

# **COMMUNITY HALL ACOUSTICAL UPGRADE PROJECT**



## **CITY OF SAN JUAN BAUTISTA**

311 Second Street  
P.O. Box 1420  
San Juan Bautista, CA 94045  
(831) 623-4661

## **MEMBERS OF THE CITY COUNCIL**

Leslie Q. Jordan, Mayor  
John Freeman, Vice Mayor  
EJ Sabathia, Jackie Morris-Lopez, Scott Freels

Don Reynolds	City Manager
Robert Rathie	City Attorney
Jerry Sanguinetti	City Engineer

**May 17, 2023**

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**NOTICE INVITING BIDS FOR  
COMMUNITY HALL ACOUSTICAL UPGRADE PROJECT**

1. The City of San Juan Bautista (“City”) will accept sealed bids for the **Community Hall Acoustical Upgrade Project**, by or before **June 22, 2023, at 11:00 AM.** at the Front Counter at City Hall, 311 Second Street, San Juan Bautista, CA 95045.

2. **Project Location and Description**

The Project entails the installation of acoustical panels and diffusers inside the San Juan Bautista Community Hall, located at 10 San Jose Street in San Juan Bautista. The Community Hall is approximately 3,485 square feet and is used for a variety of public and private events. Currently, the acoustics inside the Hall are poor due to the existing surface materials on the walls, ceilings, and floors. The purpose of the Project is to improve the sound quality inside the Hall by installing sound-absorbing and sound-diffusing materials on the walls and ceiling.

**Due to ongoing use of the Community Hall for special events on weekends the Contractor will be limited to working Monday through Thursday, with no work occurring Friday through Sunday. The project site shall be cleaned by the end of the day, Thursdays.**

3. **Pre-Bid Site Visit**

A non-mandatory pre-bid site visit for all prospective bidders will be held on **June 7, 2023 at 10:00 a.m.** The site visit will be held at the **San Juan Bautista City Hall located at 10 San Jose Street, San Juan Bautista, CA.** Prospective bidders are strongly encouraged to attend the pre-bid site visit to acquaint themselves with the site location, physical features inside the Community Hall, and access to the walls and ceiling of the facility.

4. **License and DIR Registration Requirements**

- 4.1 **License.** At the time of award of contract, the successful bidder shall possess a Class "B" contractor's license.

- 4.2 **DIR Registration.** City may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations (“DIR”) to perform public work under Labor Code section 1725.5, subject to limited legal exceptions.

5. **Contract Documents.** Bid Documents can be obtained from San Juan Bautista's City's Clerk's office at (831) 623-4661. As distribution of the bid document is by email, outside plan rooms and other means, it is the bidder's responsibility to advise the City Staff that he wants to be included on the bid holders list to receive any addenda.
6. **Bid Security.** The Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that within ten days after City issues the Notice of Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, and any other submittals required by the Contract Documents and as specified in the Notice of Award.

The Contract estimated to be \$100,000.

7. **Prevailing Wage Requirements.**

- 7.1 **General.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.
- 7.2 **Rates.** Prevailing rates are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.
- 7.3 **Compliance.** The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code section 1771.4.

8. **Instructions to Bidders.** All bidders should carefully review the Instructions to Bidders before submitting a Bid Proposal.

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

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

Don Reynolds, City Manager



## INSTRUCTIONS TO BIDDERS

Bid Proposals submitted to the City of San Juan Bautista (City) shall be in accordance with the following instructions:

### 1. Bid Submission.

- a. **General.** Each Bid Proposal must be signed, sealed and submitted to City, using the form provided in the Contract Documents, before the date and time set forth in the Notice Inviting Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened.

City reserves the right to postpone the date and time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.

- b. **Bid Envelope.** The envelope containing the sealed Bid Proposal and all required forms and attachments must be clearly labeled and addressed as follows:

**BID PROPOSAL FOR “COMMUNITY HALL ACOUSTICAL  
UPGRADE PROJECT, SAN JUAN BAUTISTA”**

Attention: City Clerk  
PO Box 1420  
311 Second Street  
San Juan Bautista, CA 95045

The envelope must also be clearly labeled with the bidder’s name, address, and its registration number with the California Department of Industrial Relations (“DIR”) for bidding on public works contracts (Labor Code sections 1725.5 and 1771.1):

*[Contractor company name]*

*[street address]*

*[city, state, zip code]*

DIR Registration No: \_\_\_\_\_

- 1.3 DIR Registration.** Subject to limited legal exceptions for joint venture bids and federally funded projects, City may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code section 1725.5. If City is unable to confirm that the bidder is currently registered with the DIR, City may disqualify the bidder and return its bid unopened. (Labor Code sections 1725.5 and 1771.1(a).)
- 2. Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included in the Contract Documents. The Bid Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with exceptions or terms such as "negotiable," "will negotiate," or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 4 below, and by a completed Subcontractor List and Non-Collusion Declaration using the forms included in the Contract Documents.
- 3. Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporation Code section 313.
- 4. Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's check, certified check, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California, made payable to City. The bid security must guarantee that, within ten days after issuance of the Notice of Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the Awarded Contract amount; and submit the insurance certificates and endorsements and any other submittals, if any, required by the Contract Documents or the Notice of Award.
- 5. Pre-Bid Investigation.**
- 5.1 General.** Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to

the public at large, bidders may not enter City's property or the Project site without prior written authorization from City. Bidders are responsible for reporting any errors or omissions in the Contract Documents to City prior to submitting a Bid Proposal, subject to the limitations of Public Contract Code section 1104. City expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by City.

**5.2 Project Site.** The bidder is responsible for ascertaining the physical conditions inside the Community Hall, including existing layout, height of ceiling, finish surfaces, and access into the building. The bidder is responsible for determining the means to access and install acoustical improvements. A pre-bid site visit will be established under Section 3 of the 'Notice Inviting Bids' to allow for access to the site prior to bidding. No site visits will be allowed later than 3 business days before the designated bid opening date.

- 6. Bidders Interested in More Than One Bid.** No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders, and may also submit a Bid Proposal as a prime contractor.
- 7. Requests for Information.** Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted in writing to Karl Bjarke, Project Manager. Oral responses are not authorized and are not binding on the City. Bidders should submit any such written inquiries at least five working days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by City in response to a written inquiry will be issued in an addendum.
- 8. Addenda.** Any addenda issued prior to the bid opening are part of the Contract Documents. Subject to the limitations of Public Contract Code section 4104.5, City reserves the right to issue addenda prior to bid time. Each bidder is responsible for ensuring it has received and reviewed all addenda prior to submitting its bid.
- 9. Brand Designations and "Or Equal" Substitutions.** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 20 calendar days after award of the Contract unless otherwise provided in the Contract Documents. This provision

does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code section 3400(c).

- 10. Withdrawal of Bid Proposals.** A Bid Proposal may not be withdrawn for a period of 90 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code section 5100 et seq.
- 11. Bid Protest.** Any bid protest must be in writing and received by City Hall at 311 Second Street, San Juan Bautista, CA 94045 or via email at *CityManager@San-Juan-Bautista.ca.us* before 5:00 p.m. no later than two Working Days following the bid opening (“Bid Protest Deadline”) and must comply with the following requirements:
  - 11.1 General.** Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another bidder but must timely pursue its own protest. If required by City, the protesting bidder must submit a non-refundable fee in the amount specified by City, based upon City’s reasonable costs to administer the bid protest. Any such fee must be submitted to City no later than the Bid Protest Deadline, unless otherwise specified. For purposes of this Section 11, a “Working Day” means a day that City is open for normal business, and excludes weekends and holidays observed by City. Pursuant to Public Contract Code section 4104, inadvertent omission of a Subcontractor’s DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours.
  - 11.2 Protest Contents.** The bid protest must contain a complete statement of the basis for the protest and all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the specific portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person representing the protesting bidder.
  - 11.3 Copy to Protested Bidder.** Upon submission of its bid protest to City, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
  - 11.4 Response to Protest.** The protested bidder may submit a written response to the protest, provided the response is received by the City Manager before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must include all supporting documentation. Material submitted after the Response

Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person representing the protested bidder if different from the protested bidder.

- 11.5 Copy to Protesting Bidder.** Upon submission of its response to the bid protest to the City, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 11.6 Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. A bidder's failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- 11.7 Right to Award.** City reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.
- 12. Reservation of Rights.** City reserves the right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities, to accept or reject any and all bids, or to abandon the Project entirely. The Contract will be awarded, if at all, within 90 days after opening of bids or as otherwise specified in the Special Conditions, to the responsible bidder that submitted the lowest responsive bid. Any specific date given for planned commencement of the Project, if any, in Section 2.2 of the Notice Inviting Bids represents the City's expectations at the time the Notice Inviting Bids was first issued. City is not bound to issue a Notice to Proceed by or before such planned commencement date, and reserves the right to issue the Notice to Proceed when the City determines, in its sole discretion, the appropriate time for commencing the Work.
- 13. Bonds.** The successful bidder is required to submit payment and performance bonds as specified in the Contract Documents using the bond forms included in the Contract Documents, within ten days following City's issuance of the Notice of Award. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.
- 14. License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a City business license within 10 calendar days

following City's issuance of the Notice of Award. Each Subcontractor must also obtain a City business license before performing any Work.

- 15. Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code sections 1777.1 or 1777.7 is prohibited from performing work on the Project.
- 16. Safety Orders.** If the Project includes construction of a pipeline, water, storm drain, sanitary sewer, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code section 6707.

***END OF INSTRUCTIONS TO BIDDERS***

# BID PROPOSAL

\_\_\_\_\_ (“Bidder”) hereby submits this Bid Proposal to the City of San Juan Bautista (“City”) for the **Community Hall Acoustical Upgrade Project** (“Project”) in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced in the Notice.

- 1. Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead for the following price as reflected in the ‘TOTAL’ amount in the bid schedule below (“Base Bid”):

\$ \_\_\_\_\_ (In Numbers)

\_\_\_\_\_ (In Words)

- 2. Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this Bid. Bidder specifically acknowledges receipt of the following addenda:

Addendum:	Date Received:	Addendum:	Date Received:
#01	_____	#05	_____
#02	_____	#06	_____
#03	_____	#07	_____
#04	_____	#08	_____

- 3. Bidder’s Warranties.** By signing and submitting this Bid Proposal, Bidder warrants the following:

- 3.1 Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder’s knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code section 1104.

- 3.2 Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.

- 3.3 Bidder is Qualified.** Bidder is fully qualified to perform the Work.

**3.4 Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed Bid.

**4. Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that if Bidder is awarded the Contract for the Project, within ten days following issuance of the Notice of Award to Bidder, Bidder will do all of the following:

**4.1 Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;

**4.2 Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents; and

**4.3 Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents.

**5. Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):

\_\_\_\_\_ A cashier's check or certified check payable to City and issued by  
\_\_\_\_\_ [Bank name] in the amount of  
\$ \_\_\_\_\_.

\_\_\_\_\_ A bid bond, using the Bid Bond form included with the Contract Documents,  
payable to City and executed by a surety licensed to do business in the State of  
California.



This Bid Proposal is hereby submitted on \_\_\_\_\_, 2023 \_\_.

s/ \_\_\_\_\_

Name and Title

s/ \_\_\_\_\_

*[See Section 3 of Instructions to Bidders]*

Name and Title

Company Name

License #, Expiration Date, and Classification

Address

DIR Registration #

City, State, Zip

Phone

Contact Name

Contact Email

***END OF BID PROPOSAL***

## PROJECT BID

The contractor shall perform all work necessary to complete the Contract in accordance with these specifications, addenda and subject to all special provisions/conditions for the panels, diffusers, walls, and ceilings listed on the Appendix B tables.

The following Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked “(SW)” are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the extended total “Amount” column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

**City of San Juan Bautista Project: COMMUNITY HALL ACOUSTICAL UPGRADE**

**BIDDER NAME:** \_\_\_\_\_

No.	Description	Unit	Estimated Quantity	Unit Price	Amount
1	Mobilization	LS	1	\$	\$
2	4'x8' Acoustic Wall Panel (min. NRC 0.75)	EA	19	\$	\$
3	2'x8' Acoustic Wall Panel (min. NRC 0.75)	EA	10	\$	\$
4	2'x8' Acoustic Ceiling Panel (min. NRC 0.60)	EA	96	\$	\$
5	4'x8' Quadratic Diffuser	EA	7	\$	\$
6	Secured Off-site Storage	LS	1	\$	\$
<b>TOTAL (In Numbers):</b>					\$
<b>TOTAL (In Words):</b>					

***END OF BID SCHEDULE***

Note: The City reserves the right to make such alterations, deviations, additions to, or omissions from these Plans and Specifications, including the right to increase or decrease the quantity of any item or portion of the work or to omit any item or portion of the work as may be deemed by the Engineer to be required for the proper completion or construction of the work.

Any such changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work.

Upon receipt of an approved contract change order, the Contractor shall proceed with the ordered work. If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order, therefore.

## SUBCONTRACTOR LIST

For each Subcontractor that will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Contract Price, the bidder must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Base Bid price.

<b>Subcontractor's Name &amp; Address</b>	<b>Percent of Total Contract</b>	<b>License No. and Date of Expiration</b>	<b>Work to be Performed Including bid item number</b>
<b>1</b>			
<b>2</b>			
<b>3</b>			
<b>4</b>			
<b>5</b>			

***END OF SUBCONTRACTOR LIST***

## NONCOLLUSION DECLARATION

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the \_\_\_\_\_ [title] of  
\_\_\_\_\_ [business name], the party making the  
foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. 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. All statements contained in the bid are true. 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, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid and will not pay, any person or entity for such purpose.

This declaration is intended to comply with California Public Contract Code section 7106 and Title 23 U.S.C section 112.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on  
\_\_\_\_\_ [date], at \_\_\_\_\_ [city],  
\_\_\_\_\_ [state].

s/ \_\_\_\_\_  
\_\_\_\_\_

Name [print]

***END OF NONCOLLUSION DECLARATION***



## BID BOND

\_\_\_\_\_ (“Bidder”) has submitted a bid, dated \_\_\_\_\_, 20\_\_\_\_ (“Bid”), to the **City of San Juan Bautista (“City”) for Community Hall Acoustical Upgrade Project (“Project”)**. Under this duly executed bid bond (“Bid Bond”), Bidder as Principal and \_\_\_\_\_, its surety (“Surety”), are bound to City as obligee in the penal sum of ten percent of the maximum amount of the Bid (the “Bond Sum”). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten days following issuance of the Notice of Award to Bidder, Bidder must submit to City the following:
  - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents (“Contract Documents”).
  - 2.2 **Payment Bond.** A payment bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents.
  - 2.3 **Performance Bond.** A performance bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents; and
  - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents, and any other documents required under the Instructions to Bidders.
3. **Enforcement.** If Bidder fails to execute the Contract and to submit the bonds and insurance certificates as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone : \_\_\_\_\_

Email : \_\_\_\_\_

- 4. Duration Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise, it will remain in full force and effect for 90 days following award of the Contract or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code sections 2819 and 2845.

This Bid Bond is entered into and effective on \_\_\_\_\_, 20\_\_.

SURETY: \_\_\_\_\_

Business name

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

(Acknowledgement with Notary Seal for Surety, and Surety's Power of Attorney-In-Fact Certificate must be attached.)

BIDDER: \_\_\_\_\_

Business name

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

***END OF BID BOND***



# BIDDER'S QUESTIONNAIRE

## COMMUNITY HALL ACOUSTICAL UPGRADE CONTRACT

With the sealed bid, bidders shall submit a completed, signed Bidder's Questionnaire using below form. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

### Part 1: General Information

Bidder Business Name: \_\_\_\_\_  
("Bidder")

Check One:     Corporation  
                   Partnership  
                   Sole Proprietorship  
                   Joint Venture of: \_\_\_\_\_  
                   Other: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Owner of Business: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Bidder's California Contractor's License Number(s): \_\_\_\_\_

## Part 2: Bidder Experience

1. How many years has Bidder been in business under its present business name?

\_\_\_\_ years

2. Has Bidder completed projects similar in type and size to this Project?

\_\_\_\_ Yes      \_\_\_\_ No

3. Has Bidder ever been disqualified on grounds that it is not responsible?

\_\_\_\_ Yes      \_\_\_\_ No

If yes, provide additional information on a separate sheet of paper regarding the disqualification, including the name and address of the agency or owner of the subject project, the type and size of the project, the reasons that Bidder was disqualified as not responsible, and the month and year in which the disqualification occurred.

4. Has Bidder ever been terminated from a construction project, either as a general contractor or as a subcontractor?

\_\_\_\_ Yes      \_\_\_\_ No

If yes, provide additional information on a separate sheet of paper regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Bidder was under contract as a general contractor or a subcontractor, the reasons that Bidder was terminated, and the month and year in which the termination occurred.

5. On separate sheets, provide information about Bidder's past projects performed as general contractor as follows:

- 5.1 Three largest completed projects within the last three years; and
- 5.2 Any project which is similar to this Project including magnitude and character of the work.

**Part 3: Verification**

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named Bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

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

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

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

Name and Title

***END OF BIDDER'S QUESTIONNAIRE***

## CONTRACT

This public works contract (“Contract”) is entered into by and between the City of San Juan Bautista, (“City”) and \_\_\_\_\_ (“Contractor”), for work on the **Community Hall Acoustical Upgrade Project** (“Project”).

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On \_\_\_\_\_, 2023, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all the following:
  - 2.1 Notice Inviting Bids;
  - 2.2 Instructions to Bidders;
  - 2.3 Addenda, if any;
  - 2.4 Bid Proposal and attachments thereto;
  - 2.5 Contract;
  - 2.6 Payment, Performance and Warranty Bonds;
  - 2.7 General Conditions;
  - 2.8 Special Conditions;
  - 2.9 Project Drawings and Specifications;
  - 2.10 Change Orders, if any;
  - 2.11 Notice of Award;
  - 2.12 Notice to Proceed; and
  - 2.13 The following:  
\_\_\_\_\_  
\_\_\_\_\_.

List additional documents here, if any, including the document date if there are multiple versions. If there are no additional documents, write “No other documents” in the space above.

3. **Contractor’s Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a

professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, **City will pay Contractor \$ \_\_\_\_\_ ("Contract Price")** for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will **fully complete the Work for the Project within Twenty-five (25) Working Days ("Working Days" for purposes of this Contract are defined as Monday through Thursday)** from the Notice To Proceed Date as specified in the "Contract Time". By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time of **25 Working Days ("Working Days" for purposes of this Contract are defined as Monday through Thursday)**, City will assess liquidated damages in the amount of **\$500 per calendar day** for each day of unexcused delay in completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.
7. **Labor Code Compliance.**
  - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
  - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
  - 7.3 **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code section 1725.5, subject to limited legal exceptions.

- 8. Workers' Compensation Certification.** Under Labor Code section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
- 9. Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
- 10. Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
- 11. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

**City:**

Name: Don Reynolds, City Manager

Address: 311 Second Street

City/State/Zip: San Juan Bautista, CA 95045

Phone: (831) 623-4661

Email: citymanager@san-juan-bautista.ca.us

Copy to: [jsanguinetti@mnsengineers.com](mailto:jsanguinetti@mnsengineers.com)

**Contractor:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

Copy to: \_\_\_\_\_

## 12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of San Benito County, and no other place.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation,

signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

*[Signatures are on the following page.]*

The parties agree to this Contract as witnessed by the signatures below:

**CITY:**

Approved as to form:

s/ \_\_\_\_\_

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Name/Title

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

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

Attest:

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

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

**CONTRACTOR:** \_\_\_\_\_



Business Name

s/ \_\_\_\_\_

Seal:

\_\_\_\_\_

Name/Title

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

Second Signature (See Section 12.7):

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

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

\_\_\_\_\_

Contractor's California License Number(s) and Expiration Date(s)

***END OF CONTRACT***

## PAYMENT BOND

The City of San Juan Bautista (“City”) and \_\_\_\_\_ (“Contractor”) have entered into a contract, dated \_\_\_\_\_, 2023 (“Contract”) for work on the **Community Hall Acoustical Upgrade Project** (“Project”). The Contract is incorporated by reference into this Payment Bond (“Bond”).

1. **General.** Under this Bond, Contractor as principal and \_\_\_\_\_, its surety (“Surety”), are bound to City as obligee in an amount not less than \$ \_\_\_\_\_, under California Civil Code sections 9550, et seq.
2. **Surety’s Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code section 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code section 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety’s obligations under this Bond will be null and void. Otherwise, Surety’s obligations will remain in full force and effect.
- +5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code sections 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

attn: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of the County in which the Project is located, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
  
7. **Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 2023. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY:

\_\_\_\_\_

Business Name

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

(Acknowledgment with Surety's Notary Seal and Surety's Power of Attorney must be attached.)

CONTRACTOR: \_\_\_\_\_

Business Name

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

APPROVED BY CITY:

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

***END OF PAYMENT BOND***

## PERFORMANCE BOND

The City of San Juan Bautista (“City”) and \_\_\_\_\_ (“Contractor”) have entered into a contract, dated \_\_\_\_\_, 2023 (“Contract”) for work on the **Community Hall Acoustical Upgrade Project** (“Project”). The Contract is incorporated by reference into this Performance Bond (“Bond”).

- 1. General.** Under this Bond, Contractor as Principal and \_\_\_\_\_, its surety (“Surety”), are bound to City as obligee for an amount not less than \$\_\_\_\_\_. By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors, and assigns, jointly and severally, to the provisions of this Bond.
- 2. Surety’s Obligations.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, and Contractor has timely provided a warranty bond as required under the Contract, Surety’s obligations under this Bond will become null and void upon City’s acceptance of the Project, excluding any exceptions to acceptance, if any. Otherwise, Surety’s obligations will remain in full force and effect until expiration of the one-year warranty period under the Contract.
- 3. Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code sections 2819 and 2845.
- 4. Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
- 5. Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:

- 5.1 Arrange for completion of the Work under the Contract by Contractor, with City’s consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
  - 5.2 Arrange for completion of the Work under the Contract by a contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety’s expense; or
  - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City’s costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety’s default, including legal, design professional, or delay costs.
7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:
- Attn: \_\_\_\_\_
- Address: \_\_\_\_\_
- City/State/Zip: \_\_\_\_\_
- Phone: \_\_\_\_\_
- Email: \_\_\_\_\_
8. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court for the County in which the Project is located, and no other place. Surety will be responsible for City’s attorneys’ fees and costs in any action to enforce the provisions of this Bond.
9. **Effective Date; Execution.** This Bond is entered into and effective on \_\_\_\_\_, 2023. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY: \_\_\_\_\_

Business Name

s/ \_\_\_\_\_

---

Name/Title

(Acknowledgment with Notary Seal for Surety and Surety's Power of Attorney must be attached.)

CONTRACTOR: \_\_\_\_\_

Business Name

s/ \_\_\_\_\_

---

Name/Title

s/ \_\_\_\_\_

---

Name/Title

APPROVED BY CITY:

s/ \_\_\_\_\_

---

Name/Title

**END OF PERFORMANCE BOND**





## WARRANTY BOND

The City of San Juan Bautista (“City”) and \_\_\_\_\_ (“Contractor”) entered into a contract, dated \_\_\_\_\_, 2023 (“Contract”) for work on the **Community Hall Acoustical Upgrade** Project (“Project”). The Contract is incorporated by reference into this Warranty Bond (“Bond”).

- 1. General.** Under this Warranty Bond, Contractor as principal and \_\_\_\_\_, its surety (“Surety”), are bound to City as obligee in the maximum amount of 15% of the final Contract Price, unless otherwise specified in the Contract Documents.
- 2. Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one-year period commencing with City’s acceptance of the Project (“Warranty Period”).
- 3. Surety’s Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and remedies, at its sole expense, any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor’s failure to make such repairs in accordance with the Contract requirements, then Surety’s obligations under this Bond will be null and void. Otherwise, Surety’s obligations will remain in full force and effect.
- 4. Waiver.** Surety waives the provisions of Civil Code sections 2819 and 2845.
- 5. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

6. **Law and Venue.** This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court for the County in which the Project is located, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
7. **Effective Date; Execution.** This Bond is entered into and is effective on \_\_\_\_\_, 2022. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY: \_\_\_\_\_

Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

(Acknowledgment with Notary Seal for Surety and Surety's Power of Attorney must be attached.)

CONTRACTOR: \_\_\_\_\_

Business Name

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title

APPROVED BY CITY:

s/ \_\_\_\_\_

\_\_\_\_\_

Name/Title

## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS

**Definitions.** The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “workday” or “working day.”

**Allowance** means a specific amount that must be included in the Bid Proposal for a specified purpose.

**Article**, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

**Change Order** means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

**City** means the municipality which has entered into the Contract with Contractor for performance of the Work, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

**City Engineer** means the City Engineer for City and his/her authorized delegee(s).

**Claim** means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

**Contract** means the signed agreement between City and Contractor.

**Contract Documents** means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the Notice of Award and Notice to Proceed; the payment, performance and warranty bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

**Contract Price** means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies or equipment following submission of the Bid Proposal.

**Contract Time** means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

**Contractor** means the individual, partnership, corporation, or joint-venture that has signed the Contract with City to perform the Work.

**Day** means a calendar day unless otherwise specified.

**Design Professional** means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

**DIR** means the California Department of Industrial Relations.

**Drawings** means the City-provided plans and graphical depictions of the Project requirements and does not include Shop Drawings.

**Engineer** means the City Engineer for the City of San Juan Bautista and his or her authorized delegate

**Extra Work** means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

**Final Completion** means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items and any required commissioning or training, and has provided the City with all required submittals, including the warranty bond, instructions and manuals, product warranties, and as-built drawings.

**Final Payment** means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to 125% of the amount of any unreleased stop notice, amounts subject to setoff, up to 150% of any unresolved third-party claim for which Contractor is required to indemnify City, and up to 150% of any amount in dispute as authorized by Public Contract Code section 7107.

**Furnish** means to purchase and deliver for the Project.

**Hazardous Materials** means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

**Including**, whether or not capitalized, means “including, but not limited to,” unless the context clearly requires otherwise.

**Inspector** means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

**Install** means to fix in place for materials, and to fix in place and connect for equipment.

**Plans** has the same meaning as Drawings.

**Project** means the public works project referenced in the Contract.

**Project Manager** means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegate(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the City Engineer.

**Request for Information or RFI** means Contractor’s written request for information submitted to City, in the manner and format specified by City, about the Contract Documents, the Work or the Project.

**Revocable** means the possibility of being revoked at any time, including before, during, or after bid opening and awarded at the sole discretion of the City. The City shall retain the right to decrease or increase the amount of a contract item of work or eliminate in its entirety via a Change Order. (Refer to Note on Page 14 under Bid Schedule)

**Section**, as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context, e.g., statutory references.

**Shop Drawings** means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

**Specialty Work** means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and not by the Contractor.

**Specifications** means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

**Subcontractor** means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

**Technical Specifications** means Specifications.

**Work** means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

**Work Day or Working Day**, whether or not capitalized, means a weekday **Monday through Thursday** when the City is open for business, and does not include holidays observed by the City.

**Worksite** means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging or fabrication.

## ARTICLE 2 - ROLES AND RESPONSIBILITIES

### 2.1 City

- (A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the City Manager and City Engineer.
- (B) **Engineer or City Engineer.** The Engineer (City Engineer), acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

(C) **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents. The Design Professional's interpretation of the Drawings or Specifications is final and conclusive.

## 2.2 Contractor

(A) **General.** Contractor must provide all labor, materials, supplies equipment and services and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City, and with minimal inconvenience to the public.

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to the Worksite, by any cause including fire, earthquake, wind, weather, vandalism or theft.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent superintendent acceptable to City, and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until the approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.



(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits, including City's municipal code, rules, and regulations, and any orders of the administrative or judicial bodies with jurisdiction over the Work

(F) **Meetings.** Contractor, its project manager and superintendent and the Subcontractors requested by City, must attend a Pre-Construction Conference, if requested by City, as well as weekly Project progress meetings with City that City will schedule.

(G) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(H) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Drawings, Specifications and every other Contract Document, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work performed without City's prior written approval. However, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor.

(I) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

(J) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of the Work-related documents, including the Contract, permit(s), Drawings, Specifications, Addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, and any related written interpretations. The Contract Documents, as-built drawings, and all Worksite copies must be available to City for reference at all times.

### 2.3 Subcontractors

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequately trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

### 2.4 Coordination of Work

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

**2.5 Submittals.** Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) ***Effect of Review and Acceptance.*** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) ***Enforcement.*** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.

(G) ***Excessive RFIs.*** A RFI will be considered excessive or unnecessary if City determines that, the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

**2.6 Shop Drawings.** When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

## ARTICLE 3 - CONTRACT DOCUMENTS

### 3.1 Interpretation of Contract Documents.

(A) ***Drawings and Specifications.*** The Drawings and Specifications included in the Contract Documents are complementary and approximate. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and

Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control. Detailed Drawings take precedence over general Drawings, and large scale Drawings take precedence over smaller scale Drawings. Any arrangement or division of the Drawings and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Drawings or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) ***Duty to Notify and Seek Direction.*** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including under the Drawings or Specifications, Contractor must immediately submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. City will not extend the Contract Time due to Contractor's failure to submit a timely RFI to the Engineer.

(C) ***Figures and Dimensions.*** Figures control over scaled dimensions.

(D) ***Technical or Trade Terms.*** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) ***Measurements.*** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

**3.2 Order of Precedence.** Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

(A) Change Orders;

(B) Addenda;

- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Provisions;
- (G) General Conditions;
- (H) Payment, Performance and Warranty Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Bids;
- (M) Instructions to Bidders;
- (N) the City's standard specifications, as applicable; and
- (O) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.

**3.3 Caltrans Standard Specifications.** Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Caltrans Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

- (A) **Limitations.** The "General Provisions" of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.
- (B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

(1) Any reference to the “Engineer” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

(3) Any reference to the “Department” or “State” is deemed to mean City.

**3.4 For Reference Only.** Contractor is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

**3.5 Current Versions.** Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.

**3.6 Conformed Copies.** If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor’s responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor’s sole expense.

## ARTICLE 4 - BONDS, INDEMNITY, AND INSURANCE

**4.1 Payment and Performance Bonds.** Within ten days following issuance of the Notice of Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, using the bond forms included with the Contract Documents.

(A) **Surety.** Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

(B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

**4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, costs and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code section 9201. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

**4.3 Insurance.** No later than ten days following issuance of the Notice of Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of City's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.



(A) ***Policies and Limits.*** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

(1) *Commercial General Liability (“CGL”) Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work, including contractor’s protected coverage, blanket contractual, products and completed operations, broad form property damage, vehicle coverage and employer’s non-ownership liability coverage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section.

(2) *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death or property damage.

(3) *Workers’ Compensation Insurance and Employer’s Liability:* The workers’ compensation and employer’s liability insurance policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Pollution Liability Insurance:* The pollution liability insurance policy must be issued on an occurrence basis, for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work.

(5) *Builder’s Risk Insurance:* The builder’s risk insurance policy must be issued on an occurrence basis, for all-risk or “all perils” coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of City.

(B) ***Notice.*** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City.

(C) ***Waiver of Subrogation.*** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.

(D) **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:

- (1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or an equivalent form approved by the City.
- (2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.
- (3) The insurance provided is primary and no insurance held or owned by City may be called upon to contribute to a loss.
- (4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

(F) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$100,000 are subject to approval by City, acting in its sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If City determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

**4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form included with the Contract Documents, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be

issued by a surety admitted in California for 15% of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City.

## ARTICLE 5 - CONTRACT TIME

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.
- (A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work on the Project site before the date specified in the Notice to Proceed.
- (B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.
- (C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

**5.2 Schedule Requirements.** Contractor must prepare all schedules using standard scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) ***Baseline (As-Planned) Schedule.*** Within ten calendar days following City's issuance of the Notice of Award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) ***Specialized Materials Ordering.*** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase orders date(s).

(B) ***City's Review of Schedules.*** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and must, within seven days, correct the schedule to address them.

(C) ***Progress Schedules.*** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) *Float.* The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the “float.” Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) *Failure to Submit Schedule.* Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to ten percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor’s failure to comply with the schedule requirements in this Section 5.2 will be deemed a waiver of any claims for Excusable Delay or loss of productivity arising when Contractor is out of compliance, subject only to the limits of Public Contract Code section 7102.

(D) ***Recovery Schedule.*** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) ***Effect of Acceptance.*** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City’s acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City’s right to assess liquidated damages for Contractor’s unexcused delay in completing the Work within the Contract Time.

(F) ***Posting.*** Contractor must at all times maintain a copy of the most current City-accepted progress or recovery schedule posted prominently in its on-site office.

(G) ***Reservation of Rights.*** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City’s use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor’s time or cost to perform the Work.

(H) ***Authorized Working Days and Times.*** **For purposes of this Contract the Contractor is limited to working Monday through Thursday**, excluding holidays, during City’s normal business hours, except as provided in the Special Conditions or as authorized in writing

by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

### 5.3 Delay and Extensions of Contract Time.

- (A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.
- (B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters “Excusable Delay,” which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor’s control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, and diligence. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13.
- (C) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight and diligence is “Non-Excusable Delay.” Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:
- (1) Weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
  - (2) Contractor’s failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
  - (3) Contractor’s failure to provide adequate notification to utility companies or agencies for connections or services necessary for the timely performance and completion of the Work;
  - (4) Foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents or other information provided or available to Contractor; or

(5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(D) **Compensable Delay.** Pursuant to Public Contract Code section 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay.

(E) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(F) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within ten calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) **Required Contents.** The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if

any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable or Compensable Delay, as defined above; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(6) *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop working pending resolution of the dispute but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the Dispute Resolution provisions set forth in Article 12 below.

**5.4 Liquidated Damages.** It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City will charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable or Compensable Delay, as set forth above.



- (B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.
- (C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.
- (D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.
- (E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, or for defective materials or workmanship.

## ARTICLE 6 - CONTRACT MODIFICATION

- 6.1 Contract Modification and Changes in Work.** Modifications to the Contract are valid and legally binding only if duly authorized by a written and signed Change Order. City may also make changes in the Work without invalidating the Contract. City may direct changes in the Work, which may include Extra Work as set forth in subsection (B) below, or deletion or modification of portions of the Work. Any change in the Work, whether directed by City or pursuant to Contractor's request for a Change Order under Section 6.2 below, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation pursuant to Public Contract Code section 7101 based on cost reduction changes or "value engineering," unless otherwise specified in the Special Conditions, or unless expressly authorized in advance in writing by City.

(A) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(B) **Extra Work.** City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). The Engineer will make any adjustments to Contractor's Extra Work Report(s) based on the Engineer's records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

**6.2 Contractor Change Order Requests.** Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the

Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code sections 12650 et seq."

**6.3 Adjustments to Contract Price.** The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods, but in the order provided with unit pricing taking precedence over the other methods:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon amount for the affected Work with no additional markup to be added for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, including allowed markup for overhead, profit, and all other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus 15% markup;
- (2) All direct material costs, including sales tax, plus 15% markup;
- (3) All direct plant and equipment rental costs, plus 15% markup.
- (4) All direct subcontract costs plus ten percent markup; and
- (5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

**6.4 Unilateral Change Order.** If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the amount of compensation or added time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

**6.5 Non-Compliance Deemed Waiver.** Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

## ARTICLE 7 - GENERAL CONSTRUCTION PROVISIONS

### 7.1 Permits and Taxes.

(A) **General.** Contractor must obtain and pay for all permits, fees, or licenses required to perform the Work. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.

(B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

**7.2 Temporary Facilities. For purposes of this Contract the Contractor shall provide – at Contractor’s sole expense - secured storage of materials, tools, scaffolding, lifts, etc. outside of the Community Hall during the period of Friday through Sunday of each week.**

Contractor must provide, at Contractor’s sole expense, any and all temporary facilities required by the contractor to complete the Project, including an onsite staging area for material and equipment, a field office, sanitary facilities, utilities, material storage, scaffolding, portable lifts, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation.

A. **Standards.** Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.

B. **Screening.** Contractor must fence and screen the Project site and staging area, and its operation must minimize inconvenience to neighboring properties.

C. **Utilities.** Contractor must install and maintain the light, power, water and all other utilities required for the Project site if it is not already available.

(D) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City’s property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

(E) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

**7.3 Noninterference and Additional Work Areas.** Contractor must avoid interfering with City’s use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and always maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must notify the affected parties of the

pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use and dispose of, at its sole expense, any additional Work areas, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** For purposes of this Contract, the Contractor shall provide – at Contractor’s sole expense - secured storage of materials, tools, scaffolding, lifts, etc. outside of the Community Hall during the period of Friday through Sunday of each week. If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

**7.4 Signs.** No signs may be displayed on or about City’s property, except signage which is required by law or by the Contract Documents, without City’s prior written approval as to size, design, and location.

**7.5 Worksite and Nearby Property Protections.**

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City’s property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor’s failure to adequately secure the Work or any Worksite.

(1) Subject to City’s approval, Contractor will provide and install safeguards to protect the Work, the Project site, City’s real or personal property, and the real or personal property of adjacent or nearby property owners.

(2) City’s wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City’s approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(B) ***Securing Project Site.*** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) ***Unforeseen Conditions.*** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) ***Support; Adjacent Properties.*** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

## **7.6 Materials and Equipment.**

(A) ***General.*** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all

shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1 below. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights in violation of this provision.

## 7.7 Substitutions.

(A) **"Or Equal."** Any Specification designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor's failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor's sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.



(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.

(F) **Contractor's Obligations.** City's approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

## 7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no later than noon of the Working Day before any inspection or testing, and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.

(4) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the required inspection(s) will also be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

**7.9 Worksite Conditions and Maintenance.** Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean and neat condition and in compliance with all regulatory requirements for air quality and dust control. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

1) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any applicable law, regulation or rule.

2) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning and/or sweeping within one hour after the Engineer notifies Contractor that an airborne nuisance exists.

3) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

4) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into City's storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due to Contractor.

**7.10 Instructions and Manuals.** Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to City at least ten days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Training.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

**7.11 As-built Drawings.** Contractor must prepare and maintain at the Project site a detailed, complete and accurate as-built set of Drawings which will be used solely for the purpose of recording changes made in any portion of the original Drawings in order to create accurate record drawings at the end of the Project.

(A) ***Duty to Update.*** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Actual locations to scale must be identified on the as-built drawings for all acoustical improvements installed by the Contractor.

(B) ***Final Completion.*** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and approval as a condition precedent to Final Completion and Final Payment.

**7.12 Existing Utilities.** As required by Government Code section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility.

**7.13 Notice of Excavation.** N/A

**7.14 Trenching and Excavations of Four Feet or More.** N/A

**7.15 Trenching of Five Feet or More.** N/A

**7.16 New Utility Connections.** N/A

**7.17 Lines and Grades.** N/A

**7.18 Historic or Archeological Items.**

(A) ***Contractor's Obligations.*** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items.

(B) ***Discovery; Cessation of Work.*** Upon discovery of any potential Historic or Archeological Items, Work must be stopped and the City Engineer should be notified.

**7.19 Environmental Control.** N/A

**7.20 Noise Control.** Contractor must comply with all applicable noise control laws, ordinances, regulations and rules. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

## ARTICLE 8 - PAYMENT

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- (A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods stipulated in the Contract Documents.
- (B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's Bid Schedule or schedule of values and any other substantiating data required by the Contract Documents.

(B) ***Payment of Undisputed Amounts.*** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may withhold additional amounts as set forth in Section 8.3, below.

**8.3 Adjustment of Payment Application.** City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

(A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work;

(B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Worksite, City may deduct an amount based on the estimated cost to repair or replace;

(C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments;

(D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work;

(E) For any unreleased stop notice, City may withhold 125% of the amount claimed;

(F) For Contractor's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, City may withhold or deduct an amount equal to five percent of the total amount requested;

(G) For Contractor's failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts;

(H) For Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated costs to correct unsatisfactory Work or diminution in value;

- (I) For fines assessed under the Labor Code, as required by law; or
- (J) For any other costs or charges that may be withheld, deducted from, or offset against payments due, as provided in the Contract Documents, including liquidated damages.

**8.4 Early Occupancy.** Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

**8.5 Retention.** City will retain five percent of the amount due on each progress payment, or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) **Substitution of Securities.** As provided by Public Contract Code section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or Section 8.6, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C) below, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete under Public Contract Code section 7107(c).

**8.6 Setoff.** City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and unreleased retention.

**8.7 Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** Pursuant to Civil Code section 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

**8.8 Final Payment.** Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

**8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code section 7100. Any disputed amounts may be specifically excluded from the release.

**8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

## ARTICLE 9 - LABOR PROVISIONS

**9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable federal and California laws, including the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), Government Code section 11135, and Labor Code sections 1735, 1777.5, 1777.6, and 3077.5.

**9.2 Labor Code Requirements.**

(A) **Eight Hour Day.** Under Labor Code section 1810, eight hours of labor constitute a legal day's work under this Contract.



(B) **Penalty.** Under Labor Code section 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code section 1815.

(C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code section 1777.5, which is fully incorporated by reference.

(D) **Notices.** Under Labor Code section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.

**9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code section 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.

(A) **Penalties.** Under Labor Code section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

**9.4 Payroll Records.** Contractor must comply with the provisions of Labor Code sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct; and

(2) Contractor or the Subcontractor has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) ***Certified Record.*** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) ***Enforcement.*** Upon notice of noncompliance with Labor Code section 1776, Contractor or Subcontractor has ten days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

**9.5 Labor Compliance.** Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

## ARTICLE 10 - SAFETY PROVISIONS

**10.1 Safety Precautions and Programs.** Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) ***Reporting Requirements.*** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) ***Legal Compliance.*** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

**10.2 Hazardous Materials.** Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

**10.3 Material Safety.** Contractor is solely responsible for complying with section 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. Contractor must also maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

**10.4 Hazardous Condition.** Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Worksite condition, the method of construction, or the way any Work must be performed.

## ARTICLE 11 - COMPLETION AND WARRANTY PROVISIONS

### 11.1 Final Completion.

- (A) ***Final Inspection and Punch List.*** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any such item from this punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. City will deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected.
- (B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction.
- (C) ***Acceptance.*** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, or if the Engineer is authorized to accept the Project, the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. The City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.
- (D) ***Final Payment.*** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items

within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment.

## 11.2 Warranty.

- (A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.
- (B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.
- (C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.
- (D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.
- (E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.
- (F) **City's Remedies.** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) **Reimbursement.** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand(s) for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

**11.3 Use Prior to Final Completion.** City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

**11.4 Substantial Completion.** For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to City acceptance of the Project, except for warranty work performed under this Article.

## ARTICLE 12 - DISPUTE RESOLUTION

**12.1 Claims.** This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** “Claim” means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code section 9204 and sections 20104 et seq., which are incorporated by reference herein.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

**12.2 Claims Submission.** The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation

such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) ***Claim Format.*** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
  - a. The background of the issue, including references to relevant provisions of the Contract Documents;
  - b. A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;
  - c. A chronology of relevant events;
  - d. The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
  - e. Use of a separate page for each issue.
- (4) Summary of issues and damages.
- (5) The following certification, executed by Contractor’s authorized representative:

“The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)”



(C) ***Submission Deadlines.***

- (1) A Claim must be submitted within 15 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.
- (2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.
- (3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.8, above.
- (4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

**12.3 City's Response.** City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code section 9204. However, if City determines that the Claim is not adequately documented, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

- (A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.
- (B) ***Non-Waiver.*** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

**12.4 Meet and Confer.** If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response, or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response in writing within the specified time, Contractor's Claim will be deemed waived.

(A) ***Schedule Meet and Confer.*** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) ***Location for Meet and Confer.*** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) ***Written Statement After Meet and Confer.*** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) ***Submission to Mediation.*** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

## **12.5 Mediation and Government Code Claims.**

(A) ***Mediation.*** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of mediation equally, except costs incurred by each party for its representation by legal counsel or any other consultants.

(B) ***Government Code Claims.***

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under California Code of Civil Procedure section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Damages.** Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula may not be used for any recovery under the Contract.
- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

## ARTICLE 13 - SUSPENSION AND TERMINATION

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.
- (A) **Failure to Comply.** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in progress Work as directed in the suspension notice. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience. However, the time for completing the Project will only be extended if the suspension causes or will cause delay in Final Completion.
- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; lack of financial capacity to complete the Work within the Contract Time; or responsibility for any other material breach of the Contract requirements.
- (A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

**13.4 Termination for Convenience.** City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must: immediately stop the Work, including under any terms or conditions that may be specified in the notice; comply with City's instructions to protect the completed Work and materials; and use its best efforts to minimize further costs. Subject to City's directions in the notice, Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated. Contractor must also promptly cancel all existing subcontracts that relate to performance of the discontinued Work.

A. **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

(1) **Completed Work.** The value of its Work satisfactorily performed to date, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) *Demobilization.* Actual and substantiated demobilization costs; and

(3) *Markup.* Five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less, which is deemed to cover all overhead and profit to date.

**13.5 Effect of Any Contract Termination.** Upon any termination pursuant to this Article, City may enter upon and take possession of the Project and the Work. City may also take possession of, for the sole purpose of completing the Work, all of Contractor's tools, equipment and appliances, and all materials on the Worksite or stored off the Worksite that will be incorporated in the Work. Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

## ARTICLE 14 - MISCELLANEOUS PROVISIONS

**14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code section 7103.5, Contractor and its Subcontractors agree to assign to City 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. section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

**14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

**14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.

- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

*END OF GENERAL CONDITIONS*

## APPENDICES

Appendix A	Volume I Special Provisions Volume II Technical Specifications
Appendix B	Plans



## APPENDIX A

### Special Provisions & Technical Specifications

# Volume I Special Provisions & Technical Specifications

## COMMUNITY HALL ACOUSTICAL UPGRADE PROJECT

### SECTION 1 SPECIFICATIONS AND PLANS

**ALL CONTRACTORS WHO ARE TO RECEIVE PROJECT ADDENDUMS SHALL BE LISTED ON THE CITY OF SAN JUAN BAUTISTA'S PLAN HOLDERS LIST. To be placed on the Plan Holders List, please contact the City Front Desk at (831) 623-4661 or email the City Engineer at [jsanguinetti@mnsengineers.com](mailto:jsanguinetti@mnsengineers.com)**

All work embraced herein shall be done in accordance with these special provisions, these plans, and the Standard Specifications of the State of California Department of Transportation dated 2015 sections 1-99, insofar as the same may apply, which specifications are hereinafter referred to as the "State Standard Specifications."

**In the event of conflict between the Specifications and these Special Provisions, the latter shall take precedence over and be used in lieu of such conflicting portions.** The listing of certain salient sections from the Standard Specifications and these Special Provisions shall not in any way relieve the Contractor of complying with each and every section of the Standard Specifications.

### SECTION 2 SAFETY AND HEALTH

#### **2-1.01 CONTRACTOR'S RESPONSIBILITY FOR SAFETY**

The Contractor certifies that he is experienced and qualified to anticipate and meet the safety and health requirements of this project. For informational purposes only, the Contractor shall submit to the City a copy of his Injury and Illness Prevention Program. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. This requirement will apply until final acceptance of the Work and shall not be limited to normal working hours. The duties of the City Engineer and Inspector do not include review of the adequacy of the Contractor's safety measures in, on, or about the site and vicinity.

### **2-1.02     SAFETY MEASURES**

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. The Contractor shall maintain copies of all documents mentioned or referenced in this Section readily available at the site until the work is completed. In the event the Contractor fails to observe any of the necessary safety provisions, the Owner may stop the work and direct the Contractor to comply with the applicable provisions or may order the necessary work to be done by others. All impacts, both monetary and time-related, associated with stoppage of the work in order to comply with the City's directives pertaining to safety requirements, and all costs of having the necessary work done by others shall be borne by the Contractor.

### **2-1.03     PERSONAL HYGIENE**

The Contractor shall require his/her personnel to observe proper hygienic precautions, including washing of hands and other exposed portions of the body with disinfecting soap and water before eating or smoking.

### **2-1.04     PUBLIC SAFETY AND CONVENIENCE**

The Contractor shall conduct his/her work so as to insure the least possible obstruction to traffic, inconvenience to the general public in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the City Engineer and the proper governmental authority. Fire hydrants on or adjacent to the work shall be accessible to fire-fighting equipment. Temporary Provisions shall be made by the Contractor to insure the use of sidewalks, private and public driveways, and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches, and natural water courses.

### **2-1.05     FIRE PREVENTION**

- B. Fire Extinguishers and Hoses: The Contractor shall furnish and maintain fully charged fire extinguishers of the appropriate type, supplemented with temporary fire hoses wherever an adequate water supply exists, at the places where burning, welding, or other operations that may cause a fire are being performed.
- C. Flammable, Hazardous, or Toxic Materials: Solvents, gasoline, and other hazardous materials may be in the wastewater (sewage); and therefore, the work site may be hazardous to open flame, sparks, or unventilated occupancy. The Contractor shall take measures to ensure his personnel observe proper safety precautions when working in these areas. Only a working supply of flammable, hazardous, or toxic materials shall be permitted in or on any of the permanent structures and improvements and shall be removed there from at the end of each day's operations. The

Contractor shall store flammable, hazardous, or toxic materials and waste separate from the Work and stored materials for the Works in a manner that prevents spontaneous combustion or dispersion; none shall be placed in any sewer or drain piping nor buried on the City's or other property. The Contractor shall maintain a current and up-to-date copy of all laws, ordinances, codes, rules, regulations, and lawful orders of any regulatory authority having jurisdiction of control over flammable, hazardous or toxic materials, and at his/her expense shall comply with said laws, ordinances, codes, rules, regulations, and lawful orders.

#### **2-1.06     SAFETY HELMETS, CLOTHING AND EQUIPMENT**

The Contractor shall not permit any person for whom he/she is responsible or liable to enter or remain on the site of the Work unless the person is equipped with and wearing a safety helmet, other protective clothing, and safety equipment as required and shall discharge from the site all persons not so equipped. The Contractor shall post conspicuous signs at the appropriate locations warning the public and persons engaged upon the Work of this requirement.

#### **2-1.07     HAZARDOUS AREAS**

The Contractor shall not permit or allow any person or persons to enter any space containing hazardous or noxious substances or gases; or where there is an insufficient amount of oxygen to sustain life and consciousness; or any other hazardous area unless equipped with lawful and appropriate safety equipment and life supporting apparatus, and unless those entering are continually monitored and guarded by and in communication with other persons outside the space or area who are equipped in the same way, can give an alarm to others for assistance, and initiate immediate rescue operations in the event of mishap.

#### **2-1.08     EMERGENCIES**

- D. Work During an Emergency: The Contractor shall perform any and all operations and shall furnish any materials and equipment necessary during an emergency endangering life or, property and, in all cases, shall notify the City Engineer of the emergency as soon as practicable, but shall not wait for instruction before proceeding to properly protect both life and property. Any additional compensation or extension of Contract Time by the Contractor on account of an emergency shall be applied for to the City.
- E. Representatives for Emergencies: The Contractor shall file with the Owner a written list giving names, addresses, and telephone numbers of at least two of his/her representatives who can be contacted at any time in case of emergency. The representatives shall be fully authorized and equipped to correct unsafe or inconvenient conditions on short notice. The Contractor shall promptly notify the Owner of all changes in the listing.

### **2-1.09 SUBMITTALS**

Prior to receiving Notice to Proceed, the Contractor shall submit to the City Engineer the following:

- 1) a copy of his/her Injury and Illness Prevention Program Manual
- 2) a list of safety equipment he/she will maintain on site
- 3) the name of his/her Safety Officer and Safety Supervisor(s) who will be responsible for maintaining safety at each work site
- 4) a description of any job-specific measures he/she will be using which are not contained in his/her manual.

The City shall not review these materials but shall maintain these materials for record purposes.

### **2-1.10 IMPLEMENTATION**

It is the Contractor's responsibility to follow his/her own safety program and provide one or more designated Safety Supervisor(s) at each work site.

### **2-1.11 PAYMENT**

No separate payment will be made for maintaining safety and health and it shall be considered as included in the prices paid for the various Contract items of work as listed in the Proposal and no additional compensation shall be allowed, therefore.

## **SECTION 3 MATERIALS**

### **3-1.01 GENERAL**

Attention is directed to the Provisions in Section 6, "Control of Materials", of the State Standard Specifications and these Special Provisions.

All materials required to complete the work under this Contract shall be furnished by the Contractor except when otherwise specified herein.

### **3-1.02     SOURCE OF SUPPLY AND QUALITY OF MATERIALS**

All materials required to complete the work under the attached contract shall be furnished by the Contractor unless otherwise specified. Upon approval of the contract, the Contractor shall notify the Engineer of the proposed source of supply of all materials to be used in the work, and shall furnish samples of such materials as may be required by the Engineer for testing.

At the request of the Engineer, the Contractor shall submit manufacturer/supplier certificates of compliance for any or all materials used in the construction of the project. If certification is so requested, said certificates must be reviewed and accepted in writing by the Engineer prior to any use or installation of the material on the project.

### **3-1.03     TRADE NAME AND ALTERNATIVES**

Attention is directed to Section 6-1.05, “Specific Brand or Trade Name and Substitution,” of the Standard Specifications.

Requests for substitutions will be considered only if received within 10 calendar days from the date of award. Requests received after this period may be accepted or rejected at the discretion of the Engineer.

Prepare and submit each request for substitution to the City in accordance with the procedures for submittals. Provide the following additional information:

1. An explanation of the advantages to the City for accepting the substitution.
2. A comparison of significant qualities of the proposed substitution with those specified.
3. When the substitute equipment or material necessitates changes to or coordination with any portion of the work, include drawings and details showing all such changes. You must perform these changes as a part of any acceptance of substitute material or equipment.
4. A statement indicating the substitution's effect on the construction schedule compared to the construction schedule without acceptance of the substitution. Indicate the effect of the proposed substitution on overall contract time.
5. Cost information, including a proposal of the net change, if any, in the Contract Sum.
6. Certification that the substitution is equal to or better in every respect to that required by Contract Documents, and that it will perform adequately in application indicated. Include Contractor's waiver of rights to additional payment or time extensions that may be necessary because of the substitution's failure to perform adequately.

Substitution requests will be considered by the Engineer when the following conditions are satisfied, as determined by the Engineer; otherwise, requests

will be returned without action except to record noncompliance with these requirements.

1. Extensive revisions to Contract Documents are not required.
2. Proposed changes are in keeping with the general intent of Contract Documents.
3. The request is timely, fully documented and properly submitted.
4. The specified product or method of construction cannot be provided within the specified Contract Time. The request may not be considered if the product or method cannot be provided as a result of failure of the Contractor to pursue the work promptly or coordinate activities properly.
5. A substantial advantage is offered the City, in terms of cost, time, energy conservation or other considerations of merit, after deducting offsetting responsibilities the City may be required to bear. Additional responsibilities for the City may include additional compensation to the Consulting Engineer/Architect for redesign and evaluation services, increased cost of other construction by the City or separate contractors, and similar considerations.
6. The specified product or method of construction cannot receive necessary approval by a regulatory agency, and the requested substitution can be approved.
7. The specified product or method of construction cannot be provided in a manner that is compatible with other materials, and where the Contractor certifies that the substitution will overcome the compatibility.
8. The specified product or method of construction cannot be coordinated with other materials, and where the Contractor certifies that the proposed substitution can be coordinated.
9. The specified product or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution can provide the required warranty.

Submittal of shop drawings, product data or samples that do not comply with the Contract Documents does not constitute a valid request for substitution, nor does it constitute acceptance of a substitution.

The Engineer will notify the Contractor of acceptance or rejection of the proposed substitution within 28 calendar days of receipt. If a decision on use of a substitute cannot be made within these time limits, the product originally specified shall be used.

No extension of contract time will be allowed through your failure to either transmit requests for substitution sufficiently in advance of the work, or on account of processing time outside the time limits noted above.

Should the originally specified materials not be available within the specified contract time due to your failure to order and obtain such materials, you

are responsible to provide, install and maintain a temporary “equal” material as approved by the City, and for replacing such temporary material with the required product upon availability. You are responsible for all costs associated with the installation, maintenance, and removal of the temporary product and the installation of the specified product, including an extended one-year warranty to cover the final product installed. Sufficient funds to cover the purchase and installation of the specified product will be withheld until such work has been completed and accepted by the City.

The use of any material or equipment so offered will be permitted only after written acceptance of the Contractor's offer by the Engineer. Such acceptance by the Engineer shall not relieve the Contractor from full responsibility from the efficiency, sufficiency, and quality, and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified in the Contract Documents.

### **3-1.04     SUBMITTALS**

This section supplements the requirements of section 5-1.23, “Submittals” of the Standard Specifications.

All submittals must be electronic.

Accompany submittals with a transmittal form. Use a separate form for each item, class of material, equipment, and for items specified in separate specification sections. Submittals for various items shall be made with a single form when the items taken together constitute a manufacturer's package or are functionally related such that expediency indicates checking or review of the group or package as a whole. Assign a sequential number to each submittal and note the number on the transmittal form accompanying each item submitted.

Submittal numbers shall have the following format:

XX.YY (NN-N.NN)

Where:

XX = the sequential submittal number



YY= the sequential number of the submittal (“01” for the first submittal, “02” for the second submittal, etc.)  
(NN-N.NN) identifies the specification section number that requires the submittal.

For example, if the twelfth submittal made is the quality control plan for sign panels, as required by section 56-2.01A, the initial submittal would be 12.01 (56-2.01A). If a re-submittal were required, it would be 12.02 (56-2.01A).

In general, allow 10 working days for the Engineer’s review of submittals. Allow 20 working days for Engineer’s review of submittals that include shop drawings or calculations.

#### **SECTION 4 DESCRIPTION OF PROJECT**

The work, in general, shall include furnishing of all labor, materials, tools, equipment and incidentals required for construction in accordance with the Plans and these Specification for the work herein, for the **CITY OF SAN JUAN BAUTISTA COMMUNITY HALL ACOUSTICAL UPGRADE PROJECT**, and is fully described as follows:

In general, the work shall include, but is not limited to: installation of acoustic panels, diffusers, and all necessary materials and devices for attaching said panels and diffusers on the interior walls and ceiling structure of the City’s Community Hall.

Such other items or details not mentioned above, but that are required by the Plans, or these Special Provisions shall be performed, placed, constructed, and/or installed for a complete project. Payment shall be included in the various items of work and no additional compensation shall be made.

**Due to ongoing use of the Community Hall for special events on weekends the Contractor will be limited to working Monday through Thursday. The project site shall be cleaned by the end of the day, Thursdays. All materials, equipment, tools, scaffolding, portable lifts, etc. shall be securely stored outside of the Community Hall during the period of Friday through Sunday each week through the duration of the contract at Contractor’s sole expense.**

Except for authorized changes in the work, payment for said complete-in-place finished work or improvement will be made only on the basis of the Contract item of work listed in the Proposal. All other work, including the furnishing of labor, materials, tools, equipment and incidentals, provided

for in these Specifications and Contract, or required for the proper completion of the work as a whole, for which no separate payment has been provided shall be an obligation of the Contractor and payment therefore shall be considered included in the price paid for the various items of work listed in the Proposal and no additional compensation shall be made.

## **SECTION 5 CONSTRUCTION DETAILS**

### **SECTION 5-1 GENERAL**

#### **5-1.01 ORDER OF WORK**

All work under this project shall be scheduled, coordinated and executed as necessary to permit construction to be completed within the constraints of the project.

All operations shall be coordinated to eliminate any possibility of damage, or unnecessary removal, replacements and/or modifications to existing facilities or to facilities constructed under this project.

#### **5-1.02 PROTECTION OF SITE AND PUBLIC**

The Contractor shall exercise special caution against dangerous conditions and provide temporary barricades and fencing as may be necessary to protect the public. During construction within the area of work, barricades, signs, and other safety devices shall be used by the Contractor to protect the public adjacent to the work.

The Contractor shall abate dust nuisance by cleaning, sweeping, or other means as necessary during all phases of construction including weekends, holidays and any other times as necessary. Payment for dust control shall be considered as included in the price paid for all items listed in the Proposal and no additional compensation shall be made.

The Contractor shall provide necessary safeguards and shall exercise caution against injury or defacement of any existing site improvements and plantings. The Contractor shall be responsible for any damage resulting from his/her operations and shall repair or replace such damage at his/her own expense. Unless designated otherwise, all existing improvements shall be repaired or replaced, in kind, at the Contractor's expense.

The Contractor is to be responsible for any damage to the work which occurs before final acceptance.

**5-1.03     INSPECTION AND CONTROL OF WORK**

The Contractor's attention is directed to Section 5 of the State Standard Specifications.

**5-1.04     FINAL INSPECTION AND CLEANUP**

At the completion of the work, a final inspection will be made by the Project Manager or City Engineer. The Contractor will be responsible for final cleanup of the project area in accordance of the Provisions with Section 4-1.13 of the State Standard Specifications.

**5-1.05     WORKMANSHIP**

All work performed under this Contract shall be of the highest quality of the trade and the Contractor shall employ only workers who are skilled and thoroughly familiar with the type of improvements proposed.

**5-1.06     PROGRESS SCHEDULE**

A progress schedule shall be prepared by the Contractor for this Contract and shall be delivered to the Project Engineer or City Engineer at the pre-construction meeting. **No work shall begin until the Progress Schedule has been approved by the City Engineer or Project Manager.**

Such progress schedule (bar chart type or other) shall show coordination of major portions of the work including utility relocations/adjustments and other related work by others.

The Contractor shall schedule operations in cooperation with other Contractors and the utility companies to avoid unnecessary conflicts, delays, and disruptions to the progress of this project. Attention should be given to scheduling of all land disturbance activities in dry season (May 1 – Sept 30).

**5-1.07     OBSTRUCTIONS**

Attention is directed to Section 15, "Existing Facilities", of the State Standard Specifications and these Special Provisions.

**5-1.08     COORDINATION AND COOPERATION WITH CITY AND PUBLIC**

The Contractor shall be required to cooperate and work harmoniously with City staff, other City agents, and members of the public during the execution of this Contract.

#### **5-1.09 EXAMINATION OF SITE**

Before submitting a Bid, each Bidder shall carefully examine the Plans and Specifications relating hereto. He/she shall also visit the site of the proposed work and shall fully inform himself/herself as to all the existing conditions relating to the construction and related labor so that he/she may fully understand the facilities, difficulties, restrictions attendant on the execution of the work, limitations applying to the work, and he/she shall estimate and include in his/her Bid a sum sufficient to cover the cost of all items which are required to attain the completed conditions contemplated in the project.

#### **5-1.10 SUBMITTALS/DRAWINGS OF RECORD/CRITERIA FOR FURNISHING PLANS AND SPECIFICATIONS TO CONTRACTOR**

The Contractor shall review, stamp, and sign with his/her approval and submit, with promptness and in orderly sequence so as to cause no delay in the work or in the work of any Contractor, all shop drawings and samples required by the Contract Documents or subsequently by the City Engineer as covered by modifications. Shop drawings and samples shall be properly identified as specified, or as the City Engineer may require. At the time of submission, the Contractor shall especially inform the City Engineer in writing of any deviation in the shop drawings or samples from the requirements of the Contract Documents. (The mere inclusion of the information is not sufficient notice.)

Shop drawings, including manufacturer's literature, catalog cuts, or other printed material shall be entitled with the name of the product on each sheet and shall otherwise be identified by listing the particular Division, Section Article or reference of the work pertaining thereto. Differing items shall not be submitted on the same sheet.

For all shop drawings, submit one reproducible copy with one print of each drawing, rolled in a mailing tube and fully protected for shipment. Provide a clear space of sufficient size for stamping and comments on each shop drawing. For the purpose of these Specifications, a reproducible copy shall mean the original tracing or a legible, double-coated reproducible sepia print, positive side up.

The City Engineer shall annotate and stamp the reproducible and shall forward same to the Contractor's printer, who shall make and return three prints plus the original tracing to the City Engineer. Additional prints required by the Contractor shall be forwarded to the Contractor. The cost of printing and mailing are the responsibility of the Contractor and no additional compensation shall be allowed therefore.

Unless otherwise specified, for standard manufactured items, submit three copies of manufacture's catalog or data sheets for each submission, showing illustrations of the item to be furnished, scaled details, sized, dimensions, performance characteristics, manufacturer's installation instructions, and other pertinent information. One copy of a submission shall be returned to the Contractor approved by the City Engineer as noted on the documents. The City Engineer will retain one copy and the remaining one copy will be distributed to the City Inspector.

By approving and submitting shop drawings and samples, the Contractor thereby represents that he/she has determined and verified all field measurements, field construction criteria, materials, catalog number and similar data, or shall do so, and that he/she has checked and coordinated each shop drawing and sample with the requirements of the work and the Contract Documents.

Allow two weeks minimum for review. Allow additional time if processing must be delayed to permit coordination with subsequent submittals. Allow one week for reprocessing each submittal.

No extension of Contract time will be authorized because of failure to transmit submittals sufficiently in advance of the work to permit processing.

The City Engineer shall review and approve any shop drawings and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the project and with the information given in the Contract Documents. The City Engineer's approval of a separate item shall not indicate approval of an assembly in which the item functions.

The Contractor shall make any corrections required by the City Engineer and shall resubmit the required number of corrected copies of shop drawings or new samples until approved. The Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the correction requested by the City Engineer on previous submissions. Corrected shop drawings shall be resubmitted in the same manner as called for above.

The City Engineer's approval of shop drawings or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has specifically informed the City Engineer in writing of such deviation at the time of the submission, and the City Engineer has given written approval to the specified deviation; nor shall the City Engineer's approval relieve the Contractor from responsibility for errors or omissions in the shop drawings or samples.

No portion of the work requiring a shop drawing submission, including ordering of materials, shall be commenced until the submission has been approved by the City Engineer. All such portions of the work shall be in accordance with approved shop drawings and samples. Any work placed without submittals being made shall be replaced by Contractor at his/her own expense, if directed by the City Engineer. Whenever work is specified to conform to approved samples on file in the City Engineer's Office, conformance shall be required in all respects and the City Engineer's decision in respect to such conformity shall be final.

Where Specifications require manufacturer's printed installation directions, submit duplicate copies of such directions for approval.

The Contractor shall provide and maintain an up-to-date complete "**RECORD DRAWING**" record on a separate set of construction Plans which shall show every change from the original drawings and Specifications. Prints for this purpose may be obtained from the City Engineer. This set of drawings is to be kept on the site and to be used only as a record set.

These Plans shall also serve as work progress sheets, and the Contractor shall make neat and legible annotations thereon daily as the work proceeds, showing the work as actually installed. These drawings shall be available at all times for inspection and to be kept in a location designated by the City Engineer.

On or before the date of final inspection, the Contractor shall deliver the corrected and completed "**RECORD DRAWING**" to the City Engineer. Contractor shall furnish in duplicate two binders of all manufacturers' literature brochures, manuals, parts list, instructions, etc., for all electrical and mechanical equipment as required to be furnished and installed by the Contractor. Submissions of this literature in a haphazard method will not be acceptable. **Failure to submit "RECORD DRAWING" shall be cause to withhold final payment and not accept the project.**

The "**Record Drawing**" shall be accurate and up-to-date with approval of the City Engineer before each progress payment shall be made.

#### **5-1.11     MATERIAL TESTING**

**The City of San Juan Bautista will not provide any appropriate material or product testing for the project.**

#### **5-1.12     ARBITRATION**

In the event of a dispute as to whether the conditions materially differ or do involve hazardous waste, the Contractor shall continue to proceed with all work to be performed under the Contract and shall retain all rights provided either by Contract or by law which pertain to the resolution of any dispute or protest.

Arbitration shall be initiated by a Complaint in Arbitration made in compliance with the requirements of said regulations. A Complaint in Arbitration by the Contractor shall be made not later than **180 calendar days** after the date of service in person or by mail on the Contractor of the final written decision by the Department of the claim.

#### **5-1.13     NOTICE OF POTENTIAL CLAIM**

The Contractor shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the City Engineer, including failure or refusal to issue a change order, or for the happening of any event, thing, occurrence, or other cause, unless he/she shall have given the City Engineer due written notice of potential claim as hereinafter specified.

The written notice of potential claim shall be submitted to the City Engineer prior to the time that the Contractor performs the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the City Engineer, or in all other cases within **15 CALENDAR DAYS** after the happening of the event, things, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that differences between the parties arising under and by virtue of the Contract are brought to the attention of the City Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The Contractor hereby agrees that he/she shall have no right to additional compensation for any claim that may be based on such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed.

Should the Contractor, in connection with or subsequent to the assertion of a potential claim, request inspection and copying of documents or records in the possession of the City that pertain to the potential claim, Contractor shall make its records of the project, as deemed by the City to be pertinent to the potential claim, available to the City for inspection and copying.

Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by owner, is a condition precedent to any action, proceeding, litigation, suit, or demand for arbitration by Contractor.

#### **5-1.14 CLAIMS**

Submission of a claim, properly certified with all required supporting documentation, and written rejection or denial of all or part of the claim by the City Engineer, is a condition precedent to any action, proceeding, litigation, suitor demand for arbitration by Contractor. The Contractor's attention is directed to Section 9-1.17D "Final Payment and Claims" of the State Standard Specifications.

Payment for graffiti, if required, shall be borne by the Contractor, and no additional compensation shall be therefore allowed.

#### **5-1.15 PUBLIC CONTRACTS CODE 9204 PUBLIC WORKS PROJECT**

##### Contract Dispute Procedures

Sections 9204(e) and (g) of the California Public Contract Code ("PCC") provides that the text or a summary of PCC 9204, effective January 1, 2017, shall be included in the plans and specifications for any public works projects that may give rise to a claim under this section and that Section 9204 applies to contracts for public works projects entered into on or after January 1, 2017. In accordance therewith, City of San Juan Bautista hereby provides notice and includes the statutory text:

**5-1.16     9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.



(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity’s written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall

bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work, which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity, and if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

#### **5-1.17     CONSTRUCTION AREA SIGNS**

**If there is a requirement for financing sign, the Contractor shall install City furnished signs (City of San Juan Bautista financing signs) with new hardware and 4” x 6” pressure treated posts. Signs shall be picked up by the Contractor at a designated location to be named at a later date by the City Engineer. The signs shall be installed near the entrance to the Community Hall and visible from the street as directed by the City Engineer. The Contractor shall remove the City signs when requested by the City Engineer and delivered to a designated location.**

Full compensation for furnish and install all temporary construction area signs, hardware, and posts (including removal at end of project) complete in place shall include all labor, materials, tools, equipment, mounting brackets, braces, hardware, and other appurtenances required for a complete-in-place installation shall be paid under various contract items of work.

#### **5-1.18     PROTECTION OF SITE AND PUBLIC SAFETY**

The Contractor shall take all necessary precautions to prevent damage to the adjacent fencing, roadway, buildings, and other existing improvements, etc., during the progress of his/her work and shall be required to make any repairs resulting from his/her negligence, and no additional compensation shall be made.

Attention is directed to Section 7-1.03 “Public Convenience” and 7-1.04 “Public Safety” of the State Standard Specifications, and these Special Provisions. Safe and adequate pedestrian zones and crossing of work shall be maintained at all times unless otherwise approved by the City Engineer.

**5-1.19 DUST CONTROL**

Dust Control shall be as specified in Section 10-5 “Dust Control” of the State Standard Specifications, except as herein modified.

Payment for dust control shall be considered as included in the prices paid for the various Contract items of work as listed in the proposal, and therefore no additional compensation shall be allowed.

**5-1.20 SCHEDULE OF VALUES**

The Schedule of Values shall conform to the Provisions in Section 9-1.06B, of the State Standard Specifications, and these Special Provisions.

The City Engineer shall be furnished a Schedule of Values for each Contract Lump Sum item of work described within these Special Provisions and where noted in these Special Provisions.

The Schedule of Values shall be submitted to the City Engineer for approval within **15 CALENDAR DAYS** after the Contract has been approved. The Schedule of Values shall be approved, in writing, by the City Engineer before any partial payment for any of the lump sum items of work shall be made. The Schedule of Values will be used to assist in determining appropriate value of partial work in the Contractor’s pay requests.

**5-1.21 CHANGES IN WORK**

For work done on a “Time and Materials” basis, the Contractor shall submit all required documents for a specific change within ten (10) calendar days of completing the work.

Outstanding proposals at the end of the project: The Contractor shall submit all outstanding proposals, in the specified format, within ten (10) calendar days of the date established as “Substantial Completion”. The City reserves the right to not process any proposals received after that date unless specifically agreed in advance.

**5-1.22 CLEAN UP**

Throughout all phases of construction including suspension of work and until final acceptance of the project by the City of San Juan Bautista Council, the Contractor shall keep the work site clean and free from rubbish and debris. The Contractor shall also abate dust nuisance by cleaning, sweeping and sprinkling with water, or other means as necessary. The use of water resulting in mud on public street and or City right-of-way shall not be permitted as a substitute for sweeping or other methods.

Failure of the Contractor to comply with the City Engineer's clean up orders may result in an order to suspend the work until the condition is corrected. No additional compensation shall be allowed therefore as a result of such suspension.

## **SECTION 5-2 TECHNICAL SPECIFICATIONS**

### **5-2.01 ACOUSTICAL WALL PANELS**

Acoustic wall panels are to be impact resistant wood fiber Armstrong Tectum Finale panels or approved equal and shall be rated minimum Noise Reduction Coefficient (NRC) 0.75 in type A mounting. The finish color of the panels shall be 'natural' in color. Mounting of panels on walls shall be per the manufacturer's recommendation.

Acoustic wall panels shall comply with Chapter 8, Section 803 of the California Building Code. The Contractor shall ensure that the panel materials proposed for installation match and comply with the corresponding material type identified in Section 803. Panels shall be classified in accordance with NFPA 286 and comply with Section 803.1.1.1 of the Code. In addition, wall panels shall be classified in accordance with UL 273 (Class A).

Contractor shall submit Manufacturer's specifications and performance information for proposed wall panels – **and receive written City approval** - before materials are brought on site.

### **5-2.02 ACOUSTICAL CEILING PANELS**

Acoustic ceiling panels are to be impact resistant wood fiber Armstrong Tectum Finale panels or approved equal and shall be rated minimum Noise Reduction Coefficient (NRC) 0.60 in type A mounting. The finish color of the panels shall be 'white' in color. Panels are to be mounted directly to the ceiling (highest point of ceiling in Community Hall is approximately 26' above floor). Mounting of panels on ceilings shall be per the manufacturer's recommendation.

Acoustic ceiling panels shall comply with Chapter 8, Section 803 of the California Building Code. The Contractor shall ensure that the panel materials proposed for installation match and comply with the corresponding material type identified in Section 803. Panels shall be classified in accordance with NFPA 286 and comply with Section 803.1.1.1 of the Code. In addition, ceiling panels shall be classified in accordance with UL 273 (Class A).

Contractor shall submit Manufacturer's specifications and performance information for proposed ceiling panels – **and receive written City approval** - before materials are brought on site.

### **5-2.03      QUADRATIC RESIDUE DIFFUSERS (QRD)**

Quadratic Residue Diffusers shall be 4' X 8' minimum in size and constructed as shown on Drawing A1.4 or, as an alternate, acquired from a manufacturer preassembled or fabricated. If acquired from a manufacturer preassembled or fabricated the diffusers must be assembled in a manner that matches the dimensions of the QRD shown on Drawing A1.4. Quadratic Residue Diffusers shall be mechanically attached to the walls using screws. Neoprene pads or other similar padding shall be installed on the backs of the QRD's to ensure they are snug against the wall. The QRD's shall be firmly attached to the wall such that they do not rattle.

The QRD's shall be finished with a wood stain if constructed or have a 'natural' finish similar to wall panels if acquired from a manufacturer.

Contractor shall submit Manufacturer's specifications and performance information for proposed pre-fabricated diffusers **for City approval before materials are brought on site**. Should contractor propose to fabricate panels a shop drawing shall be submitted for review.

### **5-2.04      SECURED OFF-SITE STORAGE**

Due to the ongoing use of the Community Hall on weekends during construction, the Hall must be clean and free of construction related material, equipment, tools, scaffolding, portable lifts, and protective measures by the end of the day, Thursday, of every week. The Contractor shall provide – at Contractor's sole expense – sufficient secured storage for all said construction related items outside of Community Hall during the period of Friday through Sunday for the duration of the contract. Such storage must protect contents from the weather and provide security from theft and vandalism. Storage pods or containers can be placed on adjacent street with prior approval from the Project Manager or City Engineer as long as traffic is not impeded.

Once the project is complete, the Contractor shall remove all storage pods, containers, skids, etc. at the Contractor's expense.

## SECTION 6 BID ITEM DESCRIPTION

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### **BID ITEM 1. MOBILIZATION**

The lump sum amount paid for "**Mobilization** " shall be considered as full compensation for mobilization and demobilization as specified herein, including but not limited to notifications, building permit application, project records and documents, licenses, submitting diffuser shop drawings, submitting manufacturer's details on panel specifications and recommended installation instructions for approval, replying to City Project Manager inquiries about submittals, re-submittals (if necessary), moving on the site any equipment required for the operations, acquiring materials, preparatory work, coordination and cooperation, inquiring information about other anticipated projects in the project areas and coordination to minimize delays, project meetings, providing on-site sanitary facilities, developing a temporary construction staging area, subcontractor insurance and bonds, Contractor insurance and bonds, development, demobilization and all other mobilization work, and no additional payment shall be allowed therefore. Mobilization bid amount shall not exceed 15% of total base bid. Contractor can request up to 75% of Mobilization bid amount with first progress payment.

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### **BID ITEM 2. 4' X 8' ACOUSTICAL WALL PANELS (NRC 0.75)**

The bid amount for installation of acoustic wall panels shall include the cost of acquiring panels (after approval of submittals by City Project Manager), mounting of panels according to manufacturer's recommendations and City drawings, fastening hardware, and any incidentals required to install the panels. Bid amount also includes providing the means for installation of panels, such as ladders, scaffolding, etc, while preserving existing adjacent floor and wall finishes.

Payment of Bid Item 2. 4' X 8' Acoustical Wall Panels (NRC 0.75) shall include all labor, materials, and all other costs associated with the professional installation and completion of this work in full.

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### **BID ITEM 3. 2' X 8' ACOUSTICAL WALL PANELS (NRC 0.75)**

The bid amount for installation of acoustic wall panels shall include the cost of acquiring panels (after approval of submittals by City Project Manager), mounting of panels according to manufacturer's recommendations and City drawings, fastening hardware, and any incidentals required to install the panels. Bid amount also includes providing the means for installation of panels, such as ladders, scaffolding, etc, while preserving existing adjacent floor and wall finishes. **Six 2' x 8' panels shall be installed on the South Wall as shown on the plans. Four 2' x 8' panels shall be installed on walls at locations designated by the City Engineer or Project Manager.**

Payment of Bid Item 3. 2' X 8' Acoustical Wall Panels (NRC 0.75) shall include all labor, materials, and all other costs associated with the professional installation and completion of this work in full.

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**BID ITEM 4. 2' X 8' ACOUSTICAL CEILING PANELS (NRC 0.60)**

The bid amount for installation of acoustic ceiling panels shall include the cost of acquiring panels (after approval of submittals by City Project Manager), mounting of panels according to manufacturer's recommendations and City drawings, fastening hardware, and any incidentals required to install the panels. Bid amount also includes providing the means for installation of panels, such as ladders, scaffolding, portable lifts, etc, while preserving existing adjacent floor, ceiling, and wall finishes.

Payment of Bid Item 4. 2' X 8' Acoustical Ceiling Panels (NRC 0.60) shall include all labor, materials, and all other costs associated with the professional installation and completion of this work in full.

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**BID ITEM 5. QUADRATIC RESIDUE DIFFUSERS**

The bid amount for installation of Quadratic Residue Diffusers shall include the cost of fabricating or acquiring diffusers (after approval of submittals by City Project Manager), mounting of diffusers according to manufacturer's recommendations (if prefabricated by manufacturer) and City drawings, fastening hardware, and any incidentals required to install the diffusers. Bid amount also includes providing the means for installation of diffusers, such as ladders, scaffolding, etc, while preserving existing adjacent floor and wall finishes.

Payment of Bid Item 5. Quadratic Residue Diffusers shall include all labor, materials, and all other costs associated with the professional installation and completion of this work in full.

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**BID ITEM 6. SECURED OFF-SITE STORAGE**

The lump-sum amount for installation of Secured Off-site Storage shall include the cost of providing off-site storage for all materials (panels, diffusers, installation hardware, adhesives, protective tarps, etc.), equipment, and tools such that the Community Hall is free of construction related material and equipment during the period of Friday through Sunday of each week for the duration of the Contract.



Payment of Bid Item 6. Secured Off-site Storage shall be made in accordance with the proportion complete based on the lump-sum price of this bid item, assisted by the Schedule of Values as determined by the City's representative and shall include all labor, materials, and all other costs associated with the professional installation and completion of this work in full.

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**Appendix B**

**Plans**

Tables and Exhibits

**Table 1: Panel Schedule**

	<b>North Wall</b>	<b>South Wall</b>	<b>East Wall</b>	<b>West Wall</b>	<b>Ceiling</b>	<b>Wall as Designated</b>
<b>4' x 8' Acoustical Panel (NRC 0.75)</b>	<b>6</b>	<b>3</b>	<b>2</b>	<b>8</b>		
<b>2' x 8' Acoustical</b>		<b>6</b>				<b>4</b>

<b>Panel (NRC 0.75)</b>						
<b>2' x 8' Acoustical Panel (NRC 0.60)</b>					<b>96</b>	
<b>4' x 8' Quadratic Diffuser</b>	<b>1</b>		<b>2</b>	<b>4</b>		