



**CITY OF BEVERLY HILLS**

**ROXBURY COMMUNITY CENTER**

**BID PACKAGE NO. 12-09**

**DEPARTMENT OF PUBLIC WORKS & TRANSPORTATION  
PROJECT ADMINISTRATION DIVISION  
345 FOOTHILL ROAD  
BEVERLY HILLS, CALIFORNIA 90210**

**BID PACKAGE NO. 12-09**

**CITY OF BEVERLY HILLS  
PUBLIC WORKS & TRANSPORTATION - PROJECT ADMINISTRATION  
345 FOOTHILL ROAD  
BEVERLY HILLS, CALIFORNIA 90210**

**LEGAL NOTICE - BIDS WANTED**

**ROXBURY COMMUNITY CENTER**

The City of Beverly Hills ("City") hereby requests sealed bids for the materials, supplies, equipment or services set forth herein, subject to all conditions outlined in this Bid Package, including:

**SECTION 1: NOTICE INVITING BIDS  
SECTION 2: INSTRUCTIONS TO BIDDERS  
SECTION 3: SPECIAL CITY REQUIREMENTS  
SECTION 4: GENERAL SPECIFICATIONS  
SECTION 5: BIDDER'S BID  
SECTION 6: SIGNATURE PAGE AND LEGAL STATUS  
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**SECTION 1: NOTICE INVITING BIDS**

1. **Notice Inviting Bids**
  - a. **Date of Request:** October 10, 2011
  - a.1 **ONLY PREQUALIFIED GENERAL CONTRACTORS ARE PERMITTED TO SUMBIT A BID FOR THE CONSTRUCTION OF THIS PROJECT**
  - b. **Bid Number:** 12-09
  - c. **Item Description:** Improvements consist of the staged demolition of the existing community center, grading, construction of a new approximately 26,000 sf community center with a roof top solar panel installation, parking lot, basketball and tennis courts, minor street improvements, maintenance yard improvements, storm drains, catch basins, site utilities, picnic facilities, landscape and irrigation. Project is located at 471 S. Beverly
  - d. **Obtaining or Viewing Bid Documents:** Prequalified General Contractors may be obtain a copy of the bid package (in PDF file format) after October 10, 2011 from the Department of Public Works & Transportation - Project Administration, 345 Foothill Road, Beverly Hills, CA 90210, telephone number 310-288-2823. The bid package including plans and specifications, may also be viewed on, and downloaded from the City's web site: [www.beverlyhills.org](http://www.beverlyhills.org); shortcuts: bid information: bid number 12-09.
  - e. **Bid Opening:** Thursday – November 3, 2011 at 2:00 p.m.

f. **Due Date and Location for Submittals:** Sealed bids will be received at all times during normal business hours prior to the Bid Opening, at the City Clerk's Office, 455 North Rexford Drive, Room 290, Beverly Hills, CA 90210. All bids must be in writing and must contain an original signature by an authorized officer of the firm. Electronic bids (i.e., telephonic, FAX, etc.) are **NOT** acceptable. All bids shall clearly contain on the outside of the sealed envelope in which they are submitted: **BID PACKAGE 12-09: ROXBURY COMMUNITY CENTER**

g. **Contractor's License:** In accordance with provisions of Section 3300 of the California Public Contract Code, the City has determined that the Contractor shall possess a valid California Contractor's License Class B-1 or other appropriate license classification under the State Contracting Code at the time the contract is bid. Failure to possess such license may render the bid non responsive and bar the award of the contract to that non responsive Bidder.

h. **Liquidated Damages:** There shall be a \$2,500.00 assessment for each and every calendar day work remains undone after date fixed for completion.

i. **Prevailing Wages:** In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. The Contractor will be required to pay to all persons employed on the project by the Contractor sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents can be reviewed in the office of the City Clerk or may be obtained from the State.

j. **Prebid Conference Date and Location:** A mandatory pre-bid conference will be held on Thursday, October 13, 2011 at 10:00 a.m. and/or at other such times as the City may determine. The meeting will be held in the Roxbury Community Center, 471 S. Beverly Dr., Beverly Hills, 90210. Check in at the front desk.

k. **Bid Security:** Each bid shall be accompanied by bid security in the form of a cashier's check, certified check or bid bond in the amount of 10% of the total bid amount. All cashier's checks or certified checks must be drawn on a responsible bank doing business in the United States and shall be made payable to THE CITY OF BEVERLY HILLS. Bid bonds must be issued by a bonding company licensed to do business in the State of California. Bids not accompanied by the required bid security shall be rejected. Cash and personal or company checks are **NOT** acceptable. The City shall return the bid security checks of unsuccessful bidders to them when the successful bidder ("Contractor") enters into the Contract with the City.

l. **Payment Bond and Performance Bond:** A Payment Bond and a Performance Bond, each in the amount of 100% of the contract amount, will be required of the Contractor.

m. **Insurance:** Upon award of contract, contractor will be obligated to file certificates of insurance evidencing coverage as specified in the bid documents and in a form acceptable to the City. The certificates shall be on the City's standard proof of insurance form.

n. **Contractor's Qualifications:** Bidders must complete the licensing portion of the Experience Form, and submit all required information.

o. **Time of Completion:** The contractual completion time shall be **Three Hundred Sixty five (365)** calendar days from the date of Notice To Proceed.

p. **Retention:** In accordance with the contract, ten percent (10%) of any progress payment will be withheld as retention. Pursuant to Section 22300 of the Public Contract Code, at the request and expense of the Contractor, securities equivalent to the amount withheld may be deposited with the City or with a state or federally chartered bank as the escrow agent, and City shall then pay such moneys to the Contractor. Refer to the contract for further clarification.

q. **Contact Person:** A bidder who has a procedural or substantive question must submit it in writing to Donielle Kahikina, by email to [dkahikina@beverlyhills.org](mailto:dkahikina@beverlyhills.org). A copy of the question plus a written response to it will be emailed to all parties who have obtained a bid package.

All Requests for Information should be submitted as soon as possible, but must be submitted on or before a date that will be specified at the pre-bid conference.

THE CITY OF BEVERLY HILLS RESERVES THE RIGHT TO REJECT ANY BID OR ALL BIDS AND TO WAIVE ANY INFORMALITY OR IRREGULARITY IN ANY BID. ANY CONTRACT AWARDED WILL BE LET TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

## SECTION 2: INSTRUCTIONS TO BIDDERS

### 2. Instructions to Bidders

a. **General Bid Requirements.** To be considered, a bidder must follow the format for bids presented in this document. Bids must be binding and firm. Any bid may be withdrawn before Bid Opening but no proposal may be withdrawn after Bid Opening.

b. **Bid Security.** Each bid shall be accompanied by bid security in the form of a cashier's check, certified check or bid bond in the amount of 10% of the total bid amount. All cashier's checks or certified checks must be drawn on a responsible bank doing business in the United States and shall be made payable to THE CITY OF BEVERLY HILLS. Bid bonds must be issued by a bonding company licensed to do business in the State of California. Bids not accompanied by the required bid security shall be rejected. Cash and personal or company checks are **NOT** acceptable. If the bidder to whom the Contract is awarded shall for fifteen (15) calendar days after such award fail or neglect to enter into the Contract or fail or neglect to file with the City all required bonds and other documents, if any, the City shall consider that bidder to be in default, and the City shall deposit in its treasury this bidder's security and under no circumstances shall it be returned to the defaulting bidder. The City shall return the bid security checks of unsuccessful bidders to them upon a successful bidder's entering into the Contract with the City.

c. **Bidder Must Make Thorough Investigation.** It is the bidder's responsibility to examine the location of the proposed work, to fully acquaint itself with any plans and/or specifications and the nature of the work to be done. Bidders shall have no claim against the City based upon ignorance of the nature or requirements of the project, misapprehension of site conditions or misunderstanding of the specifications or other Contract provisions. Once the award has been made, failure to have read all of the conditions, instructions and Contract Documents shall not be cause to alter any term of the Contract or provide valid grounds for the Contractor to seek additional compensation.

d. **Acceptance of Conditions.** By submitting a bid, each bidder expressly agrees to and accepts the following conditions:

(1) All parts of the Instructions to Bidders and Specifications will be part of the Contract between the selected bidder and the City;

(2) Either before or after Bid Opening, the City may require whatever evidence it deems necessary relative to the bidder's financial stability and ability to complete this project;

(3) The City reserves the right to request further information from a bidder, either in writing or orally, to establish any stated qualifications.

(4) The City reserves the right, in its sole discretion, to judge a bidder's representations and to determine whether the bidder is qualified to undertake the project pursuant to the criteria set forth herein. A bidder, by submitting a bid, expressly acknowledges and agrees that the judgment of the City as to whether or not the bidder is qualified to perform the project shall be final, binding and conclusive.

(5) The City reserves the right to reject all bids, waive any irregularity in any of the bids, cancel or delay the bid opening at any time.

(6) This bidding process does not commit the City to award any contract, and the City is not liable for any costs incurred by the bidder in the preparation and submission of a bid.

e. **Registration and Qualifications of Contractors.** Before submitting bids, contractors shall be licensed in accordance with Business and Professions Code Section 7000 et. seq., and each contractor shall insert its license number on its bid.

In submitting its bid, contractor warrants that it has work experience comparable to that which is to be performed. Prior to award of a Contract, City may request of any bidder, a statement setting forth its work

experience of a nature comparable to that which is to be performed. That statement shall describe the work performed during the period three (3) years immediately preceding the date of the statement, and shall give the owner, location, and contract price of all such work, together with the dates of beginning and completing that work. This statement of experience shall be submitted within seven (7) calendar days after the City's notification to so submit. Failure to submit an adequate statement may result in rejection of the bid as non responsive.

Any bidder not licensed at the time of award of the contract shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractor's State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

f. **Truth and Accuracy of Representation.** False, incomplete or unresponsive statements in connection with a bid may be sufficient cause for rejection of a bid or a bidder.

g. **Withdrawal of Proposals.** A bidder may withdraw a proposal at any time prior to bid opening; no bid may be withdrawn after bid opening.

h. **City Changes to the Bid Documents.** The City reserves the right to change any part of the Bid Package any time prior to the bid opening. Any changes shall be in the form of addenda which shall become a part of the bid documents and the Contract. Addenda shall be made available to each bidder. A bidder's failure to address the requirements of any addendum may result in that bid being rejected as non-responsive. If the City determines that a time extension is required for the submission of the bid, an addendum will give the new bid opening date.

i. **Notice Regarding Disclosure of Contents of Bids.** All bids accepted by the City shall become the exclusive property of the City. Upon opening, all bids submitted to the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each bid which are identified by the bidder as business or trade secrets and plainly marked as "trade secret," "confidential," or "proprietary." Each element of a bid which a bidder desires not to be considered a public record must be clearly marked as set forth above, and any blanket statement (i.e., regarding entire pages, documents, or other non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is nonetheless required under the California Public Records Act or otherwise by law (despite the bidder's request for confidentiality), the City shall not in any way be liable or responsible for disclosure of any such records or part thereof.

j. **Warranties, Guarantees and Manufacturer's Specifications.** If applicable, bidder shall state the nature and period of any warranty or guarantee. If applicable, manufacturer's specifications shall be submitted with the bid and shall be considered a part of the Contract for the bidder who is awarded the Contract and where the specifications meet the minimum requirements of the Contract.

k. **Award of Bid and Determination of Responsiveness.** The City shall determine the bidder to whom the Contract shall be awarded. In making this determination, the City shall consider (in no particular order):

- (1) The cost to the City;
- (2) The quality of the material offered;
- (3) The ability, capacity and skill of the bidder to perform the Contract or provide the material or services;
- (4) Whether the bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
- (5) The sufficiency of the bidder's financial resources and the effect thereof on its ability to perform the Contract or provide the material or services;
- (6) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(7) The quality and timeliness of the bidder's performance on previous purchase orders or contracts with the City;

(8) Litigation by the bidder on previous purchase orders or contracts with the City;

(9) The ability of the bidder to provide future maintenance and service where such maintenance and service are essential;

The City reserves the right to be the sole and exclusive judge of quality, compliance with bid requirements, and all other matters pertaining to this bid.

l. **Prompt Payment Discounts.** Prompt payment discounts shall be considered in evaluating bids, except that payment periods shorter than thirty (30) days will not be considered. Where discounts are offered, the period for calculation of the discount shall begin with the invoice date or its date of delivery to the City, whichever is later.

m. **Bids Other than "Lump Sum" Bids.** Bids calling for other than a "lump sum" total bid may be awarded by single item, by groups of items, or as a whole, as the City deems to be in its best interests.

n. **Prices in Bid.** Prices quoted in the bid must be firm for a period of not less than ninety (90) days after the Bid Opening.

o. **Assignment and Subcontracting.** The Contractor shall not assign the Contract in whole or in part without express prior written consent of the City. Any such consent given by the City shall neither relieve the Contractor from its obligations nor change any term of the Contract.

p. **Errors and Omissions.** Bidders shall not be allowed to take advantage of any errors or omissions in these Bid Documents. Full instructions will be given if any error or omission is discovered and timely called to the attention of the City.

q. **Patent Fees; Patent, Copyright, Trade Secret and Trademark Fees.** Each bidder shall include in the price bid any patent fees, royalties and charges on any patented article or process to be furnished or used in the prosecution of the Work.

r. **Taxes.** The price bid shall include all federal, state, local and other taxes.

### SECTION 3: SPECIAL CITY REQUIREMENTS

3. **Special City Requirements.** All forms (and their instructions) which a bidder must complete to establish compliance with City requirements should be considered an integral part of the Specifications, and failure to complete any of them shall be grounds, in the sole discretion of the City, for rejection of that bid or that bidder.

a. **Fair Employment Practices/Equal Opportunity Acts.** In the performance of any services described in this Bid Package, Contractor and every supplier of materials and services shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§ 200e-217), whichever is more restrictive.

b. **Affidavit of Non-Collusion by Contractor.** The City requires that each bidder complete, execute and submit to the City with its bid the Affidavit of Non-Collusion included in the Bid Package.

c. **Requirement for Acceptance of Sureties.**

(1) The surety on any bond or undertaking must be a corporation authorized by the Insurance Commissioner of the Department of Insurance of the state to transact surety business in the state; and

(2) There must be on file with the City Clerk of the City of Beverly Hills or submitted with the bond, a copy, duly certified by the proper authority and attested by the seal of the corporation, of the transcript or record of appointment entitling or authorizing the person or persons purporting to execute an undertaking or bond for and on behalf of such corporation to act in the premises.

d. Not used

e. **Contract Allowance(s):** Contractor shall perform work under the Bid Allowance, specified in Appendix D, Bid Form on a time-and-material basis or a lump sum basis at the City's option, to the maximum amount of the allowance as directed by the City.

e. **Rubbish Removal in the City:** One rubbish removal company is allowed to operate within the City. Information can be obtained from the City's Commercial Waste Division at 310-288-2806. This department should also be contacted for roll-off containers.



## SECTION 4: GENERAL SPECIFICATIONS

### 4. General Specifications

a. **Sample Contract.** A sample of the Form of Contract the successful bidder will be required to enter into with the City is attached hereto as Appendix A and by this reference incorporated herein and made a part of these General Specifications.

b. **Scope of Work.** The Scope of Work shall be as described and in accordance with the specifications set forth in Appendix B hereto, and by reference, incorporated herein.

c. **Bid Proposal Quantities.** The quantities contained in the Bid Package are approximate only, and are for the sole purpose of comparing bids. The City may order more or less Work or material, as necessary, in the City's sole discretion. Payment will be made for the amount of Work or material actually provided, as determined by the City and accepted at the unit or lump sum prices noted in the bid, where applicable, and those prices shall govern.

d. **Standard Specifications.** In connection with contracts to which it may apply, and except as otherwise provided below, all public works construction Work shall be done in accordance with the provisions of the most current edition of "**STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION**" (commonly known as "the GREEN BOOK") including Supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California, which specifications are hereinafter referred to as the "Standard Specifications." The provisions of these General Specifications shall apply and/or shall supersede, as the case may be, provisions of the above referenced Standard Specifications.

e. **Subcontracts.** In addition to the information to be listed by the bidder with its bid pursuant to Section 2-3 of the Standard Specifications, entitled "Subcontracts," the bidder shall provide for each subcontractor listed a brief description of the Work and the dollar value of the Work to be subcontracted. After bids have been received, the written consent of the City is required to make any change in subcontractors.

f. **Meaning of Amount of Bid.** Except where otherwise provided, all costs to perform the entirety of the Work, including all costs required for repair or replacement of existing improvements damaged, injured or removed as a result of the Work, shall be reflected in the unit or lump sum prices stated in the bidder's bid. If no specific unit or lump sum line item is required to be bid for a specific item of Work, then all costs related to that item shall be incorporated into the unit or lump sum prices provided for all other items. The total price of the bid is to be interpreted as the total price of all Work required under the Contract, whether or not there is a specific line item identifying a particular item of Work.

g. **Compliance with Labor Laws.** Contractor shall comply with and adhere to all applicable labor laws, such as, but not limited to, alien labor, prevailing wages, etc. Contractor shall comply with the provisions of Sections 1770-1777.5 of the California Labor Code, and Section 7-2 of the Standard Specifications, entitled "Labor." The California Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the Work is to be done. A copy of the general prevailing rate of wages is on file with the City Clerk of the City of Beverly Hills and is available for inspection and reference during regular business hours. Contractor shall submit with bid, on a form provided in Section 7, a statement acknowledging obligation to comply with California Labor Law requirements.

h. **Contract Bonds.** The bidder to whom a Contract is awarded shall file with the City a Payment (Labor and Materials) Bond in a form acceptable to the City in the amount of 100% of the Contract Price before execution of the Contract. The bidder to whom a Contract is awarded shall file with the City a Performance (Completion) Bond in a form acceptable to the City in the amount of 100% of the Contract Price before execution of the Contract. The term "Contract Price" shall be deemed to mean the total Contract "not to exceed" amount consisting of the base bid stated in the Bidder's Bid plus all additional amounts provided for adjustments to the estimated quantities contained in the Bidder's Bid and for extra Work covered by approved Change Orders, if any.

i. **Liability Insurance.** Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, employees or subcontractors, pursuant to contractor's bid or any subsequent contract. Insurance shall be of the type, in the amounts and subject to the provisions described below.

(1) **Commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

(2) **Business automobile liability** insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.

(3) **Workers Compensation** Insurance as required by the State of California and employers liability insurance with a limit not less than \$1,000,000 per accident.

(4) **Evidence of Coverage:**

(a) Prior to commencement of work under this contract, or within 14 days of notification of award of contract, whichever is shorter, Contractor shall file certificates of insurance with original endorsements evidencing coverage in compliance with this contract and in a form acceptable to City. The certificate shall be on the City's standard proof of insurance form.

(b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.

(c) During the term of this agreement, Contractor shall maintain current valid proof of insurance coverage, with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.

(d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default, and shall be cause for forfeiture of this bidder's bid security, if applicable.

(e) In the event Contractor does not maintain current, valid evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.

(5) All insurance coverages shall be provided by insurers with a rating of B+;VII, or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

(6) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

(7) All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this bid or any subsequent contract.

(8) Contractor's insurance and any insurance provided in compliance with these specifications, shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

(9) Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City.

(10) Any deductibles or self-insured retention's shall be declared to and must be approved by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured retention's as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.

(11) In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor.

j. **Indemnification.** The Contractor shall indemnify, defend, and hold harmless the City, including its officers, agents, servants and employees, from any and all costs, claims, liabilities, damages, or expenses, including, without limitation, costs of suit and reasonable attorney fees, arising out of the operations, acts or omissions of the Contractor, its agents, servants, subcontractors or employees.

k. **Materials and Workmanship.** The City shall have the right to inspect any material used. Material furnished shall be new, complete, ready-for-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs, unless otherwise specified. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of the City. Any materials rejected shall be removed from City premises at the Contractor's sole expense.

All Work must be approved by the City. For unsatisfactory Work not corrected, the City may, at its option, withhold payment for the unsatisfactory Work, deduct the amount from the invoiced amount, have the Work corrected by another contractor at Contractor's cost and expense or perform the corrective Work with City personnel and deduct all costs so incurred by the City from moneys owed to the Contractor.

l. **License and Permits.** Except as provided herein below, the Contractor shall obtain and pay for all permits and licenses required by federal, state or local law, rule or regulation. Costs for obtaining City permits required under this Contract will be waived. [NOTE: All requirements for obtaining permits (including City permits) remain in effect and are not waived; only the costs of City permits are waived.] For information concerning business licenses required under the Beverly Hills Municipal Code, contact the Beverly Hills Finance Department at (310) 285-2427.

m. **Payment.** The Payment Provisions are provided in Appendix C hereto, and by this reference they are incorporated herein.

n. **Changes to the Work.** City may by written notice initiate any change within the scope of the Contract. If Contractor desires to make any change, Contractor must submit a written request for that change to the City, but Contractor may make that change only upon written order of the City. A corresponding equitable change in the Contract Price of this Contract will be made for each change ordered.

o. **Termination of Work.**

(1) **For Cause.** Upon notice to Contractor, City may terminate the Work or any part thereof immediately for cause, without any prior notification to Contractor.

(2) **Without Cause.** City may terminate the Work or any part thereof upon five (5) days prior notice to Contractor.

(3) **Payment.** Upon termination of the Contract in whole or in part, City shall pay Contractor, subject to all provisions of the Contract for retention of funds, for all Work completed prior to the date of termination.

p. **Resolution of Claims and Disputes.** Public Contract Code Sections 20104 et seq. apply to this contract. Those Public Contract Code Sections are attached hereto as Exhibit I. In any arbitration to resolve a dispute relating to or arising out of this contract, the arbitrator's award shall be supported by law and substantial

evidence. The arbitrator shall file a written decision with the court and serve a copy of it on each of the parties. The written decision shall contain a summary of the evidence, reasons underlying the decision, and unless the parties otherwise agree, findings of fact and conclusions of law.

q. **Assignment of Unfair Business Practices.** In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or a subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arises from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

r. **Safety and Protection of Workers.** Pursuant to Public Contract Code Section 7104, if any work under this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface:

(1) The Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any:

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

(b) Subsurface or latent physical conditions at the site differing from those indicated.

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

(2) The City 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.

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

**SECTION 5: BIDDER'S BID**

5. **Bidder's Bid.** The Bidder's Bid Form is provided in Appendix D hereto, and by this reference it is incorporated herein. This form must be completed by the bidder and submitted to the City as described in Section 1 above.

**SECTION 6: SIGNATURE PAGE AND LEGAL STATUS**

6. **Signature Page and Legal Status.** The undersigned certifies that he is an official legally authorized to bind his firm and to enter into a contract should the City accept this proposal.

Bid proposal by \_\_\_\_\_  
(Name of Firm)

Legal status of bidder: Please check the appropriate box

A. Corporation \_\_\_\_ ; State of Incorporation \_\_\_\_\_ ;

B. Partnership \_\_\_\_ ; List Names \_\_\_\_\_  
\_\_\_\_\_

C. DBA \_\_\_\_ ; State full name \_\_\_\_\_ DBA

\_\_\_\_\_  
\_\_\_\_\_

D. Other \_\_\_\_ ; Explain \_\_\_\_\_  
\_\_\_\_\_

Signature of Bidder \_\_\_\_\_ Title \_\_\_\_\_  
(Authorized Signature)

Signature of Bidder \_\_\_\_\_ Title \_\_\_\_\_  
(Authorized Signature)

Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2010

Bidder acknowledges receipt of the following Addenda:

<u>ADDENDUM NO.</u>	<u>BIDDER'S INITIALS</u>
_____	_____
_____	_____
_____	_____

**SECTION 7: ADDITIONAL FORMS**

**7. Additional Forms**

- a. Experience Form
- b. Affidavit of Non-Collusion
- c. Statement Acknowledging Obligation To Comply With California Labor Laws
- d. Bid Bond
- e. Faithful Performance Bond
- f. Payment Bond
- g. Certificate of Insurance
- h. Bidder's Check List

**EXPERIENCE FORM**

**LICENSING**

- 1) List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers if applicable.

State: \_\_\_\_\_

Category: \_\_\_\_\_

License: \_\_\_\_\_

Class: \_\_\_\_\_

**GENERAL EXPERIENCE**

This section deleted as all bidders have been prequalified for this project.

**NON-COLLUSION AFFIDAVIT  
(TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID)**

State of California )

) ss.

County of Los Angeles )

\_\_\_\_\_, being first duly sworn, deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE



**STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY  
WITH CALIFORNIA LABOR LAW**

[Labor Code § 1720, 1773.8, 1775,  
1776, 1777.5, 1813, 1860, 1861, 3700]

I, the undersigned Contractor, certify that I am aware of and will fully comply with the following provisions of California law:

Contractor acknowledges that this contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and the awarding public agency ("Agency") and agrees to be bound by all provisions thereof as though set forth in full herein.

Contractor agrees to comply with the provisions of California Labor Code Section 1773.8 which require the payment of travel and subsistence payments to each worker needed to execute the work, to the extent required by law.

Contractor agrees to comply with the provisions of California Labor Code Section 1774 and 1775 concerning the payment of prevailing wages to workers and the penalties for failure to do so. Contractor shall, as a penalty to the Agency, forfeit not more than fifty dollars (\$50) for each calendar day or portion thereof, for each worker paid less than the prevailing rates, as determined by the Director of Industrial Relations, for the work or craft in which the worker is employed for any public work done under the contract by Contractor or any subcontractor.

Contractor agrees to comply with the provisions of California Labor Code Section 1776 which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make those payroll records available for inspection as provided by Section 1776, and (3) inform the Agency of the location of the records. Contractor is responsible for compliance with Section 1776, by itself and all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and Contractor further agrees that Contractor is responsible for compliance with Section 1777.5 and for the compliance of all of its subcontractors.

Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the Agency, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by Contractor or by any subcontractor for each calendar day during which such worker was required or permitted to work more than 8 hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

California Labor Code Sections 1860 and 3700, provide that every Contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

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

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**BID BOND**

WHEREAS, \_\_\_\_\_, hereinafter "Principal," has submitted a bid to the City of Beverly Hills (hereinafter, "City") for the **CONSTRUCTION OF THE ROXBURY COMMUNITY CENTER**.

AND WHEREAS, said Principal is required to furnish a bond in connection with said bid, to ensure that the Principal will enter into a contract with the City;

NOW, THEREFORE, we, the Principal and \_\_\_\_\_ ,  
as Surety, are held firmly bound unto the City in the sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ), this amount being not less than ten percent (10%)  
of the Bid Sum, for which payment well and truly to be made we bind ourselves, our heirs, executors and  
administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if said Principal is awarded a Contract by said City and,  
within the time and in the manner required in the Contract Documents for said project, enters into the written form of  
Agreement bound with said Contract Documents and furnishes the required bonds and insurance, and performs all  
other obligations prerequisite to signing the Agreement, then this obligation shall be null and void, otherwise it shall  
remain in full force and effect. In the event suit is brought upon this bond by said City and judgment is recovered,  
said Surety shall pay all costs incurred by said City in such suit, including a reasonable attorney's fee to be fixed by  
the Court.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be  
deemed an original thereof, have been duly executed by the Principal and Surety named herein, on the \_\_\_\_\_  
day of \_\_\_\_\_ 2010, the name and corporate seal of each  
corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to  
authority of its governing body.

Principal \_\_\_\_\_

By \_\_\_\_\_

Surety \_\_\_\_\_

By \_\_\_\_\_

**PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that:**

WHEREAS, the City of Beverly Hills, hereinafter "City", has awarded to

---

hereinafter designated as "Principal", a Contract for the **ROXBURY COMMUNITY CENTER**:

---

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, the undersigned Principal, and \_\_\_\_\_ ,  
as Surety, are held and firmly bound unto the City in the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ),  
this amount being not less than one hundred percent (100%) of the total Contract Sum, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if said Principal, its heirs, executors, administrators, successors, assigns, shall in all things stand to and abide by, well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the said Contract and any alteration thereof, made as therein provided, all within the time and in the manner therein designated and in all respects according to their true intent and meaning, then this obligation shall become null and void, otherwise, it shall be and remain in full force and effect. In case suit is brought upon this bond, the Surety shall pay all court costs and reasonable attorneys' fees to the City in an amount fixed by the court.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents, or of the work to be performed thereunder, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or modification of the Contract Documents or of the work to be performed thereunder. Surety hereby waives the provisions of California Civil Code § 2845 and 2849. The City is the principal beneficiary of this bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

DATED: \_\_\_\_\_

"PRINCIPAL"

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

{ SEAL }

{ SEAL }

NOTE: THIS BOND MUST BE EXECUTED IN DUPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.

**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS that:**

WHEREAS, the City of Beverly Hills, hereinafter "City", has awarded to

---

hereinafter designated as "Principal," a Contract for the **ROXBURY COMMUNITY CENTER:**

---

WHEREAS, said Principal is required under the terms of the Contract and the California Civil Code, to secure the payment of claims of laborers, mechanics, materialmen and other persons, as provided by law;

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_, ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ), this amount being not less than one hundred percent (100%) of the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, its heirs, executors, administrators, successors, assigns, or subcontractors shall fail to pay any of the persons named in Section 3181, of the California Civil Code, or any amounts due under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to work or labor performed under the Contract, the Surety will pay for the same in an amount not exceeding the penal sum specified in this bond; otherwise, the above obligation shall be null and void.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or other assigns in any suit brought upon the bond.

In case suit is brought upon this bond, the said Surety will pay all court costs and reasonable attorneys' fees in an amount to be fixed by the court.

FURTHER the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or modification of the Contract Documents, or of the work to be performed thereunder, shall in any way affect the obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition or modification of the Contract Documents or to the work or specifications thereunder. Surety hereby waives the provisions of California Civil Code § 2845 and 2849.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by the Principal and Surety named herein, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

DATE: \_\_\_\_\_

"PRINCIPAL"

"SURETY"

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

BY: \_\_\_\_\_  
Its

{ SEAL }

{ SEAL }

NOTE: THIS BOND MUST BE EXECUTED IN DUPLICATE AND DATED. ALL SIGNATURES MUST BE NOTARIZED, AND EVIDENCE OF THE AUTHORITY OF ANY PERSON SIGNING AS ATTORNEY-IN-FACT MUST BE ATTACHED.

## CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

**NAMED INSURED (CONTRACTOR)**

**COMPANIES AFFORDING COVERAGE**

A.  
B.  
C.

ADDRESS

POLICY NUMBER	COMPANY (A. B. C.)	COVERAGE	EXPIR. DATE	LIMITS		
				B.I.	P.D.	AGGREGATE
		AUTOMOBILE LIABILITY [ ]				
		GENERAL LIABILITY [ ]				
		PRODUCTS /COMPLETED				
		OPERATIONS [ ]				
		BLANKET CONTRACTUAL [ ]				
		CONTRACTOR'S PROTECTIVE [ ]				
		PERSONAL INJURY [ ]				
		OTHER [ ]				
		EXCESS LIABILITY [ ]				
		WORKERS' COMPENSATION [ ]				

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project:

### CONSTRUCTION OF THE ROXBURY COMMUNITY CENTER

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right on contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Authorized Insurance Representative

AGENCY \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

**BIDDER'S CHECK LIST**

**TO THE BIDDER:**

The following checklist is provided for the convenience of both you and the City to help eliminate errors or omissions which may render your bid non-responsive. Please check all appropriate boxes and submit this page with your bid.

**1. BID**

Signed by Bidder

**2. BID BOND**

Enclosed

\_\_\_\_\_

**3. AFFIDAVIT OF NONCOLLUSION**

Enclosed

\_\_\_\_\_

Signed by Bidder

**4. STATEMENT ACKNOWLEDGING OBLIGATION TO COMPLY  
WITH CALIFORNIA LABOR LAW REQUIREMENTS**

Enclosed

\_\_\_\_\_

Signed by Bidder

**5. SECTION 6: SIGNATURE AND LEGAL STATUS**

Enclosed

\_\_\_\_\_

Signed by Bidder

**6. SECTION 7: EXPERIENCE FORM**

Enclosed

\_\_\_\_\_

Make sure DELIVERY of your completed documents is made to the City Clerk, 455 North Rexford Drive, Room 190, Beverly Hills, CA 90210, prior to Bid Opening time. It is YOUR responsibility to mail your bid sufficiently early or deliver it in person.



## EXHIBIT I

### Public Contract Code

#### ARTICLE 1.5. RESOLUTION OF CONSTRUCTION CLAIMS

##### §20104:

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arises between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans and specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

##### §20104.2:

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time a claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§20104.4:

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of trial de novo.

(c) The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.

§20104.6:

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

§20104.8:

(a) This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

(b) As stated in subdivision (c) of Section 20104, any contract entered into between January 1, 1991, and January 1, 1994, which is subject to this article shall incorporate this article. To that end, these contracts shall be subject to this article even if this article is repealed pursuant to subdivision (a).

ROXBURY COMMUNITY CENTER Bid Docs 09-19-2011

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## SECTION 8: GENERAL CONDITIONS (ARTICLES 1 – 15)

### ARTICLE I GENERAL PROVISIONS

#### 1.1 BASIC DEFINITIONS

- 1.1.1 ADDENDA: Written or graphic information (including drawings) prepared and issued by the Architect prior to the receipt of Bids which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections.
- 1.1.2 ALTERNATE BID: An amount stated in the Bid as set forth in the supplementary bid forms.
- 1.1.3 NOT USED
- 1.1.4 AMENDMENT TO THE CONTRACT: A written supplemental agreement (Contract) between the City and the Contractor which outlines a major change in the Work, whether additive or deductive, which exceeds 25% or more of the Contract Sum.
- 1.1.5 APPLICABLE CODE REQUIREMENTS: All laws, statutes, building codes, ordinances, regulations, etc., governing the Work. See Paragraph 3.11, Applicable Code Requirements /Referenced Standards and Division 01 - General Requirements.
- 1.1.6 APPLICATION FOR PAYMENT: An itemized payment application for the cost of the Work in permanent place submitted by the Contractor (usually monthly) for review and approval, which has been completed in accordance with the Contract Documents. The document consists of a breakdown of several construction categories following a format provided by the City. (See Paragraph 9.3, Application for Payment and 1.1.16 below.)
- 1.1.7 ARCHITECT: The architect who prepared the Construction Documents is an entity lawfully practicing architecture in the State of California who has prepared, under contract to the City, the Drawings and Specifications, unless otherwise noted, for the Work. The term "Architect" is used as if singular in number and shall be defined as the Architect or an authorized representative of the Architect. The Architect shall be a representative of the City and shall perform duties as set forth herein without limitations to the responsibilities set forth in the Owner-Architect Agreement.
- 1.1.8 AS-BUILTS: "As-BUILTS" means the Contractor's daily, current and complete on-site set of plans and Specifications showing all changes, modifications and revisions performed during the progress of the Project construction.
- 1.1.9 BENEFICIAL OCCUPANCY: The City's "reservation of right", at its option and convenience, to occupy or otherwise make use of all or any part of the work prior to Substantial Completion. (See Paragraph 9.6, Beneficial Occupancy, of the General Conditions.)
- 1.1.10 BASE BID: The sum stated in the Base Bid Form for which the Bidder offers to perform certain Work described in the Bidding Documents. The TOTAL PROJECT BID shall be the sum of the Base Bid, the amount per diem for Compensable Delay, and the Alternates.
- 1.1.11 BIDDER: Any individual, firm, partnership, corporation, or joint venture or other legal entity or combination thereof, submitting a Bid Proposal for the Work, acting directly or through a duly authorized representative. The lowest responsible and responsive Bidder, who is ultimately awarded the Contract to provide the Work, will be referred to as the Contractor.
- 1.1.12 BID DATE: The deadline (including date and time) set forth in the Bid Notice accompanying these Instructions
- 1.1.13 BID DOCUMENTS: All documents provided by City or Bidder for Bidder's use and consideration in preparation of its Bid. Bidding documents include, but not limited to, the Notice Inviting Bids, the Instructions to Bidders, Special City Requirements, General Specifications, Bidder's Bid, Signature

page and Legal Status, Additional Forms, General Conditions and any supplements or additions hereto, the Contract Documents, Drawings, and Project Manual, all documents referenced in the Contract Documents, and all Addenda issued prior to execution of the Contract.

- 1.1.14 **BID FORM:** The Bid Form, and other additions attached hereto, all of which constitute part of the Bid Documents
- 1.1.15 **BULLETIN:** A written instrument prepared by the Architect, and reviewed by the City prior to issuance to the Contractor, which outlines an interpretation or a change in the Work. The Contractor may respond to this document with a Change Order Request, if necessary, detailing a request for additional time or money, or may proceed with the instructions if no change in the Contract Time or Sum is necessary.
- 1.1.16 **CERTIFICATE FOR PAYMENT:** The City and the Architect approved version of the Contractor's monthly, itemized Application for Payment from the City for Work performed the previous month. (See Paragraph 9.4, Certificate for Payment, of the General Conditions and 1.1.6 above.)
- 1.1.17 **CHANGE ORDER REQUEST:** The Contractor's typical written response to the Architect's Bulletin regarding a change in the Work. This document consists of a cover sheet, following a format provided by the City, and documentation provided by the Contractor(s) proposing to provide the additional Work.
- 1.1.18 **CHANGE ORDER:** A written instrument prepared and signed by the City, Contractor and Architect, and, if signed by all parties, states their agreement upon a change in the work, if any, the amount of adjustment in the Contract Sum, if any, and the extent of any adjustment in Contract Time, if any. (See Paragraph 7.2, Change Orders, of the General Conditions.)
- 1.1.19 **CITY OR OWNER:** The City of Beverly Hills (City), a municipal corporation.
- 1.1.20 **CITY PROJECT ADMINISTRATOR:** The Director of Project Administration of the City of Beverly Hills, or his designee, who is the City's authorized representative.
- 1.1.21 **CLAIM:** An unresolved Field Order or Change Order Request. (See Paragraph 4.2, Claims, of the General Conditions.)
- 1.1.22 **COMMENCEMENT DATE:** The actual date the Contractor starts the Work on the Project Site or ten (10) days after the issuance of the Notice to Proceed, whichever occurs first.
- 1.1.23 **COMPENSABLE DELAY:** See Subparagraph 8.3.1.1, Compensable Delay, of the General Conditions.
- 1.1.24 **UNUSED**
- 1.1.25 **CONTRACT:** The term "Contract" means the entire written agreement covering performance of the Work and executed on behalf of the City and Contractor.
- 1.1.26 **CONTRACT DOCUMENTS:** All documents executed by City and Bidder and expressly made part of their agreements relating to the Work. The Contract Documents include, but are not limited to, the Form of Contract (City-Contractor Agreement), the General Conditions of the Contract for Construction, the General Requirements, the Bonds, and all Addenda issued prior to execution of the City-Contractor Agreement; and all modifications thereof. In addition, the Contract Documents include the Drawings and Technical Specifications prepared by the Architect and their Consultants; and any other documents referenced and prepared by City Consultants and City Consultants.
- 1.1.27 **CONTRACT MODIFICATION:** The term "Contract Modification" includes (1) Amendments to the Contract, (2) Change Orders, and (3) Field Orders.
- 1.1.28 **CONTRACT SCHEDULE:** See Paragraph 3.15, Schedules Required of Contractor, of the General Conditions.

- 1.1.29 **CONTRACT SUM:** The amount of compensation stated in the Contract for the performance of the Work.
- 1.1.30 **CONTRACT TIME:** The number of days set forth in the Contract within which Final Completion of the Work must be achieved.
- 1.1.31 **CONTRACTOR:** The individual, partnership, corporation, joint venture or other legal entity entering into the Contract, identified as such in the Contract and referred to throughout the Contract Documents as if singular in number. The term "Contractor" means Contractor or Contractor's authorized representative.
- 1.1.32 **CONTRACTING AUTHORITY:** The City.
- 1.1.33 **DAY:** The term "Day," as used in the Bidding and the Contract Documents, shall mean calendar day, unless otherwise specifically provided.
- 1.1.34 **DEFECTIVE WORK:** Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the City, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.
- 1.1.35 **DELAY:** See Paragraph 8.3, Delay, of the General Conditions.
- 1.1.36 **DEPARTMENT:** The Project Administration Office of the Public Works Department of the City.
- 1.1.37 **DRAWINGS:** The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules, and diagrams. The Drawings are outlined in the Drawing Index, and may be used interchangeably with "Plans".
- 1.1.38 **EXCUSABLE DELAY:** See Subparagraph 8.3.1.2, Excusable Delay, of the General Conditions.
- 1.1.39 **EXTRA WORK:** The term "Extra Work" shall mean new or unforeseen work which has been determined by the City to not be included in the contract or authorized by previously approved Contract Modifications. Also means Work intended to be provided by Change Order or Field Order.
- 1.1.40 **FIELD ORDER:** A written instrument prepared by the Architect and signed by the City and Contractor, describing the scope of a change in the Work and estimated Contract Sum and Time adjustments (if applicable). Generally issued before all terms of the change are fully agreed upon by the City and the Contractor. (See Paragraph 7.3, Field Orders, of the General Conditions.)
- 1.1.41 **FINAL COMPLETION:** The term "Final Completion" means the Work has been fully and satisfactorily completed in accordance with the Contract Documents as determined by the City pursuant to Paragraph 9.8, Final Completion and Final Payment, of the General Conditions.
- 1.1.42 **FRAGNET:** The term "Fragnet" refers to a contemporaneous, fragmentary scheduling network which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Change Order Request or contract modification, with logic ties to all affected existing activities noted on the approved Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific delay in relation to past and/or other current delays and to provide a method for incorporating all approved delays into the approved Construction Schedule.
- 1.1.43 **GENERAL CONDITIONS:** That portion of the Contract Documents which contains the contractual requirements that the Contractor is to follow in carrying out the Work. It is directly related to and referenced in the General Requirements.
- 1.1.44 **GENERAL REQUIREMENTS:** That portion of the Contract Documents (referred to as Division 1) relating to the administrative procedures to be followed by the Contractor in carrying out the Work.



It is directly related to and referenced in the General Conditions and throughout the Technical Specifications.

- 1.1.45 **GUARANTEE TO REPAIR PERIOD:** See Paragraph 12.2, Correction of Defective Work and Guarantee to Repair Period, of the General Conditions.
- 1.1.46 **LOSSES:** Any and all losses, costs, liabilities, claims, damages, actions, judgments, settlements and expenses, including, without limitation, reasonable attorneys' fees and expenses.
- 1.1.47 **NOTICE TO PROCEED:** Notification, in writing, by the City to the Contractor, that the Contractor is authorized to begin the Work issued to the Contractor within fifteen (15) on the Project Site. The Notice to Proceed will be days after receipt, by the City, of a fully executed contract and all required Bonds, Insurance Statements and other documents required by the Contract.
- 1.1.48 **OWNER or CITY:** See 1.1.19 The City of Beverly Hills City (City), a Municipal Corporation
- 1.1.49 **PLANS:** See 1.1.39 (Drawings)
- 1.1.50 **PROJECT:** The total construction and related improvements, including the furnishing of labor and materials, of which the Work performed by the Contractor under the Contract Documents is the major portion and which includes work performed by the City or by Separate Contractors.
- 1.1.51 **PROJECT MANUAL:** The bound information assembled for the Work which includes the following:
- Division 0: Bidding and Contract Documents and the General Conditions.
  - Division 1: General Requirements
  - Divisions 2-48: Technical Specifications
- 1.1.52 **PROJECT SITE:** That physical site located within the City of Beverly Hills as defined on the Drawings where the Contractor is to carry out the Work, including all adjacent areas used by the Contractor for staging, storage and temporary office purposes.
- 1.1.53 **RECORD DRAWINGS:** The term "Record Drawings" means the complete record set of Plans, Specifications and other documents prepared by the Contractor which is based on the Contractor's on-site "As-Built" Plans and Specifications and which shows all changes, modifications and revisions performed during the progress of the Work. It shall be provided in a form acceptable to the City at the completion of the Work.
- 1.1.54 **SCHEDULE OF VALUES:** A detailed, itemized breakdown of the Contractor's bid which indicates dollar values allocated to each of the various parts of the work.
- 1.1.55 **SEPARATE CONTRACTOR:** A person or firm under separate contract with the City or City performing other work at the Project Site which may or may not affect the Work performed by the Contractor under the Contract Documents.
- 1.1.56 **SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES:** See Paragraph 3.17, Shop Drawings, Product Data, and Samples, of the General Conditions.
- 1.1.57 **SPECIFICATIONS:** The technical portion of the Contract Documents (Divisions 2-16) prepared by the Architect and consultants and consisting of the written requirements for materials, equipment, standards and workmanship for the Work, and performance of related services.
- 1.1.58 **SUBCONTRACTOR:** A person or firm that has a contract with a Contractor or with another subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term "subcontractor" includes subcontractors of any Tier, suppliers, manufacturers, and distributors. 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.
- 1.1.59 **SUB-SUBCONTRACTOR:** Any tier of subcontractor other than the first.

- 1.1.60 **SUBSTANTIAL COMPLETION:** The term "Substantial Completion" means the stage in the progress of the Work, as determined by the City, when the Work is satisfactorily completed in accordance with Contract Documents, except for minor items which do not impair City's ability to occupy and utilize the Project for its intended purpose. (See Paragraph 9.7, Substantial Completion, of the General Conditions.)
- 1.1.61 **SUPERINTENDENT:** The person appointed by the Contractor, subject to approval by the City, to supervise and coordinate the Contractor's own forces and Project subcontractors in all aspects of the Work, and as defined and delineated in the Contract Documents. (See Paragraph 3.14, Superintendent/Project Staff, of the General Conditions.). The Contractor may elect to have a Contractor Project Manager who shall have the authority to act on behalf of the Contractor, attend job-site meetings, and have over-all responsibility for the performance of the Work.
- 1.1.62 **SUPPLEMENTARY CONDITIONS:** Conditions of a contract which modify the General Conditions.
- 1.1.63 **TIER:** The contractual level of a subcontractor with respect to Contractor. For example, a first-tier subcontractor is under subcontract with the Contractor, a second-tier subcontractor is under subcontract with a first-tier subcontractor, and so on.
- 1.1.64 **UNEXCUSABLE DELAY:** See Sub-paragraph 8.3.1.3, Delay, of the General Conditions.
- 1.1.65 **USERS:** The City Of Beverly Hills.
- 1.1.67 **WORK:** The construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or necessary to fulfill the Contractor's obligations pursuant to the Contract.

**1.2 NOTICE**

- 1.2.1 Any "notice" required to be given by any party may be given by delivering said notice, or a copy thereof, to the other party by one of the following methods:
  - 1. Personally delivered; or if he cannot be found with reasonable diligence, then by posting a copy of said notice in a conspicuous place at the Project Site.
  - 2. Sent by facsimile.
  - 3. Sent by courier where receipt is confirmed.
  - 4. Sent by registered or certified mail, postage prepaid, return receipt requested.

Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date of delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Paragraph 1.2.

**1.3 OWNERSHIP AND USE OF CONTRACT DOCUMENTS**

- 1.3.1 The Contract Documents, and all copies thereof furnished to the Contractor are the property of the City and are not to be used on other work and may be required to be returned to the City at the Contractor's expense.
- 1.3.2 The Contractor shall keep on the Project Site of the project, at all times, a complete set of the City approved, permitted Contract Documents for the use by the City.

**1.4 AUTHORITY OF THE CITY AND THE ARCHITECT**

- 1.4.1 The Architect, subject to the approval of the City, shall decide within the provisions of the Specifications and Drawings, all questions which may arise concerning the quality or acceptability of materials furnished and Work performed.

- 1.4.2 Requests regarding substitutions, selections, materials, colors and textures shall be submitted to the Architect for review and approval, subject to approval by the City.
- 1.4.3 In all cases requiring interpretation of the Drawings and/or Specifications, the decision of the City, based upon recommendations of the Architect and the CM, shall be final.
- 1.4.4 Final determination of the acceptable fulfillment of the Contract on the part of the Contractor shall be made by the City.

## **1.5 ASSIGNMENT**

- 1.5.1 This Contract shall, under no conditions, be assigned by the Contractor without prior written consent of the City.
- 1.5.2 Notwithstanding anything else to the contrary in the Contract Documents, the City reserves the right to assign all rights to award the Contract or under the Contract. Written Notice of such assignment shall be given in accordance with paragraph 1.2 - Notices. Such assignment, if made, shall not affect any of the terms and conditions of the Contract Documents, except that all rights and obligations of the City shall transfer and all the terms and conditions of the Contract Documents shall apply as if the City were the awarding authority

## **1.6 INTERPRETATION OF CONTRACT DOCUMENTS**

- 1.6.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict or inconsistency, the conflict must be brought to the attention of the City for clarification before proceeding with the Work affected by the conflict or inconsistencies.
- 1.6.2 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.
- 1.6.3 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not nonlimiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- 1.6.4 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- 1.6.5 Any cross-references indicated between various subparagraphs or Drawings and Documents are provided for the convenience of the Contractor and shall not be deemed to be all inclusive.

## **1.7 INTERPRETATION OF PLANS AND SPECIFICATIONS**

- 1.7.1 Every part of the Work, as shown on the Drawings and described in the Specifications, must be complete and finished. No deviations are to be made from the Drawings or Specifications without previously obtaining written authorization from the City.
- 1.7.2 In general, the Drawings will show dimensions, positions, and kind of construction; and the Specifications will define materials, quality, and standards. Any Work called for on the Drawings and not mentioned in the, Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

- 1.7.3 The Drawings shall not be scaled to determine dimensions, and in all cases shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Architect's attention before proceeding with the Work affected by the discrepancy.
- 1.7.4 If there is a conflict between Contract Documents, the document highest in precedence shall govern. The order of precedence, with "First" being the highest, shall be:
- First: Permits, requirements and codes from government agencies as may be required by law.
  - Second: The Agreement, including Amendments
  - Third: Specifications, including specifications addenda
  - Fourth: Drawings/Plans, including drawing/plan addenda - large scale plans and details take precedence over small scale drawings in all cases. Full scale drawings have precedence over both large and small scale drawings in all cases. Detailed Plans and/or Drawings shall have precedence over general plans/drawings. Architectural and structural Drawings take precedence over electrical and mechanical drawings in regard to location and arrangement of fixtures, outlets, and equipment. Electrical and mechanical Drawings take precedence in describing and specifying equipment and in describing the diagrammatic requirements.
  - Fifth: Standard and reference Specifications which include industry norms such as ANSI and ASTM.
- 1.7.5 Should an error or inconsistency be found in the Specifications or Drawings, or in the work done by others affecting the Work, the Contractor shall notify the Architect and the City at once, and the City will issue instructions as to procedure. If the Contractor proceeds with the Work so affected without such instructions, it will make good any resulting damage or defects in it or adjacent work. This includes typographical errors in the Specifications and notational errors on the Drawings where doubtful of interpretation.
- 1.7.6 The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in details when needed to more fully explain the Work and the same shall be considered part of the Contract. If any detail submitted after award of the Contract is, in the opinion of the Contractor, more elaborate than the Drawings and the Specifications indicated during the Bid Period, the Contract may be modified, if at all, by following the Change Order Procedures outlined in Article 7.
- 1.7.7 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work. Where ornament or other detail is indicated on starting only, such detail shall be continued throughout the course of parts in which it occurs and shall also apply to all other similar parts in the Work unless otherwise indicated.
- 1.7.8 For convenience, the Specifications are arranged in various trade subparagraphs, but such segregation shall not be considered as limiting the Work of any subcontract or trade. The Contractor shall be solely responsible for all subcontract arrangements of Work regardless of the location or provision in the Specifications.
- 1.7.9 The Contractor will provide all necessary labor, equipment, transportation and incidentals required to complete the Work, even if the Drawings and Specifications do not describe the Work in complete sentences.

## **1.8 ACCURACY OF PLANS AND SPECIFICATIONS**

- 1.8.1 Omissions from the Plans and Specifications shall not relieve the Contractor from the responsibility of furnishing, making, or installing all items required by law or code, or usually furnished, made or installed in a project of the scope and general character indicated by the Plans and Specifications. (See Subparagraph 3.2.1).

- 1.8.2 The topography of the Project Site and existence and location of utilities indicated on Plans are in accordance with the best information obtainable, but cannot be guaranteed. They shall be investigated and verified at the Site by the Contractor before starting Work. The Contractor shall be held responsible for any damage to, and for maintenance and protection of, existing utilities and remaining structures. (See Subparagraph 3.2.2).

**ARTICLE 2**  
**THE CITY**

**2.1 INFORMATION AND SERVICES PROVIDED BY THE CITY**

- 2.1.1 Contractor will be furnished, free of charge, five (5) copies of the Plans and Project Manual, and all other project documentation, surveys and analysis, as the City deems reasonably necessary for execution of the Work.
- 2.1.2 Except as otherwise provided in the Contract Documents, the City shall obtain and pay for City any permits, easements and governmental approvals for the use or occupancy of permanent structures required in connection with the Work.

**2.2 ACCESS TO PROJECT SITE**

- 2.2.1 The City will make available, no later than the date designated in the current Contract Schedule accepted by the City, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents, for use by Contractor.
- 2.2.2 Contractor shall not obstruct the vehicular and pedestrian access and egress to and from any adjacent or contiguous City facilities.

**2.3 THE CITY'S RIGHT TO STOP THE WORK**

- 2.3.1 If Contractor fails to correct Defective Work as required by Paragraph 12.2 or fails to perform the Work in accordance with the Contract Documents, the City may direct Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Contractor. A "Warning Procedure" will be established which provides a forty-eight (48) hour written notice to the Contractor. Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. The City and the City's Representative shall have no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

**2.4 THE CITY'S RIGHT TO CARRY OUT THE WORK**

- 2.4.1 If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within seven (7) days after receipt of notice from the City to promptly commence and thereafter diligently continue to completion the correction of such failure, the City may, without prejudice to other remedies the City may have, correct such failure at Contractor's expense. In such case, the City shall be entitled to deduct from payments then or thereafter due Contractor the cost of correcting such failure, including compensation for the additional services and expenses of the City and the City's consultants made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to the City.

**ARTICLE 3**  
**CONTRACTOR/BIDDER**

**3.1 FAMILIARITY WITH PLANS, SPECIFICATIONS AND PROJECT**

- 3.1.1 All Bidders shall carefully examine the Work site. The submission of a bid shall be conclusive evidence that the Bidder has investigated and is satisfied with the conditions to be encountered as to character, quality, scope of Work to be performed, and quantities of materials to be furnished.
- 3.1.2 It shall be the responsibility of the Bidder to be so thoroughly familiar with all details of the Project, including all Contractor and subcontractor Work that the following shall be brought to the attention of the City for clarification, in sufficient time to give the City time to respond, before an error is made in the bid or in construction:
1. Errors and omissions in the Drawings and Specifications;
  2. Work shown on the Drawings or in the Specifications which, if so constructed, would result in confusion or interference with other work or the work of other trades, including the location of fixtures and equipment.
- 3.1.3 Changes to the Contract Sum will not be approved for the cost of correction work where such work could have been avoided by proper examination of the Drawings and Specifications by the Contractor. Any delay in performance of the Work on this account will not be compensable nor a cause for time delay.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

- 3.2.1 Notwithstanding Bidder obligations noted in Paragraph 3.1 above, the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the City. Further, the Contractor shall promptly report to the City in writing any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Contractor. (See Subparagraph 1.8.1).
- 3.2.2 Field measurements shall be taken and existing field conditions verified by the Contractor, and carefully compared with the Contract Documents and other information known to Contractor before commencing the Work. The Contractor shall promptly report in writing to the City any errors, inconsistencies, or omissions discovered. (See Subparagraph 1.8.2).
- 3.2.3 If the Contractor performs any construction activity which it knows, or should have known, involves an error, inconsistency, or omission referred to in Subparagraphs 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of the City, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting Work made defective by such construction activity, whether or not such Defective Work is specifically in the Contract.

**3.3 TIME FOR COMMENCING AND COMPLETING WORK**

- 3.3.1 The Contractor shall commence the Work required by this Contract within ten (10) working days after the date specified in the Notice to Proceed, and shall complete the Work within the Contract time unless otherwise directed in writing. City may, at its sole discretion, permit Contractor to accelerate all or part of the Work; otherwise, Contractor shall perform in accordance with the approved resource-loaded Schedule.
- 3.3.2 The City may order or permit the Contractor to suspend any Work that may be damaged by adverse weather or other climatic conditions, and an increase in the Contract Time will be made to the Contractor for the time actually lost on account of suspension so ordered but will not result in an increase in the Contract Sum.
- 3.3.3 As determined by the City, should the Contractor be obstructed or delayed in the commencement, prosecution, or completion of the Work by any necessary or unavoidable act or delay, not in whole or in part under the control of the Contractor or any subcontractor, then the Contract Time will be extended for a period equivalent to the time the Work, as a whole, is thereby delayed.
- 3.3.4 Labor strikes, when such strikes are not brought solely against the Contractor or any subcontractor, or instigated by an act of the Contractor or any subcontractor, shall constitute

sufficient reason for extension of the time completion within the provisions of Paragraph 8.3, Delay.

- 3.3.5 Within three (3) working days after the beginning of any delay, the Contractor shall file with the City a written notice and report as to the cause and extent. If the Contractor desires an extension of time, he shall file a written request based upon the delays reported. The City will ascertain the facts, the extent of the delays, the effect upon the entire Project, and will recommend (if appropriate) an extension of time equivalent to verified unavoidable time lost (Compensable and/or Excusable Delays). The request for extension must be made at least sixty (60) days in advance of the specified completion date of the Project.
- 3.3.6 In support of a request for each extension of time, Contractor must submit a "Fragnet" showing schedule details of the activities being affected and demonstrate an effort to mitigate such delays by a reallocation of schedule activities and, if necessary, a reallocation of resources.
- 3.3.7 The Time of Completion provided in these documents includes an allowance for inclement weather calculated on a monthly basis and typical of the 20-year average for each month. Only weather that exceeds said monthly amounts may be considered toward in the calculation of any delay.

### **3.4 SUPERVISION AND CONSTRUCTION PROCEDURES**

- 3.4.1 Contractor shall supervise, coordinate, and direct the Work using Contractor's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion. Unless otherwise shown or specified in the Contract Documents or directed in writing by the City, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work.
- 3.4.2 The Contractor shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to the City any discrepancies before proceeding with related Work.
- 3.4.3 The Contractor will be assigned a reasonable amount of working space adjacent to the Project Site, and all field offices, materials and equipment shall be kept within this area. The Contractor shall be responsible for leaving the space in as good condition as it found it, or restoring it to the condition prior to commencing the Work.
- 3.4.4 Contractor shall be responsible to the City for acts and omissions of Contractor's agents, employees, and subcontractors, and their respective agents, subcontractors and employees.
- 3.4.5 In the event of either an(y) act(s) or omission(s) by the City in the administration of the Contract, or by tests, inspections, or approvals required or performed by persons or firms other than the Contractor, Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents.
- 3.4.6 Under no conditions shall any exit or exit pathway be blocked without the approval of the City and the Fire Department.

### **3.5 RESPONSIBILITY FOR THE WORK**

- 3.5.1 Contractor shall be in charge of and responsible for all portions of the Work of the Contract, and shall be responsible for confirming such portions to the requirements of the Contract Documents and readying such portions to receive subsequent Work.
- 3.5.2 Contractor shall at all times maintain good discipline and order among its employees and subcontractors. Contractor shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each subcontractor engaged upon the Project Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with other persons engaged in work for the City upon the same site.
- 3.5.3 During the installation of Work, Contractor shall insure that existing facilities, fences, and other structures are all adequately protected, unless otherwise specifically stated in the Plans or Project



Manual. Upon completion of all Work, all facilities that may have been damaged shall be restored to a condition acceptable to the City.

- 3.5.4 The Contractor is responsible for the security of the Project Site and all Work provided under the terms of this Contract, as well as all Work provided by Separate Contractors that occurs on the Project Site during the Contract Time.

### **3.6 LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS**

- 3.6.1 Contractor shall provide and pay for all labor, materials, 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. Unless otherwise provided in the Contract Documents, all articles incorporated in the Work are to be of the most suitable grade for the purpose. Equipment, materials, and articles shall be new, best quality, undamaged, and not defective.

### **3.7 CONTRACTOR'S WARRANTY**

- 3.7.1 Contractor warrants to the City that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents. If required by the City, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufactured items installed in the Work and not specifically covered in the Project Manual or Drawings are to be installed in strict accordance with manufacturers' current printed instructions.
- 3.7.2 All materials to be incorporated in the Work shall be protected from damage during delivery, storage, and handling, and after installation until acceptance of the Work, and Contractor shall, without charge to the City, be responsible for all damage due to Contractor's failure to provide such proper protection.

### **3.8 CONSTRUCTION METHODS AND PROCEDURES**

- 3.8.1 The methods and procedures adopted by the Contractor shall be such as to secure a quality of Work satisfactory to the City and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate, the City may order the Contractor to improve their character or increase efficiency, and the Contractor shall conform to such order; but the failure of the City to order such improvement of methods or increase of efficiency will not relieve the Contractor from his obligation to perform good Work or finish it in within the Contract Time.

### **3.9 TAXES**

- 3.9.1 The Contractor is responsible for paying all sales, consumer, use, and similar taxes for the Work or portions thereof provided by the Contractor.

### **3.10 PERMITS, FEES, AND NOTICES**

- 3.10.1 REFERENCE: Division 01 - General Requirements.

### **3.11 APPLICABLE CODE REQUIREMENTS / REFERENCED STANDARDS**

- 3.11.1 REFERENCE: Refer to Section 014200.

### **3.12 LEGAL REQUIREMENTS**

- 3.12.1 The Contractor shall perform the Work in accordance with all Applicable Code Requirements, even though such requirements are not specifically mentioned in the Project Manual or shown on the Drawings.
- 3.12.2 When the Work required by the Plans and Project Manual is in conflict with any Applicable Code Requirement, the Contractor shall notify the City and shall not proceed with the Work until the City has so ordered.

### **3.13 SAFETY AND PROTECTION OF PERSONS AND PROPERTY**

- 3.13.1 The Contractor shall comply with provisions of all Applicable Code Requirements, as well as with all other items further defined in Article 10, Protection of Persons and Property.

- 3.13.2 REFERENCE: Refer to Section 015000 - Construction Facilities and Temporary Controls of the General Requirements.

### **3.14 SUPERINTENDENT / PROJECT STAFF**

- 3.14.1 Contractor shall employ a complete and competent Project Staff for the duration of the Work, including, as a minimum, one (1) Superintendent, and/or one (1) Project Manager, One (1) M/E/P (Mechanical/Electrical Plumbing) Coordinator (partial duration of the Work), plus other members as deemed necessary by Contractor. The Contractor shall not replace the designated Superintendent or Project Manager without a minimum seven (7) day written notice and only with the written approval of the City. Any Project Staff member and any replacement member shall be subject to the approval of the City. Upon notice from the City requesting replacement of any Project Staff member who is unsatisfactory to the City, Contractor shall in a timely manner, but in no event longer than three (3) days after notification, replace such member with a competent member satisfactory to the City.
- 3.14.2 The Superintendent shall be at the Project Site at all times during the performance of the Work. The Superintendent or the Project Manager shall represent the Contractor and communications given to and acknowledged by Superintendent or the Project Manager shall be binding on Contractor. Further, communications issued by or received from the Superintendent or the Project Manager shall be deemed as binding on the Contractor.
- 3.14.3 REFERENCE: Refer to Section 01400 - Quality Control of the General Requirements.

### **3.15 SCHEDULES REQUIRED OF CONTRACTOR**

- 3.15.1 Contractor shall submit a Preliminary Construction Schedule to the City in the form and within the time limit required by the General Requirements. The City will review the Proposed Contract Schedule required by the General Requirements.
- 3.15.2 Contractor shall submit a Proposed Contract Schedule and updated Contract Schedules to the City in the form and within the time limits required by the General Requirements and acceptable to the City. The City will determine acceptability of the Proposed Contract Schedule and updated Contract Schedules within the time limits required by the General Requirements.
- 3.15.3 The Preliminary Construction Schedule, the Proposed Contract Schedule, and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Extension of any schedule beyond the Contract Time shall not be acceptable. Schedules showing the Work completed in less than the Contract Time may be acceptable if judged by the City, in advance of implementation, to be practical and in the City's best interest. However, acceptance of such a schedule by the City shall not change the Contract Time except as noted in the pertinent Section of Division 1 (General Requirements). The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Contractor under the appropriate Article of the Contract and in the determination of any delay under Article 8 of the General Conditions.
- 3.15.4 The City's review of the form and general content of the Preliminary Construction Schedule, Proposed Contract Schedule, and updated Contract Schedules is for the purpose of determining, in its judgment, whether the following requirements are satisfied:
1. Schedules must be suitable in format and clarity for monitoring progress of the Work.
  2. Schedules must provide necessary data about the timing for the City's decisions and the City-furnished items.
  3. Schedules must be in sufficient detail to demonstrate adequate planning for the Work.
  4. Schedules must represent a practical plan to complete the Work within the Contract Time.
- 3.15.5 Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted Contract Schedule. Contractor shall continuously obtain from subcontractors information and data about the

planning for and progress of the Work, the ordering and fabrication of materials, required submittals, and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules and Record (As-Built) Drawings and Specifications, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of subcontractors, regardless of tier. Contractor shall cooperate with the City in the development of the Contract Schedule and updated Contract Schedules.

- 3.15.6 The City's acceptance of or its review comments about any schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule from the Contractor to the City nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.
- 3.15.7 Failure of the City to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.
- 3.15.8 Contractor shall perform the Work in accordance with the current accepted Contract Schedule.
- 3.15.9 REFERENCE: Refer to Section 013300 - Submittals of the General Requirements.

### **3.16 DOCUMENTS AND SAMPLES AT PROJECT SITE**

- 3.16.1 Contractor shall maintain the following at the Project Site:

- 1 . Current updated Plans and Project Manual (Contractor's As-Built).
- 2. The current accepted Contract Schedule.
- 3. Shop Drawings, Product Data, and Samples.
- 4. All other required submittals.

At all time during the course of the Project, these documents shall be available to the City and the Architect. Upon Final Completion or termination of the Contract, these shall be delivered to the Architect for submittal to the City.

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

- 3.17.1 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 3.17.2 Contractor shall review, approve, and submit to the Architect, Shop Drawings and similar submittals required by the Contract Documents. These requirements shall be submitted within the time frame specified in the General Requirements and in accordance with the Construction Schedule and in such sequence as to cause no delay in the Work or in the activities of the City or of Separate Contractors. Submittals made by Contractor which are not required by the Contract Documents may be returned without action by the Architect. Submittal to the Architect must include a statement, in writing, identifying any deviations from the Plans and Specifications required due to manufacturing or installation limitations contained in the submittal. Subcontractors, regardless of tier. Contractor shall cooperate with the City in the development of the Contract Schedule and updated Contract Schedules.
- 3.17.3 All Shop Drawings and similar submittals shall be submitted in sufficient copies, as specified in the General Requirements, accompanied by letters of transmittal, and shall be addressed to the Architect for review. The letter of transmittal shall give a list of the numbers of the Drawings submitted. All Drawings shall be marked with the name of the Project and the name of the

Contractor, shall be numbered consecutively, and shall be referenced to the Project Drawings and specification subparagraph affected. Submittals shall be combined for singular assemblies, items, or materials.

- 3.17.4 No Work requiring submittal and review of Shop Drawings, and similar submittals shall be performed by the Contractor until the respective submittal has been reviewed by the Architect and no exceptions have been taken by the Architect. Such Work shall be in accordance with approved submittals and the Contract Documents.
- 3.17.5 Contractor's approval and submittal of Shop Drawings and similar submittals, represents that the Contractor has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.
- 3.17.6 If Contractor discovers any conflicts, omissions, or errors in Shop Drawings and similar submittals, Contractor shall notify the Architect and receive instruction before proceeding with the affected Work.
- 3.17.7 Architect's review of Shop Drawings, and similar submittals, shall not relieve the Contractor of its responsibility for deviations from requirements of the Contract Documents, unless Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval of the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect's review, acceptance, comment, or approval thereof.
- 3.17.8 After reviewing the Contractor's submittals, the Architect will transmit to the Contractor the required number of sets. If the submittals are found to be incomplete Contractor shall resubmit once corrective action has been taken.
- 3.17.9 If the Shop Drawings or similar submittals show variations from the Contract requirements because of standard shop practice or other reason, the Contractor shall make specific mention of such variations in its letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of the price of the Contract; otherwise, the Contractor will not be relieved of the responsibility of executing the Work in accordance with the Contract, even though the submittals have been reviewed.
- 3.17.10 Review of Shop Drawings will be general and for conformance with design intent, and shall not relieve the Contractor from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contractor which may not be indicated on the reviewed Shop Drawings.
- 3.17.11 Shop Drawings shall show in detail the size, sections, and dimensions of all members; the arrangement and construction of all connections and joints, and other pertinent details; also, all holes, straps, and other fittings required by other separate contractors for attaching their Work. When required by the Architect, engineering computations shall be submitted. The Contractor shall be responsible for delivering copies of Shop Drawings to all other persons whose Work is dependent thereon.
- 3.17.12 The Contractor shall maintain at the Project Site, at all times, a complete file of all Architect-reviewed Shop Drawings, Product Data and Samples.
- 3.17.13 All Work for which Shop Drawings and similar submittals are required shall be performed in accordance with the Architect reviewed copies thereof.
- 3.17.14 REFERENCE: Refer to Section 013300 – Submittals of the General Requirements.

### **3.18 REFERENCE TO TRADE NAME - SUBSTITUTIONS**

- 3.18.1 Except as otherwise noted and permitted by law, whenever in the Specifications or Drawings, any material or process is indicated or specified by patent or proprietary name and/or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating

description of the material and/or process desired; and shall be deemed to be followed by the words "or equivalent" pursuant to Public Contract Code 3400.

- 3.18.2 The Architect may require the submission of samples, formulas, and/or statements of physical properties for consideration in determining equality of the material or process in question. A decision will be rendered within a reasonable period by the Architect.
- 3.18.3 If the Contractor requests use of substitute material or process which in the opinion of the Architect is inferior to that specified, it shall be incumbent upon the Contractor to furnish sufficient evidence to support the claim of equality to the satisfaction of the Architect.
- 3.18.4 If the City decides to accept for use in the Project a substitute material or process which in the opinion of the Architect is not the equal of that specified, authority for the substitution shall be made in the manner described herein for Subparagraph 1.1.18, Change Order, with appropriate monetary allowance for the difference in value.
- 3.18.5 REFERENCE: Refer to Section 012500 - Substitutions of the General Requirements.

### **3.19 USE OF THE PROJECT SITE AND CLEAN UP**

- 3.19.1 Contractor shall confine operations at the Project Site to areas permitted by Applicable Code Requirements and the Contract Documents. Contractor shall not encumber the Project Site with materials or equipment so that Separate Contractor's Work is hindered or impeded due to such encumbrances.
- 3.19.2 Contractor shall, during performance of the Work, keep the Project Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by Contractor or any subcontractors. Contractor shall continuously remove all excess dirt, waste material, water and rubbish caused by the Contractor and all tools, equipment, machinery and surplus materials from the Project Site and surrounding area at the completion of the Work.
- 3.19.3 Personnel of Contractor and subcontractors shall not occupy, live upon, or otherwise make use of the Project Site during any time that Work is not being performed at the Project Site, except as otherwise provided in the Contract Documents.
- 3.19.4 Upon completion of the Work, the Contractor shall remove all construction facilities, appurtenances, tools, material and other articles from the property. The entire area, including all fixed equipment, floors, and hardware shall be cleaned in accordance with the General Requirements.
- 3.19.5 REFERENCE: Refer to Section 015000 - Construction Facilities and Temporary Controls and Section 017700 – Contract Closeout of the General Requirements.

### **3.20 CUTTING AND PATCHING**

- 3.20.1 REFERENCE: Refer to Division 01 - General Requirements.

### **3.21 ACCESS TO WORK**

- 3.21.1 The City, the Architect, their consultants, and other persons authorized by the City shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for inspection.

### **3.22 ROYALTIES AND PATENTS**

- 3.22.1 Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall defend suits or claims resulting from Contractor's or any subcontractor's infringement of patent rights and shall indemnify the City and the Architect from losses on account thereof.
- 3.22.2 If a design or process generated during this Project is subject to patent or license, City reserves the right to patent or license according to terms, rights, obligations and negotiations contained in any pertinent Contract(s).

### **3.23 CONCEALED OR UNKNOWN CONDITIONS**

3.23.1 REFERENCE: Division 01 - General Requirements.

### **3.24 INSPECTIONS**

- 3.24.1 In order to allow for inspection by the Architect, the City and other agencies, or any inspection required elsewhere in these Specifications, the Contractor shall notify City in writing and three (3) working days in advance of the permanent concealment of any materials or Work.
- 3.24.2 Whenever the Contractor desires to carry on the Work of this Contract at night or on a Saturday, Sunday, or holiday, he shall request authorization in writing from the City for such Work at least three (3) working days in advance so that inspection may be provided if authorization is granted and the Contractor agrees to pay overtime reimbursement of costs of the required Inspector(s) for this service.
- 3.24.3 If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to the City that the materials used and the Work done are in conformity with the plans and Specifications. All labor and equipment necessary for exposing and testing shall be furnished by the Contractor at his expense. The Contractor shall replace, at his own expense, any materials or Work damaged by exposure and any faulty materials or workmanship evidenced by such exposure or testing.
- 3.24.4 When, in order to comply with the intent of the Specifications, and when not otherwise specified, inspection must be made at the plant or mill of the manufacturer or fabricator of the material, the Contractor shall notify the City a sufficient length of time in advance to allow for arrangements to be made for such inspection.
- 3.24.5 Any inspection or approval by any representative or agent of the City will not relieve the Contractor of the responsibility of incorporating in the Work only those materials which conform to the Specifications, and any nonconforming materials shall be removed from the site whenever identified.
- 3.24.6 Upon completion of the Work, the Contractor shall notify the City when a final inspection of the Work is desired. The City will make such inspection as soon thereafter as possible. If the Work is found to be in conformance with Applicable Code Requirements, and the Plans and Specifications, the Architect shall recommend and if the City approves the City shall file the Notice of Completion with the County Recorder.
- 3.24.7 REFERENCE: Refer to Section 011000 – Summary of the Work, and Section 014000 – Quality Control of the General Requirements.

### **3.25 REPAIR OF DAMAGED WORK**

- 3.25.1 Contractor shall promptly repair and replace any Work or materials damaged or destroyed prior to Final Completion. If such damage to or loss of the Work does not arise, in whole or in part, from the acts or omissions of Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable, the following may occur:
  - 1. The Contract Time will be subject to adjustment by Change Order.
  - 2. The Contract Sum will be subject to adjustment by Change Order, if and to the extent that the actual costs of such repair and replacement exceed the greater of the following:
    - a. The proceeds of insurance received by Contractor for such loss; provided that this provision shall not in any way reduce the Contractor's obligation to provide adequate levels of insurance to protect from such loss.
    - b. The amount of proceeds which would have been obtained under the insurance policies required to be maintained by Contractor under the Contract Documents.
    - c. The amount of insurance proceeds which would have been obtained under the insurance policies required to be maintained by Contractor under the Contract Documents, but for the insurer's inability or refusal to honor such policies.

**3.26 TESTING OF MATERIALS**

3.26.1 REFERENCE: Refer to Section 014000 – Quality Control of the General Requirements.

**3.27 INDEMNIFICATION**

3.27.1 To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold harmless the Architect, the City and each of their consultants, officers, employees, agents and volunteers from any and all Losses, including attorneys fees and cost of suit, arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person. The parties agree that nothing in this Contract shall be construed to give rise to any implied right of indemnity in favor of the Contractor.

**3.28 SUBLETTING**

3.28.1 The Contractor shall be responsible for all acts of subcontractors and for all Contract Work regardless of any Subcontracts. All interest of the City in the subcontractors' Work shall be coordinated through the Contractor.

**3.29 USE OF FACILITY BEFORE ACCEPTANCE**

3.29.1 The City may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other Work by City labor or other contracts or for any other purpose. The Contractor shall cooperate with the City and not interfere with other work being done by or on behalf of the City.

3.29.2 If, prior to completion and final acceptance of all the Work, the City desires to take possession of any portion of the Project with intent of retaining possession thereof, then this proposed action shall be considered Beneficial Occupancy. Refer to Paragraph 9.6.

**3.30 REPORTS BY CONTRACTOR**

3.30.1 The Contractor shall keep a job-site diary of, as a minimum, activities, inspection and testing, on-the-job injuries, and any unusual occurrences. It shall be maintained on the job site and copies shall be provided to the City upon request.

3.30.2 The Contractor shall provide a monthly report with each pay request that shall include, but not be limited to, the status of the Work, the schedule, any approved or pending requests for schedule extensions, any approved or pending Change Orders, the status of all Requests for Information, inspections, Field Orders, and other pertinent issues.

**ARTICLE 4**  
**ADMINISTRATION OF THE CONTRACT**

**4.1 CONTRACT ADMINISTRATION BY THE CITY AND THE ARCHITECT**

4.1.1 The Architect and the City will provide administration of the Contract as provided in the Contract Documents and will be the delegates of the City as follows:

1. During construction.
2. Until final payment is due.
3. At the City's request from time to time during the Guarantee to Repair Period described in Paragraph 12.2.

The City's Representative, when appointed, will have authority to act on behalf of the City only to the extent provided in the Contract.

4.1.2 No actions taken during Project Site visits by the Architect shall relieve Contractor of its obligation as described in the Contract Documents.

4.1.3 Unused

4.1.4 The Architect not have control over, will not be in charge of, and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. In accordance with Article 3, these are the responsibility of the Contractor.

4.1.5 Direction and Communications During Contract Administration: The Architect shall provide direction to the Contractor, unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized. Communications by the Contractor with the City's consultants shall be through the City. Communications by the Contractor and subcontractors with Separate Contractors shall be through the City. Contractor shall not rely on oral or other non-written communications.

4.1.6 Based on the Architect's Project Site visits and evaluations of Contractor's Applications For Payment conducted with the Contractor, the City and the Architect will review and certify the amounts, if any, due Contractor and will provide Certificates For Payment in such amounts for the City's approval (see Article 9).

4.1.7 Quality Assurance: The Architect or the City will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents, subject to the approval of the City. The City alone shall have the authority to stop the Work or any portion thereof. Whenever the City considers it necessary or advisable to insure compliance with the Contract Documents, the City will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of the City conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, shall give rise to a duty or responsibility of the City to the Contractor, subcontractors, directors, officers, agents, or employees of Contractor or subcontractors, any other person or firm performing portions of the Work, or third parties.

4.1.8 The Architect will prepare change documents in accordance with Article 7 of the General Conditions.

4.1.9 The Architect will conduct inspections in connection with Beneficial Occupancy and the City will determine the dates of Substantial Completion and Final Completion. The Architect will review, any records, written warranties, and related documents required by the Contract Documents and assembled by Contractor; and will provide (for the City's approval) a final Certificate For Payment upon Contractor's compliance with the requirements of the Contract Documents.



- 4.1.10 The City, based upon recommendations from the Architect, shall be the ultimate interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Contractor. However, for purposes of day-to-day situations, should the Contractor discover any conflicts, omissions, or errors in the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; or question that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, Contractor shall notify the Architect in writing and request interpretation, clarification, or furnishing of additional detailed instructions. The Architect's responses to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Contractor proceed with the Work affected before receipt of this response, any portion of the Work which is not done in accordance with the Architect's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Contractor shall be responsible for all resultant additional costs and/or losses.
- 4.1.11 The "City" is the owner and contracting entity to this Agreement, and is not to be confused with the City of Beverly Hills Department of Building and Safety. The Contractor shall comply with all permits, requirements, and notifications that are required by the Department of Building and Safety in addition to all of the conditions of this Agreement.

## **4.2 CLAIMS**

- 4.2.1 Pursuant to Public Contract Code Subparagraph 20104.8, the provisions of Article 1.5 of Chapter I of Part 3, Division 2 of the Public Contract Code (commencing with Subparagraph 20104) dealing with the mediation and arbitration of Public Works' claims are incorporated herein.
- 4.2.2 The following is a summary of such Article 1.5 as required by Subparagraph 20104(c) as it exists on the date the Contract is signed on behalf of the City:
- 4.2.2.1 Public Contract Code - Subparagraph 20104(a)
1. Article 1.5 applies to the Contract but only for Claims of Three Hundred Seventy-Five Thousand Dollars (\$375,000) or less.
- 4.2.2.2 Public Contract Code - Subparagraph 20104(b)
1. "Public Work" has the same meaning as in Subparagraphs 3100 and 3106 of the Civil Code.
  2. The term "Claim" means a separate written demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of the terms of the Contract Documents, for (A) payment of money or damages, (B) extension of time, (C) other relief with respect to the Contract Documents, or (D) determination of other disputes or matters in question between the City and Contractor arising out of or related to the Contract Documents or the performance of the Work.
- 4.2.2.3 Public Contract Code - Subparagraph 20104(c)
1. The provisions of this article or a summary thereof shall be set forth in the plans or Specifications for any Work which may give rise to a Claim under this Article.
- 4.2.2.4 Public Contract Code - Subparagraph 20104(d)
- 4.2.2.5 Public Contract Code - Subparagraph 20104.2 (a)

For any Claim, subject to Paragraphs 4.2.1 and 4.2.2, the following requirements apply:

A Claim must be stated with specificity, including identification of the event giving rise to the Claim, the date of the event, and the asserted effect on the Contract Sum and the Contract Time. The Claim shall include adequate supporting data to substantiate the Claim, and the Claim must be filed on or before the date of final payment. Adequate supporting data for a Claim for an adjustment of the Contract Time shall include

scheduling data demonstrating the impact of the event on completion of the Work. Adequate supporting data for a Claim for an adjustment of the Contract Sum shall include a detailed cost breakdown of items allowed under Paragraph 7.2, Change Orders. If the exact amount of a Claim is not ascertainable at the time such Claim is made, such supporting data as are then available shall be submitted. Supplemental data supporting the exact amount of the Claim shall be submitted as soon as available, and nothing in Article 1.5 of the Public Contract Code is intended to extend the time limit or supersede notice requirements otherwise provided in the Contract for the filing of claims.

- 4.2.2.6 Public Contract Code - Subparagraph 20104.2(f) Article 1.5 does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Subparagraph 900) and Chapter 2 (commencing with Subparagraph 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- 4.2.2.7 For claims of Fifty Thousand Dollars (\$50,000) or less, the City shall respond in writing to any written claim within forty-five (45) days after receipt of the claim, or may request, in writing, within thirty (30) days after receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.
- 4.2.2.8 The City's written response to a Claim less than Fifty Thousand Dollars (\$50,000), as further documented, shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- 4.2.2.9 For claims of over Fifty Thousand Dollars (\$50,000) and less than or equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000), the City shall respond in writing to all written claims within sixty (60) days after receipt of the claim, or may request, in writing, within thirty (30) days after receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the claimant.
- 4.2.2.10 The City's written response to a Claim in excess of Fifty Thousand Dollars (\$50,000), and less than or equal to Three Hundred Seventy-Five Thousand Dollars (\$375,000), as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- 4.2.2.11 If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within fifteen (15) days after receipt after the City's response or within fifteen (15) days after the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a Meet and Confer Conference within thirty (30) days for settlement of the dispute.
- 4.2.2.12 If following the Meet and Confer Conference the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of the Division 3.6 of Title I of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to Article 1.5 of the Public Contract Code until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- 4.2.2.13 Public Contract Code - Subparagraph 20104.4 (a)

Within sixty (60) days, but no earlier than thirty (30) days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days after the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

**4.2.2.14 Public Contract Code - Subparagraph 20104.4(b)**

If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Subparagraph 1141.10) of Title 3 of Part 3 of the Code of Civil Discovery Act of 1986 Article 3 (commencing with Subparagraph 2016) of Chapter 3 of Title 3 of Part 3 of the Code of Civil Procedure shall apply to any proceeding brought under Article 1.5 of the Public Contract Code consistent with the rules pertaining to judicial arbitration.

**4.2.2.15 In addition to Chapter 2.5 (commencing with Subparagraph 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party. The parties shall share the costs of the arbitrator.**

**4.2.2.16 Public Contract Code - Subparagraph 20104.6**

1. City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
2. In any suit filed under Subparagraph 20104.6, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 CONTRACTOR'S AWARD OF SUBCONTRACTS**

- 5.1.1 Unless otherwise stated in the Contract Documents, Contractor shall submit in writing, prior to entering into any subcontract agreements, the names and addresses of all subcontractors proposed for the Work that are changes from those previously listed in the Contractor's Bid, subject to paragraph 5.1.2. Any subcontractor may be disqualified if the City or the Architect determines that such subcontractor fails to meet the requirements of the Contract Documents or for any other appropriate reason. If the City or the Architect has reasonable objections to a person or entity proposed by the Contractor, the Contractor shall propose an alternate party to whom the City and the Architect has no reasonable objection.
  
- 5.1.2 In accordance with the Subletting and Subcontracting Fair Practices Act, nothing herein shall be deemed to entitle Contractor, without the approval of the City, to substitute other subcontractors for those named in Contractor's List of subcontractors contained in the completed Bid Form; and, except with such approval, no such substitution shall be made.
  
- 5.1.3 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a subcontractor, as approved by the City or the Architect pursuant to Subparagraph 5.1.2 shall be borne solely by Contractor and Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution. However, if a replacement or substitution of any subcontractor is made as a result of the request of the City or the Architect for any reason other than failure of such subcontractor to meet the requirements of the Contract Documents, the Contract Sum shall be subject to adjustment of an amount equal to the increase or decrease in the original subcontract amount. In such cases and at the request of the City, the replacement subcontractor shall be selected through a competitive bidding process acceptable to the City.
  
- 5.1.4 Where a hearing is held pursuant to the provisions of Chapter 2, Division 5, Title 1 of the Public Contract Code (commencing with Subparagraph 4100), by the awarding authority or a duly appointed hearing officer, the Agency's Representative shall prepare and certify a statement of all costs incurred by the City for investigation and conduct of the hearing, including the costs of any hearing officer and shorthand reporter appointed.
  
- 5.1.5 The statement shall then be sent to the Contractor who shall reimburse the City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to the Contractor prior to acceptance of the Project.

#### **5.2 SUBCONTRACTUAL RELATIONS**

- 5.2.1 Prior to the execution of each subcontract agreement, the Contractor shall make available to each proposed subcontractor, copies of the Contract Documents to which the subcontractor will be bound. If written request is supplied by a 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 next lower Tier subcontractors.
  
- 5.2.2 Any part of the Work performed for Contractor by a first Tier subcontractor shall be pursuant to a written subcontract. To the extent of the Work to be performed by the subcontractor, each such subcontract shall require the subcontractor:
  - 1. To be bound to Contractor by the terms of the Contract Documents;
  - 2. To assume toward Contractor all the obligations and responsibilities which Contractor assumes towards the City by the Contract Documents; and
  - 3. To perform such portion of the Work in accordance with the Contract Documents.
  - 4. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the Work to be performed by subcontractor, so that subcontracting thereof will not prejudice such rights. Contractor shall cause each such

subcontract to expressly include the following requirements, including the full text of any provisions referenced by paragraph number in the following:

- a. Subcontractor waives all rights that subcontractor may have against the City for damages caused by fire or other perils covered by builder's risk property insurance carried by Contractor or the City, except for such rights subcontractor may have to the proceeds of such insurance held by the City under Article 11.
- b. The City and entities and agencies designated by the City shall have access to and the right to audit and the right to copy at the City's cost all of subcontractor's books, records, contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least four (4) years after Final Completion.
- c. Subcontractor recognizes the rights of the City under Paragraph 5.3, Contingent Assignment of subcontracts, and agrees, upon notice from the City that the City has elected to accept said assignment and to retain subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by the City, to execute a written agreement confirming that subcontractor is bound to the City under the terms of the subcontract.

5.2.3 Contractor shall promptly, after execution, furnish to the City true, complete, and executed copies of all subcontracts and change orders thereto. Progress payments shall not be made for items of work for which the City has not received executed subcontracts or change orders.

5.2.4 Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the City, except when, and only to the extent that, the City elects to accept the assignment of the subcontract with such subcontractor pursuant to Paragraph 5.3 below, Contingent Assignment of Subcontracts.

### **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.3.1 Contractor hereby assigns to the City all its interest in first-tier subcontracts now or hereafter entered into by Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by the City in writing and only as to those subcontracts which the City designates in writing. The City may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Contractor's rights under the Contract Documents. Such assignment is part of the consideration to the City for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion.

**ARTICLE 6**  
**CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS**

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

- 6.1.1 The City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project Site, including portions of the Work which have been deleted by Contract Modification. Contractor shall cooperate with the City's forces and Separate Contractors. Subsequent to the award of this Contract, it is anticipated that the following Separate Contractors will be awarded: Office Furniture; Security and Surveillance Equipment.
- 6.1.2 The City shall provide coordination of the activities of the City forces and of each Separate Contractor with the Work of Contractor. Contractor shall participate with the City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the Contract Schedule after such joint review. Contractor shall provide coordination of the activities of the following separate contractors with the Work of Contractor:
- a. Security and Surveillance (CCTV) Contractor.
- 6.1.3 REFERENCE: Refer Division 01 - General Requirements.

**6.2 MUTUAL RESPONSIBILITY**

- 6.2.1 Contractor shall be responsible for affording the City Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall schedule and coordinate its construction and operations with the construction and operations of the City Separate Contractors as required by the Contract Documents.
- 6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by the City separate Contractors, Contractor shall inspect such other construction or operations before proceeding with that portion of the Work. Contractor shall promptly report to the City apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Work. Unless otherwise directed by the City, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the City or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.
- 6.2.3 In the event of delays, improperly timed activities or defective construction, the costs of such occurrences shall be borne by the party responsible therefor.
- 6.2.4 If the Contractor wrongfully causes damage to completed or partially completed construction or to property of the City or Separate Contractors, the Contractor shall promptly remedy damage as provided in Subparagraph 10.2.3.
- 6.2.5 If a claim, dispute, or other matters in question arises between the Contractor and a Separate Contractor, these occurrences shall be subject to the provisions of Paragraph 4.2. The Contractor shall immediately notify the City in writing and within seventy-two (72) hours of such occurrences.
- 6.2.6 The City and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 01045 – Cutting and Patching of the General Requirements.

**6.3 THE CITY'S RIGHT TO CLEAN UP**

- 6.3.1 If a dispute arises between Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project Site and surrounding areas free from waste materials and rubbish, the City may clean up and allocate the cost between those firms it deems to be responsible.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

- 7.1.1 The City may, at any time and without notice to the sureties, order additions, deletions, and other changes or modifications in the Work by written Amendment to the Contract or Change Order or Field Order without invalidating the Contract. Further, City may add to or delete from the Work changes, including, but not limited to:
1. The Plans or Project Manual.
  2. The Owner-furnished facilities, equipment, materials, services or Project Site.
  3. Directing acceleration in the performance of the Work.
- 7.1.2 If a change in or addition to the Work will result in an increase in the Contract Sum, the City shall have the right to require the performance on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the City as aforesaid shall apply with respect to each such change in the Work).
- 7.1.3 If the City elects to have the change in the Work performed, the Architect will issue a Bulletin requesting a cost proposal. Response to the Bulletin, called a Change Order Request (COR), shall be submitted by the Contractor to the City within twenty-one (21) days after the Contractor's receipt of Agency's request. The City's request for a cost proposal shall not be deemed an election by the City to have the change in the Work performed.
- 7.1.4 In the event that the Contractor fails to submit his proposal within the designated period, the City may order the Contractor to proceed with the change or addition to the Work and the Contractor shall so proceed. The City shall unilaterally determine the reasonable cost and time to perform the Work in question, which determination shall be final and binding upon the Contractor.
- 7.1.5 An adjustment to the Contract Time shall not be made unless the change described in the Change Order affects Work that is on the "critical path" of the Contract Schedule or otherwise affects critical Work activities as described in Subparagraph 7.2.2 below.
- 7.1.6 The City shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the City and the Contractor. The Contractor shall carry out such written orders promptly.

#### **7.2 CHANGE ORDERS AND CHANGE ORDER REQUESTS**

- 7.2.1 A Change Order will usually be based upon agreement between the City and the Contractor regarding disposition of the one or more Change Order Requests (COR's) listed on the Change Order. A Field Order may be issued by the City or the Architect in lieu of a COR, but does not require the agreement of Contractor, and shall be valid with or without the signature of Contractor. Typically, Field Orders are written instruments used to enact a pending COR or approved Bulletin.
- 7.2.2 As noted in Subparagraph 7.1.3 and if requested, Contractor shall within twenty-one (21) days after such request provide the City with a COR Proposal, in the form contained in Division 1 (or the latest version), setting forth Contractor's proposed adjustments of the Contract Sum and the Contract Time, if any, for performing the change in the Work. A "Fragnet" shall be prepared by the Contractor to accompany any request for Contract Time adjustment which identifies all critical and non-critical activities affected by the Change Order Request, with logic ties into all existing affected activities noted on the Master Construction Schedule. Adjustments of the Contract Sum shall be determined by the City using the methods described in this Paragraph 7.2.
- 7.2.3 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the Work based upon the Contractor's Change Order Request and the City does not elect to have the change in the Work performed on a time and material basis, the City shall make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon the City's estimate, the Contractor's submission, or a combination

- thereof. A Change Order shall be issued for the amounts of cost and time determined by the City and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the City within twenty-one (21) days of the issuance of the Change Order. City has the right to direct, in writing, the Contractor to perform the change in the Work, which is the subject of such Change Order. Failure to the parties to reach agreement regarding the cost and time of their performing the change in the Work and/or any pending protest, shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.
- 7.2.4 If the City elects to have the change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any subcontractors, at actual cost to the entity performing the Change in the Work and with mark-ups in accordance with Article 7.2.12. The Contractor shall submit to the City daily time and material tickets to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers if requested), the materials used, the equipment rented (not tools) and such other evidence of cost as the City may require. The City may require authentication of all time and material tickets and invoices by persons designated by the City for such purpose. The failure of the Contractor to secure any required authentication shall, if the City elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the change in the Work covered by a non-authenticated ticket or invoice.
- 7.2.5 Contractor Notice of Change
- If the Contractor asserts that any event or occurrence has caused a change in or addition to the Work, which change causes an increase or decrease in the Contractor's Contract Sum or Contract Time, the City shall be given written notice via a Change Order Request, within twenty-one (21) days, after such event or occurrence. Said notice shall include the instructions or circumstances that are the basis of the claim and the Contractor's best estimate of the cost and time involved.
- 7.2.6 If the Contractor intends to assert a claim under Article 4, he must, within twenty-one (21) days after receipt of a written Change Order under Subparagraph 7.1.1 above or the furnishing of a written notice under Subparagraph 7.2.5 above, submit to the City a written statement setting forth the specific nature and cost of such claim, unless this period is extended by the City. The statement of claim hereunder may be included in the notice under Subparagraph 7.2.5 above. The statement of claim shall include all direct, indirect and impact costs associated with the change, as well as the Contractor's estimate of the schedule impact of the change, if any. As noted in Subparagraph 7.2.2 above, a critical activities "Fragnet" shall be developed by the Contractor and shall be included as a requirement for any claim regarding schedule and/or cost impact.
- 7.2.7 Unilateral Change In or Addition to the Work
- Notwithstanding any of the above, the City may direct the Contractor to perform changes in, or additions to, the scope of the Contract. The Contractor shall perform said Work and the parties will proceed pursuant to the provisions of Subparagraph 7.2.3.
- 7.2.8 General Provisions Related to Changes
- The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of Article 9, and which the Contractor, its subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Article 7. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of his direct costs as compensable hereunder and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents.
- 7.2.9 Adjustments for Extra Work



The adjustment to the Contract Sum for the Extra Work will be based on the accumulation of actual costs as provided in Subparagraph 7.2.10 below. It is the Contractor's responsibility to review the Change Order Request invoicing of the Contractor and the subcontractors for fairness and markups as defined below in Subparagraph 7.2.12.

7.2.10 Net Cost of Extra Work (Basis)

The term "Net Cost of Extra Work" shall mean the actual costs necessarily incurred by Contractor and all subcontractors that actually perform the Extra Work caused by the change(s) in the Work, and consists of costs of labor, materials and equipment rental only. Overhead and profit allowed under this Article 7, shall be deemed to include all costs and expenses which the Contractor or any of its subcontractors may incur in the performance of a change in the Work and which are not otherwise specifically recoverable by them pursuant to this Article 7. The "Net Cost of Extra Work" shall be limited to the following to the extent so incurred:

1. **Labor** - The costs of labor will be the actual straight-time cost for wages prevailing locally for each craft or type of worker at the time the Extra Work is done at the Project Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Net Cost of Extra Work will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Wages or salaries and Fringe Benefits and Payroll Taxes of necessary supervisory and administrative personnel directly employed at the Project Site for the supervision of the Extra Work are included, but only (1) if the Extra Work requires an extension of Contract Time or requires direct supervision of approved overtime Work and (2) to the extent such personnel are solely engaged in supervising such Extra Work during periods of overtime or extension of the Contract Time.
2. **Material** - The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the jobsite in the quantities involved, plus sales tax, freight and delivery. The City reserves the right to approve materials and sources of supply, or to supply materials to the Contractor, if necessary, for the progress of the work. No mark-up shall be applied to any material provided by the City. Material re-stocking charges shall be limited to 5% of the amount of material.
3. **Tool and Equipment Rental** - No payment will be made for the use of tools which have a replacement value of \$500 or less. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listing rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. If equipment is used intermittently, when not in use, it shall be returned to its rental source unless the Contractor elects to keep it at the work site at no expense to the City. The reported rental time for equipment already at the jobsite shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.
4. **Invoices** - Vendors' invoices for material, equipment rental, and other expenditures, shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the City's Representative may establish the cost of the item involved at the lowest price which was current at the time of such submittal.

7.2.11 Net Cost of Extra Work shall NOT include any of the following, which are construed to be included in the Contractor's overhead and profit figures:

1. Wages or salaries and Fringe Benefits and Payroll Taxes of Contractor's and all subcontractors' employees or personnel not directly employed at the Project site for the supervision or performance of Extra Work.

2. Overhead, administrative, or general expenses of any kind including data processing, engineering, estimating and etc. costs incurred in connection with Extra Work.
3. Loss of efficiency or productivity.
4. Capital expenses, including interest on capital employed in connection with Extra Work.
5. Legal costs.
6. Federal, state, or local income and franchise taxes.
7. Cost of any item not specifically and expressly included in the items described in subparagraph 7.2.10.

#### 7.2.12 Contractor Fee or Mark-Up

The term "Contractor Fee" or "Mark-up" shall mean the full amount of compensation for all costs and expenses including overhead, profit, bond and insurance not included in the Net Cost of Extra Work, whether or not referred to in Subparagraph 7.2.13. The Contractor Fee, or Mark-up, shall be computed as follows:

1. If the Net Cost of Extra Work is less than or equal to \$25,000, the Contractor Fee, or Mark-up, shall be computed as follows:
  - a. For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed fifteen percent (15%) of the Net Cost of the Extra Work.
  - b. For Extra Work performed by a First Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed twenty percent (20%) of the Net Cost of the subcontractor's Extra Work.
  - c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and the lowest Tier of subcontractor shall not exceed twenty-five percent (25%) of the Net Cost of the lowest Tier subcontractor's Extra Work.
2. If the Net Cost of Extra Work is greater than \$25,000 and less than or equal to \$100,000, the Contractor Fee or Mark-up shall be computed as follows:
  - a. For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed twelve percent (12%) of the Net Cost of the Extra Work.
  - b. For Extra Work performed by a 1<sup>st</sup> Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed seventeen percent (17%) of the Net Cost of the subcontractor's Extra Work.
  - c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and the lowest tier of subcontractor shall not exceed twenty-two percent (22%) of the Net Cost of the lowest Tier subcontractor's Extra Work.
3. If the Net Cost of Extra Work is greater than \$100,000, the Contractor Fee or Mark-up shall be computed as follows:
  - a. For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed ten percent (10%) of the Net Cost of the Extra Work.

- b. For Extra Work performed by a 1<sup>st</sup> Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed fifteen percent (15%) of the Net Cost of the subcontractor's Extra Work.
  - c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and the lowest tier of subcontractor shall not exceed twenty percent (20%) of the Net Cost of the lowest tier subcontractor's Extra Work.
4. The Table of Contractor Fees/Mark-ups below is provided as a guide for the convenience of the Contract:

<b>NET COST OF EXTRA WORK</b>									
<b>TIER</b>	<b>\$0 – 25,000</b>			<b>\$25,000 – 100,000</b>			<b>OVER \$100,000</b>		
	<b>GC ONLY</b>	<b>GC w/ SUB</b>	<b>GC, SUB, SUB SUB</b>	<b>GC ONLY</b>	<b>GC w/ SUB</b>	<b>GC, SUB, SUB SUB</b>	<b>GC ONLY</b>	<b>GC w/ SUB</b>	<b>GC, SUB, SUB SUB</b>
General Contractor	15	5	5	12	5	5	10	5	5
Subcontractor		15	5		12	5		10	5
Sub-subcontractor			15			12			10
<b>Totals</b>	<b>15%</b>	<b>20%</b>	<b>25%</b>	<b>12%</b>	<b>17%</b>	<b>22%</b>	<b>10%</b>	<b>15%</b>	<b>20%</b>

7.2.13 Compensation for Extra Work authorized by Change Order shall be computed on the basis of one or more of the following:

1. Unit prices stated in the Contract Documents or agreed upon by the City and Contractor.
2. A lump sum agreed upon by the City and Contractor.
3. Reasonable, verifiable, time and material costs.

7.2.14 Changes Requiring a Decrease in Contract Sum

If the change in the Work will result in a decrease in the Contract Sum or Time, a Bulletin will be issued to the Contractor for pricing. The Contractor's quotation shall be forwarded to the City within twenty-one (21) days after City request and, if acceptable to the City, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the City in its reasonable judgment, plus a reduction in the Contractor's Fee or Mark-Up, including expenses, overhead and profit.

For Work to be omitted by Change Order, the reduction of the Contract Sum or Time shall be computed on the basis of one or more of the following:

1. Unit prices stated in the Contract Documents or agreed upon by the City and Contractor.
2. A lump sum agreed upon by the City and Contractor, based upon the estimated costs of the omitted portions of the Work, with no Contractor Fee.
3. As determined by the City, if the City and Contractor cannot agree upon one or both of the methods described in Subparagraphs 1. or 2. above.
4. No claim by the Contractor hereunder shall be allowed if asserted after final payment under this Contract. No claim relating to or flowing from a particular change shall be allowed after execution of the Change Order relating to that change.
5. In addition, deleted work will include a credit for the Contractor's overhead and profit, bond(s) and insurance costs, an amount equal to but not less than 5% of the amount of the deleted work.

### **7.3 FIELD ORDERS**

- 7.3.1 A Field Order describing the scope of the change in the Work and any estimated adjustments of the Contract Sum and the Contract Time may be issued by the Architect, with the approval of the City, to order a change in the Work before all of the terms of the change are fully agreed upon between the City and Contractor. If appropriate, Contractor shall within twenty-one (21) days provide the City with a Change Order Request, setting forth its estimate of the adjustments of the Contract Sum and the Contract Time, if any, for performing the change in the Work. The Field Order may be superseded by a Change Order which shall include the actual adjustments, if any, of the Contract Sum and the Contract Time, as well as the scope of the change in the Work.
- 7.3.2 If the Field Order provides for an adjustment of the Contract Sum, the adjustment shall be based upon one of the methods described in Paragraph 7.2.
- 7.3.3 Upon receipt of a Field Order, Contractor shall within three (3) working days proceed with the change in the Work. Contractor shall advise the City of its agreement or disagreement with the method, if any, provided in the Field Order for determining the proposed adjustments of the Contract Sum and the Contract Time.
- 7.3.4 A Field Order signed by Contractor indicates the agreement of Contractor therewith, including Contractor's agreement to the estimated adjustments of the Contract Sum and the Contract Time and the methods used to determine those adjustments. Such agreement shall be effective immediately and will be followed with a Change Order at such time as the actual adjustments are determined.
- 7.3.5 If Contractor does not agree to the adjustment of the Contract Sum set forth in a Field Order, the City shall determine the adjustment of the Contract Sum in accordance with the provisions of Subparagraphs 7.2.13.3 and 7.2.14.3 above; and Contractor shall comply with the provisions of Subparagraph 7.2.13.3 above regarding records and documentation of actual costs,

### **7.4 DISPUTES REGARDING CHANGES**

- 7.4.1 If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the Contract Time as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work itself unless otherwise so ordered by the City in writing. The City shall, however, pay to the Contractor up to the City's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the City shall have the right to decrease the Contract Sum up to the City's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Sum.

## **ARTICLE 8**

### **CONTRACT TIME**

#### **8.1 COMMENCEMENT OF THE WORK**

- 8.1.1 The date of commencement of the Work shall be set forth in the Notice to Proceed. The date of commencement of the Work shall not be postponed by any failure to act by Contractor, or of persons or firms for whom the Contractor is responsible, to act.

#### **8.2 PROGRESS AND COMPLETION**

- 8.2.1 By signing the Contract, Contractor represents to the City that the Contract Time is reasonable for performing the Work and that Contractor is able to perform the Work within the Contract Time.
- 8.2.2 Except by agreement or instruction of the City in writing, Contractor shall not commence operations on the Project Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. The dates of commencement and completion of the Work shall not be changed by the effective date of such insurance.
- 8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If Contractor is not diligently proceeding with the prosecution of the Work as scheduled, Contractor shall, immediately and at no additional cost to the City, take all measures necessary, including working such overtime and additional shifts as may be required to correct said delays. The City may also take all necessary measures to ensure no further delays to the completion of the Work.

#### **8.3 DELAY**

- 8.3.1 As used herein, the following terms shall have the following meanings:

1. "Compensable Delay" means any delay of the completion of the Work beyond the expiration date of the Contract Time which delay is unreasonable under the circumstances and not an Excusable Delay or an Inexcusable Delay. A Compensable Delay may entitle Contractor to either or both an extension of the Contract Time, in accordance with Subparagraph 8.3.2 and subject to Subparagraph 7.1:5, and adjustment of the Contract Sum, in accordance with Subparagraph 8.3.3. Except as provided herein, Contractor shall have no claim for damage or compensation of any delay, interruption, hindrance, or disruption.
2. "Excusable Delay" means any delay of the completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions in which the Work cannot continue. The financial inability of Contractor or any subcontractor, Material Supplier or Vendor, and any default of any subcontractor, Material Supplier or Vendor, without limitation, shall not be deemed conditions beyond Contractor's control. An Excusable Delay may entitle Contractor to an extension of the Contract Time, in accordance with Subparagraphs 7.1.5 and 8.3.2, but shall not entitle Contractor to any adjustment of the Contract Sum. The Contractor may claim an Excusable Delay only if all work on a critically scheduled activity is stopped for more than six hours of a normal eight hour work day, or if three to six hours are lost in one work day, then it may be claimed for one-half day.
3. "Inexcusable Delay" (also known as non-compensable delay) means any delay of the completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs 8.3.1.1 and 8.3.1.2. An Inexcusable Delay shall not entitle Contractor to either an extension of the Contract Time or an adjustment of the Contract Sum.

#### **8.3.2 Claims for Adjustment of the Contract Time for Delays**

Contractor may make a Claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. In order to avoid double counting concurrent delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be

the number of days from the commencement of the first delay to the cessation of the delay which ends last.

2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.
3. If an Inexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph 8.3.2.1 exceeds the number of days of the Inexcusable Delay.
4. Delays or anticipated delays of any type must be reported to the City in writing no later than ten (10) days of the event that has caused the request for the delay.

#### 8.3.3 Claims for Adjustment of the Contract Sum for Compensable Delays

For a Compensable Delay, the Contractor shall be entitled to an adjustment in the Contract Sum in a daily amount equal to the Contractor's per diem bid amount as stated in the Contract multiplied by the number of days, if any, determined in accordance with this Subparagraph 8.3. Such per diem amount shall be the sole compensation to Contractor for all damages resulting from a Compensable Delay, including without limitation: field office expense, home office expense, extended insurance, extended equipment costs, increased wages, increased material costs, and loss of efficiency resulting from a delay or disruption caused by the City. Except as provided herein, Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. Compensable Delay damages, if any, will be paid to Contractor by the City as part of the final payment.

- 8.3.4 The parties agree that the City's exercise of its rights to order changes in the Work, regardless of the extent and number of changes, or to suspend the Work, is within the contemplation of the parties and shall not be the basis for any Claim for Compensable Delay. The rights of the Contractor to adjustments of the Contract Time and the Contract Sum, based on changes ordered in the Work or suspension of the Work, shall be solely governed by the provisions of Articles 7 and 15, respectively.
- 8.3.5 The determination of whether a delay is an Excusable Delay, Compensable Delay, or Inexcusable Delay shall not be affected by the fact that any earlier delay occurred, regardless of fault or causation.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 SCHEDULE OF VALUES**

9.1.1 Within thirty (30) days after signing the Contract, but in any event a maximum of fifteen (15) days of receipt of the Notice to Proceed, Contractor shall submit to the City a cost breakdown of the bid price Contract Sum, called the "Schedule of Values," in the form contained in the Application For Payment in the General Requirements. The Schedule of Values shall itemize as separate line items the cost of each scheduled Work activity and all other costs, including warranties, record documents, insurance, bonds, overhead expenses, and the total allowance for profit, the total of which shall equal the Contract Sum and shall be made out in a form approved by the City. The Schedule of Values, when approved by the City, shall become the basis for determining the cost of Work requested on the Contractor's Applications For Payment. The Contractor shall submit a statement based upon this breakdown, and if required, itemized in such form and supported by such evidence as the City may direct, showing his right to the payment claimed.

9.1.2 REFERENCE - Refer to Section 012900 – Applications for Payment of the General Requirements.

#### **9.2 PROGRESS PAYMENT**

9.2.1 The City agrees to pay monthly to Contractor on or about the fifteenth day of each month and, subject to Subparagraph 9.4.2, an amount equal to ninety percent (90%) of the sum of the following:

1. Cost of the Work in permanent place as of the end of the preceding month.
2. Less amounts previously paid.

9.2.2 Retention: The City shall retain ten percent (10%) of such estimated value of the Work done and in permanent place as of the end of the preceding month.

9.2.3 At any time after fifty percent (50%) of the Contract Sum has been paid, if the City finds that satisfactory progress of the Work is being made, the City may elect to release retention on fully completed portions of the Work with deductions being made from the remaining progress estimates and final estimate limited to \$500 or ten percent (10%) of the first half of the total Contract amount, whichever is greater, provided that the City receives the following items:

1. Written consents to such release from each of the Performance and Payment Bond sureties.
2. Such releases of claims and stop notices, in the form contained in the Exhibits, as the City may require.
3. Guarantees required by the Specifications.

9.2.4 Payment shall be made by demands drawn in the manner required by law, signed by the City, stating that the Work for which payment is demanded has been performed in accordance with terms of the Contract.

9.2.5 No extra Work shall be performed or changes made, except in pursuance of a written Change Order of the City in accordance with Article 7.

9.2.6 Payments for additional Work will be made in like manner as noted above, subject to Change Order approval, and deductions for Work omitted by Change Order will be deducted at the next succeeding payment period.

9.2.7 Periodic payments shall not be construed as the City's acceptance of any or all of the Work and shall not be a waiver of any or all rights the City has under the Contract.

#### **9.3 APPLICATION FOR PAYMENT**

9.3.1 Approximately five (5) days before the end of the month or such other date as is established by the City, Contractor shall submit to the City an itemized Application For Payment, for the cost of the Work in permanent place, as approved by the City, which has been completed in accordance

with the Contract Documents as of the twenty-fifth day of that month, less amounts previously paid. Payment will be based on the City's evaluation of Work done as of the twenty-fifth day of each month and the Application For Payment shall be prepared as follows:

1. Use the form described in Section 012900 – Applications for Payment of the General Requirements.
  2. Itemize in accordance with the Schedule of Values.
  3. Include such data substantiating Contractor's right to payment as the City may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Paragraph 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) days prior to the date of the Application For Payment.
  4. Itemize retention.
- 9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts Contractor does not intend to pay a subcontractor because of a dispute or other reason.
- 9.3.3 If required by the City, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to subcontractors covered by such application and (2) unconditional waivers and releases of claims and stop notices, from each subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.
- 9.3.4 Contractor warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from the City, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work. (See also 3.30.2)
- 9.3.5 The making of final payment shall constitute a waiver of all claims by the City except those arising from unsettled liens, faulty or defective Work appearing after final payment, failure of the Work to comply with the requirements of the Contract Documents or terms of any special guarantees required by the Contract Documents.

#### **9.4 CERTIFICATE FOR PAYMENT**

- 9.4.1 The issuance of a Certificate for Payment will constitute a representation by the Architect to the City that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. This representation shall be based upon the Architect's observations at the Project Site and the data comprising the Application for Payment.
- 9.4.2 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any of the following:
1. Defective Work not remedied
  2. Third-party claims against Contractor or the City arising from the acts or omissions of Contractor or subcontractors.
  3. Stop notices.
  4. Failure of Contractor to make timely payments due subcontractors for material or labor.
  5. A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.'



6. Damage to the City or Separate Contractor for which Contractor is responsible.
  7. Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover the City's damages for the anticipated delay.
  8. Failure of Contractor to maintain and update record documents.
  9. Failure of Contractor to submit schedules, reports, or their updates as required by the Contract Documents.
  10. Performance of Work by Contractor without approved Shop Drawings.
  11. Liquidated or actual damages assessed in accordance with the Contract
  12. Any other failure of Contractor to perform its obligations under the Contract Documents.
- 9.4.3 Subject to the withholding provisions of Subparagraph 9.4.2 above and when any or all of the noted deficiencies or others have been removed, the City shall pay Contractor the amount set forth in the Certificate for Payment in accordance with its normal disbursement procedures
- 9.4.4 Neither the City nor the Architect shall have an obligation to pay or to see to the payment of money to a subcontractor, except as may otherwise be required by Law.

## **9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION & DEPOSIT OF RETENTION INTO ESCROW**

- 9.5.1 At the request and expense of Contractor, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by the City under Paragraph 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by Contractor with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Subparagraph 9.5.3 until final payment is due in accordance with Paragraph 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.
- 9.5.2 Alternatively to Subparagraph 9.5.1, and at the request and expense of Contractor, the City shall deposit retention directly with Escrow Agent. Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Contractor.
- 9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Contractor, the City, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention forms provided by the City. The terms of such escrow agreement are incorporated into the requirements of this Paragraph.

## **9.6 BENEFICIAL OCCUPANCY**

- 9.6.1 The City reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work at any time prior to issuing the Certificate of Substantial Completion upon thirty (30) days notice to Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:
1. The City and the Architect will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected prior to Substantial Completion. Prior to Beneficial Occupancy, the City will issue appropriate written authorization.

2. Beneficial Occupancy by the City shall not be construed by Contractor as final acceptance by the City of that portion of the Work which is to be occupied. The City may, however, at its sole option, relieve the Contractor of Contract requirements to protect Work being beneficially occupied by City where such relief is specifically designated by the City in writing.
3. Beneficial Occupancy by the City shall not constitute a waiver of existing claims of the City or Contractor against each other.
4. Contractor shall provide, in the areas beneficially occupied and on a continual basis (if required), utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Contractor while the equipment is so operated. Contractor shall submit to the City an itemized list of each piece of equipment so operated with the date operation commences.
5. The Guarantee to Repair Periods, as defined in Paragraph 12.2, will commence upon the first dates of actual occupancy or use of portions of the Work actually occupied and equipment or systems fully utilized.
6. The City shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
7. The City shall pay all utility costs which arise out of the Beneficial Occupancy.
8. Contractor shall not be responsible for providing security in areas beneficially occupied.
9. The City shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Contractor's remaining Work.
10. Contractor shall not be required to repair damage caused by the City in its Beneficial Occupancy.
11. Except as provided in this Paragraph 9.6, there shall be no added cost to the City due to Beneficial Occupancy.
12. Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

## **9.7 SUBSTANTIAL COMPLETION**

- 9.7.1 If a portion of the Work has been designated by the City in the Contract Documents to be performed by a Separate Contractor, Substantial Completion may occur for such designated portion of the Work.
- 9.7.2 When Contractor gives notice to the City that the Work, or portion thereof designated by the City for separate delivery, is substantially complete, unless the City determines that the Work or designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, the City will inspect the Work, or such designated portion thereof, and prepare and give to Contractor a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. Contractor shall proceed within forty-eight (48) hours to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. The City will make an inspection to determine whether the Work or such designated portion thereof is substantially complete. If the City's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. Contractor shall then submit a request for another inspection by the City to determine Substantial Completion.
- 9.7.3 When the City determines that the Work or such designated portion thereof is substantially complete, the City will prepare a Certificate of Substantial Completion on the City's form, which, when signed by the City, shall establish the date of Substantial Completion and the responsibilities of the City and Contractor for security, maintenance, heat, utilities, insurance, and damage to the

Work or such designated portion thereof. Unless otherwise provided in the Certificate of Substantial Completion, the "Guarantee To Repair Period" for the Work (which is defined in Article 12, Section 12.2.1., or such designated portion thereof covered by the Certificate of Substantial Completion, excluding any systems provided by Separate Contractors which are not yet fully operational and accepted by the City, shall commence on the date of Substantial Completion of the Work or such designated portion thereof. "The Guarantee To Repair Period" for systems which become fully operational and accepted subsequent to Substantial Completion will begin on the date of their acceptance by the City. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance.

9.7.4 Upon issuance of the Certificate of Substantial Completion for the Work or such designated portion thereof, the City will issue to Contractor and the City, after receipt of an Application For Payment from Contractor, a Certificate For Payment stating the City's determination of the amount of retention to be released to the Contractor. The determination shall be made at the sole discretion of the City based on such factors as the following:

1. Estimated cost of the remaining Work and correction of Defective Work.
2. Amounts which are or may be owed by Contractor to the City under the Contract Documents.
3. Stop Notice claims received by the City.
4. Other requirements of the Contract Documents.
5. Such other items as the City considers appropriate.

9.7.5 The City will release the retention stated in the Certificate For Payment, issued pursuant to Subparagraph 9.7.4, within thirty-five (35) days after its receipt and approval of such Certificate For Payment provided that: (1) Contractor has furnished to the City written consent from each of the Performance Bond and Payment Bond sureties to such release of retention and (2), if required by the City, receipt of conditional releases, from the Contractor and from the subcontractors entitled to any portion of the retention to be released. Contractor shall, within five (5) days after receiving such retention, pay or cause to be paid to the subcontractors the amounts stated in such releases and shall promptly thereafter furnish to the City unconditional releases from subcontractors.

## **9.8 FINAL COMPLETION AND FINAL PAYMENT**

9.8.1 Before final payment for Work under this Contract is authorized, the following requirements of the Contract Documents shall have been fulfilled:

1. The final Application For Payment and all submittals required in accordance with Paragraph 9.3.
2. Completion and delivery by the Contractor to the City of all required written guarantees, warranties, operation and maintenance manuals, and "As-Built" and "Record" Drawings and Specifications, and other such documents as listed in Section 01700 – Contract Closeout of the General Requirements.
3. Delivery by the Contractor to the City of an affidavit, signed under penalty of perjury, stating that all workers and persons employed, all firms supplying the materials, and all subcontractors of the Work have been paid in full; and that there are no bills outstanding against the Work for either labor or materials, except certain items, to be set forth in such affidavit covering disputed claims or items in connection with which notices to withhold have been filed under the provisions of the statutes of the State of California.
4. Completion of all construction work in a manner acceptable to the City.
5. Permanent Certificate of Occupancy has been obtained by the Contractor and delivered to the City.

If releases are required, Contractor shall pay or cause to be paid to subcontractors the amount stated in the conditional releases within five (5) days after receipt of the final payment, and shall promptly thereafter furnish evidence of such payment to the City. If the City does not require releases, the final payment shall be made, subject to the satisfaction of all other conditions to final payment, Forty (40) days after the filing of the Notice of Final Completion by the City.

- 9.8.2 Acceptance of final payment by Contractor shall constitute a waiver of all claims, except those previously made in writing and identified by Contractor as unsettled at the time of the final Application For Payment.

## **9.9 LIQUIDATED DAMAGES**

- 9.9.1 The City will suffer certain damages in the event the Contractor should fail to complete the Work within the Contract Time. The amount established as damages to be assessed for these Unexcused Delays shall be the sum per calendar day shown in the Notice Inviting Bids and retained out of the monies which may be due the Contractor for each and every day that the time consumed in the execution of the Work may exceed the Contract Time. This sum shall be retained as liquidated damages and not as a penalty.
- 9.9.2 The per diem charge for liquidated damages to be assessed for Unexcused Delays in completion of the Work, which occur after the date of Substantial Completion, may be subject to reduction as determined to be appropriate at the discretion of the City.

**ARTICLE 10**  
**PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1.1 Contractor shall be solely and completely responsible for initiating, maintaining, and supervising all safety precautions and programs on the jobsite in connection with the performance of the Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7-day week basis.
- 10.1.2 Prior to the start of construction, the Contractor shall submit to the City, a copy of the Contractor's Safety Program. The Safety Program shall include, at a minimum: Management Policy; Illness and Injury Prevention Program (as described below); Safety Meetings; Accident Investigation; Basic Accident Causes; Safety Inspection Check List; Fire Prevention and Control; Report Forms and Employee Safety Manual. A copy of this program shall be maintained on site at all times.
- 10.1.3 Prior to the start of construction, Contractor shall submit to the City a copy of an Illness and Injury Prevention Program as required by law. This program must be submitted prior to issuance by the City of Notice to Proceed. It must include provisions for the Contractor reviewing and monitoring all subcontractor Safety Programs.

**10.2 SAFETY OF PERSONS AND PROPERTY**

- 10.2.1 Precaution shall be exercised at all times for the protection of persons and property. The Contractor shall have available at the Project Site, copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the State Division of Industrial Safety. The Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.
- 10.2.2 Contractor shall immediately respond to notice from the City of unsafe conditions, shall take adequate precautions for safety of persons on the Project Site, and shall provide adequate protection to prevent damage, injury, or loss to the following:
  - 1. Employees involved in the Work and other persons who may be affected thereby.
  - 2. The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of Contractor or subcontractors.
  - 3. Other property at the Project Site and adjoining property(ies).
- 10.2.3 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, any subcontractor, or anyone for whose acts they may be liable and for which the Contractor is responsible. An exception is damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.
- 10.2.4 Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation: posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 10.2.5 When use or storage of hazardous materials, equipment, or unusual methods is necessary for execution of the Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of property qualified personnel. Use or storage of explosives is strictly prohibited under the terms of this Contract.
- 10.2.6 Contractor shall be required to provide at the project site a member of Contractor's organization, typically the Project Superintendent, whose responsibilities shall be the instruction of prevention of accidents and overall jobsite safety. If the Contractor has another individual responsible for these activities, he shall notify the City in writing.

- 10.2.7 Contractor shall be responsible for coordinating the storage and staging of materials and equipment on-site and off-site and shall not load/store or permit any part of the Work or the Project Site to be loaded/stored so as to endanger the safety of persons or property.
- 10.2.8 Contractor shall protect its materials and the Work from damage in a manner satisfactory to the City and shall make good, without charge to the City, all damage due to negligence in providing proper protection.
- 10.2.9 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds, and public and private property.
- 10.2.10 Contractor shall not permit the possession or use of alcohol or controlled substances on the Project Site.

### **10.3 EMERGENCIES**

- 10.3.1 In an emergency affecting the safety of persons or property, Contractor shall immediately act to prevent or minimize damage, injury, or loss. Contractor shall immediately notify the City, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation, of the occurrence of such an emergency and Contractor's action. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be treated similar to any other Change in the Work.
- 10.3.2 REFERENCE - Refer to Sections 011000 - Summary of Work, and Section 015000 - Construction Facilities and Temporary Controls of the General Requirements.

## ARTICLE 11 INSURANCE AND BONDS

### 11.1 CONTRACTOR'S INSURANCE

11.1.1 The Contractor shall not commence Work under this Contract until all insurance required under this section has been obtained by the Contractor and approved by the City; nor shall the Contractor allow any Subcontractor to commence Work until all similar insurance required of the Subcontractor has been so obtained and accepted.

#### 11.1.2 Liability Insurance

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the contractor, his agents, representatives, employees or subcontractors, pursuant to contractor's bid or any subsequent contract. Insurance shall be of the type, in the amounts and subject to the provisions described below.

1. **Commercial general liability** coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CGO001, Ed. 11/88) with a limit of not less than \$2,000,000 per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.
2. **Business automobile liability** insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code I "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than \$1,000,000 per accident.
3. **Workers Compensation** Insurance as required by the State of California and **employer's liability** insurance with a limit not less than \$1,000,000 per accident.
4. **Evidence of Coverage:**
  - (a) Prior to commencement of work under this contract, or within 14 days of notification of award of contract, whichever is shorter, Contractor shall file certificates of insurance with original endorsements evidencing coverage in compliance with this contract and in a form acceptable to City. The certificate shall be on the City's standard proof of insurance form.
  - (b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.
  - (c) During the term of this agreement, Contractor shall maintain current valid proof of insurance coverage, with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.
  - (d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default, and shall be cause for forfeiture of this bidder's bid security, if applicable.
  - (e) In the event Contractor does not maintain current, valid evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed,
5. All insurance coverages shall be provided by insurers with a rating of B+ or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.
6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

7. All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this bid or any subsequent contract.
8. Contractor's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.
9. Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City.
10. Any deductibles or self-insured retentions shall be declared to be subject to the approval by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.
11. In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor.

## **11.2 BOND REQUIREMENTS**

- 11.2.1 **Contract Bonds.** The bidder to whom a Contract is awarded shall file with the City a Contract Price before execution of the Contract. The bidder to whom a Contract is awarded shall file with the City a Performance (Completion) Bond in a form acceptable to the City in the amount of 100% of the Contract Price before execution of the Contract. The term "Contract Price" shall be deemed to mean the total Contract "not to exceed" amount consisting of the base bid stated in Bidder's Bid plus all additional Payment (Labor and Materials) Bond in a form acceptable to the City in the amount of 100% of the amounts provided for adjustments to the estimated quantities contained extra Work covered by approved Change Orders, if any.



## ARTICLE 12

### UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING OF WORK

- 12.1.1 If a portion of the Work is covered contrary to the City's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the City, be uncovered for the City's observation and be replaced at Contractor's expense without adjustment of the Contract Time or the Contract Sum.
- 12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to it's being covered and which the City has not specifically requested to observe prior to it's being covered, the City may request to see such Work and it shall be uncovered and replaced by Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

#### 12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

- 12.2.1 Besides guarantees required elsewhere, Contractor shall guarantee in writing all Work for a specified period of time. This guarantee termed "Guarantee To Repair Period," generally means a period of one (1) year, unless a longer period of time is specified, commencing as follows:
1. For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
  2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Paragraph 9.7, from the first date of such Beneficial Occupancy or actual use, as established an appropriate written authorization for Beneficial Occupancy.
  3. For all Work other than 1. or 2. above, from the date of filing of Notice of Completion.
- 12.2.2 Contractor shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (2) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any expense whatsoever to the City. The City will give notice of observed defects with reasonable promptness, and Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from the City, but in no case later than five (5) working days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for the City's or the City's services and expenses. Contractor shall perform corrective Work at such times that are acceptable to the City and in such a manner as to avoid, to the extent practicable, disruption to the City's activities. Ordinary wear and tear, unusual abuse, or neglect is excepted from this guarantee. Contractor shall notify the City upon completion of repairs.
- 12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of the City, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City will attempt to give immediate notice to the Contractor. If the Contractor cannot be contacted or does not comply with the City's request for correction within reasonable time as determined by the City, or Separate Contractors under the City's direction, may, notwithstanding the provisions of this Article, proceed to make such corrections or provide such attention; and the costs of such correction or attention shall be charged against the Contractor, such action by the City will not relieve the Contractor of the guarantees provided in this Article or elsewhere in this Contract. Contractor shall replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

- 12.2.4 Contractor shall promptly remove from the Project Site those portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Contractor nor accepted by the City.
- 12.2.5 If Contractor fails to commence correction of Defective Work within seven (7) days after notice from the City or fails to diligently prosecute such correction to completion, the City may correct the Defective Work in accordance with Paragraph 2.4; and, in addition, the City may remove the Defective Work and store salvageable materials and equipment at Contractor's expense.
- 12.2.6 If Contractor fails to pay the costs of such removal and storage as required by Subparagraphs 12.2.4 and 12.2.5 within seven (7) days after written demand, the City may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to the City, including reasonable attorneys' fees and expenses and compensation for the City's services and expenses. If such proceeds of sale do not cover costs and damages for which Contractor is liable to the City, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to the City.
- 12.2.7 Contractor's obligations under this Article are in addition to and not in limitation of its warranty under Paragraph 3.7 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents which may be longer specified periods. Establishment of the "Guarantee To Repair Period" relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

### **12.3 ACCEPTANCE OF DEFECTIVE WORK**

- 12.3.1 Notwithstanding the provisions of Paragraph 12.2, the City shall have the option, at its sole discretion and by notice to Contractor, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to the City the Work would have had were it complete, correct, and in conformity with the Contract Documents and the value to the City of such Defective Work. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by the City. If there are no remaining payments of the Contract Sum to be made to Contractor or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, Contractor shall promptly pay to the City the amount of any such deficiency.

### **12.4 MAINTENANCE OF "AS-BUILT" DRAWINGS AND SPECIFICATIONS**

- 12.4.1 It shall be the responsibility of the Contractor to maintain a current and complete record of all changes, modifications and revisions performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the Plans and Specifications on which daily recordings are made by the Contractor, indicating in detail and dimension each variation from the original set of construction documents and including all of the construction Work. At the completion of construction, the Contractor shall, as a requirement of the completion of the Work, certify that to the best of its knowledge, the "As-Built" Drawings and Specifications are true and accurate, and that the indications thereon represent all changes performed during the construction of the Project. At the completion of the Work, the "As-Built" Drawings and Specifications shall become the property of the City.
- 12.4.2 The Contractor, in concert with the Architect, shall review the Contractor's "As-Built" Drawings and Specifications for conformance with all current changes prior to presenting his monthly Application For Payment. The monthly progress payment statement will not be accepted or processed by the City unless the "As-Built" Drawings are current and complete, and approved by the City.

- 12.4.3 At the completion of the Work, all information annotated monthly on the "As-Builts" shall be fully incorporated by the Contractor onto a set of reproducible plans furnished by the Architect. These plans shall be also provided on a DVD disk in PDF format. These drawings and specifications will become the "Record Documents" and shall, along with the "As-Builts" noted above, become the property of the City at the Final completion of the Work.
- 12.4.4 REFERENCE - Refer to Section 017700 – Contract Closeout of the General Requirements.

## **ARTICLE 13**

### **MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

- 13.1.1 State of California: The Contract shall be governed by the Laws of the State of California.
- 13.1.2 Termination by Acts of God: The Contract shall be terminated by "Acts of God" as defined in the California Public Contract Code, Section 7105.
- 13.1.3 Clean Air Act: The Contractor shall comply with the provisions of the Clean Air Act of 1970, or more recently enacted version.

#### **13.2 SUCCESSORS AND ASSIGNS**

- 13.2.1 The City and Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. This Contract shall under no conditions be assigned without prior written consent of the City.

#### **3.3 RIGHTS AND REMEDIES**

- 13.3.1 All the City's rights and remedies under the Contract Documents shall be cumulative and in addition to and not in limitation of all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.
- 13.3.2 No action or failure to act by the City, Architect, or Contractor shall constitute a waiver of a right afforded them under the Contract, 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. No waiver by the City, Architect or Contractor of any breach or default shall constitute a waiver of any other breach or default; nor shall any such waiver constitute a continuing waiver.
- 13.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the Architect, or Contractor.

#### **13.4 SURVIVAL**

- 13.4.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the City's right to audit Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

#### **13.5 COMPLETE CONTRACT**

- 13.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

#### **13.6 SEVERABILITY OF PROVISIONS**

- 13.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **13.7 THE CITY'S RIGHT TO AUDIT**

- 13.7.1 The City and entities and agencies designated by the City shall have access to and the right to audit and the right to copy at the City's cost all of Contractor's books, records, contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work and changes in the Work. Contractor shall preserve all such records and other items for a period of at least four (4) years after Final Completion.

#### **13.8 TRENCHING AND EXCAVATING**

- 13.8.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Subparagraph 25117 of the Health and Safety Code, which is required to be removed to a Class 1, Class 11, 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. If the conditions do involve hazardous materials, the City agrees to indemnify and hold harmless the Architect and the Contractor and their agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from damages attributable to the hazardous materials, except where such liability arises from the sole negligence or willful misconduct of the person or entity seeking indemnifications
  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.
- 13.8.2 The City 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 Contract Sum or Time, shall issue a Change Order under the procedures described in the Contract.
- 13.8.3 In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contract Sum or Time, 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.

### **13.9 TIME OF THE ESSENCE**

- 13.9.1 Time limits stated in the Contract Documents are of the essence of the Contract.

**ARTICLE 14**  
**STATUTORY REQUIREMENTS**

**14.1 NON-DISCRIMINATION / EQUAL OPPORTUNITY**

- 14.1.1 For purposes of this Article, the term Subcontractor shall not include suppliers, manufacturers, or distributors, except those who will actually perform work on the Project Site.
- 14.1.2 Contractor shall comply and shall ensure that all Subcontractors comply with Section 12900, and the applicable sections that follow, of the State of California Government Code.
- 14.1.3 Contractor agrees as follows during the performance of the Work:
1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, local custom, habit, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship. Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, the Notice of Equal Employment Opportunity (EEO) setting forth the provisions of this Paragraph.
  2. Contractor shall send to each labor union and public/private City, with which it has a collective bargaining agreement or other contract or understanding, the letter of Concurrence and the Notice of Equal Employment Opportunity (EEO) advising them of Contractor's commitments under this Paragraph; and Contractor shall post copies of the Notice of Equal Employment Opportunity (EEO) in conspicuous places available to employees and applicants for employment. The Notice of Equal Employment Opportunity (EEO) shall be in English and other applicable languages.
  3. Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by the City or any appropriate City of the State of California designated by the City for the purposes of investigation to ascertain compliance with this Paragraph. The outcome of the investigation may result in the following:
    - a. A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by the City as (1) a basis for determining that Contractor is not a "responsible bidder" as to future contracts for which such Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of Contractor for future contracts.
    - b. The City may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.
    - c. Upon receipt of such written notice from the Fair Employment Practices Commission, the City may notify Contractor that, unless it demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, Contractor's bids on future projects will not be considered
  4. Contractor agrees that, should the City determine that Contractor has not complied with this Paragraph, Contractor shall forfeit to the City, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties

provided in Paragraph 14.2 of this Article for violation of prevailing wage rates. Such penalty amounts may be recovered from Contractor; and the City may deduct any such penalty amounts from the Contract Sum.

5. Nothing contained in this Paragraph shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law.
6. Contractor shall meet the following standards for affirmative compliance and provide the City with satisfactory evidence of such compliance upon the City's request, which shall be evaluated in each case by the City:
  - a. Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
  - b. Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
  - c. Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
  - d. Contractor shall notify the City of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.
7. Contractor shall include the provisions of the foregoing Subparagraphs 14.1.3.1 through 14.1.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

## **14.2 STATE LABOR LAW**

- 14.2.1 The Contractor, its agents, and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work.
- 14.2.2 The Contractor shall strictly adhere to the provisions of the Labor Code regarding the employment of apprentices; minimum wages; payment of wages; alien labor, the eight-hour day; overtime, Saturday, Sunday and holiday work; and nondiscrimination because of race, color, national origin, physical handicap, sex or religion. The Contractor shall forfeit to the City the penalties prescribed in the Labor Code for violations.
- 14.2.3 In accordance with the Labor Code, prevailing wage rate determinations for the work to be done on this Project are maintained at the Beverly Hills City Engineer's office.

## **14.3 PAYROLL RECORDS**

- 14.3.1 Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours Worked each day and week, and the actual per them wages paid to each journey worker, apprentice, Worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
  1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative upon request.

2. A certified copy of all payroll records shall be made available for inspection upon request to the City, the state of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
  3. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public City by the City shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.
- 14.3.2 Contractor shall file a certified copy of the payroll records with the entity that requested the records within fourteen (14) days after receipt of a written request. Contractor shall inform the City of the location of such payroll records for the Project, including the street address, city, and county; and Contractor shall, within fourteen (14) days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Paragraph 14.3 or with the State of California Labor Code Section 1776, Contractor shall have fourteen (14) days in which to comply following receipt of notice specifying in what respects Contractor must comply. Should noncompliance still be evident after the fourteen (14) day period, Contractor shall forfeit to the City, as a penalty, twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

#### **14.4 APPRENTICES**

- 14.4.1 Attention is directed to Sections 17777.5, 17777.6, and 17777.7 of the State of California Labor Code and Title 8, California Code of Regulations, Section 200, and the applicable sections that follow. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, Contractor or Subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the Work. Responsibility for compliance with these requirements lies with Contractor.

#### **14.5 WORK DAY**

- 14.5.1 Contractor shall not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Contractor shall forfeit to the City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor, or any Subcontractor, for each calendar day during which such worker is required or permitted to Work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement City of the State of California.



## **ARTICLE 15**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **15.1 TERMINATION BY CONTRACTOR**

15.1.1 Subject to Subparagraph 15.1.2, Contractor shall have the right to terminate the Contract only upon the occurrence of one of the following:

1. The Work is stopped for one hundred twenty (120) consecutive days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
2. The City fails to perform any material obligation under the Contract Documents and fails to cure such default within ninety (90) days after receipt of notice from Contractor stating the nature of such default.
3. Repeated suspensions by the City, other than such suspensions as are agreed to by Contractor under Paragraph 15.3, which constitute in the aggregate more than twenty percent (20%) of the Contract Time.

15.1.2 Upon the occurrence of one of the events listed in Subparagraph 15.1.1, Contractor may, upon thirty (30) days additional notice to the City and provided that the condition giving rise to Contractor's right to terminate is continuing, terminate the Contract.

15.1.3 Upon termination by Contractor, the City shall pay to Contractor the sum determined by Subparagraph 15.4.4. Such payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by Contractor pursuant to Paragraph 15.1; and Contractor will be entitled to no other compensation or damages and expressly waives the same.

#### **15.2 TERMINATION BY THE CITY FOR CAUSE**

15.2.1 The City shall have the right to terminate the Contract and suspend the operations of the Contract for cause at any time after the occurrence of any of the following events:

1. Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
2. Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
3. A receiver is appointed to take charge of Contractor's property.
4. The commencement or completion of any Critical Path Work activity is thirty (30) days or more behind the date set forth in the latest approved Contract Schedule for such Work activity, where the Contractor has not provided an acceptable "Fragnet" Schedule and which results in an Inexcusable Delay.

15.2.2 Upon the occurrence of any of the following events, the City shall have the right to terminate the Contract for cause and shall have the power to suspend the operations of the Contract, if Contractor fails to promptly commence to cure such default and diligently prosecute such cure within two (2) days (48 hours) after notice from the City, or within such longer period of time as is reasonably necessary to complete such cure:

1. Contractor refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents, and the latest approved Contract Schedule.
2. Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from City.

3. Contractor disregards Applicable Code Requirements.
  4. Contractor materially fails to execute the Work in accordance with the Contract Documents, or is, in the City's opinion or the Contractor is violating any of the terms of the Contract or is not executing the Contract in good faith or is not following instructions of the City as to additional force necessary in the opinion of the City for its completion within the required time.
- 15.2.3 Upon any of the occurrences referred to in Subparagraphs 15.2.1 and 15.2.2, and upon receiving notice of such suspension, the Contractor shall discontinue the Work, or such parts of it as the City may designate. Upon such suspension, the City shall designate the Contractor's sureties to carry on the Contract to completion, employ the necessary workers, substitute other machinery or materials, purchase the materials contracted for in such manner as said sureties may deem proper; or hire such force and buy such machinery, tools, appliances, material and supplies at the Contractor's expense as may be necessary for proper conduct of the Work and completion thereof. Any excess of costs arising therefrom over and above the Contract price will be charged against the Contractor and its sureties, who will be liable therefor.
- 15.2.4 In the event of such suspension, all monies due the Contractor or retained under the terms of the Contract shall be retained by the City; but such retention of monies will not release the Contractor or its sureties from liability for failure to fulfill the Contract. The Contractor and its sureties will be paid with the amount of money so retained toward completion of the Work. Any excess of cost over and above the Contract Sum arising from the suspension of operations of the Contract and the completion of the Work shall be paid by the Contractor's sureties. The Contractor will be paid any surplus monies remaining after all just claims for completion of the Work have been paid.
- 15.2.5 Should the Surety company fail to begin Work within a reasonable time in such manner as to insure full compliance with the Contract within the time limit; or if the Work to be done under the Contract be abandoned; or if at any time the City is of the opinion the Work is unnecessarily or unreasonably delayed; or that the Surety company is willfully violating any of the terms of the Contract or is not executing the Contract in good faith or is not following instructions of the City for its completion within the required time; or if at any time the Surety company is not properly carrying out the provisions of the Contract in their true intent and meaning; then, in any such case, notice thereof in writing will be served upon the Surety; and should the Surety company neglect or refuse to provide means for a satisfactory compliance within the time specified in such notices, the City shall have the power to suspend the operations of the Surety company.
- 15.2.6 Upon receiving notice of such suspension, the Surety Company shall discontinue said Work, or such parts of the Work as the City may designate. Upon such suspension, the City may employ other parties to carry on the Contract Work to completion, employ the necessary workers, substitute other machinery or materials, purchase the materials contracted for in such manner as the City may deem proper, or hire such force, and buy such machinery, tools, appliances, material, and supplies at the sureties' expense, as may be necessary for the proper conduct of the Work and for completion thereof. Any excess of costs arising therefrom over and above the Contract price will be charged against the Contractor and its sureties, who will be liable therefor.
- 15.2.7 In lieu of the exercise of the authority herein above given to employ workers, purchase tools and materials, and complete the Work, the City reserves the right and option instead thereof, to annul and cancel the Contract and to relet the Work or any part thereof; and the Contractor shall not be entitled to any claim for damages on account of such annulment, nor shall such annulment affect the right of the City to recover damages which may arise from such failure on the part of the Contractor to fulfill the terms of the Contract; and in case of such annulment, all monies due Contractor or retained under the terms of the Contract shall be forfeited to the City; but such forfeiture shall not release Contractor or its sureties from liability for failure to fulfill the Contract; and Contractor and its sureties shall be credited with the amount of the monies so forfeited toward any greater sum they may become liable for to the City on account of the default of the Contractor.
- 15.2.8 In determination of the question of whether there has been such noncompliance with the Contract as to warrant the suspension or annulment thereof, the decision of the City will be binding on all parties.

- 15.2.9 No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents upon such termination; and the City may proceed against Contractor to recover all losses suffered by the City.

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

- 15.3.1 The City may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of 20% of the Contract Time, as the City may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Paragraph. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Contractor shall, at the City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and the City, the City shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.
- 15.3.2 If a Suspension Order is canceled or expires, Contractor shall continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension, or a Change Order will be issued pursuant to Article 7.
- 15.3.3 The provisions of this Paragraph 15.3 shall not apply if a Suspension Order is not issued by the City. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

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

- 15.4.1 The City may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving a thirty (30) day written notice to Contractor. Upon such termination, Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and, as the sole right and remedy of Contractor, the City shall pay Contractor in accordance with Subparagraph 15.4.4.
- 15.4.2 Upon receipt of notice of termination under this Paragraph 15.4, Contractor shall, unless the notice directs otherwise, do the following:
1. Immediately discontinue the Work to the extent specified in the notice.
  2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
  3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
  4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.
- 15.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Contractor's obligations under Subparagraph 15.4.2, as to bona fide obligations assumed by Contractor prior to the date of termination.
- 15.4.4 Upon such termination, the City shall pay to Contractor the sum of the following:
1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
  2. Plus an amount equal to the lesser of fifty thousand dollars (\$50,000) or five percent (5%) of the difference between the Contract Sum and the amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination.

3. Plus previously unpaid costs of any items delivered to the Project Site which was fabricated for subsequent incorporation in the Work.
4. Plus any proven losses with respect to materials and equipment directly resulting from such termination.
5. Plus reasonable demobilization costs.

The above payment shall be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by the City pursuant to Paragraph 15.4; and Contractor will be entitled to no other compensation or damages and expressly waives same.

**END OF GENERAL CONDITIONS**

## APPENDIX A

### FORM OF CONTRACT

This contract ("Contract") is entered into by and between the City of Beverly Hills ("City"), a California municipal corporation, and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_.

In consideration of the agreements herein contained, the parties agree as follows:

1. **WORK TO BE PERFORMED.** Contractor shall furnish at Contractor's own expense all labor, materials, supplies, equipment, tools, transportation and other items of expense necessary to complete in a workmanlike manner all Work in accordance with the terms and conditions of the Contract, except for the labor, materials, supplies, equipment, tools, transportation and other items of expense as may be required to be furnished by the City. The Work is defined in detail in the Contract Documents, which govern the interpretation and performance of this Contract, but may be generally described as follows:

#### **ROXBURY COMMUNITY CENTER**

2. **CONTRACT DOCUMENTS.** This contract consists of this Form of Contract and the following Contract Documents, including all exhibits, appendices, addenda, drawings, specifications and documents therein and attachments thereto, all of which are by this reference incorporated herein and made a part of this Contract:

**SECTION 1: NOTICE INVITING BIDS**  
**SECTION 2: INSTRUCTIONS TO BIDDERS**  
**SECTION 3: SPECIAL CITY REQUIREMENTS**  
**SECTION 4: GENERAL SPECIFICATIONS**  
**SECTION 7: ADDITIONAL FORMS**  
**SECTION 8: GENERAL CONDITIONS**

**APPENDIX B: SCOPE OF WORK**  
**APPENDIX C: PAYMENT PROCEDURES**  
**APPENDIX D: BID FORM**  
**APPENDIX E: TECHNICAL SPECIFICATIONS**

as contained in City's Bid Document for Bid No. 12-09, dated October 10, 2011 and

**SECTION 5: BIDDER'S BID**  
**SECTION 6: SIGNATURE PAGE AND LEGAL STATUS**

of Contractor's Bid in response thereto, all of which are incorporated herein by reference, and all of which shall comprise the Contract Documents for this Contract. If any item of the Scope of Work, Payment Schedule, or any other item of the Bid Package is modified by either of the parties or arrived at by negotiation between the parties, that item as finally agreed upon by the parties shall also become a Contract Document, it shall supersede the corresponding item of the Bid Package, if any, and it shall be subject to all terms and conditions of the Contract.

3. **PERFORMANCE PERIOD.** Contractor shall commence Work after execution of the Contract, and shall complete all Work as described in Appendix B from the date of Notice To Proceed as set forth in the Contract Documents.

4. PAYMENT. City shall pay Contractor as full consideration for the satisfactory performance by Contractor of all Work required under this Contract the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable as provided in the Contract Documents, inclusive of Alternate Bids \_\_\_\_\_.

5. The City Manager or his designee shall administer the terms of the Agreement on behalf of the City.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the date stated below.

DATED: \_\_\_\_\_

CITY OF BEVERLY HILLS  
"City"

\_\_\_\_\_  
BARRY BRUCKER  
Mayor

ATTEST:

\_\_\_\_\_  
BYRON POPE  
City Clerk

APPROVED TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

DATED: \_\_\_\_\_

\_\_\_\_\_  
"Contractor"

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager

\_\_\_\_\_  
DAVID D. GUSTAVSON  
Director of Public Works

\_\_\_\_\_  
ALAN SCHNEIDER  
Director of Project Administration

\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager

## APPENDIX B

### SCOPE OF WORK

#### 1.0 SCOPE OF WORK

- 1.1 Scope of Work shall be as described and in accordance with plans and technical specifications prepared by HAI, Hirsch & Associates, Inc. 2221 E. Winston Road Suite A, Anaheim, CA 92806, Ph 714-776-4340
- 1.2 The scope of work includes:
  - 1.2.1 Base Bid: Improvements consist of the staged demolition of the existing community center, grading, construction of a new approximately 26,000 sf community center with a roof top solar panel installation, parking lot, basketball and tennis courts, minor street improvements, maintenance yard improvements, storm drains, catch basins, site utilities, picnic facilities, landscape and irrigation. Project is located at 471 S. Beverly
  - 1.2.2 Bid Alternates (Reference Specifications Section 012300 Alternates for additional information):
    - 1.2.2.1 Additive Alternate No. 1 – Climbing Wall. Refer to building architectural and structural plans, and project specification Sections 131200 Climbing Wall, and Section 116833 Climbing Wall Flooring.
    - 1.2.2.2 Additive Alternate No. 2 – Children’s Tot Lot Play Area. Refer to site construction plans CP-2 and CD-10. Scope of work shall consist of the purchase and installation of the play equipment, rubberized surfacing and crushed aggregate base, and all requirements per the General Conditions and Specifications.
  - 1.2.3 Bid Allowances:
    - 1.2.3.1 Allowance No. 1 – Include stipulated sum for hazardous materials abatement.
    - 1.2.3.2 Allowance No. 2 – Include stipulated sum to provide and install a new fire-alarm system.
    - 1.2.3.3 Allowance No. 3 - Include the stipulated sum for new or rerouting of conduits and pipes in conflict with new construction.
    - 1.2.3.4 Allowance No. 4 – Include the stipulated sum for procurement and installation of electronic access control equipment at designated door locations (excludes electronic locking door hardware specified in the Finish Hardware specification section).
    - 1.2.3.5 Allowance No. 5 – Include stipulated sum for HVAC controls, including all conduits, wiring, control-hardware, devices, programming, commissioning, graphics and integration necessary to complete the project.

#### 2.0 SCHEDULE OF WORK – CONSTRUCTION PHASES

- 2.1 Work shall be completed within the completion times specified herein from the date of Notice to Proceed for each Phase of Work described below: The contractual completion time shall be Three Hundred sixty five calendar days for the Base Bid work and all accepted alternatives commencing from the date of the Notice to Proceed

#### 3.0 SPECIAL PROVISIONS

- 3.1 Special work hours, issued as “After-Hours” permits by the Community Development Department, Building & Safety Division in coordination with the Public Works & Transportation Department Civil Engineering Division will be required to execute portions of the work that would impact the public right-of-way (ROW). After-Hours permits are required for work prior to or after the Municipal Code specified hours of 8:00 a.m. to 6:00 p.m. from Monday to Friday.

Special work hours between 10:00 p.m. and 8:00 a.m. will be required for any work that cannot fully occur within the project property boundaries, including but not limited to earthwork, steel erection, and concrete placement. Material deliveries will be required during these special hours unless it can occur within the project property boundaries.

Public ROW improvements, including utility installations in the ROW shall occur during night hours and/or weekends, subject to direction from Public Works & Transportation Civil Engineering staff.

- 3.2 Contractor shall arrange for and manage a complaint “hot line” telephone service to handle construction issues from the public during the term of this project. Contractor shall agree to have an actively manned service on a 24 hour / 7 day basis to receive such calls, and will endeavor to resolve complaints within 24 hours of such notice. Contractor shall maintain a log of all calls received and the actions taken for resolution.

- 3.3 Activities which create excessive noise, vibration, fumes or similar disruptions which are, in the opinion of the City’s Representative, detrimental to the operations of the community may be stopped by the City at its discretion, and only be performed during periods approved in advance by the City’s Representative.

- 3.4 Contractor shall control the conduct of its employees so as to prevent unwanted interaction with the City’s staff, public or other individuals except those associated with the Project. Contractor shall cooperate and provide required employee information, including name, address, driver’s license number and social security number to the City for a security review, as requested.

- 3.5 Parking for construction workers will be available on a limited basis on a surface lot under lease by City from Southern California Edison. The parking lot is located east of the Courthouse between Burton Way and the alley north. Access to the lot is from the alley and is adjacent to residential properties. The conduct of construction workers shall not cause any disturbance to the residents or this parking site will be terminated at the City’s discretion.

Parking at City owned parking garages, such as the Third Street garage or Bedford Drive garage will be available for monthly parking at the rate of \$145/month per vehicle.

- 3.6 A construction field office can be located within the project property boundaries.

- 3.7 Material storage must be contained within the project property boundaries, although space will be made available on a portion of City property on Third Street, east of Civic Center Drive. This site can also accommodate a construction office unit subject to coordination with the City’s Public Works & Transportation Department.

- 3.8 Approval by the City’s Project Manager does not constitute approval by the City’s Department of Community Services, Building and Safety Division. The City’s Project Manager shall represent the “owner”.

- 3.9 Field Orders may be issued by the City, or by the Architect with the approval of the City.

- 3.10 The construction schedule, the Schedule of Values, the subcontract amounts and contracts shall be submitted to the City’s Project Manager within a reasonable time and prior to the



commencement of work if that time is not specified in the documents. These submissions require the approval of the City's Project Manager.

- 3.11 From time to time the City receives a Public Request for Information. The Contractor shall complete each form in the time specified by the regulations.
- 3.12 Each month the Contractor shall provide certified payrolls from every firm working on the project.
- 3.13 Fees generally imposed by the City of Beverly Hills shall be waived and should not be included in the Bid, excluding those related to parking or are fines.
- 3.14 Contractor shall provide all temporary structures, measures, apparatus and services required to prosecute the Work of this bid package.
- 3.15 All utility service and building system connections or required interruptions shall be coordinated in advance with the City's Representative and the appropriate utility representative.
- 3.16 Rubbish, debris, waste, dust or surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. The City may elect if required, upon written notice to the Contractor, to perform cleanup, the cost for which will be deducted from the Contract amount. Only one rubbish removal company is allowed to operate within the City. Their contact information may be obtained from the City's Commercial Solid Waste Division at 310-288-2806.

#### **4.0 BID PACKAGE DESCRIPTION**

The plans are dated October 7, 2011 and consist of approximately 222 sheets; these include, but are not limited to, architectural, civil, structural, electrical, mechanical and plumbing. The Specifications consist of two volumes covering the pertinent trades and equipment. Both the plans and specifications were prepared by HAI, Hirsch & Associates, Inc.

Note that the base bid includes several allowance items that must be included in the Base Bid, and there are also two Alternatives.

## APPENDIX C

### PAYMENT PROCEDURES

#### **1.0 PROGRESS PAYMENTS**

1.1 Based upon Applications for Payment submitted to the City, the City shall make progress payments on account of the Contract Sum to the Contractor as provided below.

1.2 The period covered by each Application for Payment shall be one calendar month.

1.3 City shall make payment to the Contractor within thirty (30) days after receipt of a proper Application for Payment.

1.4 Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor. The Schedule of Values shall allocate the entire Contract Sum among the Various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for payment.

1.6 The amount of each progress payment shall be computed as follows:

1.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retention of ten percent (10%).

1.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing), less retention of ten percent (10%).

1.6.3 Subtract the aggregate of previous payments made by the City.

1.7 Reduction or limitation of retainage, if any, shall be upon written request by the Contractor. The City, at its discretion, may reduce the total retention withheld or release retention for a specific item of work where extended withholding of retention is not warranted.

1.8 Securities may be provided in lieu of retainage as follows:

1.8.1 At the request and expense of the Contractor, upon execution of a proper escrow agreement, securities equivalent to the amount withheld shall be deposited with the public agency as the escrow agent, or with a state or federally chartered bank as the escrow agent, and the public agency shall then pay such monies to the Contractor.

1.8.2 Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

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

1.8.4 The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

1.8.5 The escrow agreement to be used hereunder is attached hereto.

## **2.0 FINAL PAYMENT**

2.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as agreed to between the City and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by the City; and (3) the work has been accepted by the City Council of the City of Beverly Hills; and (4) a Notice of Completion has been filed. Final payment shall be made by the City not more than forty (40) days after completion of the above, but only to the extent that no stop notices or other requirements to withhold funds are then in effect.

ESCROW AGREEMENT FOR SECURITY DEPOSITS  
IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between \_\_\_\_\_  
whose address is \_\_\_\_\_ (hereinafter called "City"),  
\_\_\_\_\_ whose address is \_\_\_\_\_  
(hereinafter called "Contractor"), and \_\_\_\_\_ whose address  
is \_\_\_\_\_, (hereinafter called "Escrow Agent").

For consideration as hereinafter set forth, Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by City pursuant to the Construction Contract entered into between City and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_, dated (hereinafter referred to as the "Contract"). When Contractor deposits the securities as a substitute for Contract earnings, the Escrow agent shall notify City within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between City and Contractor. Securities shall be held in the name of \_\_\_\_\_, and shall designate Contractor as the beneficial owner.

(2) \_\_\_\_\_ City shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payment pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.

(3) Alternatively, City may make payments directly to Escrow Agent in the amount of retention for the benefit of Owner until such time as the escrow created hereunder is terminated.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account. These expenses and payment terms shall be determined by Contractor and Escrow Agent.

(5) Interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to City.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from City to Escrow Agent that City consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) City shall have the right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice to Escrow Agent from City of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by City.

(8) Upon receipt of written notification from City certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from City and Contractor pursuant to Sections (4) to (6), inclusive, of this agreement and City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of City, Contractor, and Escrow Agent in connection with the foregoing, and exemplars of their respective signatures are as follows:

City:	Contractor:
_____	_____
Escrow Agent:	
_____	

At the time the Escrow Account is opened, City and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by the proper officers on the date first set forth above.

City:	Contractor:
_____	_____
Escrow Agent:	
_____	

## APPENDIX D

### BID FORM

**NOTE: Any Alteration or Addition to the Bid Form May Invalidate the Bid**

TO: THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF BEVERLY HILLS

The undersigned, having carefully examined the site conditions and the Contract Documents for

### **ROXBURY COMMUNITY CENTER**

HEREBY PROPOSES AND AGREES to commence the Work per the Agreement; to furnish all labor, materials, equipment, transportation, service, sales taxes, and other costs necessary to complete the Work in strict conformity with the Contract Documents, at prices indicated below.

#### **1.0 TOTAL LUMP SUM BASE BID**

**Item Description:** Base Bid scope of work shall include staged demolition of the existing community center, grading, construction of a new approximately 26,000 sf community center with a roof top solar panel installation, parking lot, basketball and tennis courts, minor street improvements, maintenance yard improvements, storm drains, catch basins, site utilities, picnic facilities, landscape and irrigation. Project is located at 471 S. Beverly

Base Bid shall include all allowances listed in the in Section 1.2.3 of Appendix B

Bidder agrees to provide and install all base bid work as shown on the Drawings and described in the Specifications including General Conditions, licenses, non-City of Beverly Hills permits and fees, taxes, overhead, bond and insurance for the total lump sum of:

\$ \_\_\_\_\_  
Dollars (in words- printed)

\$ \_\_\_\_\_  
Dollars (in figures)

**In the case of any discrepancy between words and figures, the words shall prevail.**

#### **2.0 ALTERNATE BIDS**

Bidder agrees to provide an add/deduct for any or all of the Alternate Bid items listed herein as part of the overall Work. These Alternates are listed in Specification Section 012300, the required scope of work would relate to the respective specification sections.

The Contractor shall guarantee the bid price(s) for the Alternates for 90 days. Prior to that date, the City shall inform the Contractor of the City's decision to either proceed or not to proceed with any or all of the Alternates. If the City decides to proceed with any or all of the Alternates, then the Contractor shall complete the Work as specified. A Change Order shall be executed for the alternate(s) amount(s). The Contractor shall be entitled to an increase in the Contract Time, as specified in these documents.

- 2.1 Additive Alternate No. 1 – Climbing Wall. Refer to building architectural and structural plans, and project specification Sections 131200 Climbing Wall, and Section 116833 Climbing Wall Flooring.

\$ \_\_\_\_\_  
Dollars (in words- printed) Dollars (in figures)

- 2.2 Additive Alternate No. 2 – Children’s Tot Lot Play Area. Refer to site construction plans CP-2 and CD-10. Scope of work shall consist of the purchase and installation of the play equipment, rubberized surfacing and crushed aggregate base, and all requirements per the General Conditions and Specifications.

\$ \_\_\_\_\_  
Dollars (in words- printed) Dollars (in figures)

### **3.0 BID ALLOWANCES**

The following allowances shall be included in the Base Bid. The Contractor’s profit and overhead shall be included in the Base Bid so that if these allowances are authorized no additional Contractor’s profit or overhead shall be included. These allowances cannot be expended without a written directive from the City.

- 3.1 Allowance No.1 - Include the stipulated sum of \$140,000.00 for hazardous material abatement.
- 3.2 Allowance No. 2 - Include the stipulated sum of \$50,000.00 to provide and install a new fire-alarm system and tie into the existing system.
- 3.3 Allowance No. 3 - Include the stipulated sum of \$40,000.00 for new or rerouting of conduits and pipes in conflict with new construction.
- 3.4 Allowance No. 4 - Include the stipulated sum of \$92,000.00 for procurement and installation of electronic access control equipment at designated door locations (excludes electronic locking door hardware specified in the Finish Hardware specification section).
- 3.4 Allowance No. 5 - Include the stipulated sum of \$230,000.00 for HVAC controls, including all conduits, wiring, control-hardware, devices, programming, commissioning, graphics and integration necessary to complete the project.

- 4.0 TIME OF PERFORMANCE** – The contractual completion time shall be Four Hundred and Twenty Four (424) calendar days for the Base Bid work and all acceptable alternates commencing from the date of the Notice to Proceed

## 5.0 COMPENSATION FOR DELAY (PER DIEM)

Bidder shall determine and provide in the space below the amount of per diem compensation (costs to include any and all of Contractor's overhead, profit and General Conditions as directly related to this project) for any Compensable Delay at any time during the performance of the Work:

\$ _____	
Dollars Per Diem Per Day (in words)	Dollars Per Diem Per Day (in figures)

Per Diem compensation multiplied by Twenty (20) days =

<div> <div>\$</div> <div></div> </div>	
Total Per Diem (in words)	Total Per Diem (in figures)

## 6.0 TOTAL PROJECT BID

To determine the low Bidder, the City will calculate the sum of the following:

- (a) Base Bid in paragraph 1.0, including the Bid Allowances in Section 3.0
- (b) The sum of all Alternate Bids in Section 2.0
- (c) The twenty day (20) Compensable Delay in Section 5.0.

The Contract will then be awarded to the lowest responsive and responsible Bidder.

The final Contract may or may not include any or all or the alternates at the sole discretion of the City.

## 7.0 DESIGNATION OF SUBCONTRACTORS/SUPPLIERS

In accordance with the "Subletting and Subcontracting Fair Practices Act", Sections 4100-4113 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall list below the name, location and trade of each Subcontractor or Supplier who will perform work, labor, render service or provide and install material and/or equipment to the Contractor in the construction of the Work in an amount in excess of one-half of one percent (0.5%) of the Contractor's total Bid (Example: one-half of one percent (0.5%) of a \$1,500,000 project is equal to \$7,500). Only one Subcontractor for each such trade shall be listed. If the Contractor fails to specify a Subcontractor for any portion of the Work to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself, and he shall not be permitted to subcontract that portion of the Work.

**NOTICE:** Penalties for violations of the Subletting and Subcontracting Fair Practices Act will be enforced by the City for failure to list subcontractors as provided by that act.

NOTES:

- (1) **SUBMISSION PROCEDURES:**
- a. Upon submission of bid documents: Complete the forms as much as possible, but at a minimum include the Subcontractors/Suppliers name.
  - b. Incomplete forms turned in upon submission of Bids by Contractors will lead to the Bids of said Contractors being declared non-responsive.



- (2) Some of the trades listed may not be providing Work in excess of one-half of one percent (0.5%) of your Bid. In that case, indicate which trade the Work is to be included under.
- (3) In all cases, if the Work is to be provided by the General Contractor's (your) forces, indicate this by listing your company name in the space provided for the Subcontractor's name.
- (4) In accordance with requirements above, Contractor shall use the following form to list the Subcontractors or Suppliers:

**DESIGNATION OF SUBCONTRACTORS/SUPPLIER FORM**

CSI	TRADE	SUBCONTRACTORS NAME	LICENSE #


Respectively submitted,

COMPANY NAME: \_\_\_\_\_

BY: \_\_\_\_\_

NAME & TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Roxbury Community Center Bid Documents 10-10-2011

**APPENDIX E**

**TECHNICAL SPECIFICATIONS**

Technical specifications consist of the pertinent trades and equipment prepared by HAI, Hirsch & Associates, Inc.