS OF LAW

15.1 SMOKE-FREE ENVIRONMENT

The Contractor acknowledges that the Owner operates it's facilities as a Smoke-Free Environment. Smoking is prohibited inside the building or within 25 feet of the building, regardless of the building's level of completion or enclosure. The Contractor shall notify all Subcontractors of this provision.

ARTICLE 16 - TERMINATION OR SUSPENSION OF THE CONTRACT

16.1 TERMINATION BY THE OWNER FOR CAUSE

16.1.1 GROUNDS FOR TERMINATION. The Owner may terminate the Contract if the Contractor:

16.1.1.1 Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials.

16.1.1.2 Fails to make payment to Subcontractors for materials or labor.

16.1.1.3 Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction.

16.1.1.4 Otherwise is in substantial breach of a provision of the Contract Documents.

16.1.2 NOTIFICATION OF TERMINATION. When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of 7 days, terminate the Contract and may, subject to any prior rights of the surety:

16.1.2.1 Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor.

16.1.2.2 Accept assignment of subcontracts pursuant to Sub-article 4.4.

16.1.2.3 Complete the Work by whatever reasonable method the Owner may deem expedient.

16.1.3 PAYMENTS WITHHELD. If the Owner terminates the Contract for one of the reasons stated in Paragraph 17.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete.

16.1.4 PAYMENTS UPON COMPLETION. If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor, or Owner, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

16.2 TERMINATION OR SUSPENSION BY THE OWNER FOR CONVENIENCE

16.2.1 SUSPENSION BY OWNER. The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

16.2.1.1 Adjustments. An equitable adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

16.2.1.1.1 That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible.

16.2.1.1.2 That an equitable adjustment is made or denied under another provision of this Contract.

16.3 TERMINATION DUE TO DISCOVERY OF UNKNOWN CONDITIONS

The Owner reserves the right to terminate this Contract should the Owner determine not to proceed because of the discovery of any condition described in Sub-article 10.1.9 or Sub-article 14.3. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 11.

16.4 MUTUAL TERMINATION FOR CONVENIENCE

16.4.1.1 The Contractor and the Owner may mutually agree to terminate this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 11.

END SECTION

CITY OF STOCKTON

Contract Change Order #: 1

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 - NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER

Original Contract Price	\$14,450,556.00
Prior Change Order Total	\$.00
This Change Order	\$ 86,426.33
Revised Contract Price	\$14,536,982.33

TO Patriot Contracting, Inc. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

Additional Work Performed for Above Referenced Project
See page 2.

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefore the prices shown above.

By reason of this proposed change, 0 days extension of time will be allowed.

Accepted Date 12/13/2021
O. Ronaghinia
(Contractor)

By Omid Ronaghinia
Title Project Manager

Note: This contract change order is not effective until approved by the City Manager.

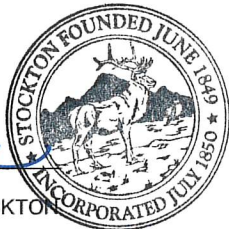
APPROVED AS TO FORM & CONTENT:
OFFICE OF THE CITY ATTORNEY

BY _____

Date: _____

ATTEST:

for Eliza R. Garza
ELIZA R. GARZA
CITY CLERK OF THE CITY OF STOCKTON



Internal Approval Routing

Mohammad Sadiq Date: 12/13/21
Submitted by:
Mohammad Sadiq, Project Manager

Grace B. Petines Date: 12/20/21
Approval by:
Grace Petines, Public Works Fiscal Division

Eric Alvarez Date: 2/1/22
Approval Recommended by:
Eric Alvarez, Deputy Public Works Director/City Engineer

Approval Recommended by:
Jodi Almassy Date: 02.01.2022
Jodi Almassy, Public Works Director

Change Order Approved By:
Harry Black Date: 3/2/22
City Manager, Harry Black

2020-12-15-1404
419000528
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CITY OF STOCKTON

Contract Change Order #: 1

Resolution/Motion No. 2020-12-15-1404
(if not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 Northeast Stockton Library and Recreation Center Project

TO Patriot Contracting Inc. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

1) **EXTRA WORK AT AGREED LUMP SUM**

In accordance with Section 4-1.05A "Changes and Extra Work – General" of the City of Stockton Standard Specifications, the Contractor was directed to provide the following items for the additional items of work:

I. **PCO1: Weld Type for Column Flange Connections:**

Provide 3/8 inch fillet weld type for column flange connections.

Agreed lump sum price: \$2,735.64

II. **PCO3: Weld Type for Main Entrance Assembly:**

Provide fillet weld and groove weld type for hollow structural steel members at main entry steel canopy.

Agreed lump sum price: \$1,193.40

III. **PCO7: Re-route Plumbing Pipe:**

Re-route storm drain pipe to avoid foundation's anchor bolt structure.

Agreed lump sum price: \$3,694.12

IV. **PCO8: Added Rebar Reinforcing:**

Install additional #4 & #6 vertical dowels and horizontal rebar ties for pedestal wall footing located at Line A between 5 to 6.2.

Agreed lump sum price: \$4,808.13

V. **PCO11.2: Added Manifold Systems:**

Manifold systems revisions for building water supply required to meet code requirements. Includes all added rough plumbing material, labor, and equipment for the additional excavation and backfill work to install the manifold.

Agreed lump sum price: \$47,137.72

VI. **PCO13: Backsplash and Bookshelf Additions:**

Additional 4" backsplash and additions for adult collection book shelf.

Agreed lump sum price: \$3,985.20

VII. PCO17r1: Lighting Revisions:

Lighting revisions for outdoor basketball court and work out areas includes adding and removing lighting fixtures as detailed below.

Additions:

- 2 type P6 light fixtures with bases
- 8 type P8 light fixtures
- Conduit and wiring for light fixtures
- Excavation and backfill

Removal:

- 3 type P5 light fixtures

Agreed lump sum price: \$21,871.08

VIII. PCO18: Changes to Parking Lot Lighting and Landscaping:

Lighting and landscaping modifications to the parking lot area including the deletion of one P2 type light fixture.

Agreed lump sum credit: (\$4,170.96)

IX. PCO21r3: Furnish and Install Red Slurry at PGE Electrical Main Line:

Furnish and install red slurry at driveway entry to cover existing conduits including PGE electrical main line in the Public Utility Easement. Work includes typical backfill and compaction.

Agreed lump sum price: \$5,172.00

TOTAL COST OF CHANGE ORDER WORK: \$86,426.33 ✓

The additional compensation, if any, included in this change order constitutes full compensation, including all mark ups, profits, surcharges, taxes and overhead costs, for the change in work as specified.

CITY OF STOCKTON

Contract Change Order #: 2

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 – NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER

Original Contract Price	\$14,450,556.00
Prior Change Order Total	\$86,426.33
This Change Order	\$41,309.21 ✓
Revised Contract Price	\$14,578,291.54

TO **Patriot Contracting Inc.** You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

Additional Work Performed for Above Referenced Project

See page 2.

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefore the prices shown above.

By reason of this proposed change, 32 days extension of time will be allowed.

Accepted Date May 25, 2022
[Signature]
(Contractor)

By Omid Ronaghinia
Title Project Manager

Note: This contract change order is not effective until approved by the City Manager.

APPROVED AS TO FORM & CONTENT:
OFFICE OF THE CITY ATTORNEY

BY _____

Date: _____

ATTEST:

[Signature]
for ELIZA R. GARZA
CITY CLERK OF THE CITY OF STOCKTON



Internal Approval Routing

[Signature] Date: 5/31/22
Submitted by:
Mohammad Sadiq, Project Manager

[Signature] Date: 06/02/22
Approval by:
Grace Patines, Public Works Fiscal Division

[Signature] Date: 6/2/22
Approval Recommended by:
Eric Alvarez, Deputy Public Works Director/City Engineer

Approval Recommended by:
[Signature] Date: 06.09.2022
Jodi Almasy, Public Works Director

Change Order Approved By:
[Signature] Date: 7/6/22
City Manager, Harry Black

2020-12-15-1404
419000528

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CITY OF STOCKTON

Contract Change Order #: 2

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 – NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER

TO **Patriot Contracting Inc.** You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

EXTRA WORK AT AGREED LUMP SUM

In accordance with Section 4-1.05A "Changes and Extra Work – General" of the City of Stockton Standard Specifications, the Contractor was directed to provide the following items for the additional items of work:

1. PCO16r1: Revisions to HVAC System:

Provide the added equipment and to HVAC system and VFR fan coil units per Construction Change Directive 08.

Agreed lump sum price: \$13,190.04

2. PCO19r1: Added Roof Deck Reinforcing:

Provide additional roof deck reinforcing for skylight and roof access.

Agreed lump sum price: \$2,949.48

3. PCO24r2: Under Slab Vapor Barrier Installation:

Under slab vapor barrier installation footing wrapping.

Agreed increase in contract working days: 5

Agreed lump sum price: \$24,599.99

4. PCO25r4: Trench Shoring for Manifold Water Connection:

Provide trench shoring for water connection to manifold.

Agreed lump sum price: \$4,907.79

5. PCO28: Changes to IT Equipment:

Change two data cabinets to floor mount post racks for additional equipment capacity.

Agreed lump sum credit: (\$943.72)

6. PCO29r1 & 31r1: 21 Day Failed Concrete Pour Delay:

Concrete pours failed on 7/19/2021, 7/20/2021, and 12/7/2022 resulting in the project falling 21 days behind schedule. The 21 days are being granted as non-compensatory days and no monetary value is associated with them.

Agreed increase in contract working days: 21

Agreed lump sum price: \$0.00

CITY OF STOCKTON

Contract Change Order #: 2

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 – NORTHEAST STOCKTON LIBRARY AND COMMUNITY CENTER

7. PCO30r1: Radius Earthwork COVID-19 Delay:

Radius Earthwork's crew contracted COVID-19 and were not able to work on site for 5 days. The 5 days are being granted as non-compensatory days and no monetary value is associated with them.

Agreed increase in contract working days: 5
Agreed lump sum price: \$0.00

8. PCO36: Shifting Storage Room Doors in Gymnasium:

Shift the framing for doors to storage rooms in gymnasium to accommodate changes to FF&E Package.

Agreed lump sum price: \$2,037.00

9. PCO37: Connect Roof Drain Lines to Underground Drainage Area:

Provide additional piping to connect the roof drain lines to underground drainage at 8 locations.

Agreed lump sum price: \$7,539.63

10. PCO38: Changes to Exterior Lighting:

Substitute exterior lighting fixtures with revised #U3 light type.

Agreed lump sum credit: (\$12,971.00)

11. PCO45: Soil Compaction Data Delay:

Soil compaction data was required but not available on 4/08/2021 resulting in the project falling 1 day behind schedule. The 1 day is being granted as a non-compensatory day and no monetary value is associated with it.

Agreed increase in contract working days: 1
Agreed lump sum price: \$0.00

TOTAL COST OF CHANGE ORDER WORK: \$41,309.21 ✓

The additional compensation, if any, included in this change order constitutes full compensation, including all mark ups, profits, surcharges, taxes and overhead costs, for the change in work as specified.

CITY OF STOCKTON

Contract Change Order #: 3

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 Northeast Stockton Library and Community Center Project

Original Contract Price	\$14,450,556.00
Prior Change Order Total	\$ 127,735.54
This Change Order	\$ 68,845.37
Revised Contract Price	\$14,647,136.91

TO **Patriot Contracting, Inc.** You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

Additional Work Performed for Above Referenced Project

See page 2.

We, the undersigned contractor, have given careful consideration to the change proposed and hereby agree, if this proposal is approved that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefore the prices shown above

By reason of this proposed change, 0 days extension of time will be allowed.

Accepted Date 9/13/2022

O. Ronaghinia
(Contractor)

By Omid Ronaghinia

Title Project Manager

Note: This contract change order is not effective until approved by the City Manager.

Internal Approval Routing

Mohammad Sa'idi Date: 9/13/2022
Submitted by:
Mohammad Sa'idi, Project Manager

Grace Pethes Date: 09/15/22
Approval by:
Grace Pethes, Public Works Fiscal Division

Eric Alvarez Date: 9/14/22
Approval Recommended by:
Eric Alvarez, Deputy Public Works Director/City Engineer

Approval Recommended by:
Jodi Almassy Date: 09.16.22
Jodi Almassy, Public Works Director

APPROVED AS TO FORM & CONTENT:
OFFICE OF THE CITY ATTORNEY

BY _____
Date: _____

Change Order Approved By:
Harry Black Date: 10/28/22
City Manager, Harry Black



ATTEST:
Eliza R. Garza
ELIZA R. GARZA
CITY CLERK OF THE CITY OF STOCKTON

2020-12-15-1404
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CITY OF STOCKTON

Contract Change Order #: 3

Resolution/Motion No. 2020-12-15-1404
(If not required enter "N/A")

Purchase Order No. 419000528
Purchase Order #

CL17024 Northeast Stockton Library and Community Center Project

TO Patriot Contracting Inc. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications of this contract.

EXTRA WORK AT AGREED LUMP SUM

In accordance with Section 4-1.05A "Changes and Extra Work – General" of the City of Stockton Standard Specifications, the Contractor was directed to provide the following items for the additional items of work:

1. PCO12r2.3: Concrete Footings for Outdoor Fitness Equipment:

Installation of concrete foundations for exterior fitness area equipment.

Agreed increase in contract working days: 0
Agreed lump sum price: \$47,495

2. PCO12r2.5: Children's Room Casework & Fitness Room Mirror:

Children's room casework enlargement revisions and fitness room's mirror relocations and added mirror.

Agreed increase in contract working days: 0
Agreed lump sum price: \$5,908.13

3. PCO46r3: Addition of Mineral Wool Insulation & Rain Wall L Sheet Metal Painting:

Additional mineral wool insulation within bottom of exterior wall track. Rain Wall's L sheet metal flashing to be field painted after installation of unfinished galvanized sheet install.

Agreed increase in contract working days: 0
Agreed lump sum price: \$7,081.22

4. PCO51r1: Added Parapet Framing:

Additional framing details including kickers at roof's parapet for cement board sheathing for rooms 100F exterior walls.

Agreed increase in contract working days: 0
Agreed lump sum price: \$8,361.02

TOTAL COST OF CHANGE ORDER WORK: \$68,845.37 ✓

The additional compensation, if any, included in this change order constitutes full compensation, including all mark ups, profits, surcharges, taxes and overhead costs, for the change in work as specified.

